

DIGEST OF STATE AND FEDERAL LAWS:

Education of Handicapped Children

3rd EDITION



DIGEST OF STATE AND FEDERAL LAWS: EDUCATION OF HANDICAPPED CHILDREN

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INTRODUCTION

The Council for Exceptional Children (CEC) is pleased to publish the third edition of this digest of state and federal law relating to the education of handicapped children. It was developed by the Council's State-Federal Information Clearinghouse for Exceptional Children, and has three purposes:

1. to facilitate better understanding of legal language and structure governing the education of handicapped children in each state and the federal government;
2. to serve as a basic reference for those seeking alternative legal patterns and for those conducting related research; and
3. to provide a means for states to evaluate and compare their statutes with those of other states.

Part I presents, in digest form, the laws of the 50 states and the District of Columbia. Each state's laws have been organized along 11 subject categories—right to an education, population, identification, evaluation and placement, administrative responsibility, planning, finance, administrative structure and organization, services, private schools, personnel, and facilities. Citations are provided for those who may wish to refer to the original text of the laws.

Part II is a digest of federal laws which have particular relevance to education of handicapped children. These laws are organized by statute rather than subject.

While handicapped children are first of all children who are governed by and entitled to all of the benefits and guarantees provided by all state and federal law, this digest is confined to those laws which directly pertain to education of handicapped children. Therefore, the reader may wish to consult other sections of state and federal codes which are not cited in this document.

Further, since many laws relating to education of the handicapped have either undergone major revisions in the last few years or are under consideration for revision, the reader should be aware that Parts I and II of this book represent the status of state and federal laws through December, 1974.

As an additional reference the reader may want to refer to another CEC publication, *State Law and the Education of Handicapped Children: Issues and Recommendations*. This book discusses in depth some of the problems regarding state law and handicapped children and proposes model state statutes.

While substantial progress has been made in the improvement of law and other public policy providing for the education of the handicapped since 1971, when the first edition of the *Digest* was published, many handicapped children are still not receiving an appropriate education. It is our hope that the use of the *Digest* will contribute to making such education for these children a reality.

Raphael Simches
1974-75 President
The Council for Exceptional Children

December 31, 1974

ACKNOWLEDGEMENTS

As those who have worked with the law know, the process of monitoring, collecting and cataloguing statutes is often a complex and frustrating task. In the development of the "Digest of State and Federal Laws: Education of Handicapped Children," The Council for Exceptional Children's State-Federal Information Clearinghouse and Governmental Relations Unit have had assistance from a number of persons. The most significant of these are the directors of special education in the 50 states and the District of Columbia.

In addition, special recognition is given to Linda Lindsay and John Aguero for their superior efforts in the total production of this volume, and to Joe Ballard for his preparation of the Federal portion.

N.B.

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ALABAMA

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and 21 years . . ." (Art. XIV, Sec. 256, Ala. Const.)

Compulsory Attendance Law: A child whose physical or mental condition prevents or renders inadvisable attendance at school or application to study (and who has a certificate of exemption by the county superintendent of education if he resides in a district under the supervision of a city board), is exempt from the compulsory attendance requirements. Before an exemption certificate may be issued, the superintendent must require a certificate saying that the child is physically and mentally incapacitated for school work. The certificate is signed by the county health officer in counties having a health unit or by a regularly licensed practicing physician in counties not having a health unit. (Sec. 301 Ala. Stats.)

Responsibilities: School boards shall provide at least 12 consecutive years of appropriate instruction and special services for exceptional children beginning with children six years of age. (Sec. 2, Act 106, Laws of 1971)

POPULATION

Definitions: "'Exceptional children' means persons between the ages of six and 21 who have been certified under regulations of the State Board of Education by specialists as being unsuited for enrollment in regular classes of the public schools or who are unable to be educated or trained adequately in such regular programs, including but not limited to the mild and moderately to severely retarded, but not including the profoundly retarded; the speech impaired, the deaf and hearing impaired; the blind and vision impaired; the crippled and those having other physical handicaps not otherwise specifically mentioned herein; the emotionally conflicted; the socially maladjusted; those with special learning disabilities; the multiply handicapped; and the intellectually gifted." (Sec. 1, Act. 106, Laws of 1971)

"Retarded" means having subaverage general intellectual functioning which (1) either originates during the developmental period or results from brain damage caused by disease or physical injury occurring subsequent to the developmental period, and (2) is associated with an impairment in adaptive behavior." (Sec. 1, Act 106, Laws of 1971)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: Within 120 days after July 22, 1971, all school boards must conduct a thorough survey of persons who, if certified by specialists, would probably qualify as exceptional children. The survey must indicate each child's name, age, sex, and type of exceptionality.

All data descriptive of an individual person, rather than a compilation which does not reveal specific information about a person, will be maintained in strict confidence and unavailable to anyone except the survey takers, appropriate superintendent and staff, the appropriate school principal, the individual child's parent or guardian, and any other person designated in regulations adopted by the State Board of Education. (Sec. 4, Act. 106, Laws of 1971)

Screening: The Department of Education and the State Board of Health will jointly arrange for examining public school children for mental deficiency and any physical defects (which include diseases of the ear, eye, nose, throat, mouth and teeth, deformity of location of the hip joint, spinal disease, phymosis, hook worm disease, any communicable or contagious diseases) if a local superintendent has reason to believe that the child has a communicable or contagious disease or any disease requiring medical and/or surgical aid to develop the children into strong and healthy individuals. (Sec. 553 Ala. Stats.)

Alabama Boys Industrial School, Alabama State Training School for Girls, The Alabama Institute for Deaf and Blind, Department of Mental Health, State Crippled Children's Service, the State Board of Health, and Department of Pensions and Securities shall direct their field workers to review their case records on or

before March 31 of each year and to report to the superintendent of the local school board the names and other pertinent information from all persons who might, if certified by specialists, be exceptional children in the school district and whose condition, in their opinion, might require special education services. (Sec. 9, Act 106, Laws of 1971)

Special Education Evaluation: "Placement committee means a committee so designated and appointed by the superintendent for determining the eligibility of exceptional children for placement in special school programs or classes. The committee shall be composed of representatives from the fields of medicine, education, and psychology whenever practicable and after study of all data available on each exceptional child shall make recommendations concerning each child's admission to a school program or class or withdrawal therefrom."

"Specialist' means a physician, psychologist, psychometrist, or other professional personnel qualified pursuant to regulations established by the State Board of Education to examine children for the purpose of determining whether they are exceptional children." (Sec. 1,Act 106, Laws of 1971)

No child shall receive special services unless he is properly classified as an exceptional child. The child's parents or guardian shall be informed of the reasons for this classification, and a copy of the report certifying the child's type of exceptionality will be kept on file in the office of the principal of the school in which the child is enrolled and any other places prescribed by regulation. (Sec. 9, Act 106, Laws of 1971)

The school board should utilize regular facilities by adapting them to the needs of exceptional children. No exceptional child will be segregated or taught apart from non-exceptional children until a study of the child's case has been made, with evidence obtained indicating that segregation would be for the child's benefit or is necessary because of the difficulties involved in teaching the child in a regular classroom. Whenever possible placement will be on the basis of the placement committee's recommendation. The principal of the school in which an exceptional child is taught will keep a written record of the case history of each exceptional child showing the reason for any withdrawal of a child from the regular school program and his enrollment in or withdrawal from a special program. This confidential record is kept available for inspection by appropriate school officials and/or faculty at any time with the consent of the principal. (Sec. 8, Act 106, Laws of 1971)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education will adopt regulations covering:

- (1) qualifications of specialists for each type of exceptionality and standards for certification of exceptional children;
- (2). minimum standards of instruction and special services for each type of exceptionality at each age or grade level;
- (3) reasonable qualifications for teachers, instructors, therapists, and other personnel needed to work with exceptional children;
- (4) guidelines for suitable five-year incremental plans for implementation of the programs for various types of typical situations encountered by school boards, and
- (5) any other necessary rules or regulations.

If the regulations of the Board are amended, the amendments become effective 90 days after written notice of the amendments has been given to all local boards. (Sec. 5, Act 106, Laws of 1971)

The Department of Health is responsible for the operation of the School for the Mentally Retarded. (Sec. 252 Ala. Stats.)

The Alabama Institute for the Deaf and Blind is managed and controlled by a board of trustees consisting of the governor, state superintendent of education, and 12 other persons appointed by the governor and confirmed by the Senate. (Sec. 520 Ala. Stats.)

PLANNING

Within 120 days after the completion of the census (See Identification, Evaluation and Placement), each school board must adopt an incremental five-year plan, which implements a program of appropriate instruction and special services for resident exceptional children including a procedure for obtaining their certification by a specialist.

After adoption, the plan will be submitted to the State Board of Education for approval or disapproval in accordance with State Board regulations. If it is approved, the school board must abide by it. Modifications of the plan must be approved by the State Board. If the State Board of Education

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disapproves the plan, representatives of the State Board will consult with the district in an effort to formulate a plan which can be approved. Plans and/or amendments will be disapproved only because minimum State Board standards are not met. Reasons for disapproval must be stated.

If no plan can be agreed upon, the State Board shall provide a plan which becomes binding unless the local board files, within 30 days, a suit in the Circuit Court of Montgomery County to restrain the enforcement of the plan on the grounds that it is arbitrary, impracticable, detrimental to the education of exceptional children, or invalid. Only the specified court will have jurisdiction on these suits. All suits will be given a preferred setting. {Sec. 4, Act 106, Laws of 1971}

The State Board of Education has the primary responsibility for enforcing compliance with the plans. If any local board fails or refuses to carry out its duties, the Attorney General when requested by any private citizen shall bring civil suits in Montgomery County to require that such duties be performed. (Sec. 5, Act 106, Laws of 1971)

During the fifth year of implementation of the incremental five-year plan, each school board must submit a long-range plan, providing appropriate instruction and special services to exceptional children. Long-range plans are binding unless modified with State Board approval. Such plans and modifications must be resubmitted to the State Board of Education for approval or disapproval at established intervals, but not less often than once every seven years or more often than once every two years.

Procedures for approving or disapproving, establishing and/or enforcing long-range plans will be in the same manner as for the incremental five-year plans. The long-range plan must include provisions for: (1) establishment of special education classes, instruction, curricula, facilities, equipment, special services, utilization of teachers and other personnel; (2) attendance requirements for exceptional children; (3) services for exceptional children whose condition will not permit them to profit or benefit from any kind of school programs such as day care, recreation programs, and other services and facilities; and (4) payment of tuition and other costs for attendance at appropriate semi-public or private schools or institutions which provide appropriate services for all exceptional children, such as the Children's Center in Montgomery and the Opportunity Center School in Birmingham. {Sec. 6, Act 106, Laws of 1971}

FINANCE

Required public school instruction and special services for exceptional children shall be made available at public expense for each school year. The funds for such instruction and special services are derived from state, county, municipal, district, federal, or other sources or any combination of sources. All school boards are required to set aside from their revenues from all sources an amount necessary to provide special services for exceptional children. If insufficient funds are available to school boards to fully provide for exceptional children as well as to provide for the educational needs of non-exceptional children, the board must pro-rate all funds on a per capita basis between exceptional and non-exceptional children. No matriculation, tuition, or other fees or charges will be required or asked of exceptional children or their parents or guardians, unless such fees or charges are made uniformly for all public school pupils. {Sec. 3, Act 106, Laws of 1971}

Teacher units will be allocated on the following basis:

(1) For each group of between eight and 15 exceptional children who are taught by a properly qualified full-time teacher in a special class or who are taught individually as homebound or hospitalized children unable to attend school for the major portion of the year, one teacher unit shall be allowed. The minimum number of pupils may be reduced to five if instruction of a larger number would not be feasible or practicable. One-fifth of a unit may be authorized for each exceptional child taught in communities where fewer than five exceptional children are in need of special instruction;

(2) For each qualified member of the instructional staff devoting full time to the instruction of exceptional children in regular or special school programs, one teacher unit will be allowed;

(3) For instructional services provided by a qualified teacher or teachers of exceptional children who are unable to attend school because they are homebound or hospitalized, one teacher unit is allowed for each 900 instruction hours. A proportionate part of one unit will be allowed for less than 900 hours;

(4) Upon conclusion of the five-year plan, the State Board shall allocate teacher units to public state institutions providing residential care for exceptional children in the same manner as those provided for public schools to the extent that appropriations for teacher units are not otherwise provided for by law. (Sec. 7, Act 106, Laws of 1971)

As authorized by regulations of the State Board, districts may receive, in lieu of the amount calculated on the basis of daily attendance and otherwise authorized by law, 80 percent of the cost of transportation

for each bus used exclusively for the purpose of transporting eight or more exceptional children unable to ride regular buses. A proportionate amount will be allowed for a vehicle used exclusively for transporting a smaller number of exceptional children (fewer than eight) to and from school. (Sec. 11, Act. 106, *Laws of 1971*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Districts may jointly provide services to exceptional children. (Sec. 6, *Act 106, Laws of 1971*)

SERVICES

"Special services' means services relating to instruction of exceptional children (but not including the instruction itself) including, but not limited to: administrative services; transportation; diagnostic evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braille services and materials; typists and readers for the blind; special materials and equipment; and such other similar personnel, services, materials, and equipment as may from time to time be approved by regulations adopted hereunder by the State Board of Education." (Sec. 1, *Act 106, Laws of 1971*)

The state superintendent of education is authorized to purchase and arrange for distribution to school boards previously adapted text books, equipment, and materials prepared in various resource and media centers for use by certain children. These children are those with vision and hearing impairments and other special learning disabilities enrolled in the public schools or whose tuition and expenses in other schools are being paid by the school board under the provisions of this Act. (Sec. 10, *Act 106, Laws of 1971*)

PRIVATE

Children may be educated in a semi-public or private school. The payment per exceptional child will not exceed the average per pupil appropriation for all exceptional children in a school district including an allowance for teacher units, transportation and all other aids for exceptional children. Only children whose needs cannot be met in the schools may use this program. It is further limited to private institutions approved or accredited for training of exceptional children by the State Board. Institutions not meeting minimal standards will not be eligible, by direct or indirect means, to receive state funds. Also, no funds will be expended for training in any school or institution outside the State of Alabama. (Sec. 6, *Act 106, Laws of 1971*)

PERSONNEL

The State Board of Education may make training grants to professional personnel seeking special training in exceptional child education to qualify them to meet State Board regulations for personnel. Grants are limited to personnel under contract to work in the exceptional child program in the state, the training schools, the child training centers, and at various residential facilities for exceptional children throughout the state. The grants, for contractual periods as specified by the State Board of Education, are made to regular students planning to work in the state's exceptional child program if they sign a commitment (satisfactory to the State Board) that they will take any appropriate, available job at any location within the state upon graduation or completion of their study. These commitments will be binding upon those who sign them and receive scholarship aid, but the State Board may waive enforcement in the case of extreme and unforeseen hardships.

Each grant will cover the cost of tuition, housing, and food. The courses for which scholarships may be made available are most often on the campuses of the state higher educational institutions. If courses are not offered within the state in the areas requiring certification in exceptional child education, the recipient may receive a grant for attending an out-of-state institution of higher learning approved by the State Board. (Sec. 12, *Act 106, Laws of 1971*)

FACILITIES

All buildings and facilities used by the public and constructed in whole or in part with state, county or municipal funds shall abide by prescribed standards and specifications. (*Act 224, Ala. Code*)

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ALASKA

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall, by General Law, establish and maintain a system of public schools open to all children of the state and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institutions." (Art. VII, Sec. 1, Alas. Const.)

Compulsory Attendance Law: Children between ages seven and 16 are required to attend the public schools of the state, and the parents or guardians of such children are responsible for insuring their attendance. The requirement is waived if: (1) the child's physical or mental condition makes attendance impractical, as determined by a competent medical authority; (2) the child is in the custody of the court or a law enforcement authority; or (3) the child is temporarily ill or injured.

A child may be suspended or denied admittance because of (1) behavior which is inimical to the welfare, safety, or morals of other pupils; (2) a physical or mental condition which, in the opinion of competent medical authorities, renders the child unable to reasonably benefit from the available programs; or (3) a physical or mental condition which, in the opinion of competent medical authorities, will cause the attendance of the child to be inimical to the welfare of other pupils. If a child has been suspended or denied admittance because of reasons 2 and 3 above, he will be permitted to attend school only when he is obviously recovered or when a written statement by a competent medical authority to the local school board states that the child is no longer afflicted with or suffers from the physical or mental condition to the extent that it is a cause for suspension or denial of admission. (Sec. 14.30.010, 14.30.045, and 14.30.047 AS)

Policy: "It is the purpose of sections 180-350 of this Chapter to provide competent education services for the exceptional children of legal school age in this state for whom the regular school facilities are inadequate and not available."

Responsibilities: The Department of Education shall institute a statewide program for the education of exceptional children to insure that whenever possible children are educated in the state, in or near their residence. (Sec. 14.30.285 AS)

All school boards shall provide for, during the school term of each year, an educational program for each school age child who is a resident of the district. (Sec. 14.14.090 AS)

POPULATION

Definitions: "Exceptional children" means children who differ markedly from their peers to the degree that they are better served by placement in a special learning program designed to serve their particular exceptionality; these children may be identified in the following categories:

"mentally retarded" includes those children of educable and trainable mind who consistently demonstrate evidence of reduced academic achievement or social behavior and whose intellectual potential indicates restriction significantly below that of their peers;

"physically handicapped" includes children whose known or diagnosed physical impairments are so severe or involved that special facilities or equipment or methods are needed to make their educational program effective;

"emotionally handicapped" includes children whose known emotional impairment is so severe or involved that special facilities, equipment, or methods are needed to make their educational program effective;

"children with learning disabilities" includes those who exhibit disorders in one or more of the basic learning processes involved in comprehending or using expressive or receptive language and who may require special facilities, equipment, or methods to make their educational program effective;

"gifted" includes children having outstanding intellect, ability, or creative talent; programs or services beyond the level of those ordinarily provided as regular school programs shall be submitted to the Department for supplemental funding on an approved program basis;

"multiple handicapped" includes children whose known or diagnosed handicaps are determined to be any combination of this paragraph, whose needs demand the provision of special facilities, equipment, or methods to make their educational program 'effective.' (Sec. 14.30.351 AS)

Age of Eligibility: Children are eligible for special services if they are at least three years of age. (Sec. Sec. 14.30.180 AS)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Special Education Evaluation: A local special education administrator or the parent or guardian of an exceptional child may apply for a child's enrollment in a special education program. If the administrator applies, he must have parental consent. The application is then forwarded to the local school board which, in turn, forwards it to the commissioner of education. The commissioner has the final responsibility for certifying the child for a special education program. (Sec. 14.30.330 AS)

If a parent or guardian of a handicapped child can certify that the child is receiving adequate educational advantages to the satisfaction of the local school board, enrollment in a special education program is not required. (Sec. 14.30.340 AS)

Before a child is placed in a special education program he shall be assessed to determine the type and extent of his exceptionality. Review of placement shall occur every year that the child is assigned to a special program.

After the child is assessed and before he is placed, his parent or guardian may consult with the school district about the assessment. Opportunity will also exist for consultation after each review of placement.

If a parent or guardian disagrees with the assessment he may request an independent examination and evaluation of the child. If a substantial discrepancy exists between the two evaluations, and if the parent requests it, a hearing shall be held to resolve the discrepancy and to determine the appropriate placement of the child. The Department of Education will adopt regulations governing the hearings and the appointment of the hearing officer. (Sec. 14.30.191 AS)

ADMINISTRATIVE RESPONSIBILITY

The Department of Education is the chief administrative agency and, in conjunction with the local agencies, shall establish standards relative to special programs. The Department will formulate, cooperatively with the Department of Health and Social Services, the diagnostic standards for the identification and classification of exceptional children. (Sec. 14.30.191 AS)

The seven-member board of directors of the state school system has exclusive control of schools in the system, subject to the regulations of the commissioner and Board of Education. (Sec. 14.08.090 AS)

The Department of Health and Social Services shall be responsible for the management of the state institutions. (Sec. 44.29.020 AS)

PLANNING

An advisory committee, established by the commissioners of Education and Health and Social Services, provides information and guidance for development of appropriate programs and services for exceptional children. The committee is composed of, but is not limited to, persons representing local education agencies, state agencies, parent groups, and organizations concerned with programs and services for exceptional children. (AS 14.30.231)

FINANCE

Units are granted to districts conducting special education programs on the following schedule:

Average daily membership	No. of instructional units
5-8	1
9-15	2
16-23	3
24-32	4
33 and over	4 plus 1 for each 9 pupils or fraction of 9

(Sec. 14.17.041 AS)

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ADMINISTRATIVE STRUCTURE AND ORGANIZATION

No child may be transferred to a school outside his district of residence without the consent of his parent or guardian. (AS 14.30.285)

An exceptional child may be sent to classes in another school district or in a state-operated school with the consent of his district if he resides in a district or school attendance area with no provision for classes or if existing classes are inappropriate for his needs. The sending district will pay the receiving facility an amount equal to its cost-per-pupil rate. The Department of Education will pay the remainder of the annual cost. (Sec. 14.30.285 AS)

A child may be sent to another state for special education services if the child's district of residence or school attendance area has no provision for classes appropriate to his needs. If enrollment out of state is approved by a school district or the state director of the state-operated system and the commissioner, the child's expenses shall be paid by the Department of Education. Education expenses are limited to the actual cost of necessary care, transportation and instruction, including room and board, while attending the facility. (Sec. 14.30.285AS)

When necessary to provide more efficient or more economical educational services, a district may cooperate or the Department may require a district to cooperate with other districts, state-operated schools, or the Bureau of Indian Affairs in providing educational services or in establishing boarding and tuition arrangements or arrangements for the exchange of pupils or teachers. (Sec. 14.14.110 AS)

SERVICES

"Special services' means but is not limited to transportation, special teaching, corrective teaching, corrective health habits, and the provision of special seats, books, teaching supplies, facilities, and equipment required for the instruction of exceptional children, and includes education and training for children who cannot utilize regular classroom instruction." (Sec. 14.30.351 AS)

Transportation is provided to exceptional children, without any minimum distance requirements. When it is provided, exceptional children, whenever practicable, must be carried in vehicles separate from those children attending regular classes. (Sec. 14.30.147 AS)

School districts may provide instructional services to exceptional children who are hospitalized or confined to their homes. A child must receive at least ten hours instruction each week in order to be counted as a pupil in the average daily attendance membership for state aid purposes. (Sec. 14.30.305 AS)

A Department of Health and Welfare program gives assistance to groups or organized parents to provide evaluation and special training of exceptional children who do not come within the laws relating to special education because of their age or severity of handicap. Exceptional children in this context mean those who are physically handicapped and those who are educable and trainable mentally retarded. In order to qualify for aid, the parents must arrange for the necessary facilities and equipment for training centers for at least five children. The services provided for those with special handicaps include nursery or preschool training in order to prepare children (when possible) for admission into special classes or regular school, or training in self-help, safety, social and occupational skills for trainable mentally retarded children of school age who are incapable of academic subjects. (Sec. 47.20.10-47.20.50 AS)

Teachers of the handicapped must have a valid teaching certificate and other training that the Department of Education may require. During the first year that special services are offered in a local district or a state-operated school district, the local governing board or the State Department may waive part of the qualifications for teachers of exceptional children. Persons qualified to serve as substitute teachers may serve as teachers for classes for exceptional children. (Sec. 14.30.250 to 14.30.270 AS)

Psychologists must meet the minimum standards in the state's classification plan for psychologists as well as any other requirements that the Department of Education may establish. (Sec. 14.30.280 AS)

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

ARIZONA

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and universities (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character). The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind." (Art. XI, Sec 1 Ariz. Const.)

"Provision shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and be free from sectarian control." (Art. XX, Ordinance 2 Ariz. Const.)

Policy: It is the intent of the Legislature to guarantee equal educational opportunity to each handicapped child in the state regardless of the schools, institutions or programs by which such children are served. (Ch. 181, 1973)

To the extent practicable, handicapped children shall be educated in the regular classes. Special classes, separate schooling or other removal of handicapped children from the regular educational environment, shall occur only if, and to the extent that the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily.

Compulsory Attendance Law: All persons having custody of a child between ages eight and 16 must send the child to the public schools for the full time school session. Parents may be excused from sending their child to school by the board of trustees, if it is shown to the satisfaction of the board and the county school superintendent that the child is in such a physical and mental condition that attendance at public school is either inexpedient or impracticable. (Sec. 15-321 ARSA)

Responsibilities: The governing board of each school district or the county school superintendent shall by the school year 1976-77 provide special education programs and required supportive services for all handicapped children, except emotionally handicapped children. (Ch. 181, 1973)

The governing board of each common or high school district may establish special education programs for gifted and emotionally handicapped children. (Ch. 181, 1973)

POPULATION

"(1) 'Exceptional child' means a gifted or a handicapped child."

"(2) 'Gifted child' means a child of lawful school age who, due to superior intellect, and advanced learning ability or both, is not afforded an opportunity for otherwise attainable progress and development in classroom instruction and who needs special instruction, special auxiliary services, or both, to achieve the levels commensurate with his intellect and ability."

"(3) 'Handicapped child' means a child of lawful school age who, due to physical, mental, or emotional characteristics or a combination thereof is not afforded the opportunity for all around adjustment and progress in regular classroom instruction and who needs special instruction, special auxiliary services, or both, to achieve at levels commensurate with his abilities. Handicapped children include the following:

(a) 'educable mentally handicapped' means a child who, because of his intellectual development, as determined by evaluation pursuant to Section 15-1013, is incapable of being educated effectively through regular classroom instruction, but who is capable of achieving a degree of proficiency in basic academic skills and as a result of special education, may become economically productive and socially adjusted;

(b) 'emotionally handicapped' means a child who, because of his social or emotional problems, as determined by evaluation pursuant to Section 15-1013, is unable or incapable of meeting the demands of regular classroom programs in the public school and requires special classes or special services designed to promote his educational growth and development;

(c) 'homebound' or 'hospitalized' means students who are capable of profiting from academic instruction but who are unable to attend school due to illness, disease, accident, pregnancy or handicapping conditions, who have been examined by a competent medical doctor and are certified by that doctor as being unable to attend regular classes for a period of not less than three school months;

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(d) 'multiple handicapped' means a child who has serious learning and developmental problems resulting from multiple handicapping conditions as determined by evaluation pursuant to Section 15-1013, and who cannot be provided for adequately in a regular class;

(e) 'physically handicapped' means a child who has a physical handicap or disability, as determined by evaluation pursuant to Section 15-1013, which impedes his education progress in a regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment;

(f) 'specific learning disabilities' means the condition of a child who exhibits a significant discrepancy between ability and achievement as determined by evaluation pursuant to Section 15-1013. The specific learning disability may be manifested by perceptual handicaps, brain injury, minimum brain dysfunction, dyslexia, developmental aphasia, but excluding learning problems which are due primarily to visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental disadvantage;

(g) 'speech handicapped' means a child whose speech differs, as determined by evaluation pursuant to Section 15-1013, to the extent that it calls attention to itself, interferes with communication, or causes the child to be maladjusted;

(h) 'trainable mentally handicapped' means a child who because of his intellectual development, as determined by evaluation pursuant to Section 15-1013, is incapable of being educated in regular classroom instruction or educable mentally handicapped classes but who is capable of benefiting from the school experience;

(i) 'hearing handicapped' means a child who has a hearing deviation from the normal, as determined pursuant to Section 15-1013, which impedes his educational progress in the regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment;

(j) 'visually handicapped' means a child who has a vision deviation from the normal, as determined pursuant to Section 15-1013, which impedes his educational progress in the regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment." (Sec. 15-1011 ARSA)

Age of Eligibility: By 1976-77 children must receive services from age five to 21.

IDENTIFICATION, EVALUATION, AND PLACEMENT

The referral of a child for evaluation for possible placement in a special education program shall be made under the direction of the chief administrative official of the school district or county, or such person designated by him as responsible for special education, after consultation with the parent or guardian.

Before a child is placed in a special education program an evaluation shall be made of his capabilities and limitations by at least one professional specialist in a field relevant to his handicap. If appropriate, the educational implications of the handicapping conditions shall be evaluated by a psychologist. The results of the evaluation shall be submitted in writing and with recommendations to the chief administrative official of the school district or county.

In determining placement the following persons shall be consulted by the chief administrative official of the school district or county or such person designated by him as responsible for special education: (1) the school principal; (2) a person responsible for administering or conducting special education courses in the school or school district; (3) a teacher who currently has been instructing the child; (4) an appropriate professional adviser who may be a physician, psychologist, professional social worker or school nurse; (5) a parent or guardian of the child.

The chief administrative official of the school district or county shall place the child. No child shall be placed or retained without the approval of his parent or guardian. (Sec. 15-1013 ARSA)

The placement of a child in a special education program shall be reviewed by the chief administrative official of the school district or county or such person as designated by him as responsible once each semester, if requested by the parent or guardian of the child or recommended by the person conducting the special education program. A copy of the results of the review shall be submitted to the person making such request or recommendation for review. (Sec. 15-1014 ARSA)

ADMINISTRATIVE RESPONSIBILITY

The Division of Special Education is created to administer the special education program under the direction of the state superintendent of Public Instruction. The director of the Division is appointed by the

superintendent with the consent of the State Board. Responsibilities of the director are determined by the State Board. A master's degree in education and experience in special education are necessary to be eligible for appointment as director. (Sec. 15-1012 ARSA)

The director carries out the provisions of this article and the duties prescribed by the State Board of Education relating to the administration of the provisions of this article.

The Division of Special Education may review special education programs, including placement of pupils, to determine that program evaluation and placement procedures comply with the provisions of sections 15-1013 and 15-1014 and the rules and regulations approved by the State Board of Education. (Sec. 15-1012 ARSA)

PLANNING

All school districts shall develop a district plan for providing for special education to all handicapped, except emotionally handicapped children within the district. This plan must be submitted to the State Board of Education by July 1, 1975, and must have approval prior to November 1, 1975. (Sec. 15-1010 ARSA)

A special education advisory committee advises and consults with the State Board of Education, the state superintendent of Public Instruction and the director of the Division of Special Education and engages in other activities mentioned below. The committee is composed of 12 members, no more than five of whom may be officers of employees of local school districts. Other members shall be persons broadly representative of community organizations interested in exceptional children, professionals related to the educational needs of exceptional children, and the general public. It shall have a minimum of two meetings a year.

It shall elect its own chairman and vice-chairman. The State Board of Education shall regularly submit as part of its budget request, any item or items sufficient to cover expenses of the operation of the advisory committee and of its members in connection with their attendance at meetings of committee activities. (Sec. 15-1012 ARSA)

FINANCE

If the county superintendent of schools has established, (with the approval of the Division of Special Education) special education programs in county accommodation schools or has cooperated with other school districts for the provision of special services, he submits an estimate of the current year's tuition cost to each district which has signed an agreement to use the services of the accommodation school at the beginning of the next year's term. Tuition shall be the estimated per capita cost, based on the number of pupils each school district estimates to enroll in the program. The school district pays the tuition in advance quarterly payments on July 1, October 1, January 1, and April 1. During the school year, increases in enrollment over the district's estimate will cause the tuition charge to be adjusted. In the event of over-payment, adjustment is made at the close of the school year. (Sec. 15-1015 ARSA)

The State Board of Education may accept gifts or money from public and private organizations for the Division of Special Education if the purpose of the gift as specified by the donor is approved by the Board and is within the scope of the Board's powers and duties. A fund is established for the placement of these monies and is designated as the Exceptional Children's Special Education Fund. (Sec. 15-1016 ARSA)

All exceptional students shall be included in the entitlement to state aid. The Legislature shall also appropriate 90% of the excess cost of special education and \$50 for each gifted pupil. Excess cost uses a separate budget format, which determines the actual per handicapped pupil cost and then subtracts the regular per pupil cost from that amount. The excess cost shall not exceed the basic support level per state supported classroom divided by 26 for a common school district or 24 for a high school district.

The superintendent of Public Instruction shall require each district which provided special education in the current year to furnish him with detailed records before February 1 of each year. The superintendent reviews all requests for special education to determine if the money requested is consistent with programs already offered, plus an allowance for reasonable growth. If he determines that the amounts are inconsistent, he will reduce the district's excess cost, and it shall be used as the basis to provide money for programs which are consistent. The superintendent determines the program level for districts beginning new programs.

Money appropriated by the superintendent will never exceed the Legislature's appropriations which will be based on the estimated number of students taught at least 240 minutes per school day. A homebound student who receives at least four hours of instruction per week will be counted as a school member.

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Tuition money budgeted and received by a district acting as administrative agent for a cooperative agreement shall be exempt from the budget cost level. (Sec. 15-1017 ARSA)

Until the school year 1976-77, or such earlier time as the district of a pupil's residence provides a course of instruction for the nonemotionally disturbed handicapped children for which such child is eligible, the child, upon application of his parent or guardian to the Division of Special Education, shall have a voucher qualification level equal to the state basic grant under Sec. 15-1211, ARSA, and the relevant category of state special education assistance under Sec. 15-1017, ARSA.

The parent or guardian may present the voucher for such child to any person, school or other institution within the state which offers suitable special education instruction and supportive services approved by the Department of Education, Division of Special Education.

The voucher shall be valid as payment of tuition and costs of such instruction to the extent of the qualification level, but not in excess of the standard charge for tuition and costs as applicable to any non-voucher pupils.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The governing body of a school district or the county superintendent of schools may establish special education programs for exceptional children in cooperation with another district or districts. If two or more governing bodies provide services by joint agreement, they may establish a written agreement for the provision of such services. In the agreement, one governing body administers the program in accordance with the contract. Tuition students may be included in the agreement. (Sec. 15-1015 ARSA)

School districts or county superintendents may contract with other approved public or private agencies inside or outside of the district for the education of exceptional children in accordance with the rules and regulations of the Division of Special Education. (Sec. 15-1015 ARSA)

SERVICES

"Special education" means the adjustment of the environmental factors, modifications of school curricula, and adaptation of teaching methods, materials, and techniques to provide educationally for those children who are gifted or handicapped to such an extent that they do not profit from the regular school curricula or need special education services in order to profit. Difficulty in writing, speaking, or understanding the English language due to an environmental background wherein a language other than which English is spoken primarily or exclusively shall not be considered a sufficient handicap to require a special education." (Sec. 15-1011 ARSA)

The governing body of a school district or the county superintendent may employ, if necessary, special personnel including a director of special education for the operation of special education programs for exceptional children.

The school district or the county superintendent of schools may also establish work experience programs following the rules and regulations of the Division of Special Education. These programs shall consist of classroom instruction, evaluation, training, and part-time employment, which may take place on and off the school campus, under the supervision of certified school personnel. Students in the program must be at least age 16, and attendance will be counted as attendance at school in order to qualify for state reimbursement. The State Division of Special Education must approve all work experience programs.

Special education programs may be conducted only in facilities housing regular education classes or other facilities approved by the State Division of Special Education. (Sec. 15-1015 ARSA)

Among the services provided by the Department of Economic Security are: consultation and guidance for the retarded and their families, residential care, preschool programs for residential and day students, and day care services for school age children who are not eligible for public schools for residential and day children. (Sec. 8-44 ARSA)

The Board of Directors for the Arizona State School for the Deaf and the Blind has established a branch elementary day school in the Phoenix area. (Sec. 15-851 ARSA)

Any blind person enrolling in the University of Arizona or any recognized college in the state may apply to the board of directors of the School for the Deaf and Blind for a reader to assist in his studies. If the application is approved, the board of the school may provide him with a reader at a cost not exceeding \$600 in any one calendar year. (Sec. 15-805 ARSA)

PRIVATE

School districts or county superintendents of schools may contract with approved public or private agencies inside or outside the district for education of exceptional children in accordance with the rules and regulations of the Division of Special Education. {Sec. 15-1015 ARSA}

Handicapped children being furnished special education in rehabilitation, corrective or other state and county supported institutions shall be the responsibility of that institution or facility. Special education programs therein shall conform to the conditions and standards prescribed by the Director of the Division of Special Education.

See also FINANCE and ADMINISTRATIVE STRUCTURE AND ORGANIZATION.

PERSONNEL

The governing body of each school district or the county school superintendent shall by the school year 1976-77, employ supportive special personnel, which may include a director of special education, for the operation of special school programs for exceptional children. (Sec. 15-1-15 ARSA a)

FACILITIES

The special education program shall be conducted only in a school facility which houses regular education classes or in other facilities approved by the State Division of Special Education. (Sec. 15-1-15 ARSA a)

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ARKANSAS

RIGHT TO AN EDUCATION

Constitution: "Intelligence and virtue being the safeguards of liberty and bulwark of a free and good government, the state shall ever maintain a general suitable and efficient system of free schools whereby all persons in the state between the ages of six and 20 years may receive gratuitous instruction." (Art. 14 Sec. 1, Ark. Const.)

Compulsory Attendance Law: Compulsory school attendance requirements for children between the ages of seven and 15 are waived for children who are mentally or physically incapacitated for performing school duties. (Sec. 80-1504, Ark. Stats.)

Every parent, guardian or other person having control of any mentally normal minor over age eight who has defective hearing or sight to the extent that he is not benefited by instruction in the public schools must send such child to the State School for the Deaf or the State School for the Blind. The child must attend the school for at least 32 weeks of each year until he has completed the course of instruction at the school, or until he has been discharged by the superintendent of the schools. (Sec. 80-2401 Ark. Stats.)

Children will be excused from this provision if they are receiving instruction from a private tutor or at another approved school, if they are physically incapable of performing school work, or for any other reason which is deemed sufficient by the superintendent of schools. (Sec. 80-402 Ark. Stats.)

Policy: It shall be the policy of this state to provide and to require school districts to provide, as an integral part of the public schools, special education sufficient to meet the needs and maximize the capabilities of handicapped children. The implementation of this policy, within the time limit provided for elsewhere in this Act, to the end that all handicapped children receive the special education necessary to their proper development, is declared to be an integral part of the policy of this state. (Act 102 of 1973)

Responsibility: The Department of Education shall provide or cause to be provided by school districts, or in some cases by other departments of state government, institutions, or through private facilities, all regular and special education, corrective and supporting services required by handicapped children to the end that they shall receive the benefits of a free public education appropriate to their needs. It is the intent of this statute to provide that full services shall be available to all handicapped school age children in the state within six years or by the school year 1979-80. (Act 102 of 1973)

[The effective date of Act 102 is July 1, 1973. This Act provides mandatory special education services to handicapped children at a rate "equal to the effort expended on account of the education of each child who does not have a handicap." The date of implementation of certain sections was under question. The Attorney General said all sections go into effect as of the above date. He further stated that "while Act 102 places the ultimate responsibility upon the State, this does not relieve local school districts from the obligation to put forth an immediate effort on behalf of handicapped children at least as great as that expended for non-handicapped children." (Op. Att'y. Gen., Sept. 7, 1973)]

POPULATION

Definitions: " 'Handicapped child' means a natural person between the ages of six and 21 who because of mental, physical, emotional or learning problems requires special education services. If and when the state activates a kindergarten program for five year old children, the ages shall be between five and 21 years. This term is to be specifically interpreted to mean, but not wholly limited to, the mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, specific learning disabled, or other health impaired children who by reason thereof require special education and related services." (Act 102 of 1973)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: Boards of directors of school districts may hire one or more physicians or nurses to conduct physical examinations in the public schools. The examinations shall be restricted to detecting contagious

diseases or any defective sight, hearing or function or condition of health that would prevent the pupil from receiving the full benefit of school work, and should be conducted at least once every school year. Teachers may make the test of sight and hearing under regulations prescribed by the State Board of Education. (Sec. 80-1219Ark. Stats.)

Evaluation and Placement: Specific eligibility requirements for admission to these special services are the responsibility of the State Board of Education. Eligibility for services and provisions of this Act are limited to those students enrolled in the public schools and/or approved treatment institutions in the state. The local public school board or governing board of an approved treatment institution shall be responsible for the initial determination of eligibility, but the final determination, in the event of controversy, shall rest with the Board or its designated representative.

Children may be admitted to and discharged from all such special education services on the recommendation of physicians under whom they are being treated, or by medical, psychological, psychiatric, or therapeutic experts chosen or approved by the Board. (Act 102 of 1973)

To the maximum extent practicable, handicapped children must be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of handicapped children in the regular school environment should be overcome, when possible, by the provision of special aids and services rather than by separate schooling for the handicapped. (Act 102 of 1973)

Separate schooling or other removal of handicapped children from the regular educational environment occurs only when, and to the extent that the nature or severity of the handicap is such, that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. (Act 102 of 1973)

An evaluation unit within the Department of Education for diagnostic purposes was established by recent legislation. In implementing this, the Department of Education is hereby granted authority and is directed to cooperate with the Department of Social and Rehabilitative Services and with available treatment institutions and qualified individuals in order to provide diagnostic services to handicapped children in need of such services. The Departments of Education and Social and Rehabilitative Services are authorized and directed to work cooperatively in maintaining an evaluation unit for diagnostic purposes. (Act 102 of 1973)

ADMINISTRATIVE RESPONSIBILITY

A section for the education of exceptional children in the Department of Education is headed by a coordinator who shall be qualified by education, training, and experience to take responsibility for, and give direction to, the Department's programs relating to the handicapped. Establishment of this section is dependent upon funds being made available to the Department for this purpose. (Act 102 of 1973)

The Board is empowered to initiate, inspect, approve, and supervise a program of education for exceptional children. It is also hereby designated as the agency for cooperation with the state and federal government, the approved treatment centers, institutions, and the local schools in carrying out these provisions. The Board makes the necessary rules and regulations in keeping with the provisions of this Act and employs the necessary personnel for the proper administration of this Act, if funds are available for this purpose. (Act 102 of 1973)

The Arkansas Department of Mental Retardation has the exclusive responsibility and jurisdiction over the licensing of facilities for services to the mentally retarded. (Op. Att'y. Gen., Aug 17, 1970)

PLANNING

An advisory council for the education of the handicapped shall advise and consult with the director of the Department of Education and the coordinator of the section for the education of exceptional children and shall engage in such other activities as specified by this Law. (Act 102 of 1973)

The advisory council is to be composed of nine members who are not officers or employees of state agencies and no more than four of whom may be local school district officers or employees. The director of the Department of Education must appoint the members of the advisory council for three-year terms, except that of those first appointed, three must be appointed for terms of one year, three for terms of two years, and three for terms of three years. Vacancies which leave unexpired terms must be filled in the regular manner for the unexpired period of time, and vacancies as a result of expiration of terms must be

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filled in the regular manner for three-year periods. Appointees are not eligible for reappointment. The advisory council will have no administrative responsibility or authority and is to be advisory only. (Act 102 of 1973)

The advisory council must be composed of persons broadly representative of community organizations interested in the handicapped, professions related to the educational needs of the handicapped, and the general public. It must annually elect its own chairman and vice chairman. The coordinator of the section for the education of exceptional children must meet with and act as secretary to the advisory council and, within available personnel, facilities, and appropriations, must furnish it with meeting facilities and staff services. (Act 102 of 1973)

The advisory council must:

- (1) have an opportunity to comment on rules and regulations proposed for issuance under the Handicapped Children's Act of 1973;
- (2) consider problems presented to it by the director of the Department of Education or the coordinator of the section for the education of exceptional children, and give advice on these problems;
- (3) review required state plans prepared by the section for the education of exceptional children prior to their submission to duly constituted authorities; and
- (4) make an annual report to the governor, the General Assembly, the State Board of Education and the director of the Department of Education. The report must be available to the news media for public information purposes. Funds for the publication of this report must be made available by the Department of Education from its regular appropriations. Available federal and/or state funds may be used for this purpose. (Act 102 of 1973)

FINANCE

The Board is hereby granted authority to contract for services with the Department of Social and Rehabilitative Services, physicians, or other individuals or organizations which, in the opinion of the Board, possess the necessary expertise to warrant a contract. In the event of contract, fees paid by the Board may not exceed the amounts which would be paid by a private individual for such services. (Act 102 of 1973)

The Department of Education shall develop such plans and procedures as may be required in order to receive and disburse federal funds for handicapped children. (Act 102 of 1973)

The Board is hereby designated as the state agency to receive and disburse federal funds designed to improve educational opportunities provided for exceptional children. Such funds shall not include monies appropriated specifically for use by other agencies, institutions, or treatment facilities for exceptional children. (Act 102 of 1973)

The specific intention of this section is to provide that the Board is hereby designated as the state agency to receive and disburse federal and state funds made available to this state for education of handicapped children, except as specifically provided for otherwise by the U. S. Congress or the General Assembly, and no other interpretation shall be given to it. (Act 102 of 1973)

The Department of Education is authorized to establish a Special Educational Instructional Materials Center in keeping with available federal and state funds for this purpose. In such an eventuality, the functions of this Center shall be in keeping with state and federal laws. (Act 102 of 1973)

Full time state employees are prohibited from being paid additional amounts over and above transportation and expenses for any service rendered in connection with this Act. State employees may be paid transportation and expenses at the rate established by the chief fiscal officer of the state, but may not be paid a salary, consultant fees, or other amounts which would, in effect, result in supplementing the full time salary already being paid the employee. (Act 102 of 1973)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

In districts where there is not a sufficient number of children to organize a special class, children may be entered in special classes in another district if the plan is acceptable to both districts and the Board. Two or more districts may join together to establish special classes. One district may be designated as the controlling agent. All reimbursement for the education of exceptional children will be made to the controlling district. Local revenues or tuition from other districts participating in the cooperative programs will be paid to the controlling district on an accepted, prorated formula per child. (Act 102 of 1973)

SERVICES

The State Board of Education may establish hospital and convalescent classes in treatment institutions and pay the total cost of the educational programs. All personnel employed by the school districts conducting special classes must adhere to the qualifications and training prescribed by the Board. (*Act 39 of 1971*)

State aid may be used for the establishment of classes in school districts, for classes in treatment institutions, for the purchase of specialized materials and equipment, for homebound instruction, and for speech therapy.

Graduates of the State School for the Blind who are regularly enrolled students in a university, college, conservatory of music, or technical institution may, under the direction of the superintendent of the School for the Blind, receive funds for a reader while in attendance at the university. No more than \$750 may be spent for reader services on any one person during any fiscal year. (Sec. 80-24-28 Ark. Stats.)

The State School for the Blind may expend any available funds for the purpose of sending children (who are under the age of 21, who are both deaf and blind, and for whom there are no facilities in the state) to any school, institution, or other place outside the state having an approved program in the education for such children. The funds may be spent for room or tuition or transportation and any other necessary items. (Sec. 80-2401.1 Ark. Stats.)

PRIVATE

The responsibility of local governments, school districts, and the state to provide a free public education for handicapped children is not diminished by the availability of private schools and services. Whenever such schools and services are utilized, it continues to be the responsibility of the Department of Education to assure an appropriate quantity and quality of instructional and related services, and the protection of all other rights, and to ascertain that all handicapped children receive the educational and related services and rights to which the law of this state entitles them. (*Act 102 of 1973*)

Deaf-blind children are eligible for private placement. See SERVICES.

No funds are to be given to programs outside Arkansas. (*Op. Att'y. Gen., July 2, 1971*)

Local school agencies have the authority to contract with organizations licensed under MR-DDS to provide the services if the organizations meet all the standards established by the Arkansas Department of Education. (*Op. Att'y. Gen., Sept. 7, 1973*)

See Services for institutional programs.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**CALIFORNIA****RIGHT TO AN EDUCATION**

Constitution: "The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year. (*Art. IX, Sec. 5, Cal. Const.*)

Compulsory Attendance Law: Children whose physical and mental condition prevents or renders inadvisable school attendance or application to study are exempted from the compulsory education requirement, but the governing board of the school district may require satisfactory evidence of the condition to be furnished. (*Sec. 12152, Cal. Ed. Code*)

The administration of each private school and public school district of any county must, upon severing the attendance of or denying admission to any child who is physically handicapped, mentally retarded, multiple handicapped, or otherwise subject to the compulsory education laws, report such "severance, expulsion, exclusion, exemption, transfer, or suspension" lasting more than ten days to the county superintendent. The report must include names, ages, last known addresses, and the reasons for action. The county superintendent is responsible for examining reports and drawing the attention of the county board or local school district board to any cases in which the interest of the child or the welfare of the state may need further examination. After preliminary study of available information the county board may, on its own action, hold hearings on these cases in the manner prescribed by law. (*Sec. 12104, Cal. Ed. Code*)

Any child who is blind, deaf, partially blind, or hard of hearing to such an extent that he is incapable of receiving instruction in regular elementary or secondary schools but whose mental condition permits application of study is exempted from the compulsory attendance requirements if he is a resident of a city and county school district not maintaining appropriate special classes, and if he is ineligible for admission to the state schools for the blind or the deaf. The county superintendent must approve the exemption. (*Sec. 12156, Cal. Ed. Code*)

All parents, guardians, or other persons having control of any child between the age of five and 20 who (because of deafness or impaired hearing) is unable to benefit by regular public school instruction, shall send the minor to a school or class for the deaf maintained by the school district or by the state for a full school year. The child must attend the school or class until completion of the prescribed course of study or until discharged by the principal or any other person in charge of the school or class with the approval of the governing board. (*Sec. 12801, Cal. Ed. Code*)

Responsibilities: Any mentally retarded, physically handicapped, or multiply handicapped minor is entitled to training or an education free of charge in the public schools of this state. (*Sec. 6920, Cal. Ed. Code*)

Education shall be provided to mentally retarded children of compulsory school age who are expected to benefit from special education facilities designed to make them economically useful and socially adjusted. Special education may be provided to mentally retarded children below compulsory school age (five years, nine months and six years of age) and those above compulsory school age but less than 21 years old. (*Sec. 6902, Cal. Ed. Code*)

Education shall be provided to mentally retarded children not included in the above section between the ages of six and 18 who may be expected to benefit from special education facilities to further their individual acceptance, social adjustment, and economic usefulness in their homes and within a sheltered environment. The education may be provided to these children who are between the ages of three and six. If any such child becomes 18 years of age while attending a special training school or class, he is permitted to attend the school or class for the remainder of the current school year. (*Sec. 6903, Cal. Ed. Code*)

Governing boards of any elementary, unified, or high school district with an average daily attendance (ADA) of 900 or more shall provide education in special schools or classes for educable mentally retarded children who are not attending other special training schools or classes maintained under the provisions of Section 6901-6913, inclusive. Governing boards of any elementary, unified, or high school district having an ADA of 8000 or more shall provide for the education of severely mentally retarded children not attending any other training classes or schools. (*Sec. 6904, Cal. Ed. Code*)

With the approval of the county superintendent, governing boards of any unified or high school district with an ADA of less than 8000 may provide training in special training schools or classes for severely mentally retarded children. (*Sec. 6904, Cal. Ed. Code*)

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Governing boards of high school districts with ADA's of 901 or more shall provide a secondary program for each educable mentally retarded child residing in the district and for whom the district is required to provide an education and special training schools. (Sec. 6904.5 *Cal. Ed. Code*)

Governing boards of any high school district with an ADA of less than 901 may establish and maintain special training schools and classes for educable mentally retarded children as may be admitted to the schools and classes by the governing board of the district. (Sec. 6905, *Cal. Ed. Code*)

County superintendents of schools shall establish and maintain special training schools or classes for mentally retarded children residing in counties and elementary unified districts with an ADA of less than 901 in the elementary schools.

The county superintendent of schools shall establish or maintain special training schools or classes for the severely mentally retarded residing in the county in an elementary or unified school district with an ADA of less than 8,000. (Sec. 8901, *Cal. Ed. Code*)

Elementary, unified, and high school districts having an average daily attendance of less than 8000 may establish programs for the physically handicapped. (Sec. 894, *Cal. Ed. Code*)

POPULATION

Definitions: "Any minor who, by reason of a physical impairment, cannot receive the full benefit of ordinary education facilities, shall be considered a physically handicapped individual for the purposes of this Chapter. Such minors include the following, as defined by the State Board of Education: (a) the deaf or hard of hearing; (b) the blind or partially seeing; (c) orthopedic or health impaired; (d) the aphasic; (e) the speech handicapped; (f) other minors with physical illnesses or physical conditions which make attendance in regular day classes impossible or inadvisable; (g) minors with physical impairments so severe as to require instruction in remedial physical education; and (h) multi-handicapped." (Sec. 6802, *Cal. Ed. Code*)

"'Physically handicapped' as used in this article (commencing at Sec. 6801) means a physically defective handicapped person under the age of 21 years who is in need of education." (Sec. 6801, *Cal. Ed. Code*)

"As used in this Chapter, 'educationally handicapped minors' are minors other than physically handicapped minors (as defined in Sections 6801 and 6802 of this Code) or mentally retarded minors (as defined Sections 6901, 6902, and 6903 of this code) who, by reasons of marked learning or behavioral problems or a combination thereof, cannot receive the reasonable benefit of ordinary educational facilities." (Sec. 6750, *Cal. Ed. Code*)

"The education of mentally retarded minors who are of compulsory school age and who may be expected to benefit from special educational facilities designed to make them economically useful and socially adjusted shall be provided for in the manner set forth in Sections 6901 to 6913, inclusive, and in Sections 8951 to 8956, inclusive." (Sec. 6902, *Cal. Ed. Code*)

"The education of mentally retarded minors who do not come within the provisions of Section 6902, who are eight or more, and less than 18 years of age and who may be expected to benefit from special educational facilities designed to educate and train them to further their individual acceptance, social adjustment, and economic usefulness in their homes and within a sheltered environment, shall be provided for in the manner set forth in Sections 8951 to 8956, inclusive, and Sections 6901 to 6913, inclusive. (Sec. 6903, *Cal. Ed. Code*)

"'Mentally retarded minors' means all minors who because of retarded intellectual development as determined by individual psychological examination are not capable of being educated efficiently and profitably through ordinary classroom instruction." (Sec. 6901, *Cal. Ed. Code*)

Age of Eligibility: Mentally retarded children are eligible for services at the following ages:

1. Educable mentally retarded children eight to 18 (mandatory) and five years eight months to eight and 18 to 21 years of age (permissive);
2. Severely mentally retarded eight to 18 years of age (mandatory) and three to eight years of age (permissive); and
3. Mentally retarded children in occupational training programs between the ages of 18 and 21. (Sec. 6902 and 6903, *Cal. Ed. Code*)

If classes are established, physically handicapped minors may begin receiving services at age three.

If the school district of the residence of a child between the ages of three and six who is deaf, blind, orthopedic or other health impaired, aphasic, or multiple handicapped does not maintain a special class in the child's appropriate category, but a class or school is maintained by the county superintendent or in

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another school district, the child may be admitted to that program when all the following circumstances exist: (a) the child is eligible for enrollment under the regulations of the county superintendent or a local governing body; (b) the governing board of the district or the county superintendent maintaining the special classes is willing to admit the child; and (c) the parents of the child file a written request for admission into the program and a physician's statement showing that the child is physically able to attend the class. The request and statement must be filed with the superintendent of schools conducting the class. (Sec. 6809, *Cal. Ed. Code*)

Multiple handicapped children are eligible for services between the ages of three and 21. See Services. (Sec. 6812.1, *Cal. Ed. Code*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: In order to compile sufficient information regarding the handicapped and in order to assure that these children receive educational programs, the governing board of each school district by April 30 of each year will report to the appropriate county superintendent those handicapped children in either of the following categories:

- (1) handicapped children participating in special classes or programs in the school district;
- (2) handicapped children not covered in number 1, but whose parents, guardians, or other person having control of them have applied to the school district for enrollment of the child in special class, school, or program. If the child was denied enrollment the report shall state this fact. The word "applied" includes an interview by district personnel with the parents, guardian, or any other person having control or charge of the child. (Sec. 6942, *Cal. Ed. Code*)

The required reports may be limited to the particular programs in which a child can participate and the numbers participating in each. The reports required for number two shall contain the following information relative to each child reported: name, address, date of birth, name of parents, guardians, or other person having control or charge of the child, handicap of the child as far as known to the school district, and special class, school, or program, if any, in which a child is enrolled and report of any suspensions often days or more or expulsions from a special class, school, or program. (Sec. 6943, *Cal. Ed. Code*)

By June 30 annually, county superintendents report for the present fiscal year to the superintendent all handicapped children in the area under his jurisdiction (including those children participating in a special class or program provided by the county superintendent and those children not participating) for whom application for enrollment has been made by the parents, guardian or other person in charge or control of the child. The report will contain the same information as mentioned in the previous paragraph and shall also specify the school district which submitted the information to the county superintendent. (Sec. 6944, *Cal. Ed. Code*)

All attending or consulting physicians examining any child under age 20 who is totally deaf or has impaired hearing will report at once to the Department of Education the name, age, and residence of the child and name of the parent or guardian of the child. (Sec. 12802, *Cal. Ed. Code*)

Screening: Governing boards of school districts will make the rules and regulations for examining public school children to assure care of the pupils and secrecy in connection with any noted defects by the supervisor of health or his assistant and may tend to the correction of the physical defect. (Sec. 11821, *Cal. Ed. Code*)

If a parent or guardian having control or charge of any child enrolled in the public schools files annually with the principal of the school (in which the child is enrolled) a statement in writing noting that he will not consent to a physical examination of his child, the child is exempt from any physical exam. If there is any good reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home and not be permitted to return to school until the school authorities are satisfied that the disease no longer exists. (Sec. 11882, *Cal. Ed. Code*)

School districts shall provide for sight and hearing testing of public school children. The tests will be given only by qualified supervisors of health employed by the district, by certified employees of the district, the county superintendent of schools possessing the qualifications prescribed by the State Board, or by a contract with an authorized agency or accredited school or college of optometry, osteopathy, or medicine. Test records will serve as evidence of the need of children for the education services provided physically handicapped individuals. Equipment necessary to conduct the test may be purchased or rented by governing boards. The state, agency, or political subdivision of the state may sell or rent any equipment owned by it to the governing board of any school district upon mutually agreeable terms. (Sec. 11823, *Cal. Ed. Code*)

Persons employed by school districts in positions requiring certified qualifications and holding valid special credentials authorizing the teaching of lipreading or teaching of the deaf and hard of hearing or a standard teaching credential with specialized preparation in the area of the deaf and hard of hearing or in the area of the speech and hearing handicapped may test the hearing of pupils in the district through the use of an audiometer. (Sec. 11824, *Cal. Ed. Code*)

If a physical defect, other than visual, has been noted by a supervisor of health or his assistant, the parents or guardian of the child will be notified and asked to take any action to cure or correct the defect. The report must be made in writing and in a form approved by the superintendent of public instruction. The report will not include any recommendations suggesting directing pupils to a designated individual for the purpose of curing or correcting any defects referred to on the report. If a visual defect has been reported by the superintendent of health or his assistant, a report will be made to the parent or guardian asking the parent or guardian to take any action necessary to correct the defect. Again, the report must not include any recommendations suggesting directing the pupil to a designated individual or class of practitioner to correct the defect. A supervisor of health may recommend in the written report that the child be taken to a public clinic or diagnostic and treatment center operated by a public hospital by the state, county, or city department of public health. The Supervisor of health will make periodic reports that he feels are necessary for the governing board or that the board may call for showing the number of defective children in the schools of the district and the efforts made to correct such defects. (Sec. 11827, *Cal. Ed. Code*)

The State Board of Education requires that uniform tests be given to determine the achievement of basic reading fundamentals and skills to all children completing the first and second grades. The children determined to be mentally retarded are exempted from this testing. Those who have been determined to be educationally handicapped are subject to the testing requirement but will be tested separately from regular pupils, and the test scores or results will be submitted separately. The Department of Education will annually prepare a comparative analysis of the scores and results of tests administered to educationally handicapped pupils and regular pupils. The Department of Education will also annually report to the Legislature the scores and results of the tests administered to educationally handicapped pupils. (Sec. 5779, *Cal. Ed. Code*)

When a child first enrolls in a California elementary school and every third year thereafter until he completes the eighth grade, the child's vision will be tested by the school nurse or another authorized person. The evaluation must include tests for visual acuity in color vision. Gross external observation of the child's eyes, visual performance, and perception tests will be conducted by the school nurse and classroom teacher. The evaluation may be waived if the child's parents present a certificate from a physician, a surgeon, or an optometrist setting out the results of a determination of a child's vision including visual acuity in color vision. If a child's parents or guardian file, with the principal of the school, a statement in writing, that they adhere to the teachings of any well-recognized religious sect or denominational organization and that its creed, tenants, or principals depend upon healing by prayer in the practice of their religion the child will be exempt from the requirement. (Sec. 11825, *Cal. Ed. Code*)

Testing and screening of all pupils in a particular grade, school, or district is not a condition of eligibility for state aid. If the governing boards of the school districts elect to do the testing or screening, only tests or screening procedures approved by the State Board may be used. The school districts intending to do such testing or screening must give written notice to the parents or guardian of pupils concerned at least 15 days prior to the testing or screening. The copies of any written instruments to be used for the testing and screening must be available in the office of the principal of the school the pupils attend for examination by the parents or guardian. No child is required to participate in the screening or testing unless the parent or guardian files prior written consent. (Sec. 6758, *Cal. Ed. Code*)

Evaluation and Placement: If a principal of a school reports that a pupil shows evidence of impaired mental health and a mental examination is felt necessary, the governing body of a school district may, with the written consent of the child's parents or guardian, provide for this examination. The principal is not liable for damages or for any civil or criminal penalty for any report made in good faith. (Sec. 11801, *Cal. Ed. Code*)

The governing boards of school districts will make the necessary rules for mental examinations to assure proper care of the child and confidentiality in connection with any condition of impaired mental health noted by the supervisor of health or his assistant. Governing boards may consult and cooperate with the Department of Mental Hygiene to formulate rules and regulations regarding the correction of any mental conditions. The Department of Mental Hygiene will cooperate in aiding and assisting school districts in carrying out these duties. (Sec. 11802, *Cal. Ed. Code*)

If evidence of impaired mental health is noted by the supervisor of health or his assistant, a report will be made to the parent or guardian of the child asking the parent or guardian to take any necessary action to cure or correct the condition. The report must be made in a form approved by the superintendent and may not include any recommendations suggesting or directing the pupil to a designated individual or class of practitioner to cure or correct any condition referred to in the report. This does not prevent the supervisor of health from recommending in a written report that the child be taken to a public clinic or diagnostic or treatment center operated by a public hospital or by a state, county, or city department of public health. (Sec. 11803, *Cal. Ed. Code*)

No officer or employee of a school district, county superintendent of schools or any of his employees, or any member of the county board or any of the employees will place or participate in placing a public school child in any private or public agency, institution, or place outside of the school of attendance for psychological or psychiatric treatment, or both, without prior written consent of the parent or guardian. (Sec. 11804, *Cal. Ed. Code*)

No psychological or psychiatric treatment may be administered to a pupil at his school of attendance or at a place outside of the school without the written consent of the parent or guardian. (Sec. 11804, *Cal. Ed. Code*)

Governing boards of any school district may contract with a mental health clinic or child guidance clinic to furnish the district with mental health services for its pupils. "Mental health and mental health services does not express or imply legislative intent with regard to other health services." Terms and conditions governing the provision of these services are set forth in the contract. Payments may not be made by the district for services performed by persons not possessing credentials issued by the State Board covering these services. If the conditions of the contract have been fulfilled, the cost of services rendered under such a contract may be paid from funds of the district. The governing board of any city, county, or district maintaining a public mental health clinic or child guidance clinic or non-profit health clinic may enter into such an agreement. (Sec. 11805, *Cal. Ed. Code*)

Children will be admitted to programs for the educationally handicapped only on the basis of an individual evaluation according to State Board standards and on the recommendation of an admission committee. The admission committee includes an administrator in charge of special education in the school district or county, an administrator designated by the school district, or county superintendent of schools; an experienced special education teacher; a school nurse, and a school psychologist who has examined the child for eligibility for placement. The admission committee will use any necessary health reports to properly evaluate the child. The committee may also have the services or presence of other pupil personnel workers, education specialists, school nurses, social workers, optometrists, or physicians that they may require and/or request. The recommendation for placement must include a statement that, in the professional judgment of the members of the committee, the child is recommended for placement in a program for educationally handicapped minors to ameliorate a marked learning disability associated with a neurological handicap or emotional disturbance or both. Any member of the admission committee dissenting from the final committee recommendation shall attach to the final recommendation a statement of reasons for his objection.

The parent or guardian of a child being evaluated for placement in a program for the educationally handicapped may select a physician, optometrist, psychologist, social worker, or teacher, whether certified or not, to assist the admission committee in its deliberations. The recommendation for placement must include a statement that, in the professional judgment of the members of the committee, the child is recommended for placement in a program for educationally handicapped minors to ameliorate a marked learning disability associated with a neurological handicap or emotional disturbance or both. Any member of the admission committee dissenting from the final committee recommendation shall attach to the final recommendation a statement of reasons for his objection.

The administrative head of a school district or office of the county superintendent may make an interim placement of a pupil in a program for the educationally handicapped for a period not exceeding 90 days whenever a pupil transfers into the school district from another district in which his last enrollment was in a program for the educationally handicapped. An interim placement may be made without the complete documentation specified above. Before expiration of the 90 days, the interim placement must be reviewed by the admission committee and a final recommendation made. The committee may utilize information, records, and reports from the admission committee proceedings of the school district or county program from which the pupil was transferred. (Sec. 6755, *Cal. Ed. Code*)

Admission committees shall annually review placement of minors in special educational programs for educationally handicapped children and submit recommendations regarding the return of these children to the regular school program, continuance in the program for the educationally handicapped, transfer to other special education programs, or referral to other agencies. (Sec. 6755.1, *Cal. Ed. Code*)

If a minor is being evaluated for placement in a program for the educationally handicapped by an admission committee, or a review and recommendation procedure is being conducted by an admission committee, the parent or guardian of the child has the right to have a physician, optometrist, psychologist,

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social worker, or teacher, whether certified or not, represent the minor and present any additional material to assist the admission committee in making its determination. This representative may be an employee of the school district but has no decisionmaking power. (Sec. 6755.2, *Cal. Ed. Code*)

No minor is required to participate in a program for the educationally handicapped unless the admission committee or a member of the admission committee, appointed by the committee, has personally consulted the parent or guardian of the child regarding the child's learning disorders and the objectives of the program. The parent or guardian, subsequent to such counseling, but prior to the child's participation in the special education program, must file written consent to the child's participation with the governing board of the school district or with the office of the county superintendent. (Sec. 6755.3, *Cal. Ed. Code*)

The State Board will adopt rules and regulations and prescribe standards for the individual identification and evaluation of educationally handicapped children and their admission to special education programs. In arriving at the standards, the State Board will receive assistance from an advisory committee consisting of one member each from the State Departments of Education, Mental Hygiene, Public Health, and any members appointed by the heads of the respective departments. The advisory committee may have additional members appointed by the State Board. (Sec. 6756, *Cal. Ed. Code*)

Before any child is admitted into a special education program for the mentally retarded, he must be given a verbal or non-verbal individual intelligence test in his primary home language, i.e., the language in which the child is most fluent and has his best speaking ability and capability to understand. These tests will be selected from a list approved by the State Board of Education. (Sec. 6902.07, *Cal. Ed. Code*)

If a child scores higher than two standard deviations below the norm, considering standard measurements of error, he will not be placed in a special education class for the mentally retarded. Neither shall a child be placed in a special education program for the mentally retarded when tested in a language other than English, if he scores higher than two standard deviations below the norm, considering standard measurements of error, on a non-verbal intelligence test or on the non-verbal portion of an individual intelligence test which includes both verbal and non-verbal sections.

He may be placed in a special education program for the mentally retarded if he scores two standard deviations or more below the norm on an individual intelligence test selected from a list approved by the State Board, if a complete psychological examination by a credentialed school psychologist investigating such factors as developmental history, cultural background, and school achievement substantiates the retarded intellectual development indicated by the test scores. Written consent of the parent or guardian of the child after they have received a complete explanation of the special education program is necessary for placement for a child in a program for the mentally retarded. (Sec. 6902.085, *Cal. Ed. Code*)

The psychological examination must be administered by a credentialed school psychologist fluent in the minor's home language. If such a person is not available, an interpreter qualified in the primary home language must be present to assure effective communication between the minor and psychologist administering the evaluation. The interpreter will be provided by the district with inservice training in the application of evaluation techniques and procedures. This training is to be conducted by a school psychologist according to State Board guidelines. (Sec. 6902.085, *Cal. Ed. Code*)

After a child has been screened and referred, written permission for the individual psychological examination must be secured in a conference with a school official and the parent or guardian or his authorized representative. After the evaluation, the psychologist will confer with the parent, etc., regarding the recommendation to the admission committee. Following the admission committee meeting, a committee member will meet with the parent to discuss the committee conclusion and obtain written permission for placement. (Sec. 6902.085, *Cal. Ed. Code*)

No minor may be placed in a special education class for the mentally retarded without the written consent of his parent or guardian. After a complete explanation of the special education program, permission documents for individual psychological evaluation and placement shall be written in English and in the language of the parent or guardian. The explanation of the nature of the placement processes, the committee conclusion, and the special education program shall be in the home language of the parent or guardian. (Sec. 6902.085, *Cal. Ed. Code*)

"In exceptional circumstances, after an examination of relevant and cultural and adaptive behavior data, the admission committee may by unanimous vote agree to place a minor in a special education class for the mentally retarded in spite of an individual test score higher than two standard deviations below the norm. The committee shall take notice of and be guided by the legislative intent expressed in Section 6902.06. Upon such unanimous agreement, a written report indicative of the decision of the committee and the reasons therefore shall be sent to the parent or guardian of the minor. Beginning in 1971-1972, each school district shall report annually to the Department of Education:

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(1) the ethnic breakdown of the children placed in special education classes for the mentally retarded in the district;

(2) the ethnic breakdown of the children who will be placed in such classes by the standard admissions procedure and by the exceptional unanimous consent procedure described in this section.

The psychological evaluation must include estimates of adaptive behavior. Until adaptive behavior scales are normed and approved by the State Board, the adaptability testing includes, but is not limited to, a visit with the consent of the parents or guardian at in-home interviews with members of the child's family by the school psychologist or person designated by him. If the language spoken in the home is not English, these interviews shall be conducted in the language of the home. After a student has been screened and referred, written permission for the individual's psychological evaluation must be secured in a conference with the school officials and parents.

All minors currently enrolled in programs for the mentally retarded had to be retested by a verbal or non-verbal individual test in the primary home language of the child prior to the conclusion of the 1970 calendar year. (Sec. 6902.08, *Cal. Ed. Code*)

No teacher, principal, employee, or governing board member of any public, private, or parochial school, including colleges and universities shall permit access to any written records of any particular child enrolled in the school to any person except under judicial process unless the person is one of the following:

(1) a parent or guardian of the child;

(2) a person designated in writing by the pupil, if he is an adult, or by the parent or guardian of the child if he is a minor;

(3) an officer or employee of a public, private, or parochial school where the pupil attends, has attended, or intends to enroll;

(4) a state or local law enforcement officer including a probation officer, parole officer, or a member of a parole board seeking information in the course of his duties; or

(5) state superintendent of public instruction, or a member of his staff, or the county superintendent of the county where the pupil attends, has attended, or intends to enroll, or a member of his staff.

These restrictions are not intended to interfere with the preparation and distribution of junior college, college, and university student directories, or with furnishing a list of names and addresses and telephone numbers of junior college, college, and university students to proprietors of campus housing. Also the restrictions are not intended to interfere with the giving of information by school personnel concerning participation in athletics or other school activities, or for scholastic or other honor awards. A governing board, at its discretion, may provide information to the staff of a college, university, educational research and development organization, or laboratory if the information is necessary to a research project or study conducted, sponsored, or approved by a college or university, educational research and development organization, or laboratory. However, no pupil is to be identified by name in the submitted information. An employer or potential employer may be furnished the age and scholastic record of the pupil. An employment recommendation is prepared by members of the school staff. Rosters or lists containing names and addresses of seniors in public, private, or parochial high schools or junior colleges may be furnished private businesses, professional schools and colleges. (Sec. 10751, *Cal. Ed. Code*)

Every deaf person between the ages of three and 21, who meets the criteria administratively determined by the superintendent of public instruction, is entitled to an education in the California School for the Deaf free of charge. Priority in admission is given to elementary deaf minors living in sparsely populated regions and to secondary age deaf minors in need of a high school program for whom appropriate comprehensive educational facilities are not available. (Sec. 26501, *Cal. Ed. Code*)

ADMINISTRATIVE RESPONSIBILITY

The Department of Education will establish minimum standards for all special schools and classes and will enforce these standards throughout the state. (Sec. 6906, *Cal. Ed. Code*)

The superintendent will promote and direct special instruction in the public schools for physically handicapped minors. He may employ necessary personnel and perform any other duties necessary to fulfill the provisions of the article. (Sec. 6803, *Cal. Ed. Code*)

The State Department may prescribe minimum standards for special education for physically handicapped children. No state funds will be granted by the superintendent to any district for physically handicapped children unless they comply with state standards. (Sec. 6804, *Cal. Ed. Code*)

The superintendent will prescribe procedures for qualifying for and determining the amount of allowance for special and regular day classes and for authorized instruction other than in special or day classes for physically handicapped children. (Sec. 6816, *Cal. Ed. Code*)

The governing board of a local school district may establish regulations determining who can profit by and who shall receive the special instruction provided for physically handicapped children. These regulations will be subject to standards prescribed by the State Department of Education. (Sec. 6811, *Cal. Ed. Code*)

Maximum class sizes for programs for the physically handicapped is as follows for children ages three through eight: deaf, six; severely hard of hearing, eight; combination of deaf and severely handicapped, six; blind, eight; partially seeing, ten; combination of blind and partially seeing, eight; orthopedic or other health impaired, 12; aphasic, six; deaf, blind, multi-handicapped, three; and other multi-handicapped, six.

Maximum class sizes for programs for the physically handicapped is as follows for children ages nine through 20 years: deaf, eight; severely hard of hearing, ten; combination of deaf and severely handicapped, eight; blind, ten; partially seeing, 12; combination of blind and partially seeing, ten; orthopedic or other health impaired, 16; aphasic, eight; other physically handicapped, 20; deaf, blind, multi-handicapped, five; and other multi-handicapped, eight.

Maximum class size requirement may be waived in the following two circumstances:

(1) With the approval of the State Board of Education, a county superintendent or school district submits a proposal to conduct experimental studies determining the proper maximum class size standards.

(2) If, after the beginning of the school year, the classes for a given category of physically handicapped children are at a maximum size and additional pupils will be without schooling unless additional classes are established and qualified teachers are unavailable, a school district or county superintendent of schools may request permission of the superintendent of public instruction to exceed the maximum class size for the remainder of that school year by not more than two pupils (Sec. 6802.2, *Cal. Ed. Code*)

Coordinative, consultant, and supervisory services will be provided by the superintendent of public instruction for programs for multiple handicapped children, and personnel shall be employed devoting their full time to supervising the provision of services to these children. (Sec. 6803.1, *Cal. Ed. Code*)

The State Board of Education may adopt rules and regulations governing the establishment of programs for preparing physically handicapped and mentally retarded minors enrolled in special day classes for suitable occupations. These programs will provide for physically handicapped and mentally retarded children unable to profit by regular classes of work experience education. (Sec. 6931, *Cal. Ed. Code*)

The superintendent of public instruction will prescribe the procedures for qualifying for and determining the amount of allowances for special and regular day classes and for authorized instruction in other than special and regular day classes for education of mentally retarded minors. (Sec. 895.10, *Cal. Ed. Code*)

The superintendent of public instruction recommends, and the State Board adopts guidelines for use by school districts and county superintendents to develop curriculum and adopt courses of study for special instruction of mentally retarded children enrolled in the public schools. (Sec. 160, *Cal. Ed. Code*)

The director of education shall provide consultant services for the education of hard of hearing children in areas where such services are not available. Services will be provided through an expert in the fields of organization and planning for the education of the hard of hearing. (Sec. 264, *Cal. Ed. Code*)

County superintendents of schools have a primary responsibility for coordinating all special programs maintained by their offices and by the school districts under the jurisdiction of that office for educating the physically handicapped and the mentally retarded. County superintendents will undertake necessary measures to assure that all children in the school district territory under their jurisdiction eligible to participate in any special program for physically handicapped or mentally handicapped children are afforded the opportunity to participate in an appropriate program. County superintendents will compile and maintain a tabulation of all children enrolled in every category of the special education program in the school districts under their jurisdiction. They shall also maintain a current list of all physically handicapped and mentally retarded children who have applied for but have been denied access to each category of special education program under their jurisdiction. Consultative and coordinative services to school districts will be provided by the county superintendent with programs for physically and mentally handicapped children. (Sec. 885.9, *Cal. Ed. Code*)

The State Board of Education is responsible for adopting rules and regulations prescribing the standards for special education programs for the educationally handicapped including, but not limited to, individual evaluation of pupils, curriculum content, teacher qualifications for each type of program, provisions for periodic examination, reevaluation, and transfer of educationally handicapped minors participating in each type of special educational program. (Sec. 6757, *Cal. Ed. Code*)

Maximum class size for programs for the educationally handicapped in special day classes is 12. If, after the beginning of the school year, it is determined that additional pupils will be without schooling unless additional classes are established but additional qualified teachers are unavailable and the present classes are

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at the maximum size, a school district or county superintendent may request permission of the superintendent to exceed the maximum class size for all or part of the remainder of the school year. The superintendent may approve such requests as long as the maximum size is not increased more than two pupils above the maximum specified enrollment.

For learning disability groups, the maximum enrollment is 32. Participation in a learning disability group will be for at least 30 minutes and will not exceed eight pupils at any one time. The instruction provided by a full time teacher whether offered by a single teacher or two or more part-time teachers will result in not more than eight units of average daily attendance being credited as the result of this instruction. (Sec. 6751.1, *Cal. Ed. Code*)

Any district furnishing services to physically handicapped children shall furnish these services to all physically handicapped children residing in the district five or more days a week although their legal residence may be outside the district. (Sec. 6805, *Cal. Ed. Code*)

No child is required to take advantage of any special provisions for the physically handicapped if his parents or guardian files a statement with the governing board of the school district showing that the child is receiving an adequate education elsewhere. (Sec. 6814, *Cal. Ed. Code*)

The governing board of any district may make the special provisions that in its judgment are necessary for the education of physically handicapped children. (Sec. 6801, *Cal. Ed. Code*)

Programs for physically handicapped children will be maintained by the county superintendent of schools including programs for the cerebral palsied, orthopedically handicapped, the visually handicapped, and aurally handicapped, who reside in the county and in elementary or unified school districts having an ADA of less than 8000, whenever the districts have not provided nor entered into contract with other districts to provide for such programs. (Sec. 8901, *Cal. Ed. Code*)

The governing board of any school district may provide for any one or more of the special educational programs for the educationally handicapped. Districts with an ADA of 901 or less may contract with the county superintendent to provide the programs. (Sec. 6751, *Cal. Ed. Code*)

The superintendent of public instruction will establish supervisory and consultative services for programs for educationally handicapped children and will employ personnel devoting their entire time to the provision of these services. (Sec. 6759, *Cal. Ed. Code*)

The California School for the Deaf is part of the school system, but it derives no revenue from the public school fund. The school is under the administration of the State Department of Education. (Sec. 2552 and 2553, *Cal. Ed. Code*)

The Department of Education has the responsibility for prescribing the rules for the government of the schools as well as appointment of the superintendent, other officers, and employees. (Sec. 25554, *Cal. Ed. Code*)

There are two state schools for the deaf in northern and southern California. The term "California School for the Deaf" refers to both schools. (Sec. 25751, *Cal. Ed. Code*)

The Department of Education maintains the same control over the California School for the Blind as it does for the School for the Deaf. The School is also part of the public school system of the state, but does not receive funds from the public school fund. (Sec. 25752-25754, *Cal. Ed. Code*)

The schools for the neurologically handicapped are also part of the public school system of the state and derive no revenue from the public school fund. Their objectives are diagnosis and determination of treatment in an educational program essential for children with neurological handicaps. The schools provide temporary services to the children who need educational diagnostic services not available in regular public schools. (Sec. 26402, *Cal. Ed. Code*)

The schools are under the director of education. He is responsible for prescribing rules for governing the schools, for appointing the superintendent, and for contracting with the University of California or other public or private hospital or school of medicine in order to establish and maintain diagnostic services and treatment centers for neurologically handicapped children. (Sec. 26402-26404, *Cal. Ed. Code*)

PLANNING

One person with special knowledge, experience, and qualifications regarding the special education needs of physically and mentally handicapped persons must be on the California Advisory Council on Vocational Education and Technical Training. (Sec. 6262, *Cal. Ed. Code*)

There is in the state government the Advisory Commission on Special Education. It consists of a member of the Assembly and a public member appointed by the Speaker of the Assembly, a Senate member and a public member appointed by the Senate Committee on Rules, one public member appointed by the

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Governor, and nine public members appointed by the State Board of Education (on recommendations by the superintendent of Public Instruction or the members of the State Board). (Sec. 586, *Cal. Ed. Code*)

The members of the Legislature on the Commission shall have joint legislative committee powers and duties on the subject of special education. The members of the Commission shall be reimbursed only for actual expenses incurred. The superintendent of Public Instruction or his representative shall serve as executive secretary, and one member will be elected by the Commission to serve as chairperson. (Sec. 586.1-4, *Cal. Ed. Code*)

The Commission shall study and provide assistance and advice to the State Board in the areas of research, program development, and evaluation in Special Education. (Sec. 586.5, *Cal. Ed. Code*)

FINANCE

The superintendent of Public Instruction is allowed to grant to county school service funds, in addition to all other allowances, state funds:

- (1) for all emergency schools maintained in each elementary school district of the county by the county superintendent of schools;
- (2) for all special schools or classes for mentally retarded and severely mentally retarded children maintained in each elementary school district of the county by the county superintendent of schools;
- (3) for all elementary schools maintained in juvenile halls, juvenile homes, and juvenile camps by the county superintendent of schools, and
- (4) for schools and classes for educationally handicapped children maintained in each elementary school district of the county by the county superintendent the same amount as he would compute as the foundation program of the elementary school district under Sections 17655.5 and 17656. No reimbursement may be given for emergency schools in excess of the actual expense of maintaining the school (Sec. 18355, *Cal. Ed. Code*)

The superintendent will prescribe the procedures for qualifying for and determining the amount of the allowances for special or regular day classes and for instruction other than special or regular day classes for the mentally retarded. (Sec. 6913, *Cal. Ed. Code*)

Whenever a school district maintains special training schools or classes for the mentally retarded, or special schools or classes for the education of physically handicapped children, the governing board of the school district may apply to the superintendent of public schools for an apportionment pursuant to Sees. 6914 to 6919. (Sec. 6914, *Cal. Ed. Code*)

If physically handicapped pupils are given instruction at home or in a hospital or if children with speech disorders or defects are admitted at the age of three for individual or small group instruction of four pupils or less at the school, each clock hour of instruction devoted to the instruction will count as one day of attendance. No pupil will be given individual instruction for more than three hours in any one day or credited with more days of attendance for individual instruction during any fiscal year than the number of legal calendar school days that school may be maintained during such year. (Sec. 11202, *Cal. Ed. Code*)

Attendance of educationally handicapped minors in special day classes who attend the school for the number of minutes that constitute a minimum school day shall be credited as a day of attendance. Each clock hour of teaching time devoted to individual instruction of educationally handicapped minors shall count as one day of instruction. The average daily attendance of all educationally handicapped minors will be computed by dividing the total number of days of attendance of the pupils by the number of days taught in the regular schools of the district. (Sec. 11226, *Cal. Ed. Code*)

State aid for the educationally handicapped will be computed as follows:

(1) divide the ADA of educationally handicapped children by the maximum class size and increase the quotient to the next highest integer if a fractional amount is produced;

(2) multiply the amount computed by the total above by a total support guaranty of \$16,260; and

(3) subtract from the amount computed the applicable of the following amounts: (a) product of the ADA of educationally handicapped children in kindergarten through grade eight and the foundation program per pupil established for elementary school districts with an average daily attendance of 901 or more; (b) product of the ADA of educationally handicapped children in grades nine to 14 and the foundation program per pupil established for high school districts with an ADA of 900 or more; (c) product of the average daily attendance of physically handicapped children in grades 13 and 14 and the foundation program per pupil for junior colleges with an average daily attendance in excess of 1000. (Sec. 18102, *Cal. Ed. Code*)

The governing board of school districts with an ADA of less than 2000 or a county superintendent of schools may seek the approval of the superintendent of public instruction whenever sparsity of population

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or transportation distances make it impossible to maintain maximum class sizes to maintain smaller classes. If the superintendent, upon review, finds that it is impossible to maintain maximum class sizes, he may add to the amounts allowed above an amount sufficient to provide for the needed classes but not more per class than the applicable amounts for classes with maximum class size. (Sec. 18102.8, *Cal. Ed. Code*)

Attendance of educationally handicapped minors instructed by the county superintendent will be computed as follows:

(1) attendance of elementary pupils in special classes for the educationally handicapped children will be credited to the county school service fund as attendance "upon a single emergency elementary school for special class instruction of these pupils." Attendance of pupils of secondary grade in classes maintained for educationally handicapped children will be credited to the county school service fund and "attendance upon a single emergency secondary school for special class instruction for such pupils;"

(2) attendance of elementary pupils in learning disability groups will be credited to the county school service fund as "attendance upon a single emergency elementary school for learning disability group instruction of educationally handicapped minors." Attendance of secondary pupils will be credited in the same manner to the emergency secondary school;

(3) attendance of elementary pupils given instruction in a home, hospital, or regularly established licensed children's institution will be credited to the county school service fund as "attendance upon a single emergency elementary school for home, hospital or regularly established licensed children's institution instruction of educationally handicapped minors." Attendance of pupils of secondary grade will be credited in the same manner as a single emergency secondary school. (Sec. 11229, *Cal. Ed. Code*)

Districts maintaining programs for educationally handicapped children may not enroll at any one time more than two percent of total district enrollment, except as permitted by special authorization of the superintendent of public instruction. The total district enrollment means the average number of pupils exclusive of pupils receiving home instruction and tuition students enrolled at the end of the first school month and the sixth school month of the school year.

The superintendent will report to each regular session of the legislature:

- (1) The school districts and county superintendents of schools permitted to exceed the two percent during the preceding school year;
- (2) the number of additional pupils involved; and
- (3) the causes resulting in granting the permission.

County superintendents of schools maintaining schools in juvenile halls or juvenile homes, ranches, or camps (as authorized by the Welfare and Institutions Code) will not enroll at any give time more than two percent of the juvenile population in these institutions in programs for the educationally handicapped. Except as permitted by the superintendent, the two percent limitation does not include pupils participating in a program who reside in a non-profit tax exempt residential facility. (Sec. 6752, *Cal. Ed. Code*)

When school districts provide education in grades kindergarten through 12 for children residing in a regularly established licensed children's institution located within or without the boundaries of the district, the district is reimbursed for the actual cost of educating the children by the county or city and county in which the child resided prior to his admission to the institution. If the child's prior residence cannot be ascertained or if his residence was outside the state of California, the district will be reimbursed for the actual cost of educating the child by the county or city and county in which the institution or family home is located. The pupil residing in an institution or family home under this section does not acquire residence in the district wherein the institution or family home is located during his residence at the institution. (Sec. 6951, *Cal. Ed. Code*)

Claims concerning the attendance of an exceptional child at any school, institution, or agency in which there are an insufficient number of properly certified teachers but which otherwise offer an acceptable education program are allowed if:

(1) the Department of Education has determined that there is in the area served by the school, institution or agency a shortage of certified teachers, and

(2) the Department of Education determines that the needs of the children served by the school, institution, or agency would be more adequately served through an education at that school, institution, or agency than they would be if the child remained in his existing educational environment. If the Department determines that there are a sufficient number of properly certified and employable teachers available, the Department will require that properly certified teachers be employed by the school, institution, or agency before any claim may be paid for the education of an exceptional child. (Sec. 6874.6, *Cal. Ed. Code*) The

The computation of average daily attendance for county operated programs does not include physically handicapped, speech impaired, deaf, or hard of hearing children between the ages of 18 months and three years who are receiving instruction. (Sec. 11557, *Cal. Ed. Code*)

handicapped, speech impaired, deaf, or hard of hearing children between the ages of 18 months and three years who are receiving instruction. (Sec. 11557, *Cal. Ed. Code*)

Each district transporting blind, deaf, aphasic, orthopedic or other health impaired, multiply handicapped, mentally retarded, and physically handicapped children who are handicapped in mobility will receive for transporting children to day classes \$389 for each unit of ADA. They will receive the same amount for transporting deaf, severely hard of hearing, blind, deaf-blind, or other multiply handicapped pupils to experimental programs for children between the ages of 18 months and three years. County schools service funds will receive \$389 for each student in average daily attendance receiving transportation from the county superintendent of schools. In cases where the school districts and the county superintendent of schools furnish transportation to handicapped children requiring vehicles exclusively for that purpose, the superintendent of schools shall allow 75 percent of any expense in excess of the \$389, but the additional allowance cannot exceed \$73 per unit of average daily attendance. In no case shall the district receive any amount greater than its total current expense in providing transportation. (Sec. 18060, *Cal. Ed. Code*)

Attendance of physically handicapped pupils in a special class for the same number of minutes as constitutes a day of attendance in regular classes of the same grade will constitute a day of attendance. For children over age 16 enrolled in an approved occupational training program or work experience program, each clock hour of teaching time devoted to individual instruction of physically handicapped pupils instructed at the same time by the same teacher in a remedial class conducted by a school district or county superintendent, the total attendance credited for such pupils will equal one unit of attendance for each 60 minutes of instruction. The ADA of all physically handicapped pupils will be computed by dividing the total number days of attendance of the pupils by the number of days taught in the regular schools of the district. When a physically handicapped minor 16 years of age or over is enrolled in an approved occupational training program, two clock hours of attendance in a special day school or class in combination with two clock hours of attendance in an occupational training program will count as one day of attendance. When a physically handicapped minor 16 years of age or over is enrolled in an approved off campus work experience education program, three clock hours of attendance in a special day class or in a regular class in combination with one clock hour of attendance in a work experience education program will count as one day of attendance. No pupil will be credited with more than five days of attendance per calendar week or more than the number of calendar days each special day school or class is maintained in the school year. (Sec. 11201, *Cal. Ed. Code*)

Deaf, hard of hearing, blind, deaf-blind, and multiply handicapped children receiving services in an experimental program for children between the ages of 18 months and three years will be credited to the school district of the county superintendent of schools providing such instruction in the same manner as physically handicapped minors receiving special education services between the ages of three and 21. Computations of allowances and apportionment from the state school fund for such children will be credited to the district or the county superintendent in the same manner as other funds for the physically handicapped for children between the ages of three and 21. (Sec. 6812.5, *Cal. Ed. Code*)

School districts having educationally handicapped students receiving special education will report the attendance of the children and submit any claims to the districts for special purpose apportionment to be used in payment to the parent or guardian of the minor toward any tuition arising out of the attendance through the county superintendent of schools to the superintendent of public instruction. The claims will be submitted at a time and in a manner prescribed by the superintendent. The county superintendent will verify the attendance report and claims. (Sec. 6771, *Cal. Ed. Code*)

Upon verification of the attendance and the claim, the superintendent will apportion to the district submitting the report and the claim of the parent or guardian of the minor for the tuition in question in an amount sufficient to satisfy the claim but not in excess of the sum per unit of ADA of the state apportionment to the district for the fiscal year in question and the maximum amount allowable per unit of ADA for reimbursement of excess current expenses under Sec. 18060 and 18102. (Sec. 6772, *Cal. Ed. Code*)

The superintendent of public instruction shall allow \$389 for each unit of average daily attendance to the school districts for transporting children whose vision or hearing is impaired to a degree making it practical to transport them to the California School for the Blind and School for the Deaf or to some location in another public school district where specialized instruction may be afforded. If they are furnishing transportation in motor vehicles used exclusively for them, the superintendent will allow 75 percent of any expense in excess of \$389 but the additional allowance may not exceed \$73 per unit of ADA. The amount will be allowed as part of the second principal apportionment under special request and upon approval of the superintendent. (Sec. 18062, *Cal. Ed. Code*)

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The governing board of the district of residence of a child who is a day class pupil at the California School for the Deaf will pay for the transportation. Pupils 15 years of age or older as of September 1 of each fiscal year will be considered residents of the high school district and pupils 14 years of age or under will be considered residents of the elementary district. (Sec. 25601.1, *Cal. Ed. Code*)

The district of residence will pay from the general fund of the school district the cost for the transportation of pupils to any of the California School for the Blind's day classes. Districts of residence will be determined in the same manner as those attending the California School for the Deaf. (Sec. 2582.1, *Cal. Ed. Code*)

Instructional aides shall not be utilized to increase the number of pupils in relation to the number of classroom teachers in any school or school district in the state. Class size ratios existing in special education classes may be maintained or decreased but not increased by use of instructional aides. (Sec. 13599.2, *Cal. Ed. Code*)

For all physically handicapped, mentally retarded, and educationally handicapped children of secondary grade educated by the county, the superintendent of public instruction shall allow the same amount as he would compute for the foundation program of a high school district. (Sec. 18358, *Cal. Ed. Code*)

The ADA of elementary schools for the district will be computed by excluding the ADA of pupils attending seventh and eighth grade or a junior high school maintained by the district. (Sec. 895.1, *Cal. Ed. Code*)

The superintendent of public instruction will prescribe the form and manner of notification of intention to initiate a program for the educationally handicapped and will prescribe the procedures for qualifying for state aid for special day classes of authorized instruction in other than special day classes. (Sec. 6761, *Cal. Ed. Code*)

The application for apportionment for mentally retarded and physically handicapped pupils must be made prior to September 1 of each year and must include an estimate of the ADA that will be credited to the schools, classes, or integrated programs during the school year for which an advance apportionment is requested. The estimate is based on the number of children (residing in the district or in an adjacent district) who are physically handicapped or mentally retarded and who will attend the schools, classes, or integrated programs. (Sec. 6915, *Cal. Ed. Code*)

Within 30 days of the application, the superintendent will approve it. He then will apportion to each applicant school, from the state general fund as an advance against future apportionment from the state school fund, an amount to each district which is equal to the maximum amount allowable for each type of program included in the request per unit of ADA to school districts for the excess expense of educating severely mentally retarded children and physically handicapped children multiplied by eight and the product multiplied by the number of special classes or integrated programs maintained by the applicant school district for such minors. (Sec. 6916, *Cal. Ed. Code*)

All monies received by the treasurer of the county under these sections will be credited by the treasurer to the general fund of the school district of the county exactly as apportioned by the superintendent. (Sec. 6918, *Cal. Ed. Code*)

During the next two fiscal years after the fiscal year in which the apportionment is advanced to a school district, the state comptroller will deduct from apportionments made to each school district from the state school fund an amount equal to the amount apportioned to the district under Sec. 6914 to 6919 and pay the same into the state general fund. (Sec. 6919, *Cal. Ed. Code*)

Attendance of educationally handicapped children receiving instruction by school districts are reported annually through the county superintendent together with all other attendance on forms provided by the superintendent. (Sec. 11228, *Cal. Ed. Code*)

The ADA of physically handicapped elementary and secondary pupils, instructed by a county superintendent, whose attendance is credited to the county school service fund will be computed by dividing the total days of attendance of such pupils during the fiscal year by 175. (Sec. 1151 and 1152, *Cal. Ed. Code*)

The ADA of mentally retarded children, instructed by a county superintendent, will be computed by dividing the total days of attendance by 175 and the ADA will be credited to the county school service fund. However, the ADA of severely mentally retarded children for the purpose of computing transportation allowances under Section 18060 will be computed by dividing the total number of days of attendance of the pupils during the fiscal year including the days of attendance in an authorized summer session by 175. (Sec. 11553, *Cal. Ed. Code*)

The ADA of educationally handicapped elementary and secondary children, instructed by a county superintendent, whose attendance is credited to the county high school service fund will be computed by

dividing the total days of attendance of these pupils during the fiscal year by 175. (Sec. 11555 and 11556, *Cal. Ed. Code*)

The minimum school day for pupils in kindergarten classes and for severely mentally retarded children in special training schools or classes is 180 minutes, including recesses. If the school district maintains two such classes on the same day taught by the same teacher the minimum school day for the classes is 150 minutes, including recesses. (Sec. 11003, *Cal. Ed. Code*)

Minimum school day in grades one to three in elementary schools (except in opportunity schools or classes) is 230 minutes unless the governing board of the school district has prescribed a shorter length of time, because of lack of school facilities requiring double sessions. In this case, the minimum school day is 200 minutes. (Sec. 11005 and 11006, *Cal. Ed. Code*)

Minimum school day in grades four to eight in elementary schools and in special day and evening classes in elementary school districts, except in opportunity schools or classes, is 240 minutes. (Sec. 11006, *Cal. Ed. Code*)

The school day in any high school except an evening high school or regional occupational center, opportunity school and opportunity classes, continuation high school, and continuation education classes, and in late afternoon or Saturday occupationally organized vocational training programs conducted under federally approved plans for vocational education is 240 minutes. (Sec. 11052, *Cal. Ed. Code*)

Minimum school day for secondary educationally handicapped students is 240 minutes. (Sec. 11054, *Cal. Ed. Code*)

The attendance of all physically handicapped pupils given instruction by a school district including those instructed under cooperative agreements with the Bureau of Vocational Rehabilitation will be reported annually to the county superintendent of schools together with all other attendance. (Sec. 11203, *Cal. Ed. Code*)

The attendance of physically handicapped pupils instructed pursuant to Section 6806 by the county superintendent is credited as follows:

(1) Attendance of elementary pupils taught in emergency elementary schools and in special classes shall be credited to the emergency schools.

(2) Attendance of elementary school pupils given individual instruction in the home or at the bedside in institutions and of minors with speech disorders and defects at least three years of age and of minors who are deaf or hard of hearing between the ages of three and six given individual instruction in school or in the home or by cooperative arrangements with the Division of Vocational Rehabilitation of the State Department of Rehabilitation, or in remedial classes, or in integrated programs of instruction, is credited to an emergency elementary school maintained for physically handicapped if there is such a school in the county. If there is no such school, attendance is credited to an emergency elementary school. If there is no emergency school maintained in the county the total number of days of attendance of pupils will be divided by 175 to compute average daily attendance and the ADA so computed is credited to the county school service fund as attendance upon a single emergency elementary school for individual instruction for the physically handicapped.

(3) Attendance of pupils of secondary grades given individual instruction in the home or institution, or by cooperative arrangement with the Division of Vocational Rehabilitation, or instructed in special classes of secondary grade or in remedial classes or integrated programs of instruction of secondary grades will be credited to the county school service fund. Attendance of pupils taught by emergency teachers in the regular schools will be credited to the district except the attendance of pupils taught by emergency teachers pursuant to Section 8902 in the regular elementary schools of the district of any county and the attendance of elementary pupils in remedial classes pursuant to 8901 will be credited to the county school service fund in accordance with subdivision two of this section.

(4) Attendance of pupils residing in one county and educated under contract with the county superintendent of schools or governing board of the school district of another county will be credited to the county school service fund of the county or district in which pupils are educated.

(5) If the county superintendent maintains an integrated program of instruction as defined in Section 18060.2 and contracts with the school district to provide the instruction for part of the day in the regular classes of the district, the total attendance of the pupils under the program will be credited to the county school service fund at both the elementary and secondary levels. (Sec. 11204, *Cal. Ed. Code*)

"The amount transferred pursuant to subdivision (b) of Section 17301 shall be expended in accordance with the following schedule:

(a) \$21.50 multiplied by the total ADA credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of ADA to high school districts

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which during the preceding school year had less than 301 units of ADA and to unified districts which during the preceding school year had less than 1501 units of ADA but not to exceed an amount equal to \$1.60 multiplied by the ADA credited during the preceding fiscal year to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds, for allowance to county school service funds pursuant to subdivision (a) of Section 18352.

(b) \$4 multiplied by the total ADA credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds during the preceding school year for the purposes of Article 10 (commencing with Section 18051) of Chapter 3 of this division.

(c) \$12.85 multiplied by the total ADA credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds during the preceding school year, for the purposes of Sections 18060 and 18062, and Articles 11,12 and 13 (commencing with Sections 18102, 18152, and 18202, respectively) of Chapter 3 of this division.

(d) \$3.06 multiplied by the total ADA credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds during the preceding school year for allowances to county school service funds pursuant to subdivision (b) of Section 18352.

(e) \$0.96 multiplied by the ADA during the preceding fiscal year credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds for allowances to school districts for the purposes of Section 6426.

(f) \$60.67 multiplied by the ADA during the preceding fiscal year credited to all kindergarten, elementary, high school, junior college and adult schools in the state and to county school tuition funds during the preceding school year for basic aid, equalization aid, allowances for adults, and allowances to the county school tuition funds to be apportioned on account of ADA." (Sec. 17303.5, *Cal. Ed. Code*)

The superintendent of public instruction shall not allow, except under Section 18060, a total amount in excess of the amount provided by law for transportational allowances. (Sec. 18051, *Cal. Ed. Code*)

As used in Section 18060, "blind" includes partially seeing, and "deaf" includes hard of hearing. "Special day classes" include integrated programs of instruction for physically handicapped children including those children handicapped in vision or hearing requiring provision of services of a qualified special teacher. "Integrated programs of instruction for the physically handicapped" include those handicapped in vision or hearing or who are in any program where a physically handicapped child receives his education in regular classrooms from regular classroom teachers. In addition, the child receives supplementary teaching services from a teacher possessing a valid credential to teach exceptional children of the type enrolled in the program. "Supplementary teaching services" may include instruction in the appropriate tool skills, the provision of special material, and the use of appropriate special equipment in necessary counseling and guidance to enable physically handicapped, vision, and hearing handicapped children to benefit fully from their instruction. "Physically handicapped children" means those children who are eligible for special class placement as defined by the State Board. (Sec. 18060.2, *Cal. Ed. Code*)

The superintendent will allow during the current fiscal year, to each school district and county school superintendent maintaining special day classes for the education of physically handicapped, mentally retarded, severely mentally retarded and educationally handicapped children, amounts prescribed by this article for each of their respective types of classes maintained for the fiscal year. (Sec. 18101, *Cal. Ed. Code*)

By July 15th of each year the superintendent of each California diagnostic school for neurologically handicapped children will report in writing to the governing board of all school districts the name of each pupil in residence and the number of days attended by each pupil during the fiscal year. For each pupil in attendance, the school district of residence shall annually pay to the Department of Education an amount determined by dividing the income credited to the general fund of the school district from the levy of the district tax rate. Exclusive of taxes levied under sections 1822.2, 1825, 16633, 16635, 1645.9, 1943, 19610, and 20801 and 22101 by the ADA of the school district and (2) multiplying the quotient obtained by the ratio of the number of days pupils attended the school bears to the number of days that the school was in session. The payment to the Department must be made by September 30. (Sec. 26501.1)

The maximum rate of a school district tax for any fiscal year is increased by an amount that will provide the amount of proposed expenditures for programs of educating physically handicapped and mentally retarded children in development centers in excess of state apportionments as shown by a budget of the district adopted by the governing board of the district. The proposed expenditures may include the cost of equipment and facilities, lease or purchase of buildings, lease of land, alteration or additions to existing buildings, or any other necessary capital outlay expenditures in connection with the programs. If at the end of any fiscal year there remains an unencumbered balance derived from the revenue of the increase in tax,

the balance will be used exclusively in the following fiscal year for the expenditures of the school district for development centers. (Sec. 20807, *Cal. Ed. Code*)

A county and city, or county (described in Sec. 6951) shall at the close of each school year pay to the district or county superintendent educating the child the cost of educating the child during the school year in a regularly licensed children's home. The cost is determined by dividing the total current expense of the school district or county superintendent of schools during the school year plus all apportionments from the state or allocations from federal government received by the district or county superintendents of schools, by the total number of units of ADA in each district or in programs maintained by the county or city and county in which any such child is a resident at the closing of each school year, and also pay to the district or county superintendent of schools educating the child the excess expenditures of educating him during the school year. The excess expenditures are determined by dividing the total excess expenditures of the district or county during this school year for educating these children with a special purpose apportionments from the state or allocations from the federal government on account of the excess cost of educating the child by the total number of units of ADA of such children in the school, classes, facilities, and programs during each school year. The ADA for all minors attending a junior high school or in accordance with Sections 5601 and 5612 will be credited to the elementary district in which the institution is located. "Excess expenditures" shall mean the additional expenditures made by the district during the school year for the education of these minors.

In cases where the education of such children is provided in buildings or facilities owned by the school district or county superintendent, the county or city and county of the child's residence shall pay the school district, or county superintendent of schools for the child's use of the buildings, facilities, and equipment an amount per unit of ADA in one of the following categories: (1) \$35 in an elementary school district; (2) \$55 in a high school district; (3) \$42 in a unified school district; and (4) \$44 to a county superintendent of schools.

The money received by the school district will be credited to its bond interests and redemption fund or building fund. Monies received by the county will be deposited to the credit of the county school service fund for use in providing school buildings and facilities for use of the county superintendent of schools to educate mentally retarded children, physically handicapped children, and non-immigrant children. Except for mentally retarded children and physically handicapped children, no payment may be made to a district for children described in Section 6951 unless the district educates from kindergarten through grade 12 at least 30 children described in Section 6951 in buildings and facilities owned by the district. No payment is made to a district under Section 6950, unless the district educates (from kindergarten through grade 12) at least 30 children described in Section 6950 in buildings or facilities owned by the district. (Sec. 6952.5, *Cal. Ed. Code*)

By July 15 of each year, districts maintaining such schools or classes shall forward, to the county superintendent or city and county where the district is located, claims for reimbursement to the pupil's county and city or county of residence. (Sec. 6953, *Cal. Ed. Code*)

The county superintendent in each county or city and county will file, with the board of supervisors by August 8, a request for sufficient funds to pay the total amount of the claims presented to him in accordance with this Chapter. If during any fiscal year the county superintendent determines an amount of at least \$100 more or an amount of at least \$100 less than was required for the claim of any individual district included in his request to the county board of supervisors during a prior fiscal year, this amount shall no later than the third succeeding fiscal year be added to or deducted from the requested funds for the then current fiscal year. (Sec. 6954, *Cal. Ed. Code*)

Boards of supervisors of each county and city or county will annually, at the time and in the manner of levying of the city and county taxes, levy a special tax for the payment of the claims submitted under this Chapter. (Sec. 6955, *Cal. Ed. Code*)

Monies received from the county tax will be deposited in the county treasury to the credit of the county school service fund. By the first Monday in February and the first Monday in June of each year, the county auditor will notify the county superintendent of the amount of money in the treasury available for payment of claims under this Chapter. (Sec. 6955, *Cal. Ed. Code*)

The state superintendent will prescribe the procedures required of school districts and county superintendents under this Chapter. They will also adopt all rules and regulations necessary to carry it out. (Sec. 6957, *Cal. Ed. Code*)

The superintendent of public instruction will provide the facilities, furniture, equipment, and personnel necessary to carry out the provisions of 10301. (Sec. 10302, *Cal. Ed. Code*)

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ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Any school district having an ADA of 400,000 or more can contract with the county superintendent of schools or with another school district to educate physically handicapped, mentally retarded, or educationally handicapped children of any contracting party. All parties to the contract will require the district whose pupils are receiving educational services to pay all costs of the educational services in excess of the amounts received by the servicing unit from the state school fund. Whenever a county superintendent of schools is a party to such contracts, no tax may be levied to defray the cost of educational services under the contract by any party other than the school district whose pupils are receiving the educational services. (*Sec. 895.12, Cal. Ed. Code*)

County superintendents of schools (in counties with more than 25,000 pupils in ADA in which at least 50 percent of the mentally retarded pupils are enrolled in classes conducted by the county superintendent) shall employ at least one full-time certified person to coordinate activities involved in the preparation, adoption, revision, use, and enforcement of a course of study for the mentally retarded in which the county course of study is required. Minimum professional requirements for employment in this position will be the holding of a regular teaching credential with authorization for teaching the mentally retarded. County boards of education, in counties with less than 25,000 in ADA with the governing board of any school district and with an ADA of more than 8000, may cooperate with the county superintendent of schools for developing a course of study for mentally retarded pupils educated by them. (*Sec. 6904.2, Cal. Ed. Code*)

Governing boards of any unified, elementary, or high school district required to provide for the education of severely mentally retarded children in special training classes may enter, with the approval of the superintendent, into an agreement with the county superintendent of schools for him to provide the required services. (*Sec. 6904, Cat. Ed. Code*)

The county superintendent of schools maintaining special classes or schools for mentally retarded children may limit the number of minors admitted to such schools or classes. Any minor becoming age 18 while in attendance in the special training classes will be permitted to continue to attend for the remainder of the school year. (*Sec. 895.3, Cat. Ed. Code*)

The county superintendents who are otherwise required to maintain special training schools or classes for mentally retarded children may provide the education and transportation of such children in special training schools or classes maintained by the high school district or by another county. The agreement must be approved by the county board of education. (*Sec. 894, Cal. Ed. Code*)

A tax may be levied by counties to provide for the education and training of physically handicapped minors coming within the provision of Section of 6801 and 6802. The county superintendent, when actually maintaining schools or classes for handicapped children in districts with an ADA of over 8000 by agreement with the governing board of the school districts, shall certify (with the approval of the county board) to the county auditor or the county board of supervisors the amount of money required to be raised by the tax for physically handicapped children coming within the provisions of 6801 and 6802. The tax is raised in the same manner for districts with an ADA of less than 8000, but the tax in districts of more than 8000 will not include any amount for the education of physically handicapped minors actually conducted by local school districts or for contracted services by another school district. (*Cal. Ed. Code*)

The superintendent of public instruction will reduce allowances to county school service funds by an amount determined by multiplying \$.60 by each \$100 of total assessed valuation of all elementary and unified school districts for whom the county superintendent of schools maintains exclusive classes in grades kindergarten through eight pursuant to Section 894 dividing the product by the total ADA of pupils. Then multiply the quotient by the ADA of pupils attending special schools or classes maintained by the county superintendent of schools in grades kindergarten through eight. The superintendent will also reduce allowances to county school service funds by an amount determined by multiplying \$.50 by each \$100 of total assessed valuation of all high school unified school districts in which the county superintendent of schools maintains schools or classes in grades nine through 12 pursuant to Section 894. Divide the product by the total ADA of pupils involved in the foundation program then multiply the quotient by the ADA of pupils attending special schools or classes maintained by the county superintendent of schools. (*Sec. 895.9, Cal. Ed. Code*)

The governing boards of school districts with an ADA of less than 901 may enter into an agreement with the county superintendent to provide special educational programs for educationally handicapped minors. The governing board of the school district may enter into agreements with the governing boards of other school districts to educate these children. The district of residence having pupils receiving special education

under the provisions of this section will pay expenses involved in providing this special education over and above the state apportionments made to the county superintendent. (Sec. 6753, *Cal. Ed. Code*)

County superintendents of schools required to provide for educating mentally retarded children in special training schools and classes coming within provisions of Section 6903, may enter (with the approval of the superintendent) into an agreement with an elementary, unified, or high school district to provide for them. The county superintendent may establish and maintain, with the approval of the county board, special training schools or classes for the mentally retarded residing in the county coming under the provision of Section 6903. The county superintendent may also contract with an elementary or unified district with an ADA of 8000 or more in an elementary or a high school district. If the county superintendent does establish programs under this Section, the foundation program applies as if the county superintendent were establishing classes for the educable mentally retarded in districts with an ADA of 901 or more. (Sec. 895, *Cal. Ed. Code*)

The county superintendent of schools may contract with any other county superintendent of schools to provide educational services and programs for educationally handicapped, physically handicapped, and mentally retarded children. Before the contract can take effect, it must be approved by the boards of education of all involved counties. (Sec. 821, *Cal. Ed. Code*)

A county superintendent of schools, with the approval of the county board, may enter into an agreement with the governing board of any school district under his jurisdiction to conduct a remedial class for handicapped children excused from regular classes for a portion of the class. Cost of the education to the district shall not exceed the actual cost to the county superintendent. (Sec. 894.1, *Cal. Ed. Code*)

County superintendents providing education to the physically handicapped will annually report to the superintendent their total average daily attendance, type of instruction provided, cost of education, and any other necessary information. (Sec. 894.2, *Cal. Ed. Code*)

The superintendent will prescribe the procedures for qualifying for and determining the amount of allowances for special or regular day classes or authorized instruction in other than special or regular day classes for physically handicapped minors. (Sec. 894.3, *Cal. Ed. Code*)

The ADA of elementary schools of the district will be computed by including the ADA of pupils attending the seventh and eighth grades of a junior high school maintained by a high school district. (Sec. 894.4, *Cal. Ed. Code*)

If directed by the county board of education, the county superintendent shall establish centrally located classes or special training schools for mentally retarded pupils who reside in elementary or unified school districts with an ADA of less than 901. Transportation will be provided by the county superintendent.

A district of this size may establish its own programs.

A county superintendent may contract with a public school in a state adjacent to the county to provide services, with the child's county of residence making necessary payments.

The county superintendent may establish classes and contract with an elementary or unified school district with an ADA of 901 or more or with a high school district with an ADA of less than 901.

The county superintendent shall establish classes in districts with an ADA of less than 8,000 in the elementary or unified or high schools. If it would be impractical because of transportation distances to bring together a sufficient number of mentally retarded pupils, compliance with the provisions in this section may be deferred for the year in question.

Districts with an ADA of less than 8,000 may establish special classes or may contract with other districts.

The county superintendent may establish classes in districts with an ADA of 8,000 or more. (Sec. 894.2, *Cal. Ed. Code*)

The county superintendent shall establish programs for physically handicapped pupils (including orthopedic or other health-impaired, visually, aurally or multi-handicapped) who reside in districts with an ADA of less than 8,000, when the districts have not contracted for special services. Programs shall be provided in the following ways:

- (1) In special schools or classes and in remedial classes.
- (2) By employing emergency teachers to work in the regular schools.
- (3) By maintaining special secondary classes.
- (4) By employing home instructors, remedial teachers for physically handicapped pupils in regular, special day or special training schools, or for children at least three years old with speech defects.
- (5) By cooperating with the Department of Rehabilitation.
- (6) By contracting with other counties or school districts.
- (7) In integrated programs.

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(8) By employing instructors to provide instruction in schools or the homes of deaf or hard of hearing pupils who are at least three years old.

The county superintendent may establish programs for physically handicapped pupils who live in the county. Regulations concerning their location are the same as in Sec. 895.

Programs may be established in districts with an ADA of less than 8,000. (Sec. 894.1, *Cal. Ed. Code*)

If any school districts are required to maintain special training schools and classes for mentally retarded minors, they may provide for the education of these children in and for the transportation to special training schools or classes maintained by another school district or by a county superintendent of schools. (Sec. 6910, *Cal. Ed. Code*)

In lieu of entering into an agreement for transporting mentally retarded children by the school district of residence, the county superintendent in the county with special training schools or classes may provide the transportation. (Sec. 6911, *Cal. Ed. Code*)

The governing boards of any school district required or otherwise to maintain special training schools or classes for exceptional children may contract, with the approval of the county superintendent of schools, with any state college within the boundaries of the county within which the school district is located to provide for the education of the children in laboratory classes for exceptional children established and maintained in conjunction with the state college. Transportation will also be provided for the children. Exceptional children includes physically handicapped, mentally retarded, or educationally handicapped children. (Sec. 1064.1, *Cal. Ed. Code*)

If a school district maintains a school or class in a tuberculosis or polio ward, or hospital, or sanatorium established or maintained by a county or group of counties, any minor or adult admitted, if otherwise qualified, is eligible to attend the schools or classes and will be considered a resident of the school district in which he resided prior to admission. Minimum school day for the classes is 180 minutes. If two or more districts operate such schools or classes, the governing boards of the districts may jointly employ personnel to administer and conduct the programs. The school district maintaining the school shall, no later than 30 days following the date of enrollment of a student who resides in another school district under this section, notify the district of residence of the student's enrollment. (Sec. 6851, *Cal. Ed. Code*)

The cost per school year of educating any minors or adults at such schools or classes will be paid by the school district in which the minor or adult is a resident to the district maintaining the school or class. The cost will be determined by dividing the total current expenditures of the school district during each school year for the maintenance of the schools or classes less all apportionments from the state or allocations from the federal government on account of such schools or classes, by the total number of units of average daily attendance in such schools or classes during the school year. Districts providing services to minors in the schools or classes will be apportioned excess cost apportionments for handicapped children as stated elsewhere in this code. The standards will be adopted by the superintendent relating to administration, attendants, accounting and counseling in hospital schools and classes. (Sec. 6852, *Cal. Ed. Code*)

By July 15 of each year, a district maintaining such schools or classes will forward its claim to the district of residence for educating minors or adult residents of that district. Upon receipt of the claim, the governing board of the district of residence will pay the tuition cost. (Sec. 6853, *Cal. Ed. Code*)

Districts receiving such tuition charges may include in their budget an amount necessary to pay the claim. If the amount is included in the budget, the board of supervisors shall levy a school district tax to raise the amount. The school district tax is in addition to any other tax authorized by law. (Sec. 6854, *Cal. Ed. Code*)

Governing boards of any school district maintaining schools or classes in a tuberculosis or polio ward, hospital, or sanitarium may include in their budget an amount necessary to maintain these schools or classes. The board of supervisors will levy a school district tax necessary to raise the amount. The tax will be in addition to any other school district tax authorized by law to be levied. (Sec. 6855, *Cal. Ed. Code*)

The governing boards of any school district or county superintendent, with the approval of the county board, may maintain schools and juvenile halls or juvenile homes, ranches, or camps as authorized by the Welfare and Institutions Code. They may provide any one or more of the special educational programs for the educationally handicapped minors authorized in this section. County superintendents may enter into an agreement with the governing board of any school district with less than a 901 ADA in elementary schools or in the high schools in the district to provide for one or more of the special educational programs for educationally handicapped students. If a child in an education program for educationally handicapped pupils is receiving services in a special day class through home and hospital instruction and lives in a district

with an ADA of 901 or more, the foundation program described in Section 17656 for an elementary school district with an ADA of 901 or more will apply to the educationally handicapped pupils of the elementary schools of the district who are in such a special education program and the foundation program described in Section 17665 will apply to educationally handicapped pupils in the high schools in the district in such a special education program. The programs will emphasize fundamental school subjects with the aim of returning pupils to the regular school program at the earliest possible date. Special education programs for educationally handicapped minors are:

(1) **Special Day Classes.** Classes are maintained for at least a minimum school day. Fundamental school subjects will be emphasized as prescribed by the State Board.

(2) **Learning Disability Groups.** The pupil remains in his regular class but is scheduled for individual small group instruction given by a special teacher. If two to four educationally handicapped pupils are instructed at the same time by the same teacher, the total attendance credited for each such pupil will equal one unit of attendance for each 60 minutes of instruction.

(3) **Specialized Consultation to Teachers, Counselors, and Supervisors.** Consultation is provided to teachers, counselors and supervisors relative to the learning disabilities of individual pupils and special education services required by these pupils.

(4) **Home and Hospital Instruction.** Children unable to function in a school setting and who do not attend school receive instruction at the appropriate grade level at home or in a hospital. (*Sec. 6751, Cat. Ed. Code*)

Any school district not maintaining facilities for the education of physically handicapped children shall enter into a contract with the school districts within the same county or with county superintendent of schools maintaining such facilities. If there are no districts in the same county or if the county superintendent of schools does not maintain appropriate facilities, the governing board of the school district shall enter into a contract with a school district in another county. If the governing board of the district determines that it is more economical and practical, it may enter into a contract with a school district located in another county. If questions arise concerning the adequacy of facilities provided for the education of physically handicapped children by the school district in which the child is actually a resident, the parent or guardian of the child may appeal to the county superintendent of schools. If the county superintendent determines that the facilities are inadequate, he shall order the school district in which the child is actually living either to provide the facilities or to enter into a contract with the school district maintaining adequate facilities. The contract shall provide for the actual payment of the cost of tuition by the district and may provide for the payment of the cost of the use of buildings and equipment. The cost of tuition shall not be greater than the difference between prior expenditures per unit of average daily attendance including transportation for the education of a pupil in a particular category of physically handicapped minors to which the pupil belongs and the apportionment of state funds for the education of physically handicapped minors in that category.

Physically handicapped minors may be instructed in special schools, special classes, hospitals, sanitariums, or in the home through the employment of home instructors or by cooperative arrangement with the Department of Rehabilitation or by any other means approved by the State Department of Education. Children with speech disorders or defects may be admitted to schools for individualized or small group instruction of four pupils or less for the purpose of correcting the speech disorder or defect. With prior approval of the superintendent of Public Instruction, these children may be admitted at the age of 18 months for instruction. Deaf or hard of hearing children between the ages of three and six may be admitted to school for individual instruction or be instructed in the home through the employment of a home instructor, if there are fewer than five such educable minors in the community making the establishment of a special class impracticable because there are fewer than five children in the community within reasonable travel distance of a suitable school. Instruction must be provided by a teacher or home instructor possessing full qualifications and credentials to teach deaf pupils. With prior approval of the superintendent of Public Instruction, children may be admitted into special education programs for deaf children at the age of 18 months. (*Sec. 6812, Cat. Ed. Code*)

SERVICES

" 'Special day classes' includes integrated programs of instruction for physically handicapped children including those handicapped in vision or hearing where the services of a qualified special teacher are provided.

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"An integrated program of instruction for physically handicapped children including those handicapped in vision or hearing shall be defined as any program in which such physically handicapped children receive their education in regular classrooms from regular classroom teachers, but receive, in addition, supplementary teacher services of a full-time special teacher, possessing a valid credential to teach exceptional children of a type enrolled in the program. Such supplementary teaching services may include instruction in the appropriate tool skills, the provision of special materials in the use of appropriate special equipment, and counseling and guidance necessary to enable physically handicapped children and those handicapped in vision or hearing to benefit fully from their instruction. As used in this section 'physically handicapped' children means those physically handicapped who are deemed eligible for special class placement as defined by the State Board of Education." (Sec. 18102.4, *Cal. Ed. Code*)

The governing board of the school district in which any physically handicapped child is actually living, although the residence of his parents or guardian is outside the district, shall provide the transportation for the minor to the school at which the education is furnished if his handicap prevents his walking to school. Transportation is also provided if the distance is greater than one mile, regardless of whether the education is furnished within or without the district. (Sec. 6808, *Cal. Ed. Code*)

Children with cerebral palsy may attend a special school or class maintained by any school district for these children. The governing board of the district of residence will pay (to the district of attendance at the close of each year) the total expenditures for the education of cerebral palsied children and apportionments of state and federal funds. The governing board of the district of residence may agree to reimburse the district of attendance for use of buildings and equipment. If the district of residence has insufficient funds to make this payment, the county superintendent of schools having jurisdiction over the district of residence will apportion to the district from the county school service fund any funds necessary to permit the district to meet its obligation. (Sec. 6815, *Cal. Ed. Code*)

The amount shall be determined no later than the last Monday in December and the last Monday in May of each year by the county superintendent. (Sec. 6806, *Cal. Ed. Code*)

School districts maintaining home teaching programs for the handicapped may provide such teaching on Saturdays with the consent of the parent or guardian of the handicapped child. (Sec. 6253, *Cal. Ed. Code*)

On or after September 1, 1975, all persons teaching multiply handicapped children must hold a valid credential to teach exceptional children. (Sec. 6820.2, *Cal. Ed. Code*)

The superintendent of Public Instruction may approve special day classes for the multiply handicapped conducted by a school district or county superintendent of schools. No more than 40 classes are authorized. The superintendent of Public Instruction shall annually report to the Legislature progress being made in the education of multiply handicapped children including the number of authorized classes and number of children enrolled, the nature of handicapping conditions of children in the special classes, a description of the instruction provided, the objectives of the program, achievement outcomes, and recommendations for further program development. (Sec. 6812.1, *Cal. Ed. Code*)

Deaf, severely hard of hearing, blind, deaf-blind or other multiply handicapped children (as determined by the State Board of Education) who are between the ages of 18 months and three years may be enrolled in experimental programs conducted by the school district or the county superintendent of schools. Such programs must be approved by the superintendent. Teachers participating in this program must possess full qualifications to teach the deaf, severely hard of hearing, blind or deaf-blind or other multiply handicapped children as prescribed by the rules and regulations of the State Board. (Sec. 6812.5, *Cal. Ed. Code*)

Individual counseling and guidance in social and vocational matters shall be provided as part of the instructional program for physically handicapped students. With the approval of the State Department, governing boards of any school district may separately (or in cooperation with the governing board or boards of one or more other school districts or in cooperation with the Department of Rehabilitation) employ a special coordinator who will make a study of employment and occupational opportunities and who will assist in the coordination of the education of physically handicapped children with the commercial and industrial pursuits of the community to prepare the minors for employment. (Sec. 6818, *Cal. Ed. Code*)

If funds have been appropriated by the Legislature or if federal funds are available, the State Board shall approve and provide for the establishment of no more than 20 pilot programs directed to develop methods and techniques for identifying mentally gifted children within the educationally handicapped and culturally deprived elements in the school age population and improving the academic performance of these children.

Programs will be conducted in selected school districts including urban and rural areas in districts of varying sizes. (Sec. 6499.21, *Cal. Ed. Code*)

Programs under this section have the purposes of:

(1) developing instrumentalities, techniques, and procedures for identifying potential. Procedure for identifying gifted disadvantaged minors shall not be limited to the testing programs but will also include other suitable methods;

(2) devising procedures, methods, and programs whether innovative, experimental or otherwise to raise the aspiration level of academic achievement of disadvantaged children; and

(3) augmenting the resources and effectiveness of the established compensatory educational programs and related educational undertakings. (Sec. 6499.22, *Cal. Ed. Code*)

The governing board of any school district or county superintendent of schools of any county maintaining secondary schools may enter into contracts with the governing boards of other school districts or with the county superintendent and with any department or agency of the state to obtain and provide services and other assistance in connection with providing effective rehabilitation services to include, but not limited to, occupational training, mobility training, sheltered workshops, and work experience programs. Any school district, governing board, or county superintendent entering into a contract with the State Department of Rehabilitation may employ or allow to be employed in the school district employees of the State Department of Rehabilitation or other persons not employed by the Department but certified by the Department to be fully qualified. Certification to the State Department of Education by the Department of Rehabilitation must note that the individual meets all requirements and fulfills all qualifications of that Department for the position for which he is being considered. This shall serve as evidence that the individual meets academic, professional, and experience requirements for standard designated services with specializations in pupil personnel services as a rehabilitation counselor or mobility instructor for the blind. (Sec. 6933, *Cal. Ed. Code*)

The superintendent of Public Instruction will withhold, from the total amount allocated in any current fiscal year, an amount equal to .0016 of the amount allocated in the preceding year for use by the Department of Education for research, program development, and evaluation of special education through contractual agreements. Seventy-five percent of the funds withheld will be used to contract for research in special education for exceptional children. Contractual agreements for such research will be made with universities operating joint doctoral programs in special education in cooperation with a state college. At each of the two universities operating such a program, the Department will expend for research and services at least \$75,000 annually for a period of five years. Twenty-five percent of the withheld amount will be used by the Department for program development and evaluation through contractual agreements with an agency or organization possessing personnel and competencies necessary for the successful completion of the project or projects selected for study and analysis. (Sec. 18104, *Cal. Ed. Code*)

Individual counseling in social and vocational matters will be provided as part of the instructional program for mentally retarded pupils. With the approval of the State Department, the governing board of a school district may, separately or cooperatively with governing boards of one or more other school districts, or, in cooperation with the Bureau of Vocational Rehabilitation in the State Department, employ a special coordinator to make studies of employment and occupational opportunities. The governing board may also assist in the coordination and education of mentally retarded children with the commercial and industrial pursuits of the community. (Sec. 6912.5, *Cal. Ed. Code*)

Governing boards of unified or high school districts required or authorized to maintain special training classes for mentally retarded children shall issue diplomas or other certificates of graduation to each child who has met the minimum standards of the State Board for such special schools. The diploma or certificate of graduation shall not contain any notation or evidence which indicates that the graduate is a mentally retarded person. (Sec. 6906.5, *Cal. Ed. Code*)

Before initiating any program for the educationally handicapped, the governing boards of school districts or county superintendents must notify the superintendent of Public Instruction of its intention to do so and furnish any relevant information with respect to the proposed special education program that may be required by the superintendent. The notice and the information on it will be on the forms provided by the superintendent. (Sec. 6754, *Cal. Ed. Code*)

Governing boards of any school district maintaining secondary schools will have the power, with the approval of the State Department of Education, to establish special classes to serve the educational needs of handicapped adults. Classes will be directed to providing instruction in civic, vocational, literary, homemaking, technical, and general education. (Sec. 5746, *Cal. Ed. Code*)

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The Department of Rehabilitation may establish orientation centers for the blind on a statewide basis. They may be established under the jurisdiction and supervision of the Department and will be administered by the director of Rehabilitation. (Sec. 6201, *Cal. Ed. Code*)

Each center will be residential in nature. Blind persons will be admitted as residents and trainees in an intensive program designed for maximum vocational and personal rehabilitation and to prepare blind persons for useful and remunerative work in trades, professions, private business, private industry, or public service. (Sec. 6202, *Cal. Ed. Code*)

The Department of Education may appoint counselors to assist blind students in the public schools to solve problems connected with their school program. The counselors may visit blind pupils attending any public school in the state and their homes to advise them and discuss with them and their parents solutions to the problems pertaining to their school attendance. Counselors will be available to teachers and administrators in the public schools where blind pupils are in attendance to advise and counsel them regarding teaching methods. Counselors must have special training for such work and be familiar with problems peculiar to the blind in public school education. Blindness shall not disqualify a person for these positions. (Sec. 6817, *Cal. Ed. Code*)

If care is needed during school hours by a pupil whose attendance has been irregular because of a physical handicap, persons to provide such care may be employed. (Sec. 6810, *Cal. Ed. Code*)

The Board will make available copies of adapted textbooks in large print for pupils in the elementary schools whose visual acuity is 20/200 or less, or who have other visual impairments making the use of the textbooks necessary. The Board will also make available adapted textbooks in braille characters for pupils enrolled in elementary schools whose corrected visual acuity is 20/200 or less. (Sec. 9316, *Cal. Ed. Code*)

The superintendent will establish and maintain a central clearinghouse depository for special textbooks, reference books, recordings, study materials, tangible apparatus, equipment, and other similar items for the use of visually handicapped minors in the public schools who may require their use as determined by the State Board. (Sec. 10301, *Cal. Ed. Code*)

School districts or a county superintendent of schools may maintain, with the superintendent's approval, one or more development centers for physically handicapped and mentally retarded children, who are between the ages of three and 21 who reside in or who are in the custody of persons residing in the district or county. The governing body or superintendent will determine the hours, days, and months during which the development center is to be maintained. If a county superintendent maintains a development center, it will be on terms and conditions provided for in a written contract between the county superintendent of schools and the governing body of each school district. (Sec. 16645.2, *Cal. Ed. Code*)

The superintendent of public instruction will establish reasonable and uniform standards for development centers and for the admission of children. (Sec. 16645.4, *Cal. Ed. Code*)

Governing boards maintaining a development center may allow children from other districts to attend the center upon conditions mutually agreed to by the governing boards of both districts. The terms and conditions include payment of the costs required or authorized to be paid from the district general fund or a special development center tax levied by the operating district. The amount will be paid from any funds of the contracting school district available for that purpose. (Sec. 16645.5, *Cal. Ed. Code*)

Governing boards may permit the use of or furnish maintenance for buildings, grounds, and equipment of the district and may use existing administrative personnel for the purposes of administering the program for development centers. (Sec. 16645.6, *Cal. Ed. Code*)

Governing boards of districts may enter into agreements with any city, county, or city and county, or other public agency for the use of property, facilities, personnel, supplies, equipment, and any other necessary items. (Sec. 16645.7, *Cal. Ed. Code*)

The superintendent of public instruction will apportion to the districts or county superintendents necessary amounts to operate development centers. In no event shall the amount apportioned exceed the sum obtained by multiplying \$1.75 by the number of hours a child is in attendance at the center. (Sec. 16645.8, *Cal. Ed. Code*)

The governing board of any school district or county superintendent maintaining such a center may include in its budget an amount necessary to carry out the program. The board of supervisors will levy a school district tax or county tax to raise the necessary amount. The tax is in addition to any other school district tax or county tax authorized by law. Funds derived from the tax may be expended in addition to state funds and will not operate to affect the operation or the formula for apportionment of state funds provided in Section 16645.8. Any tax funds raised in this section may be used to purchase land or buildings and to make alterations or additions to existing buildings and to purchase furniture, apparatus, or

equipment for a development center. Any school district entering into a contract with the county superintendent to establish a development center for the physically handicapped and mentally retarded will be considered as maintaining a development center. (Sec. 16645.10, *Cal. Ed. Code*)

The governing board will establish from the county treasury a fund known as the "development center for handicapped minors fund." All funds received by the district for the operation of the center will be paid into this fund. Maintenance and operating costs shall be paid from the fund. However, any contributions, other than those to the employee retirement system, are to be paid by the district from the general fund or from funds of the district derived from a special tax levied according the Section 14657 or 14758 of the education code or Section 20532 of the government code. No funds of a district derived from district taxes except the tax for the development centers, and no state funds other than those appropriated from the general fund for the support of the development centers may be expended in connection with such a center. (Sec. 16645.11, *Cal. Ed. Code*)

If, during any fiscal year, a development center received more or less than the amount to which the center was entitled, the superintendent during the next or any succeeding fiscal year will withhold from or add to the apportionment in the amount of the excess or deficiency. (Sec. 16645.12, *Cal. Ed. Code*)

The State Department of Education may accept funds from the U.S. government and apportion them to governing boards of districts to conduct development centers which are also authorized to accept such funds. (Sec. 16645.13, *Cal. Ed. Code*)

The superintendent of Public Instruction will establish the standards to issue permits for persons employed by the center. (Sec. 16645.14, *Cal. Ed. Code*)

Persons employed in a development center in positions requiring certification are subject to the same rules and regulations. They are also eligible for the same benefits as are all teachers within the school district maintaining the center. (Sec. 16645.16, *Cal. Ed. Code*)

The governing board of the district may adopt reasonable rules and regulations to govern the centers that are not in conflict with the laws and standards or regulations of the superintendent. Local rules and regulations may include admission of children and their exclusion from such centers. (Sec. 16645.17, *Cal. Ed. Code*)

No provision may require medical examination or immunization for admission to a development center for a child whose parent or guardian files a letter with the governing board stating that the medical examination or immunization is contrary to his religious beliefs or provides for the exclusion of a child from a center because of the parent or guardian having filed such a letter. If there is cause to believe the child is suffering from a contagious or infectious disease, he may be temporarily excluded until the governing board of the district is satisfied that any contagious or infectious disease does not exist. (Sec. 16645.18, *Cal. Ed. Code*)

Children enrolled in the development centers, who are absent on account of illness or quarantine, are considered in regular attendance for the number hours per day for which they are enrolled for state apportionment purposes. All attendance is reported according to the requirements of the superintendent of Public Instruction. (Sec. 16645.19, *Cal. Ed. Code*)

Any development center may be discontinued at the discretion of the governing board of the district giving prescribed notice. At least 30 days before the discontinuance of a center, the governing board must mail (to each person having custody of a child in attendance at the center) notices of the intent to discontinue it and the date it becomes effective. (Sec. 16645.20, *Cal. Ed. Code*)

An Advisory Committee on Development Centers for the Mentally Retarded and Physically Handicapped will be established to aid in setting standards for the admission to centers and to advise the Department of Education in the administration and operation of the centers. The Committee consists of one member from the Department of Social Welfare appointed by its director, one member from the Department of Mental Hygiene appointed by its director, one member from the Department of Public Health appointed by the director of Public Health, one member from the Department of Education and appointed by the director of Education, one member from the general public, one parent of a handicapped minor appointed by the director of Education, and four members each from a school district or county superintendent of schools' office participating in the program appointed by the director. (Sec. 16645.23, *Cal. Ed. Code*)

Governing boards of any school district or the county superintendent of schools may provide transportation of children between the home and the center. The superintendent will allow, to each school district or county superintendent, an amount equal to the current expense of transporting severely

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handicapped children, but not exceeding \$675 for each unit of ADA in the center per year resulting from the attendance of children transported between home and the center. Average daily attendance as used in this section will be determined on the basis of 250 days a year. (Sec. 16645.24, *Cal. Ed. Code*)

The superintendent of Public Instruction shall provide coordinating, consultative, and supervisory services for programs for development centers for handicapped minors who employ personnel to devote their entire time to the provision of such services. (Sec. 16645.25, *Cal. Ed. Code*)

Specialized preparation means training and education designed to prepare persons to serve as librarians and to teach librarians to serve as teachers for exceptional children as designated by the credential. A degree includes any certificate, diploma, or other document granted by a foreign institution of higher learning, regardless of its graduation policies, certified by the State Board as representing academic qualifications and standards equivalent to those of a degree granted by universities or colleges in the United States and performing academic requirements for California teaching credentials. (Sec. 13188, *Cal. Ed. Code*)

The State Board of Education may issue a standard teaching credential with a specialization in elementary teaching, secondary teaching, or junior college teaching to any person who holds a regular general elementary, secondary, or junior college teaching credential and who has completed the specialized preparation to become a teacher of exceptional children. The credential will authorize service at any educational level in the public schools but only as a librarian or teacher of exceptional children in the area of specialized preparation completed. (Sec. 13197.55, *Cal. Ed. Code*)

The Department of Education may pay, from the available funds, the expenses of any deaf student attending Gallaudet College on scholarship from the college who is a graduate of the California School for the Deaf at Berkely or Riverside or a high school in California or who has been a resident of California for at least two years and has been enrolled in or is attending a private or public college or university in California. (Sec. 25610, *Cal. Ed. Code*)

The director of Education may authorize the California School for the Deaf to maintain testing centers for deaf and hard of hearing minors. The centers will test hearing acuity and give any other tests necessary in order to advise parents and school authorities about an appropriate educational program for any child. (Sec. 25653, *Cal. Ed. Code*)

In conjunction with the California School for the Deaf, the State Department may establish preschool and kindergarten service for care and teaching of hearing impaired children under school age. The Department will prescribe the rules and regulations governing the conduct of the preschool and kindergarten service and appoint any necessary teachers. (Sec. 25651, *Cal. Ed. Code*)

Also in connection with the California School for the Deaf, The State Department of Education may offer classes of instruction to parents of deaf children to assist and instruct the parents in the early care and training of such a child, to train the child in play, and to do everything which will assure the child's physical, mental, and social adjustment to his environment. (Sec. 25652, *Cal. Ed. Code*)

"It is the intent and purpose of the Legislature in providing for the establishment and/or in conjunction with individual state colleges, under this Chapter, or of laboratory classes for exceptional children, to accomplish the following general aims: improve programs presently offered within the state college system for the training of teachers in the education of exceptional children, and afford prospective teachers with direct experience with typical exceptional children; provide facilities and workshops where a systematic system of continuing research and development of methods, means, or techniques in teaching exceptional children shall be conducted; accelerate the recruitment and training of prospective teachers of exceptional children and provide in-service training for credentialed teachers to improve their skills; provide or combine a comprehensive college level program of research and teacher training to meet the needs of exceptional children such as will serve to attract and effectively utilize available public and private funds and grants; and provide for increased and improved special educational services for exceptional children through cooperation and coordination with local school districts and county offices." (Sec. 24351, *Cal. Ed. Code*)

Laboratory schools or classes will be considered for certified financial support as separately budgeted, for each budget request submitted by the state colleges and in the budget act. (Sec. 24352, *Cal. Ed. Code*)

School districts and county superintendents of schools may contract with sheltered workshops and other work establishments (approved for supervised occupational training for physically handicapped and mentally retarded minors) and may reimburse them for the expenses incurred in the training of such minors. (Sec. 6932, *Cal. Ed. Code*)

The State Department of Education, through the state employment service, will cooperate with local school officials in placing physically handicapped individuals. (Sec. 6819, *Cal. Ed. Code*)

No person may teach blind, partially seeing, hard of hearing, speech handicapped, or orthopedically handicapped children in special day or remedial classes who does not hold a valid credential authorizing such teaching. Teachers substituting in special day classes for not more than 20 days in any school year may hold some other valid credential authorizing substitute teaching. (Sec. 6820, *Cal. Ed. Code*)

The State Department may cooperate with the American Printing House for the Blind to provide and distribute braille books and other materials and equipment available to blind pupils in the public schools. (Sec. 6821, *Cal. Ed. Code*)

The State Department will establish and maintain nursery school-parent institutes at the schools for the deaf in Riverside and Berkely for preschool deaf children between the ages of three and six and their parents or guardians. Each nursery school-parent institute will be maintained for at least one, but not more than two, calendar weeks per school year. The institute will provide a program designed to assist and instruct parents of preschool deaf children in the early care and training of the child as well as to promote communication skills of the child and to do everything to help assure the physical, mental, social, and communication development of the deaf child. Any preschool deaf child and his parents or guardians receiving individual instruction at school or at home are not eligible to attend the institute. The Department will make annual budget arrangements for carrying out this Act. Budget arrangements include provisions for all expenses, including lodging and meals for the deaf child and his parents or guardians. (Sec. 6822, *Cal. Ed. Code*)

The position of field worker is created in the California School for the Blind. The field worker shall be a member of the teaching staff of the school and shall visit graduates and former pupils in their homes to advise them regarding extension and continuance of their education, assistance with carrying remunerative employment, improvement of their economic conditions in all possible ways, and provision of preparatory instruction necessary for selected occupation. The field worker is a person who has had special training for such work. Blindness will not be grounds for disqualification. (Sec. 25803, *Cal. Ed. Code*)

In connection with the School for the Blind, the State Department may maintain a kindergarten service for care and teaching of children under school age. The Department will prescribe the rules and regulations and will govern the conduct of the kindergarten service. (Sec. 25901, *Cal. Ed. Code*)

The State Department shall create the position of visiting teacher to blind children of preschool age. With the consent of the parents of any blind children of preschool age, the visiting teacher will assist and instruct parents in the early care and training of the child, train the child to play, and do everything to assure the child's physical, mental, and social adjustment to his environment. (Sec. 25902, *Cal. Ed. Code*)

Up to \$200 may be allowed by the superintendent for physically and educationally handicapped and mentally retarded minors attending a public secondary school who may qualify for a driver's allowance for the necessary driver training instruction. (Sec. 17305.7, *Cal. Ed. Code*)

PRIVATE

School districts may provide for the instruction of educationally handicapped children residing in all regularly established, non-profit, tax exempt, licensed children's institutions within the district. Under such a program pupils who are unable to function in a school setting and who are not attending school, receive instruction at the appropriate grade level in the institution. A pupil residing in the institution who is able to function in a school setting receives instruction at the appropriate grade level in the public school facilities. The governing board may contract with the county superintendent of schools for the provision of such programs. (Sec. 6751.5, *Cal. Ed. Code*) See Finance.

"It is the intent and purpose of the Legislature in enacting this Chapter to provide special education facilities and services to exceptional children who, because the school district or county superintendent of schools of the county in which they reside, have no appropriate special education facilities and services or they cannot reasonably provide for their needs, or because the state of California has no facilities to educate them, are unserved by the state school system or by state institutions or agencies. It is the further intent and purpose of the Legislature to provide the Department of Education with broad administrative discretion consistent with the needs of exceptional children in the intent of this Chapter in carrying out the responsibilities under this Chapter. The superintendent of Public Instruction may adopt rules and regulations consistent with this Chapter which he deems necessary for the effective administration thereof." Exceptional children in this Chapter include educationally handicapped, physically handicapped, mentally

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retarded, severely mentally retarded, and multiply handicapped children as defined in the Population section. (Sec. 6870 *Cal. Ed. Code*)'

Any school district having a physically handicapped minor for whom special education facilities are unavailable in the state of California, may in lieu of establishing and maintaining the special education facilities at an unreasonable cost, pay to the parent or guardian of the child toward the tuition of a public or private non-sectarian school within or without the state offering the needed services. The amount paid may not exceed the per unit of ADA of the regular state apportionment to the district. Reimbursable tuition includes the cost to the parent or guardian of transporting a minor enrolled in a public or private non-sectarian school under this section to and from school. (Sec. 6871, *Cal. Ed. Code*)

This section also applies if special facilities are available within the state but at an unreasonable distance from the child's home. The superintendent shall implement the rules and regulations to determine "unreasonableness." County superintendents shall determine the "unreasonableness" of cost and distance for the districts within their jurisdiction and report to the superintendent.

In addition, these provisions are applicable if the attending physician of a physically handicapped, mentally retarded, severely mentally retarded, multiply handicapped, or educationally handicapped child or the attending optometrist of a physically handicapped child who is blind, partially seeing, or visually handicapped recommends that it is in the best interests of the health and welfare of the child to be enrolled in a private non-sectarian school, institution, or agency offering special services and facilities made necessary by the child's disabilities. The recommendation must be approved by the county superintendent and the county health officer.

Priority will be given to placing children in public schools or state-operated programs. Children will be placed in private programs only if no publicly operated programs are available within a reasonable distance of the child's residence or if the public programs do not meet the needs of the child. When approving private programs, priority will be given to those nearest to where the parent or guardian of the child resides. Schools enrolling exceptional children shall annually file a progress report with the appropriate county superintendent. (Sec. 6871, *Cal. Ed. Code*)

The parent or guardian of the child who has been denied admission and qualifies for tuition payments will make a written application to the school district for the tuition payment. Within 30 days after receiving the application, the school district must, in writing, grant to deny the application with reasons stated in cases of denial. If the application is denied, the parents or guardians may appeal to the county superintendent of schools who shall review the decision of the school district, and within 30 days after the appeal, either defer to or reverse the school district's decision. If the county superintendent of schools reverses the decision, a report and claim shall be made by the school district in which the minor resides. Then the county superintendent contracts for the placing of the exceptional child in another school district within or without the county. The superintendent may then transfer, to the district or county where the child was placed, the amount of state aid the placing district receives for the child. If the county superintendent of schools confirms the school district's decision, the parent or guardian may, within ten days following receipt of the county superintendent's decision, further appeal to the Department of Education for reconsideration. Within 30 days after the receipt of the appeal, the Department must, in writing, either affirm or reverse the decision of the county superintendent. In the case of an affirmation, a statement of reasons shall also be sent. If the Department affirms the decision of the county superintendent, that decision shall be final. If the Department reverses the decision, a report and claim will be made by the school district in which the minor resides. (Sec. 6871.5, *Cal. Ed. Code*)

School districts having any children receiving benefits from special education services under this section will report the attendance of these children and submit any claims the district may have for the regular and special purpose apportionment to be used in payment to the parent or guardian of the child toward tuition arising out of this attendance through the county superintendent to the superintendent of Public Instruction. The aforementioned report and claims are submitted at the time and in a manner prescribed by the superintendent. The county superintendent must verify the attendance and claims submitted. (Sec. 6872, *Cal. Ed. Code*)

Upon verifying the attendance, the superintendent will apportion, to the school district submitting the report and the claim, an amount sufficient to satisfy the claim, but not in excess of the sum per unit of average daily attendance of the regular state apportionment to the district for the fiscal year in question, the amount allowed per unit of ADA for the particular disabilities under Section 18102, 18102.2, 18102.4, or 18102.6, and the amount per unit of ADA for that particular category under Sec. 18060. For multiply

handicapped children, the apportionment shall not exceed the sum per unit of ADA of the state's regular apportionment to the district, the amount allowed per unit of ADA under Section 18102, and the amount allowable per unit of ADA for the particular category under Section 18060.

Apportionments for physically handicapped, mentally retarded, and multiply handicapped children are made from funds reserved under provisions of Section 17303.5(c). Apportionments for educationally handicapped children will be made from funds reserved under the provisions of Section 17303.5(g). State aid is paid for each fiscal year immediately following the fiscal year in which attendance occurs. (Sec. 6873, *Cat. Ed. Code*)

No claim will be satisfied by the superintendent for the education of an exceptional child under this section, unless the school, institution, or agency (at which the child attends) meets minimum educational standards established by the State Board of Education. (Sec. 6874, *Cat. Ed. Code*)

The State Board of Education is responsible for adopting rules and regulations relating to the educational program to be offered at these schools, institutions, or agencies. (Sec. 6874, *Cat. Ed. Code*)

PERSONNEL

"The governing board of the school district or county superintendent of schools, in order to assure having teachers qualified to teach physically handicapped and mentally handicapped pupils enrolled in programs of special education maintained by such districts or the county superintendent of schools, and any employee of the district or county superintendent of schools holding a position requiring certification qualifications, or any certificated person under contract to the district or the county superintendent of schools to teach physically handicapped or mentally retarded pupils, may enter into an agreement whereby the district or the county superintendent of schools may make or grant financial assistance, in such amount not in excess of that specified in Section 6877, as they may in writing agree upon, for the set employee or certificated person under contract to undertake during the summers between academic school years specialized preparation to teach physically handicapped or mentally retarded minors as required by law and the state board of and counties education regulations." By October 31 yearly, the superintendent will allow to districts an amount sufficient to reimburse for the total of the grants made during the immediately preceding summer. (Sec. 6876 *Cal. Ed. Code*)

"The amount of reimbursement allowed a school district and the county superintendent of schools under Section 6876 cannot exceed the product of the number of semester hours taken in any given summer and \$50.00. The total amount of reimbursement allowed for all such grants to any given employee or certificated person under contract shall not exceed the product of the number of semester hours of special preparation required by law and the State Board for the credential to teach the category of physically handicapped and mentally retarded pupils being sought at \$50.00. No more than five years shall elapse between the first and final allowance in reimbursement of such grants of any given employee or certificated person under contract without the express approval of the superintendent upon the recommendation of the governing school boards of the district or the county superintendent of schools." (Sec. 6877, *Cal. Ed. Code*)

The superintendent will establish rules and regulations to administer this program of grants. (Sec. 6878, *Cat. Ed. Code*)

In cooperation with an accredited college or university, the director of education may authorize the California Schools for the Neurologically Handicapped to maintain teacher training courses to prepare teachers to instruct neurologically handicapped children in special classes in the public school system. The director of education, in cooperation with an accredited college or university, will prescribe the standards for the admission of persons to the courses and the contents of the courses. Courses conducted in the schools will be counted toward the requirements of the credential in the area of the educationally handicapped upon the establishment of such a credential. (Sec. 26452, *Cal. Ed. Code*)

The director of education may authorize the California School for the Deaf to maintain teacher training courses to prepare teachers of the public schools and any other persons holding the credentials issued by the State Board or recommended by the president of the state college, to give instruction to the deaf and hard of hearing. The standards for the admission of persons to the courses and for any other courses will be prescribed by the director of Education. (Sec. 25557, *Cal. Ed. Code*)

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FACILITIES

An amount not to exceed three and one half percent of the sum of any sum appropriated by the Legislature of the 1952 second extraordinary session and not to exceed three and one half percent of the proceeds of the sale of any state bonds or state school building aid, including the proceeds of bonds authorized by Sec. 17 of Article 16 of the State of California Constitution, may be expended pursuant to this article, (Sec. 19681-19689), to assist school districts in providing necessary housing for the education of exceptional children. All of the provisions of Article 1 & 2 of this chapter (Sec. 19551-19567, inclusive except Sections 19556 and 19581) shall apply to this Article (Sec. 19681-19689, inclusive) unless otherwise provided within." (Sec. 19681, *Cal. Ed. Code*)

Exceptional children, as used in this article, include physically handicapped, mentally retarded, and educationally handicapped children. (Sec. 19682, *Cal. Ed. Code*)

The obligation of any district which receives an apportionment under this article to pay this apportionment does not extend to more than one-half of the amount of the aid. (Sec. 19684, *Cal. Ed. Code*)

With the approval of the county superintendent, school districts may apply for an allocation under this section for facilities for which state aid will be made available for use by the county superintendent until he ceases to conduct the classes or until the superintendent of schools of the county (other than the county whose superintendent of schools approves the allocation) acquires jurisdiction over the location of the facility, whichever occurs first. No more than 50 percent of any state aid made will be repaid. Repayments will be made in the following manner: ten percent of the amount will be subject to repayment by the district to the extent in the manner prescribed by Article 1 (Sec. 19551-19632) for apportionments other than those made in pursuant to Section 19577. Forty percent of the amount will be repaid in full with interest by the district in an annual amount over a period of years determined by the Board but, not exceeding 20 years from the date the apportionment becomes final. The county board of supervisors of the county whose superintendent of schools conducts classes on the facility during any fiscal year shall at any time or time within the fiscal year as may be agreed upon between the county and the school district, but never later than the end of the fiscal year pay the school district having the obligation to repay the apportionment an amount equal to the amount the district is required to repay in said fiscal year with respect to the forty percent of the amount of the apportionment described above. The county board of supervisors may raise the amount required by a general tax levy or by a tuition charge not exceeding \$160 a year per pupil by the county superintendent of schools to the school district or residence of pupils attending the facility other than the district having the obligation to repay or through a combination of these.

Upon the application of a school district and written approval of county superintendent, the Board may amend any previous apportionment received by a district for exceptional children. Only the unpaid balance of the apportionment at the time of the amendment of the apportionment with accrued interest to that date would be repaid as prescribed in this section. The county superintendent of schools will notify the county board of supervisors of his intention to approve a school district's application or allocation under this section. (Sec. 19685, *Cal. Ed. Code*)

By July 10 each year the county superintendent (of the county in which there is a district maintaining facilities for exceptional children constructed with funds under this article) shall certify to the board of supervisors and to the county auditor the total number of units of ADA pupils enrolled in these facilities during the next preceding fiscal year who reside in the district other than the district maintaining the facility. As of July 10 of each year the county superintendent will notify the governing board of each affected district of the total number of units of average daily attendance of pupils residing in the district who are in that attendance at the facility maintained by another district. (Sec. 19686, *Cal. Ed. Code*)

By July 20 of each year, the governing body of a school district which has received a notification will notify the county board of supervisors and the county auditor whether the amounts required to be paid on behalf of the district shall be provided from a general fund of the district or by a special district tax levied by county board of supervisors. If the district notification specifies it, the amount required will be provided by a special district tax or, if no notification is made, the board of supervisors with whom the certificate prescribed by Section 19865 is filed, will at the time and in the tax levy for that year for the county purposes, levy a special tax upon all taxed property in the district of residence of each pupil enrolled in the

facilities, other than the district maintaining the facilities sufficient in amount to raise for the use of the facilities the sum of \$160 per unit of ADA less any amounts per unit of average daily attendance remaining in the county school building aid fund from more recent collections made in the prior years and not paid to the state. (Sec. 19687, *Cal. Ed. Code*)

If the board of supervisors fails to make such a levy, the auditor will then make it. If a governing board of the school district has elected to provide from a district general fund the amounts due, the county superintendent of schools will order the payment made in the required amount from the general fund of the district. (Sec. 19688, *Cal. Ed. Code*)

If the governing board of a school district determines, subject to the approval of the county superintendent, that the amounts to be collected within the district by special taxes and credited to the district and the county school building aid funds are substantially in excess of amounts required for the ensuing three year period, the county may order the payment to the district from the county school building fund of so much and such excess monies as he deems appropriate. (Sec. 19688.5, *Cal. Ed. Code*)

The county auditor, no later than the last Monday in December and the last Monday in May of each year, will notify the superintendent of schools of the amounts in the county school building aid fund. The superintendent will then draw his order on the county auditor in the favor of the state treasurer for the amount in the county school building aid fund of the county. The total of such building aid fund for any year may be limited to an amount not exceeding the total of \$160 per each unit of ADA during the next preceding fiscal year of students residing in the district other than the district maintaining the facility. The amount will be paid by the county treasurer upon order of the state comptroller and will be deposited in the state treasury to the credit of the state school building aid fund. All money paid to this fund will be available only for transfer to the general fund under provisions of Section 19704 and will be credited to the repayment of the apportionment of funds to the district maintaining the facilities. (Sec. 19689, *Cal. Ed. Code*)

County boards of education of any county providing for the education of handicapped persons residing in the county may, when necessary, construct and maintain dormitories, andd fix the rates to be charged. (Sec. 665, *Cal. Ed. Code*)

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Constitution: "The General Assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and 21 years, may be educated gratuitously. One or more public schools shall be maintained in each school district within the state, at least three months in each year; any school district failing to have such schools shall not be entitled to receive any portion of the school fund for that year." (*Art. IX, Sec. 2, Colo. Const.*)

"The General Assembly may require, by law, that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and 18 years, for a time equivalent to three years, unless educated by other means." (*Art. IX, Sec. 11, Colo. Const.*)

Compulsory Attendance Law: "Any resident of this state who has attained the age of six years and is under the age of 21 is entitled to attend the public schools in the district in which he is a resident, during the academic year when the schools are in regular session, and without the payment of tuition, subject only to the limitation of Sections 6 and 7 of this Act. Tuition may be charged for a pupil not resident of the district in which he attends school, and to resident and non-resident pupils, as otherwise provided by the law." (*Sec. 123-20-3 CRS*)

All children between ages seven and 16 shall attend the public schools for at least 172 days during the school year. Exceptions may be made to this law if the child is absent for an extended period due to physical, mental, or emotional disabilities.

The child who is deaf or blind and is between the age of six years and 17 shall attend a school providing suitable specialized instruction for at least 172 days each school year. If the Colorado School for the Deaf and the Blind refuses him admission and if it is impracticable to arrange attendance in a special education class within daily commuting distance of his home, this section does not apply. Any school providing instruction for deaf and blind children that offers less than the necessary 172 days shall file, with the school district in which it is located, a report showing the number of days classes were held and the names and ages of the children enrolled. (*Sec. 123-20-5 CRS*)

Boards of education of local school districts may expel or suspend children from the public school for behavior which is inimicable to the welfare, safety, or morals of other pupils. A child may be expelled or denied admission because of a physical or mental disability which renders the child unable to reasonably benefit from the available programs or because a physical or mental disability or disease causes the attendance of the child to be inimicable to the welfare of other pupils. (*Sec. 123-2-7 CRS*)

Policy: The General Assembly, recognizing the obligation of the state to provide educational opportunities to all children which will enable them to lead fulfilling and productive lives, declares its intent to provide means for educating those children who are handicapped. (*Sec. 123-22-2 CRS*)

Responsibilities: Administrative units may until July 1, 1975, and shall thereafter make available special educational services for the education of any handicapped child between five and 21 under the jurisdiction of the administrative unit. (*Sec. 123-22-6 CRS*)

Handicapped children shall be educated in regular classrooms, insofar as practicable, and should be assigned to special education classrooms only when the nature of the child's handicap makes his inclusion in a regular classroom impractical. To this end, the services of special education personnel shall be utilized within the regular school programs to the maximum extent permitted by good educational practices, both in rendering services directly to children and in providing consultative services to regular classroom teachers. (*Sec. 123-22-2 CRS*)

POPULATION

Definitions: " 'Handicapped children' means those persons between the ages of five and 21 who by reason of one or more of the following conditions are unable to receive reasonable benefit from ordinary education: long-term physical impairment or illness; significant limited intellectual capacity; significant

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identifiable emotional or behavioral disorder or identifiable perceptual or communicative disorders; or speech disorders. 'Handicapped children' also means those persons between the ages of five and 21 whose presence in the ordinary educational program is detrimental to the education of others and must therefore receive modified or supplementary assistance and services in order to function and learn." (Sec. 123-22-3 CRS)

Age of Eligibility: Handicapped children are eligible for services between the ages of five and 21. Children under five may receive services. (Sec. 123-22-3 CRS)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: The State Board shall develop guidelines for the identification of handicapped children who may become eligible for special educational services. (Sec. 123-22-3 CRS)

The Department of Education shall maintain a data and information system on children. (Sec. 123-22-4 CRS)

Evaluation and Placement: The determination that a child is handicapped and the recommendation for placement of that child in a special educational program shall be made by a committee of professionally qualified personnel designated by the board of education of the school district or by the governing board of the board of cooperative services if the administrative unit encompasses more than a single school district. The composition of the committee shall be prescribed by the State Board and may be composed of but not limited to the following: a psychologist, a social worker, a physician, a school administrator, and a teacher of the handicapped. The committee shall give parents of an allegedly handicapped child an opportunity to consult with the committee or representative thereof prior to determination that their child is handicapped.

Before any child is given an individually administered battery of psychological tests for placement in a special educational program, the child's parent or guardian must give consent in writing. In case of appeal, the final approval of the enrollment of any eligible handicapped child in a special educational program shall be made by the board of education of the school district of the child's residence.

The committee, named above, shall review the placement of each child at least once every year. In formulating recommendations for placement of a handicapped child, the committee shall work cooperatively with the Department of Institutions, when applicable, and shall be guided by the legislative declaration contained in section 123-22-2. (Sec. 123-22-8)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for maintaining qualified personnel to supervise special education through utilization of the existing facilities of the state Departments of Health, Welfare, Rehabilitation, and Institutions whenever possible. The State Board also has the authority to adopt reasonable rules and regulations for the administration of this article. (Sec. 123-22-5 CRS)

The Department of Institutions supervises the State School for the Deaf and Blind and the State School for the Mentally Retarded, and administers the program for the trainable mentally handicapped and other seriously handicapped persons. (Sec. 71-4-1 through 4 CRS)

The special education program is administered by the Department of Education. Administration includes the recommendation to the State Board of reasonable criteria, rules, and regulations; recommended minimum standards for facilities, materials, equipment, and personnel; and recommended assessment criteria for identifying handicapped children, their level of handicap, and the special services needed. The State Board of Education shall adopt appropriate recommendations following public hearings in several locations throughout the state. Recommendations adopted by the State Board shall be in accord with the legislative declaration set forth in section 123-22-2. (Sec. 123-22-4 CRS)

By September 1, 1973, every school district in the state shall be either an administrative unit in itself or in a board of cooperative services which shall be designated as an administrative unit. An administrative unit shall be a school district or board of cooperative services which meets criteria established by the State Board governing the duties and responsibilities of the director of special education. It is either a board of cooperative services which conducts special educational programs for all member school districts or is a school district which meets criteria of geographic size, location, and number of pupils established by the State Board to achieve maximum efficiency in administering programs of special education. Although the State Board shall define the qualifications and the general duties and responsibilities of directors of special

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education, such directors shall be regarded for all purposes as employees of their local administrative units and are subject to the administrative direction of such units. (Sec. 123-22-6 CRS)

The Department shall submit to the Governor and the Education Committees and the Joint Budget Committee of the General Assembly an annual report of the type and number of handicapped children served and not served, what educational services are provided to them, and the total costs incurred for the services, whether state, federal, local, or privately funded. The reports shall include a measurable qualitative evaluation of the educational services rendered. The audit performed by the school district shall certify the number of pupils enrolled in special educational programs and the numbers and salaries of reimbursable personnel. To comply with this section, the Department shall maintain a data and information system on children, personnel, costs, and revenues. (Sec. 123-22-4 CRS)

PLANNING

Each administrative unit was to have submitted a plan to the Department no later than January 1, 1974, indicating how the school district will provide for education of all handicapped children between the ages of five and 21 no later than July 1, 1975. Each plan shall include the type and number of handicapped children in the unit based upon the Department's criteria of incidence, the services to be provided, and the estimated resources necessary. If any administrative unit failed to submit an acceptable plan by January 1, 1974, the State Board was to have provided a comprehensive plan by July 1, 1974. (Sec. 123-22-6 CRS) Each administrative unit shall employ a "Director of Special Education." From and after July 1, 1975, no Director shall be employed who does not meet qualification standards as set by the State Board. (Sec. 123-22-6 CRS)

By July 1, 1975, and thereafter, each administrative unit shall employ a sufficient number of school psychologists and school social workers, or contract for services to adequately carry out these functions that provide for teacher referral of children who may be handicapped, case finding and assessment, staffing of the special committee as provided for in section 123-22-8(1) and (4), teacher and parent counseling and consultation, and inservice education for school staff. In submitting that portion of the plan to comply with this subsection (6), the administrative unit may indicate how it intends to utilize the services of existing mental health clinics or centers in carrying out the functions named above in cooperation and coordination with the school psychologists and school social workers. (Sec. 123-22-6 CRS)

Any school district which provides plans, programs, or services which do not reasonably satisfy the criteria, rules, regulations, and standards recommended by the State Board of Education will be provided by the Department with a detailed analysis of any discrepancies noted along with specific recommendations for their correction. Funding will be provided or continued for a reasonable period of time, as determined by the Department, not to exceed two years to allow the local district opportunity to satisfy the recommended standards, or to establish a claim for variance based upon conditions indigenous to a local district. (Sec. 123-22-4 CRS)

In order to assist the State Board in the performance of its responsibilities for the implementation of this article, a State Special Education Advisory Committee of an appropriate size shall be appointed by the State Board. The members of the Advisory Committee shall include at least two special education teachers, at least two administrators with experience in special education, at least two parents of children presently or formerly enrolled in special education programs and one representative from the Department of Institutions. Members shall be appointed for one or two-year terms. (Sec. 123-22-4 CRS)

FINANCE

If an administrative unit cannot provide an educational program for a handicapped child because of the uniqueness of the handicap, the unit may contract with another unit to provide the needed program, upon approval by the Department. In such an instance the administrative unit of the child's residence shall reimburse the unit of the child's attendance an amount equal to the amount of educating that child. Reimbursement by the Department under this section shall not be subject to proration under the provisions of section 123-22-14. (Sec. 123-22-9 CRS)

For each child enrolled in a special educational program in an administrative unit, the Department shall pay the unit of the child's residence for the maintenance in a family care home in the administrative unit of the child's attendance. The amount shall be equal to the established family care home rate of the community for a school year, as established by the Division of Public Welfare of the Department of Social Services, with final approval to be made by the Department. Such placement shall be made only in a family

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care home licensed by the Department of Social Services, in homes of relatives. Reimbursement under this section shall not be subject to proration under the provisions of section 123-22-14(3). (Sec. 123-22-10 CRS)

An administrative unit may purchase and be reimbursed for materials and equipment for the education of handicapped children. To be eligible for reimbursement, the unit shall maintain a special education instructional materials center and may employ a special educational materials specialist. A qualifying center may be operated as a part of an existing instructional materials center, but such portion shall be specifically accounted for. (Sec. 123-22-11 CRS)

Any administrative unit planning to utilize federal funds from any source for the education of handicapped children as provided in this article shall obtain prior approval from the Department for the use of such funds. The use of such funds in the administrative unit shall be in accordance with rules and regulations as established by the Department, which are not in conflict with federal law or regulations. (Sec. 123-22-6 CRS)

The governing board of each administrative unit eligible for reimbursement shall file with the Department by July 15 of each year a report containing a statement of the reimbursable costs of approved programs and other information as required by the State Board. (Sec. 123-22-13 CRS)

An administrative unit which maintains and operates special educational programs approved by the Department for the Education of handicapped children shall be entitled to reimbursement for:

- (1) 80% of that portion of the salary of the following personnel which is attributable to special educational programs: administrator and assistant administrator of special education in an administrative unit, if such administrator meets the qualification standards for administrators as set by the State Board; supervisors of special programs; teachers of special classes; teachers of special resource rooms; teachers of special itinerant programs; school psychologists; school social workers; school audiologists; occupational therapists; physical therapists; special education instructional aides; special education instructional materials specialists; speech correctionists; mobility specialists for the blind; special education secretaries; registered school nurses.
- (2) 80% of the cost of: special transportation provided for handicapped children only, after other funds reimbursed by the state are deducted; home-to-school or hospital-to-school equipment; consultation and evaluation services provided by psychiatrists, psychologists, and social workers employed by mental health clinics and centers approved by the Department.
- (3) 50% of the costs of materials for the education of handicapped children or \$200 per special education teacher, whichever is less.
- (4) 50% of the costs of equipment used in the education of handicapped children.
- (5) 100% of the costs of: maintenance of a child in a licensed family home; and the average cost per pupil of an administrative unit that accepts a child from another administrative unit in one of its special educational programs. (Sec. 123-22-14 CRS)

Reimbursements made to any administrative unit under the provisions of this article shall in no instance exceed one hundred percent of the attributable student cost when such reimbursements are combined with all other applicable state, local, private, and federal resources. (Sec. 123-22-14 CRS)

In the event appropriations shall be insufficient to cover reimbursements provided for in subsection (1), all approved reimbursements, except those for tuition and for maintenance in a family care home, which shall always be fully reimbursed, shall be prorated on the basis of total claims submitted in proportion to funds available for reimbursement. The enactment of this article shall not affect reimbursements under prior law for special educational programs conducted during the period prior to July 1, 1973. (Sec. 123-22-14 CRS)

Reimbursements to any administrative unit under the provisions of this article shall in no instance exceed 100% of the attributable student cost when such reimbursements are combined with all other applicable state, private, and federal resources. In no case shall the local school district contribution per child be less than the amount raised per pupil in average daily attendance entitlement in the district by the levy for the school district's general fund. (Sec. 123-22-14 CRS)

An institution of higher education, or a community center board, may contract with an administrative unit as provided in section 71-8-2, CRS 1963, for the provision by the administrative unit of an education and training program for handicapped children. If such agreement is arrived at by the two agencies, the administrative unit shall place the responsibility for administering the program with the Director of Special Education.

The two agencies shall agree to an amount per child that the institution of higher learning or community center board shall pay to the administrative unit for providing such services. No school district providing an

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education and training program for handicapped children under contract with an institution of higher learning or a community center board shall count such children as regularly enrolled for the purposes of the general state school aid as provided by law. The institution of higher learning or community center board shall pay to the administrative unit providing the program an amount per child as agreed upon by the institution or board and the administrative unit, but the amount shall not be less than the amount per child provided to the institution or board by the Department of Institutions for educational purposes pursuant to section 71-8-2(1) CRS, 1963. Any school district providing an education and training program for handicapped children living in that district shall not be required to provide to an institution of higher learning or a community center board the amount required by section 71-8-2(3), 1963, on behalf of those children; but each such school district shall expend out of its own funds at least the amount required by the said section 71-8-2(3), 1963, in providing the program. (Sec. 123-22-7 CRS)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If no special program exists in the school district of residence, the parent or guardian of the child or the board of education of the school district may apply for the child's enrollment in a special program in another district. After determining the eligibility and capability of the child and the benefits to be received from such an enrollment, and after approval of both Boards of Education, the child may then be enrolled in the program. Final approval of enrollment of any eligible handicapped child is made by the Board of Education of the school district providing the program. A child may enroll for a trial period not exceeding nine months. (Sec. 123-22-7 CRS)

An administrative unit may contract with one or more administrative units to establish and maintain special educational programs, sharing the cost in accordance with the terms of the contract. When fewer than six children needing a particular kind of program reside in one district, the Board of Education of that district may purchase services from another school. (Sec. 123-22-6 CRS)

Community incorporated boards may purchase services for the trainable mentally retarded and other seriously handicapped persons from public or private non-profit sheltered workshops, day care training centers, and other private facilities, and from universities, colleges, public schools, and preschool nurseries with approved programs. See Finance.

SERVICES

The cost of educating handicapped children may include the compensation of special class and itinerant teachers, speech correctionists, supervisors of special programs, directors of special education, and the cost of consultation and evaluation by psychiatrists, psychologists, and social workers, individual instruction in hospitals or homes, home-school equipment, maintenance in licensed foster homes and transportation to and from schools. However, no state money distributed to the above may be used for medical costs or for the erection or repairs of school buildings. (Sec. 123-22-4 CRS)

Psychologists will include anyone who is properly certified as a school psychologist by the State Board of Education or who is properly certified by the Colorado Board of Examiners or has a minimum of two years of graduate training in psychology supervised by a psychologist (as defined above) and who is employed as a psychologist by an institution of higher education, hospital, or agency, supported at least in part by government funds. (Sec. 123-22-23 CRS)

The superintendent of the State School for the Deaf and the Blind may spend any necessary monies from the appropriation for the support of the school to provide readers for blind residents of the state and graduates of the school who regularly study for a degree in any institution of higher education or any conservatory of music approved by the board of trustees of the State School for the Deaf and the Blind. These funds may also be used to help defray expenses of deaf persons taking a collegiate course of instruction at Gallaudet College. (Sec. 16-1-20 CRS)

The School for the Deaf and the Blind may establish a program of instruction in understanding the needs, problems, and education of the deaf and blind for parents of such children attending Colorado schools. The Department of Institutions may provide for the cooperation of the school with any other interested state agencies in carrying out this program. (Sec. 16-1-26 CRS)

The superintendent of the Colorado School for the Deaf and the Blind may spend any money necessary to provide for the educational training of eligible deaf-blind students, or those having a multiple physical handicap of hearing, sight, and speech in appropriate institutions outside the state or by employing a skilled person as a home teacher trained in teaching such students. The compensation of any such person may not be greater than the expense of the education of such pupils in any institution outside of the state.

Any institution selected or persons employed for educational training of deaf-blind students or students having a multiple physical handicap must be approved by the board of trustees of the Colorado School for the Deaf and the Blind. (Sec. 16-2-24 CRS)

PRIVATE

See Administrative Structure and Organization regarding programs for trainable mentally retarded and other seriously handicapped persons.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**CONNECTICUT****RIGHT TO AN EDUCATION**

Constitution: "The fund, called the School Fund shall be made a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the state, and for the equal benefit of the people thereof." (*Art. VII, Sec. 2, Conn. Const.*)

Compulsory Attendance Law: No school age child requiring special education shall be excluded or exempted from school privileges without the express approval of the secretary of the school board based upon appropriate professional advice. The secretary then reports any excluded or exempted child to the state agency responsible by law for any aspect of the welfare of the child. (*Sec. 10-76d Conn. Gen. Stats.*)

Local boards of education may compel the attendance of any blind child until he reaches age 16 in an institution providing appropriate instruction. If the parents or guardians of the child do not consent, the director of the board may apply to the probate court in the district where the child resides. Reasonable notice of a court hearing must be given to the parents and guardians of the child. If the court finds the action warranted, it will issue an order concerning attendance of the child at a suitable school or institution. (*Sec. 10-296 Conn. Gen. Stats.*)

Town boards of education and regional school districts shall make provisions necessary to enable resident children who are between ages seven and 16 and who are in suitable mental and physical condition, to attend a public day school for a period required by law. (*Sec. 10-220 Conn. Gen. Stats.*)

When a child is formally identified as a child requiring special education, the responsible town or regional board of education must immediately inform the parent or guardian of the laws relating to special education.

Responsibilities: In accordance with the regulations of the State Board, all town and regional school districts shall provide special education to all school age children requiring it until they graduate from high school or reach age 21, whichever occurs first. School districts may provide special services to those children with "extraordinary learning ability" or "outstanding creative talent." They may also provide education to those children below school age, if their educational potential would be irreparably diminished without it. (*Sec. 10-76 Conn. Gen. Stats.*)

POPULATION

Definitions: "'Exceptional child' means a child who deviates either intellectually, physically, socially, or emotionally so markedly from normally expected growth and development patterns that he is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services."

"Children requiring special education" include an exceptional child who: (1) is mentally retarded, physically handicapped, socially or emotionally maladjusted, neurologically impaired, or suffering an identifiable learning disability which impedes rate of development and will be improved by special education; or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those that are ordinarily provided in a regular school program, but which may be provided for special education as part of the public school program."

"A 'mentally retarded' child means one who by reason of retarded mental development, is not capable of profiting from the educational programs of the public schools established for the normal child, but shall not include any child who requires custodial care, or who does not have clean bodily habits, responsiveness to directions, or means of intelligible communication."

"An 'educable' mentally retarded child means one who, at maturity cannot be expected to attain a level of intellectual functioning greater than that commonly expected from a child of 12 years of age but who can be expected to attain a level of intellectual functioning greater than that of a seven year old child "

"A 'trainable' mentally retarded child means one who at maturity cannot be expected to attain an intellectual functioning greater than that commonly expected of a seven year old child and who, for entrance into a public school program, can walk, has clean bodily habits, and is responsive to simple directions."

"A 'physically handicapped child' is one who, because of a physical handicap as defined by the regulations of the State Board of Education, requires special educational programs or services."

"A 'socially or emotionally maladjusted child' or 'neurologically impaired child' is one who is incapable of profiting from the general education programs of the public schools because of some serious social or emotional handicap or an impairment of the nervous system, respectively, as defined by regulations of the State Board but who is expected to profit from special education.

'Learning disabilities', 'extraordinary learning ability' and 'outstanding creative talent' shall be defined by regulations of the secretary, subject to the approval of the State Board after consideration by him of the opinions of appropriate specialists and of the normal range of ability and rate of progress of children in the Connecticut public schools."(Sec. 10-76a Conn. Gen. Stats.)

Age of Eligibility: Services must be provided to children from age five until they graduate from high school or reach age 21, whichever occurs first. Services must be provided hearing impaired children beginning at age three and to all other handicapped children aged four as of January 1. (Sec. 10-76a Conn. Gen. Stats.)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: Each town board of education shall annually ascertain, by December 1, the name and age of resident children under age 21 who are enrolled in the schools as well as the names and addresses of the parents or persons in control of them. If a child of compulsory school age is not attending school, the reason for the non-attendance must be noted. (Sec. 10-249 Conn. Gen. Stats.)

Screening: The Board of Education requires that all public school pupils have health examinations by a licensed medical practitioner or by the school medical advisor at least once every three years to discover if children suffer from any physical disability which would prevent them from receiving the full benefit of school work. (Sec. 10-206 Conn. Gen. Stats.)

Special Education Evaluation: Each town or regional board of education is responsible for providing the professional services necessary to identify those children within its jurisdiction who require special education, to determine their eligibility and to prescribe suitable educational programs for them, to maintain records of eligible children, and to make any reports the secretary may require. According to State Board rules, town or regional school districts will determine whether a child is eligible for special education upon request of a parent or guardian or upon referral of a physician, clinic, or social worker, with consent of the parent or guardian. (Sec. 10-76 Conn. Gen. Stats.)

Parents or guardians of children requiring special education and who are aggrieved by the decision of the local board of education may request, or the board of education of the school district responsible for providing the education may request of the state school board a review in writing of:

1. diagnosis;
2. evaluation of education programs provided for the child by the board of education of the school district; or
3. the exclusion or exemption from school privileges of the child by the board of education of the school district.

The State Board shall, upon receiving the request for the review, establish within 30 days a hearing board consisting of no fewer than three persons knowledgeable in the fields and areas significant to the educational review of the child. Members of the hearing board may be employees of the State Department of Education or qualified persons from outside the Department. No persons participating in a previous diagnosis, evaluation, or prescription of educational programs or exclusion and exemption from school privileges under review, nor any member of the board of education of the responsible school district may be members of the hearing board. The hearing board shall within 30 days hear the testimony of the party conducting the review and any other party directly involved, and they will review the previous diagnosis, prescription of special education services, and other educational records of the child. Records are furnished by the board of education of the school district. They may hear any additional relevant testimony and may require complete and independent diagnosis, evaluation, and prescription of educational programs by qualified persons. The cost of this independent study is to be paid by the board of education of the school district.

The hearing board has the power to confirm, modify, or reject the diagnosis, evaluation, prescribed educational program, or exclusion or exemption of school privilege, and to prescribe alternate special

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education programs for the child. The board shall inform the parent or guardian and the board of education of the school district of its decision in writing within 60 days of its first meeting. If the board of education of the school district responsible for providing special education for the child does not take action on the findings or the prescription of the hearing board within 15 days of receipt of them, the State Board of Education shall take appropriate action to enforce the findings or prescriptions of the hearing board. Appeal of the decision of the hearing board is to the court of common pleas for the county or district of residence of the child within 30 days of receiving the hearing board's decision. In the event of an appeal, upon request and at the expense of the State Board of Education, said board shall supply a copy of the transcript of the formal sessions of the hearing board to the parent or guardian and to the board of education of the school district. Members of the hearing board other than those employed by the state of Connecticut, shall be paid reasonable fees and expenses on a schedule established by the State Board of Education. (Sec. 10-76H Conn. Gen. Stats.)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for development and supervision of educational programs and services for children requiring special education. The Board may regulate curriculum, conditions of instruction, physical facilities and equipment, size of the class, admission of students, and the requirements for special services and instruction provided by town or regional boards of education.

The Board is responsible for supervising the educational aspects of all children requiring special education residing in or attending any child-caring institution and receiving money from the state. The secretary, by regulations of the State Board, determines the procedures used to identify exceptional children.

The State Board is also the agency for cooperating and consulting with federal agencies, other state agencies, and any private agencies on matters of public school education for children requiring special education. (Sec. 10-76b Conn. Gen. Stats.)

The Office of Mental Retardation in the State Department of Health is responsible for institutional programs for mentally retarded and emotionally disturbed children.

The Mystic Oral School for the Deaf is operated by and under the direct supervision of the State Board of Education and the Oak Hill School for the Blind is operated by and under the direct supervision of the State Board for the Education of the Blind. (Sec. 10-245 Conn. Gen. Stats.)

PLANNING

The State Board must periodically evaluate progress and accomplishments of special education programs. The joint standing committee on education and the State Board shall annually review disbursement of funds, types of projects funded, and evaluation of programs. This review is to apprise the General Assembly of the true condition, progress, and needs of special education. (Sec. 10-76b (d) Conn. Gen. Stats.)

The State Board, using present personnel, is required to develop and keep current a five-year plan for implementing special education policy. The plan must include provisions for:

- (1) a total and geographic census of children requiring special education showing both total number and geographic distribution;
- (2) an inventory of personnel and facilities available to provide instruction and other programs and services to children requiring special education;
- (3) an analysis of the present distribution of the responsibility for special education between the state, the state institutions, and local and regional boards of education, together with any recommendations for change;
- (4) the formulation of goals, objectives, and strategies;
- (5) a program for recruitment, preparation, and inservice training of professionals, paraprofessionals, and supportive personnel in special education and allied fields including participation by institutions of higher education, state and local agencies, and any other appropriate public and private organizations;
- (6) procedures for identification, screening, and diagnosis of children requiring special education and determination of the criteria for how these children should be educated;
- (7) standards for education in town and regional programs and state institutions;
- (8) a program for developing, acquiring, constructing, and maintaining classrooms, resource rooms, and other facilities;
- (9) a policy for the roles of private schools and regional programs and services;

- (10) a delineation of the roles of program personnel and relationship of special education to the total educational program; and
- (11) an analysis of the present formula, levels, and patterns of financial support for special education and recommendations to insure the maximum use of funds.

The development of the state plan must include participation of representatives from state agencies, institutions, public and private colleges and universities, professional and parent groups and organizations, local school boards and other local government and civic organizations, and the general public. The plan must be submitted to the governor and the joint standing committee on education of the General Assembly by December 1, 1973. (Sec. 10-76j Conn. Gen. Stats.)

An advisory council for special education is established to advise the State Board and the secretary and to engage in other activities. The advisory council is to be composed of 15 members who are not officers or employees of the State Board of Education. No more than four members may be employees of local or regional school districts. The advisory council must be composed of persons broadly representative of community organizations interested in children requiring special education, parents of the children, practicing members of professions concerned with these children's educational needs, and members of the general public. The members shall be appointed by the secretary of the State Board for three-year terms. The advisory council shall annually elect its own chairman and any other officers. The representative of the secretary shall meet with and act as secretary to the advisory council. The advisory council members shall serve without compensation but will be reimbursed for reasonable expenses. The State Department will provide secretarial and administrative assistance to facilitate the activities of the council. The commissioner for higher education shall also appoint a liaison person to the council. The council's responsibilities shall include:

- (1) periodic review of regulations, standards, and guidelines pertaining to special education and recommending to the State Board any changes it finds necessary;
- (2) comment on new or revised regulations, standards, and guidelines; and
- (3) participation with the State Board to develop a state plan for the provision of special education.

The advisory council shall annually review, with the joint standing committee on education of the General Assembly, progress made by the state in serving those children requiring special education, and any recommendations made for the improvement of special education of the state. (Sec. 10-76i Conn. Gen. Stats.)

Districts may make long term plans to provide services on a regional basis. See Facilities. (Sec. 10-76e Conn. Gen. Stats.)

FINANCE

The state shall pay up to \$5,400 per fiscal year per student for instruction of blind or visually impaired residents, regardless of age, who require special educational programs. When the parents or guardians of any such person are not able to provide clothing, an additional sum of up to \$100 may be allowed for such expenses. In addition, the parents or guardians may be reimbursed by the local board for up to \$300 per school year for transporting the student to and from a specialized residential facility for the blind. The state shall then reimburse the local board. (Sec. 60-295 (Conn. Gen. Stats.)

School districts providing special education for any exceptional children will be reimbursed in an amount equal to 66 2/3 percent of the net cost of providing the special education. Applications for reimbursement must be made by October 1. All reimbursements will be made by December 15. In any case where special education is being provided at a private institution and no school district can be found responsible, the reimbursement provided should be made payable to the institution, and for these purposes the institution shall be considered a school district. (Sec. 10-76g Conn. Gen. Stats.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Children placed by the Welfare Commission, other agencies, or other persons are entitled to all free school privileges of the town in which they reside, unless they are placed in hospitals or custodial institutions. In this instance, reimbursement is provided under Section 10-266. The board of education in the town where the hospital or institution is located will furnish appropriate instruction. Payment is made by the board of education of the town under whose jurisdiction the child would otherwise be attending school. This subsection does not apply to children placed in hospitals or custodial institutions under the special education chapter.

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No town is required to provide school accommodations to any child whose legal residence is in another state, unless a bond in the sum of \$500 is issued by a state-authorized surety company. The bond is based upon parental payment of the child's tuition at the rate of the per capita cost of education.

Children residing with anyone who is not a parent or guardian are entitled to all free school privileges accorded in the regional school district or town in which they reside, if the intention is that the residence is to be permanent and provided without pay. Each child is counted in the town in which he is actually residing on the date of the census taking. (Sec. 10-253 Conn. Gen. Stats.)

See Planning and Facilities.

SERVICES

"Special education" means special classes, programs, or services designed to meet the educational needs of exceptional children in accordance with the regulations of the secretary, subject to the approval of the State Board of Education." (Sec. 10-76 Conn. Gen. Stats.)

Town or regional boards of education may contract with any sheltered workshop or rehabilitation center to provide educational occupational training for children requiring special education who are at least 16 years of age, if the workshop or institution has been approved by the State Board of Education. (Sec. 10-76d, Conn. Gen. Stats.)

When providing special educational services, town or regional school districts shall provide transportation, tuition, room, board, and any other necessary items, unless a child is placed in a residential facility because of needs other than educational, and for such the financial responsibility of the district is limited to the reasonable cost of education as defined by regulations of the State Board. (Sec. 10-76d Conn. Gen. Stats.)

The Office of Mental Retardation shall develop day care, day camp, and recreational programs for mentally retarded children and adults. Nonprofit organizations organized or existing for the purpose of establishing or maintaining such programs may apply through the Department of Health to the Office of Mental Retardation for such funds. Day care programs are defined as programs providing for the care or training of preschool children, or of children inadmissible to the special classes in public schools, and devoted primarily to the training of the retarded in the regimen and procedures necessary for adjustment to public school classes or to enabling school-excluded children to achieve their maximum social, physical, and emotional potentials. They may also provide mentally retarded adolescents and adults with an activity program that includes training in one or more of the following areas: self-care activities of daily living, personal and social adjustment, work habits and skills, and speech and language development. (Sec. 19-4d Conn. Gen. Stats.)

Day camp programs may provide mentally retarded children or adults with a supervised program of outdoor activities during June, July, August, and September, and recreational programs may provide planned, supervised activities for mentally retarded children or adults. These activities may be of asocial, athletic, or purely diversionary nature. Recreational programs will be considered separate from the day camp program. Grants to assist in operating, maintaining, or expanding the establishment of these programs cannot exceed the ordinary, recurring annual operating expenses of the programs. No grant shall be made to pay for all or any part of capital expenditures. The Office of Mental Retardation will define the minimum requirements to be met by each program including, but not limited to, physical plant and record keeping. It will also establish procedures to be used in making application for the funds and provide regulations governing the granting of funds. (Sec. 19-4e Conn. Gen. Stats.)

The Office of Mental Retardation operates a system of diagnostic clinics for the mentally retarded. The clinics are located geographically to conveniently serve the population of the state. The director of any district department of health, any full time director of health, or any nonprofit organization extending diagnostic services to the mentally retarded may apply through the Department of Health and the Office of Mental Retardation for funds to maintain or expand a diagnostic clinic for mentally retarded persons. A diagnostic clinic for the mentally retarded shall be an organization devoted to the diagnosis of those provisionally judged to be mentally retarded, to determine the eligibility of the retarded for education, training, or residential care, and recommend an order of priorities for acceptance to residential care. The clinic shall provide psychological evaluations, medical examinations, social casework, or other diagnostic procedures as necessary to accomplish the purposes of this Act. Grants for such diagnostic clinics may not exceed 2/3 of the ordinary operating expenses of the clinics. Grants may not cover any part of capital expenditures. The only acceptable reason for refusal of services is place of residence of applicant. (Sec. 19-4e Conn. Gen. Stats.)

PRIVATE

Any regional or town board of education may provide necessary services to exceptional children with the consent of the parents or guardians by making agreements with any private school or public or private agency or institution. Expenditures made by a contract with a private school, agency, or institution are not reimbursable unless the special educational needs of the child cannot be met by a public school arrangement.

The secretary, prior to granting contract approval, must consider factors including the particular needs of the child, the suitability and efficacy of the private program, and the economic feasibility of comparable alternatives. If the child is identified as needing special education and the board of education determines that his special education needs can be met within the district or by agreement with another district except for the child's non-educational needs, such as medical, psychiatric, or institutional care, the board may meet its obligation to furnish special education for the child by paying the reasonable cost of it in a private school, hospital, or other institution. The board or secretary must concur that such placement is mandatory to provide necessary services. (*Sec. 10-76d Conn. Gen. Stats.*)

The State Board of Education and Services for the Blind may expend up to \$8,400 per fiscal year per child for the purpose of sending resident children who are both blind or visually impaired and deaf, or blind or visually impaired with other severe physical handicaps, to specialized facilities within or outside the state furnishing proper facilities for education of such children. Blind or visually impaired children who are mentally retarded or emotionally maladjusted who can reasonably profit by special training, facilities and services may be included in the provisions of this section. Funds may be spent outside the state for room, board, tuition and other items necessarily relevant to the education of such children. (*Sec. 10-295 Conn. Gen. Stats.*)

PERSONNEL

If it is determined by the commissioner of higher education that there are no approved programs of teacher education available within the state to prepare teachers of deaf children or children with perceptual learning disabilities, the commissioner may approve scholarships for them to attend approved programs in out-of-state schools. The commissioner will determine the amount of the scholarship aid in each case. In order to be eligible for scholarship aid, the applicant must agree to teach such children in Connecticut for at least three years. (*Sec. 10-333 Conn. Gen. Stats.*)

FACILITIES

If districts agree to provide special education as part of a long term regional plan approved by the State Board for children residing in other school districts, they are eligible to receive an amount equal to the net cost of providing, constructing or reconstructing, and equipping appropriate facilities to be used exclusively for these children. Facilities, in order to be approved by the State Board, must be adjunct or connected with facilities in the regular school program, unless the State Board determines that separate facilities will be of greater benefit to the children requiring special education. These grants supplement any other aid received for special education. Upon completion of the building project the comptroller pays the lump sum granted to the district for the regional school. (*Sec. 10-76e, Conn. Gen. Stats.*)

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DELAWARE

RIGHT TO AN EDUCATION

Constitution: "The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child not physically or mentally disabled, shall attend the public schools unless educated by other means." (Art. X, Sec. 1, Del. Const.)

Compulsory Attendance Law: All parents, guardians, or other persons having control of a child between the ages of six and 16 inclusive are required to send the child to a free public school all day during the school year. The compulsory attendance requirement does not apply to children whose physical or mental condition, as attested to by a physician's certificate, renders instruction inexpedient or impractical. (14, Del. Code Sec. 2702 and 2705)

All parents, guardians or any other persons having control of a blind child between the ages of seven and 18 shall have the child receive instruction and training adapted for blind persons for at least six months in each year until the child reaches age 18.

The child may be excused by the Commission for the Blind upon presentation of satisfactory evidence that the child is not in proper physical or mental condition to receive instruction and training. Any parent, guardian or other person having control of any blind child shall apply to the Commission for instruction and training for the child, upon receiving a notice from the Commission to that effect. The Commission may recommend to the governor that the child be placed in an institution for blind persons. The governor, at his discretion, may grant or refuse the application, and "he is vested with all the powers and discretion in regard to such application and recommendation as he, by law, has in cases where application for instruction of blind children is made through the judges of the Superior Court of this state." (31, Del. Code Sec. 2110)

Responsibilities: The State Board of Education and local boards shall maintain appropriate special classes and facilities, whenever possible, to meet the needs of all handicapped, gifted, and talented children recommended for special education and training coming from any geographical area within the state served by special facilities. (14, Del. Code Sec. 3103)

POPULATION

"'Handicapped children' means children between the chronological ages of four and 21 who are physically handicapped or maladjusted or mentally handicapped."

"'Educable mentally handicapped children' means children who, because of retarded intellectual development as determined by individual psychological examination, are incapable of being educated properly and efficiently through the regular classroom program but who may be expected to benefit from special educational facilities designed to make them economically useful and socially adjusted."

"'Trainable mentally handicapped children' means children who are incapable of being educated or trained properly as determined by individual psychological examination in special classes for educable mentally handicapped children in public schools and state institutions but who may be expected to benefit from training in a group setting designed to further their social adjustment and economic usefulness in their homes or in a sheltered environment."

"'Physically handicapped children' means children who suffer from any physical disability making it impracticable or impossible for them to benefit from or participate in a regular classroom program in the public schools and whose proper education requires modification of the regular classroom program."

"'Socially or emotionally maladjusted' means those children whose behavioral disorders are such that it is impossible for them to be educated profitably and efficiently through a regular classroom program, and who may, upon recommendation of the chief administrative officer of a school district, or of a state institution (if committed to its care or under its direction) be assigned to such classes in accordance with policies set forth by the State Department of Public Instruction for their establishment and operation."

"'Learning disabled' means children who exhibit disorders in one or more of the basic psychological or physiological processes involved in understanding and in using spoken or written language. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. They include

but are not limited to, conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and/or developmental aphasia. They do not include learning problems which are due primarily to visual, hearing or orthopedic handicaps, to emotional disturbance if these are provided for elsewhere, or to mental retardation or to environmental disadvantage.

"'Gifted children' means children between the chronological ages of four and 21 who are endowed by nature with high intellectual capacity and who have native capacity for high potential intellectual attainment and scholastic achievement.

"'Talented children' means children between the chronological ages of four and 21 who have demonstrated superior talents, aptitudes, or abilities, outstanding leadership qualities and abilities, or consistently remarkable performance in the mechanics, manipulative skills, the art of expression of ideas, oral or written, music, art, human relations or any other worthwhile line of human achievement." (14, Del. Code Sec. 3102)

Age of Eligibility: Children may receive special education services between the ages of four and 21. (14, Del. Code Sec. 3101)

Children who are deaf or hard of hearing are eligible for services from age 0-21. (14, Del. Code Sec. 1703)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: All superintendents, principals, teachers, and visiting teachers in every school district, in accordance with State Board rules, will report to the school board by May 15 of each year and throughout the year as new cases are discovered, all children within the district between the ages of four and 21 who because of apparent exceptional physical or mental conditions are not being properly educated and trained. (14, Del. Code Sec. 3105)

Special Education Evaluation: The State Board may direct, with the aid of cooperating agencies, the examination of all children and discover if the child is a fit subject for special instruction and training. (14, Del. Code Sec. 3105)

A pupil's personal records are confidential and can be released to non-school personnel only if there is a question of public health or safety. Parents and students over 14 may have access to records. (14, Del. Code Sec. 4114)

The rules and regulations of the State Board will provide for the establishment of evaluation and placement committees in the school districts to evaluate candidates for enrollment into classes for children with learning disabilities and to recommend appropriate placements to parents or legal guardians of children and to the superintendent of the school district. Each placement committee must contain a psychologist and psychiatrist licensed to practice in the state. No state expenditures for classes for the learning disabled will be authorized unless qualifications of the teacher and the instructional program have been approved by the State Board. If the evaluation and placement committee certifies the child cannot be adequately served in any of the units described for handicapped children including those with learning disabilities, or if a unit for learning disabilities is unavailable in the district of residence or a district within reasonable transportation distance of the home of the child, the committee may recommend to the parents or legal guardian of the child and to the superintendent of the district of residence that the child attend a specialized public or private school in Delaware or in another state and that the district of residence include in its budget a separate amount drawn from state funds used to cover the cost of tuition, transportation, and housing for specialized assignments. The amount may not exceed the average expenditure per pupil from state funds for the preceding year. This amount will not be counted against the district's allocation for other unit purposes, nor shall the district count the student in its certified count by which units are determined for the school district. When the timing of a pupil evaluation and placement does not coincide with the timing of the budget presentation, the amount shall be provided from the educational contingency fund. (14, Del. Code Sec. 1703)

The State Board of Education is responsible for prescribing rules and regulations for the physical examination of children and for the mental examination of children who have made no advancement in their studies for three successive years of regular attendance. (14, Del. Code Sec. 122)

Law Digest: Education of Handicapped Children

ADMINISTRATIVE RESPONSIBILITY

The State Board is responsible for adopting rules and regulations for the education, training, and transportation of handicapped and talented children. (14, Del. Code Sec. 3102)

The State Board of Education is responsible for the care and education of all deaf persons in the state. These responsibilities are in addition to any other duties which it may have in regard to deaf persons. (14, Del. Code Sec. 3106)

The State Board is also the trustee for any deaf persons maintained and instructed in any institutions in the state. It pays monies to the institutions for board, maintenance, and instruction of such deaf persons. The amounts paid will not be greater than that paid for any other persons in the same institution. (14, Del. Code Sec. 3107)

The Commission for the Blind will appoint a representative to visit institutions outside of the state where blind children of the state are maintained and instructed to ascertain whether they are receiving proper treatment and instruction and are making any improvement or advancement that will justify the state incurring the necessary expenses for their placement in such institutions. (31, Del. Code Sec. 2111)

The State Board may provide for the suitable care and instruction of blind infants and blind children too young for schools for the blind. (14, Del. Code Sec. 2501)

PLANNING

An Advisory Committee appointed by the governor on the needs of exceptional children will serve in an advisory capacity to the State Board of Education and the board of trustees of the State Hospital at Farnhurst. (Del. Code Sec. 3108)

FINANCE

Units will be granted for the education of exceptional children under the following formulas:

- (1) classes for the educable mentally handicapped—one unit for 15 children;
- (2) classes for the trainable mentally handicapped—one unit for six children;
- (3) classes for the socially and emotionally maladjusted—one unit for ten children;
- (4) classes for the partially sighted—one unit for ten children;
- (5) classes for the orthopedically handicapped—one unit for ten children;
- (6) classes for the partially deaf or hard of hearing—one unit for six children;
- (7) classes for the blind established and approved by the State Board and the Commission for the Blind—one unit for eight children; and
- (8) for those children designated as learning disabled—one unit for eight children.

Any fraction greater than one-half will be considered a unit. Exceptional children will not be counted in any other calculation of units. (14, Del. Code Sec. 1703)

The State Board of Education shall use or transfer for use to local school districts and state institutions any funds appropriated to it for any cause for the education or training of handicapped, gifted, or talented children. (14, Del. Code Sec. 3104)

The state will not pay for a blind child in a school or institution outside Delaware more than what is spent by the state for its own institutionalized blind children. (31, Del. Code Sec. 2110)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If a handicapped child attends a special education class operated by a district (other than his district of residence) or by the State Department, the child's district of residence will pay a tuition charge to the other school district or the State Department of Public Instruction. The funds for the tuition will be raised by a local tax levied for this special purpose.

The tuition charge will be determined by adding the current year's estimated expenses for salary supplements for the staff of the special classes based on a schedule not higher than the schedule in force in other schools in the district in which the special classes are located; and other expenses due to the operation of the special classes for which local funds are to be used in the current school year. The total will then be divided by the number of children in special classes as of September 30 of the current school year. (14, Del. Code Sec. 602 and 604)

The State Board and local school districts, separately or jointly, may establish special schools to include but not be limited to the following: orthopedically handicapped, socially or emotionally maladjusted, educable or trainable mentally retarded, or hearing or speech impaired. (14, Del. Code Sec. 203)

Programs for pre-kindergarten partially deaf or hard of hearing children and their parents may be established. (14, Del. Code Sec. 1703)

The State Board may combine districts which otherwise would not qualify for the services of specialists for the purpose of providing such personnel. (14, Del. Code Sec. 1321)

SERVICES

All districts having classes for the trainable mentally retarded or for the orthopedically handicapped, or for the partially deaf or hard of hearing, may employ necessary attendants or aides, subject to the qualifications of the certifying board. (14, Del. Code Sec. 1324)

The State Board may contract with any local school district to reimburse a district for all or part of the cost of educating handicapped children who are institutionalized. (14, Del. Code Sec. 2502)

Transportation to and from the institution is provided by the state. (14, Del. Code Sec. 1502)

When an institutionalized child attends school in the district in which the institution is located, the district of residence is liable for tuition. (14, Del. Code Sec. 605)

PRIVATE

Programs for the blind, deaf (See Right to an Education) and for learning disabled children (See Identification, Evaluation, and Placement) may be provided in private facilities.

PERSONNEL

Every employee of a reorganized school district must meet standards for qualifications as adopted by the State Board of Education. (14, Del. Code Sec. 1092)

FACILITIES

The State Board shall prescribe rules and regulations governing hygiene, sanitary and protective construction of school buildings. (14, Del. Code Sec. 122(b) (1))

Law Digest: Education of Handicapped Children

FLORIDA

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same" (Art. XII, Sec. 1, Fla. Const.)

Compulsory Attendance Law: All children between ages seven and 16 are required to attend school during the entire term. Exceptional children who have reached the age of three on or before January 1 of the school year are eligible for admission to public school programs and related services under rules and regulations of the School Board. Children who are deaf, blind, severely physically handicapped or trainable mentally retarded below age five may be eligible for a home instruction program, or if enrolled in other preschool or day care programs, may be eligible for supplemental instruction. (Sec. 232.01 Fla. Stats.)

Children who are within the compulsory attendance limits and who have certificates of exemption issued by a county superintendent are exempt from attending school for the school year specified in the exemption. Children whose physical, mental, or emotional condition prevents their successful participation in regular education or programs for exceptional children may be exempted. Before issuing a certificate of exemption, the county superintendent requires a statement from the county health officer, if he is a licensed practicing physician in other counties, or from a qualified psychological examiner designated by the county. This statement must certify that the child is physically or mentally incapacitated for school attendance. If appropriate programs are unavailable within the school system, arrangements shall be made with adjoining counties, other appropriate agencies, residential schools, or approved non-public schools to provide such programs and services. All children exempted from education will be immediately reported to the state superintendent. Upon the recommendation of a judge of the juvenile court and the agreement of the superintendent, any child within the compulsory attendance age limit may be granted a certificate of exemption. (Sec. 232.06 Fla. Stats.)

Responsibilities: All school boards shall provide an appropriate program of special instruction, facilities, and related services for exceptional children for 13 consecutive years. This program shall be implemented in annual increments so that by 1973 all exceptional children will be served. (Sec. 228.13 Fla. Stats.)

All severely and profoundly retarded children shall be served by 1977-78. (Sec. 228.17 Fla. Stats.)

POPULATION

Definitions: "The term 'exceptional students' as used in the Florida School Code means any child or youth who has been certified by a specialist qualified under regulations of the State Board of Education to examine exceptional children, as one who is unsuited for enrollment in a regular class of the public schools or is unable to be adequately educated in the public schools without the provision of special classes, instruction, facilities or related services, or a combination thereof.

"The term 'exceptional students' includes the following: mentally retarded, speech impaired, deaf and hard of hearing, blind and partially sighted, crippled or other health impaired, emotionally disturbed and the socially maladjusted and those with specific learning disabilities and may include the gifted." (Sec. 228.041 Fla. Stats.)

Age of Eligibility: Children may begin receiving special education services at age three, except for deaf, blind, severely physically handicapped or trainable mentally retarded children, who may receive home or supplemental instruction at any age. There is no maximum age. (Sec. 232.01 Fla. Stats.)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The Crippled Children's Commission, the State Board of Health, and the State Board of Welfare will direct their field workers to review case records on or before March 31 of each year and to report to each county superintendent the name and other pertinent information of all of the county's exceptional children, who, in their opinion, require special education and services. (Sec. 232.13 Fla. Stats.)

The Legislature intends that by September, 1976, every child entering kindergarten shall be tested to determine the existence of potential disabilities. (Sec. 29 Fla. Stats.)

In providing for the education of exceptional students the superintendent, principals and teachers must utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible. No student may be segregated and taught apart from normal students until a careful study of the student's case has been made and evidence obtained which indicates that segregation would be for the student's benefit or is necessary because of difficulties involved in teaching the student in a regular class. (Sec. 232.17 Fla. Stats.)

The principal of the school in which the student is taught shall keep a written record of the case history of each exceptional student showing the reason for the student's withdrawal from the regular class and his enrollment in or withdrawal from a special class for exceptional students. This record shall be available for inspection by school officials at any time. (Sec. 232.17 Fla. Stats.)

No student shall be given special instruction or services until he is properly classified as an exceptional student. The parent or guardian of an exceptional student placed or denied placement in a program of special education shall be notified promptly of such placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to a review of the determination and of the procedures for obtaining such review. (Sec. 230.23 Fla. Stats.)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is authorized to adopt the rules and regulations necessary to secure adequate school services for handicapped individuals. (Sec. 22-9.1 Fla. Stats.)

The State Board of Education may assist local school divisions in employing and paying teachers to conduct special classes for the handicapped, including the orthopedically handicapped, speech defective, homebound, those children and adults confined in hospitals, and children who require special education, whether by reason of mental retardation, cerebral palsy, physical deficiency or otherwise, but not including visually impaired children who are provided for in Section 22-9. (Sec. 22-9.2 Fla. Stats.)

The Board of Education is directed to establish 16 regional diagnostic and resource centers for exceptional students. Such centers shall provide a range of medical, psychological physiological educational and other testing services designed to evaluate and diagnose disabilities and shall prescribe services and make referrals for necessary services. They may provide consultant services. Counties without such a center may contract with one closest to them. (Sec. 30 and 31. Fla. Stats.)

The State Board for the Mentally Retarded is under the supervision of the Board of Commissioners of State Institutions. (Sec. 393.1 Fla. Stats.)

The State Department of Education is responsible for programs in the State School for the Deaf and Blind.

The Division of Mental Health in the Department of Health and Rehabilitation Services administers the institutional programs for the mentally retarded and emotionally disturbed. (Sec. 402.10, Fla. Stats.)

PLANNING

Local school boards are responsible for adopting and providing plans for the establishment, organization, and operation of the schools of the districts. This includes an appropriate program of special facilities and services, according to the rules and regulations of the State Board of Education such as: (1) necessary diagnostic and evaluation services for exceptional children; (2) special instructions, classes and services, within districts' school systems, and (3) contractual arrangements by district boards with approved private or non-public schools or community facilities.

The superintendent is responsible for recommending the establishment, organization and operation of schools, classes, and services needed for providing adequate educational opportunities for exceptional children in the district, including the recommending of plans for the provision of special education classes, instruction, facilities, equipment, and related services. (Sec. 232.17 Fla. Stats.)

The school board must submit annually to the Department its plan for the provision of special instruction and services for exceptional children. (Sec. 232.7, Fla. Stats.)

Law Digest: Education of Handicapped Children

FINANCE

For the 1974-75 fiscal year the maximum amount of Florida Education Finance Programs funds for current operations for all districts for special programs for exceptional students shall not exceed \$118,000,000.

Expenditures for minor remodeling may be approved to allow for the installation of equipment required for a new activity. Funds will not be allowed to refurnish existing classrooms or other facilities.

During each fiscal year, each school district shall survey all of its schools to determine the full time equivalent student membership of each program by school and by district. This equivalent membership shall be computed and currently maintained.

The base student cost shall be determined annually by the Legislature. For 1974-75 it is \$745. (Finance Ed. Action of 1973)

Cost factors based on desired relative cost differences between programs are established. Their application, in special programs identified by the roman numeral I, are limited to a maximum of 12/25 (twelve twenty-fifths) of a student membership in a given program during a week. The criteria for qualification for the special programs shall be determined by regulations of the State Board. Cost factors for special programs for exceptional students shall be used to fund approved programs as provided by law for exceptional students under the minimum age for enrollment in kindergarten. (Sec. 236.081 Fla. Stats.)

Cost Factors**Basic Programs**

Kindergarten and grades 1, 2 and 3	1.20
Grades 4, 5, 6, 7, 8, 9 and 10	1.00
Grades 11 and 12	1.10
Special programs for exceptional students	
Educable mentally retarded	2.30
Trainable mentally retarded	3.00
Physically handicapped	3.50
Physical and occupational therapy I	6.00
Speech and hearing therapy I	10.00
Deaf	4.00
Visually handicapped I	10.00
Visually handicapped	3.50
Emotionally disturbed I	7.50
Emotionally disturbed	3.70
Socially maladjusted	2.30
Specific learning disability I	7.50
Specific learning disability	2.30
Gifted I	3.00
Hospital and homebound I	3.00

The basic amount for current operation to be included in the Florida Education Finance Program for each district shall be the product of the following:

- the full time equivalent student membership in each program, multiplied by
- the cost factor for each program, multiplied by
- the base student cost figure.

A supplement to the base student cost shall be added for all full time equivalent students in basic programs qualifying for compensatory education in accordance with criteria, including low achievement test scores, socio-economic level, and low standard English comprehension level, established by regulations of the State Board. Such regulations shall be designed to maintain consistency with applicable federal law and regulations so as to prevent impairment, interruption, or loss of any federal funds allocated to the state for compensatory education of public school students. (Sec. 236.081 Fla. Stats.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Florida's schools operate on a county system, and two or more counties may contract to provide special services.

SERVICES

"The term 'special education services' means such related services in addition to instruction of the exceptional child as transportation, diagnostic and evaluation services, social services, physical and occupational therapy, job placement, orientation and mobility training, braille, typists and readers for the blind, specified materials and equipment, and other such services as approved by regulations of the Board of Education." (Sec. 228.041 *Fla. Stats.*)

No teacher may teach exceptional children unless he has been properly certified under the regulations of the State Board. The State Board is directed to develop the plans for the proper education of such teachers and to prescribe the standards and regulations necessary for certifying such teachers and supervisors. (Sec. 231.81 *Fla. Stats.*)

The Department of Education may purchase and arrange for the distribution among district school systems of previously adopted textbooks prepared in various media for the use of partially sighted children enrolled in the public schools. (Sec. 233.4 *Fla. Stats.*)

The Division of Elementary and Secondary Education is authorized to establish a coordinating unit and instructional materials center for visually handicapped children and youth. The center will provide staff and resources to coordinate, catalogue, standardize, produce, procure, store, and distribute braille, large print, tangible apparatus, and other specialized educational materials needed by blind and partially sighted students. The major purpose of the unit is to improve instructional programs for visually handicapped students. The Division may operate the unit directly or contract for its operation by a local education agency. (*Senate Bill 692, 1972*)

PRIVATE

See Planning.

PERSONNEL

Teachers who seek special training in exceptional child education in order to meet professional requirements may receive training grants from the State Department of Education. These grants are limited to teachers under contract in an exceptional child program in the state, the Sunland Training Centers, the child training centers, or Florida Schools for the Deaf and the Blind. Each grant covers the cost of tuition, housing, and food and may be a maximum of \$200 for residential enrollment in specific courses approved by the Department for certification in exceptional child education.

Courses are offered at institutions of higher learning in the state and through the Florida Institute for Continuing University Studies. If the courses are unavailable in the state in the subject area required for certification, the recipient may receive a grant for attending an out-of-state institution of higher learning approved by the Department of Education in order to meet the professional requirements of the state. (Sec. 239.371 *Fla. Stats.*)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children

GEORGIA

RIGHT TO AN EDUCATION

Constitution: "There shall be a thorough system of common schools for the education of children, as nearly uniform as practicable, the expense of which shall be provided for by taxation, or otherwise . . ." {Art. VIII, Sec. 1, Georgia Const.)}

Compulsory Attendance Law: Children between the ages of seven and 16 are subject to the compulsory attendance requirements. Children determined to be physically or mentally incapable of doing school work or who have been excused from attendance by county or independent school boards in accordance with State Board regulations are exempt from the requirements. Regulations must consider factors such as sickness, seasonal labor, and other emergencies. County and independent boards of education are the only agencies which can excuse children from the compulsory attendance requirement. (Sec. 32-2106 Ga. Stats.)

Responsibilities: ["School boards of any school systems that maintain a recognized public school shall, subject to any limitations hereinafter specified, establish and maintain such special facilities and employ such professional workers as may be needed for one or more types of exceptional children defined by the State Board of Education who are residents of their school district and such children, residents of other school districts, as authorized by this Act." {Ch. 32-35, Ga. School Laws}]

*Local units of administration shall provide a special education program for all students with special needs who are residents of their school system, either by establishing and maintaining such educational facilities and employing such professional workers as are needed by those students or by contracting with other school systems or Cooperative Educational Service Agencies for such services. (APEG SB672-Sec. 5B, 1974)

POPULATION

[Definitions: " 'Exceptional Children' are those three through 20 years of age who have emotional, physical, communicative, or intellectual deviations or any combination thereof, to the degree that there is interference with school achievements or adjustments or prevention of full academic attainment and who require modifications or alterations in their educational programs. This definition includes children who are mentally retarded, physically handicapped, speech handicapped, multiple handicapped, autistic, dyslexic, intellectually gifted, and any other areas of exceptionality which may be identified." (Ch. 32-35, Ga. School Laws)]

Children and youth with special needs are those who have emotional, physical, communicative, or intellectual deviations, or a combination thereof, to the degree that there is interference with school achievements or adjustments, or prevention of full academic attainment and who require modifications or alterations in their educational programs. This definition includes children who are intellectually gifted, mentally retarded, physically or speech handicapped, behaviorally disordered, hospital or homebound, handicapped by a specific learning disability, multi-handicapped, autistic, hearing impaired, visually impaired and any other areas of special needs which may be identified. (APEG SB672-Sec. 5A, 1974)

IDENTIFICATION, EVALUATION, AND PLACEMENT

For provisions relating to census, see Planning.

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for establishing rules and regulations to govern all phases of the educational programs for exceptional children. (Ch. 32-35, Ga. School Laws)

The State Board of Education is responsible for the supervision of the State Schools for the Deaf and the Blind. The Department of Human Resources is responsible for programs in state institutions for the

* All sections followed by an asterisk take effect on July 1, 1975.

[] All sections in brackets are repealed effective July 1, 1975.

mentally retarded and the emotionally disturbed. The State Board of Education is responsible for the implementation of state-wide programs in the public schools for the education of exceptional children and for any other educational programs deemed necessary; for the establishment of priorities, standards and criteria for the implementation and operation of such programs; for the appointment of an Advisory Council for Exceptional Children; for scholarship grants and recruitment; for non-local education for exceptional children and for transportation of exceptional children and itinerant teachers. (SB 672, 1974)

Local school system responsibilities are to provide services for all exceptional children; the appointment of a director/coordinator of the local program; the employment of qualified teachers; the provision of space, materials and equipment. Responsibilities of the local director/coordinator include administration of the program, recruitment, coordination of services, in-service activities, supervision, referrals and placement, curriculum development, evaluation and public relations. (SB 672, 1974)

PLANNING

[A State Advisory Council for Exceptional Children, appointed by the state superintendent with the approval of the State Board, and a Committee for Exceptional Children in each school system are established. Each local committee consists of a local superintendent, a local director of special education (who shall be chairman), and at least five additional members who represent professions related to special education services. One committee may be formed to serve the districts. (Ch. 32-35 Ga. School Law)]

School systems are charged with the responsibility for securing a competent survey of the educational needs of exceptional children in their jurisdictions. In addition, each system shall make an educational plan for these children. A biennial report will be made to the state department of education to indicate the extent to which the plans have been implemented and to report any additional planning. (Ch. 32-35, Ga. School Laws)]

Georgia's mandatory legislation (SB 672, 1974) requires provision of full services for all exceptional children by July 1, 1977. Each local school system has developed comprehensive planning budgeting systems for accomplishing this goal, which give evidence of the intent of the school system to meet the needs of the more severely as well as the moderately handicapped. The state plan for deaf-blind children is continuously evaluated in terms of current needs.

FINANCE

[The State Board is responsible for establishing a uniform basis for allotting additional personnel and funds for special education programs. These programs are considered part of the minimum foundation program for education. The costs are shared by state and local administrative units in the same manner and on the same basis as costs in regular education programs. (Ch. 32-620 Ga. School Laws)]

*The State Board of Education shall annually allot instructional units to local units of administration. For special education, one instructional unit per 12 pupils in average daily attendance in special classes in grades 1-12 is provided, if the children adhere to the definitions for exceptional children. One instructional unit for each three state approved vocational teachers in grades 7-12 is also provided.

During a fiscal year, the amount of funds distributed to any local unit for this purpose shall not exceed the amount actually required for payment of salaries of instructional personnel actually employed by the local unit. (APEG SB 672, Sec. 10, 1974)

The State Board may allot funds to local units to supplement the salaries of instructional personnel who supervise beyond the regular school day not less than ten students engaged in community work experience.

Local boards may also be reimbursed for teachers who provide services beyond the regular school year, and for staff development activities which go beyond the regular school day or year. (APEG SB 672, Sec. 11, 1974)

[If itinerant personnel require travel they receive state reimbursement.]

[Transportation, approved by the local committee, is wholly reimbursed by the state when funds are appropriated. (Ch. 32-35, Ga. School Laws)]

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

[The State Board is responsible for implementing statewide programs in the public schools for the education of exceptional children and other educational programs not ordinarily coming within public school curricula. It will establish priorities, criteria, and standards for implementing and operating statewide programs. Prior to state implementation local systems should initiate such programs locally.]

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Committees for Exceptional Children may plan with other districts to provide joint services. Children may be sent to other districts for special services. If children attend special classes in another district, transportation is provided. (*Ch. 32-35, Ga. School Laws*)

*The State Board shall adopt classification criteria for each area of special need to be served on a statewide basis, both for students who can be served in a self-contained setting and for those who can be served effectively in the regular classroom by itinerant personnel.

Local units shall provide a special education program for all resident children with special needs, either by establishing programs or contracting with other systems or Cooperative Educational Service Agencies.

The State Board of Education shall have the authority to provide educational and training services for children with special needs, by: (1) contracting with private organizations within or outside the state, (2) contracting with suitable public agencies and departments in or out of state; (3) entering into reciprocal agreements with other states or political subdivisions. (*APEG SB 672, Sec. 5, 1974*)

[The State Board may establish and maintain special courses, classes and/or schools for "the correction of speech by oral methods of those who are deaf, or who have defective hearing or speech, in cooperation with, or independently of, local units of administration, with the power and right to promulgate the rules, standards, and requirements for the said courses, classes, and schools receiving state aid under this chapter. . ." (*Sec. 33-210A Ga. Stats.*)]

[The State Board may send children who are deaf and blind and for whom there are no facilities within the state to schools, institutions, or other places outside the state maintaining appropriate facilities. Room, board, tuition, transportation, and other necessary items may be provided. (*Sec. 32-441, Ga. Stats.*)]

SERVICES

[" 'Special education facilities' shall include, but not be limited to, special classes, housing, instruction, rental facilities, braillists and typists for physically handicapped children, transportation, maintenance, instructional materials, therapy, professional consultant services, psychological services, itinerant services, resource services, additional evaluation services and centers, special administrative services, salaries of all required special personnel, and other special education services required by the child because of his exceptionality."

"Professional workers" means approved personnel, and shall include, but not be limited to speech and/or hearing specialists, mobility instructors, special education interns, special education administrators or supervisors giving full time to special education, and teachers of any class or program defined in this Act." (*Ch. 32-35 Ga. School Laws*)

*The State Board shall have the authority to implement other educational programs not ordinarily within the prescribed curricula of the public schools. They may or may not require the use of additional specially qualified personnel or special equipment.

The State Board is authorized to establish standards for such programs as it may find necessary or desirable to implement on a statewide basis. Local units may begin such programs before the state does.

The state may authorize funds for the state schools for the deaf and blind, other special schools for exceptional persons, and for public schools operated within correctional institutions. (*APEG SB 672, Sec. 9, 1974*)

The State Board shall promulgate standards and establish the conditions necessary to implement programs of compensatory education, including, but not limited to, programs of remedial reading, mathematics, and other such programs as are needed.

The State Board is authorized to inaugurate a student honors program for pupils in public and private high schools who have manifested exceptional abilities, unique potentials, or have made exceptional academic achievements. Such a program may be conducted during the summer term at institutions of higher learning or other appropriate centers in Georgia with facilities adequate to provide challenging opportunities for advanced study and accomplishments. The state will pay the expenses of student costs and operation.

The State Board is authorized to conduct or make provision for educational research into all methods of instruction of children. (*APEG SB 672, Secs. 6 and 9, 1974*)

PRIVATE

[If an exceptional child cannot be educated in a local school system, his parents may seek a program appropriate to his needs after receiving approval from the program for exceptional children in the State

Department. The school or agency, either inside of or outside of the state, which educates the exceptional child will be reimbursed for tuition fees, transportation, and books. Reimbursement cannot exceed the cost of educating an exceptional child of identical age with a similar handicap in the Georgia public schools. Included in this section are multiply handicapped children who, because of the severity of their disability, have a special appropriation. (*Ch. 32-35 Ga. School Laws*)]

PERSONNEL

[With the advice of the Advisory Council for Exceptional Children, the superintendent may grant scholarships to persons interested in working in programs for the education of exceptional children for either part-time or full-time study in programs designed to qualify them as professional workers in special education. (See Services.) To qualify for a scholarship, a person must have earned at least 90 quarter hours of college credit and must be a student at a recognized college or university. Part-time and summer students may be awarded grants on a pro rata basis. The amount of grants is not specified within the law.]

[If any part of the appropriation for scholarships is not utilized, it may be used to recruit professional workers for programs in the education of exceptional children through further training at graduate and undergraduate levels. (*Ch. 32-35, Ga. School Laws*)]

[The State Board of Education may, at their discretion, select some educated young men who may desire to learn the mute or sign language, upon the condition that they will obligate themselves to teach in the institution as many years as may be agreed upon by the Board at the time they shall enter the institution." (*Sec. 35-809, Ga. Stats.*)]

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children

HAWAII

RIGHT TO AN EDUCATION

Constitution: "The state shall provide for the establishment, support, and control of a statewide system of public schools, free from sectarian control, a state university, public libraries, and such other educational institutions as may be deemed desirable, including physical facilities therefore. There shall be no segregation in public educational institutions because of race, religion, or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private instructional institution." (Art. II Sec. 1, Haw. Const.)

Compulsory Attendance Law: Unless excluded from school or exempted from attendance, all children between ages six and 18 must attend a public or private school for and during each school year. Any parent, guardian, or person having responsibility for or care of a child whose attendance in school is obligated, shall send the child to some such school. Such attendance shall not be compulsory in the following cases:

- (1) where the child is physically or mentally unable to attend school (deafness and blindness excepted) of which fact the certificate of a duly licensed physician shall be sufficient evidence;
- (2) where a competent person is employed as a tutor in the family wherein the child resides and proper instruction is thereby imparted as approved by the superintendent;
- (3) where any child who has reached 15 years of age is suitably employed and has been excused from school attendance by the school department or its authorized agents, the family court or the district judge;
- (4) where, upon investigation by the family court, when feasible, or by the district judge, it has been shown that for any other reason the child may properly remain away from school; or
- (5) where a child graduated from a high school or vocational school. (HRS 298-9)

"Every parent or guardian having control over any partially or totally blind or deaf person, from six to 18 years of age who, by reason of total or partial blindness or deafness, is unable to obtain an education in the public or private schools, shall send the child to the State School for Deaf and Blind for a period corresponding to the regular school year. The superintendent of education or a circuit court judge can excuse such attendance if, in his opinion, the facts warrant such action. This does not apply when skilled private instruction is given to such persons for the same length of time each year." (HRS 298-10)

"If for any reason a child becomes a detriment to the morals or discipline of any school, the child may be precluded from attending school by the principal with the approval of the district superintendent. The Department shall seek the active participation of other public and private agencies in providing help to such children before and after they have left school. An appeal may be taken on behalf of the child to the superintendent of education within ten days of such action. . . ." (HRS 298-11)

Policy: "It is hereby declared to be a vital concern to the state that all exceptional children residing in the state be provided with instruction, special facilities, and special services for education, therapy, and training to enable them to live normal competitive lives." (HRS 301-22)

Responsibilities: If one or more exceptional children are found in any one district superintendent's area, the superintendent of education shall provide instruction, special facilities, and special services, according to the specifications of this law in a manner most expedient and economical. (HRS 301-24)

POPULATION

Definition: "'Exceptional children' includes: (1) children under 20 years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities; (2) children under 20 who by reason of physical defects cannot attend the regular public school classes with normal children; and (3) children under 20 who are certified by a licensed physician eligible to membership in the state medical society to be emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods." (HRS 301-21)

Age of Eligibility: Exceptional children may receive special education services until age 20. Except under the Early Admission Program, any child must be at least five years old before December 31 of the school

year, or (for schools convening after the regular school schedule, 25 days following the school's convening) for admission to kindergarten and six years old for admission to the first grade. (HRS 298-4, 298-8)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Special Education Evaluation: The Department of Education is responsible for establishing standards to determine eligibility of exceptional children for instruction, special facilities, and special services.

ADMINISTRATIVE RESPONSIBILITY

Hawaii has a totally state operated system of education. The state is divided into seven administrative units, each administered by a district superintendent. At the state level, a Department of Education is responsible for establishing and administering instruction, special facilities, and special services for the education, therapy, and upgrading of exceptional children and to provide corrective therapy, and academic, occupational, and related training. The Department shall also cooperate with other agencies of the state providing any type of services or aid to exceptional children and with the U.S. government, through any of its agencies for developing, extending, and improving instruction, special facilities, or special services. (HRS 301-22)

The Department is also charged with the responsibility for making any studies, surveys, evaluations, rules, and regulations necessary to carry out the special education program. (HRS 301-26)

Within the Department of Education, the Division of Special Education is established to promote, direct, supervise, and control the special education program. (HRS 301-23)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

Since Hawaii's education system is completely state financed, there are no special education finance laws.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

See Administrative Responsibility.

SERVICES

"'Special facilities' includes buildings, equipment and materials, transportation, boarding homes, and personnel qualified to work with exceptional children."

"'Special services' means physiotherapy or any form of muscle training, speech training, occupational therapy, vocational training, psychological evaluation, or any combination thereof." (HRS 301-21)

The special education program includes the provision of boarding facilities, when necessary, special classes in homes or schools, and any other facilities required to render appropriate services to exceptional children. Already existing facilities, buildings, and equipment, belonging to or operated by the state, may be made available for these purposes, if such use does not conflict with the primary purpose of these facilities. (HRS 301-22)

The Department of Health, in cooperation with the Department of Education, may provide one physiotherapist and one occupational therapist for exceptional children (needing such services) in the primary and elementary grades in the county of Honolulu. The Department may accept funds from private sources and divert any appropriated funds to the Board whenever, in the opinion of the Board, these funds can be used to better advantage by being so diverted. (HRS 301-27)

The Waimano Home, under the supervision of the Department of Health, is located in Honolulu. Those persons who, because of mental retardation, are incapable of independent self-support and self-management in the community may be admitted to the institution. (HRS 333-22)

The state superintendent of education may, with the approval of the Department of Social Services, negotiate with transportation companies for transportation of crippled children whose parents or guardians have been found by the Department of Social Services to be unable to provide for their transportation to or from a public school day program. (HRS 37-19)

Law Digest: Education of Handicapped Children

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Since Hawaii's education system is completely state operated, special education facilities are financed through state appropriations. No additional legal provisions are provided.

IDAHO**RIGHT TO AN EDUCATION**

Constitution: "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free common schools." (*Art. IX, Sec. 1, Idaho Const.*)

"All children with sufficient mental and physical ability shall attend the public schools throughout the period between the ages of six and 18 for a time equivalent to three years, unless educated by other means." [*Art. IX, Sec. 9, Idaho Const.*)

Compulsory Attendance Law: A child is exempted from the compulsory attendance law "if a reputable physician within the district shall notify in writing that the child's bodily or mental condition does not permit his attendance at school." (*Sec. 33-202 Idaho Code*)

The parent or guardian of any child between the ages of seven and 16 shall have the child instructed in the subjects taught in the public schools of the state of Idaho. Unless the child is comparably instructed, the parent or guardian must have the child attend a public, private, or parochial school during the school year. (*Sec. 33-202 Idaho Code*)

State institutions for the deaf and blind will admit "all children between the ages of six and 21 who are too deaf or too blind to be educated in the public schools. . . ."

Children under age six may be admitted when, in the opinion of the superintendent and with the approval of the Board of Education, they are proper subjects to receive training and education at the school and when the facilities are adequate for their care, training, and education. (*Sec. 33-3407 Idaho Code*)

If the board of trustees of a school district receives a written statement from a licensed physician or psychiatrist that a child's physical, mental, or emotional condition does not permit attendance at a school and a petition is filed by the parent or guardian requesting the child's exemption from the compulsory attendance requirements, the Board may grant, at its discretion, the exemption during the existence of the condition. The Board may require, from time to time, an additional examination of the child. (*Sec. 33-204 Idaho Code*)

The Board may suspend or expel any pupil who is habitually truant, incorrigible, or whose conduct, in the judgment of the Board, is continuously disruptive of school discipline, instruction, or effectiveness of the school. Any suspended or expelled pupil may be readmitted to the school on conditions set by the Board. Readmission does not prohibit future suspensions or expulsions.

Before expelling a student, the board of trustees must notify the parent or guardian of a time and place to appear to show cause why the student should not be expelled. Any pupil who is expelled and who is within the age of compulsory attendance comes under the purview of the Youth Rehabilitation Law, and an authorized board representative must file a petition with the probate court of the county of the pupil's residence in any form the court may require. (*Sec. 33-205 Idaho Code*)

Responsibilities: Each public school district is responsible for the education and training of exceptional pupils resident therein. Public school districts may provide instruction and training for persons under the age of 21 who are exceptional children as defined by this Act and by the State Board of Education. (*Sec. 33-2001 Idaho Code*)

POPULATION

Definition: "Exceptional children" means those children whose handicaps or capabilities are so great as to require special education and special services in order to develop to their fullest capacity. This definition includes, but does not limit itself to, those children who are physically handicapped, mentally retarded, emotionally disturbed, chronically ill, who have perceptual, visual or auditory handicaps or speech impairment as well as those children who are so academically talented, that they need special educational programs to achieve to their fullest potential." (*Sec. 33-2002 Idaho Code*)

"Homebound student" means any student who would normally and regularly attend school, but is confined to home or hospital because of an illness or accident. (*Sec. 33-1001, Idaho Code*)

If the superintendents of the Schools for the Deaf and the Blind ascertain that a pupil has ceased to make progress or is no longer benefiting by attending the school, the child may be released from the school with the approval of the Board of Education. (*Sec. 33-3407 Idaho Code*)

Law Digest: Education of Handicapped Children

Age of Eligibility: Exceptional children are eligible for services from birth through age 21.

Census: By February 1 annually, the clerk of each school district must report the number of deaf and blind pupils attending the district's schools as well as other children who are not pupils in the schools but of whom they have knowledge. The report is made to the superintendents of the State Schools for the Deaf and the Blind. (Sec. 33-3408 *Idaho Code*)

Licensed physicians are required to provide to the State Department of Health on appropriate forms the names of children suspected of having severe auditory and/or visual impairment. In addition, if any physician or optometrist, audiologist, or any certified person giving an examination receives as a patient any child suspected of having severe auditory or visual impairment whom he believes has not been reported it is his duty and responsibility to include this information on the report. Parents must be notified by the person reporting that their child has been reported. (Sec. 39-427 *Idaho Code*)

Special Education Evaluation: Prior to enrollment or placement in special education classes and the expenditure of funds for exceptional children, the students must be comprehensively evaluated in accordance with the regulations of the State Department of Education. (Sec. 33-2003 *Idaho Code*)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for establishing rules and regulations to determine eligibility of exceptional children, qualifications of special teachers and other special personnel, programs of instruction and minimum standards for classrooms and equipment. (Sec. 33-2001 *Idaho Code*)

The State Board is also responsible for:

- (1) establishing an administrative unit in the State Department of Education to administer the special education programs;
- (2) establishing programs, setting standards, and employing the necessary supervisory and clerical personnel to assist and direct school districts in educating and training exceptional children;
- (3) establishing a research program to evaluate existing programs, assess the number and types of handicapped children, and make recommendations for serving them, and
- (4) formulating and revising regulations and standards for determining eligibility of children for special services and training. (Sec. 33-2003 *Idaho Code*)

The state hospitals for the mentally ill and mentally retarded are under the jurisdiction of the Director of the Health and Welfare Board. (Sec. 66-116 *Idaho Code*)

The Idaho schools for the deaf and the blind are under the general supervision of the State Board of Education. (Sec. 33-103 *Idaho Code*)

PLANNING

A school district or combination of school districts may submit to the Board of Education a plan for the provision of vocational educational services for handicapped students under age 22. The plan may be approved or disapproved by the State Board. If approved, the plan is entitled to all the considerations and benefits available by law to the educational programs of the school district. (Sec. 33-124 *Idaho Code*)

FINANCE

Whenever one or more school districts provides special educational services through contract for services or by employing full-time or part-time ancillary personnel in accordance with the State Board's regulations and standards, each district or designated district shall be reimbursed in accordance with the foundation exceptional education program. (Sec. 33-2005, *Idaho Code*)

The Board shall report on the status of the foundation program to the Legislature annually. It will include the number of persons served, districts operating programs, money distributed, and the estimated number of persons still in need of services. The report shall be filed not later than the 15th day of the legislative session and may include the Board's recommendations.

The foundation exceptional education program of a school district shall be based on an amount up to and including 80% of the allowable salaries of certified ancillary personnel, approved teacher aides, and approved directors and supervisors of exceptional child programs as provided in section 33-2002A, *Idaho Code*, and approved contracts as provided in section 33-2004, *Idaho Code*.

No district shall receive less per exceptional child in average daily attendance for 1974-75 than it did in 1973-74 including funds received for ancillary personnel assigned to exceptional children. (Sec. 33-1006A *Idaho Code*)

If a district contracts with another school district or any private or public rehabilitation center, hospital, or corporation, the sending district pays a tuition rate computed in the following manner:

(1) to another school district: the annual tuition rate of the receiving district as shown in the last tuition certificate;

(2) to the rehabilitation center, hospital, or corporation: the tuition rate of the sending district as computed above and the district's reimbursement under the handicapped child factor of the education foundation program. One district is designated as the educating district when public school districts contract for the education of exceptional children residing within several districts. When a student attends a rehabilitation center, hospital, or corporation, the home district of the child considers the child as a resident in average daily attendance. (Sec. 33-2004 *Idaho Codes*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

School districts may contract for the education of exceptional children with another school district. See Finance and Planning. (Sec. 33-2004 *Idaho Code*)

When residents of a district which abuts the border of another state attend school in that state, the State Board shall determine the approved costs necessary to meet the educational needs of such students and shall divide the total by the state average cost factor per student to determine the number of weighted ADA allowed for such students. (Sec. 33-1002 *Idaho Code*)

SERVICES

"'Special services' for exceptional children may include those services provided by special education teachers as well as ancillary and itinerant personnel such as visiting teachers, speech therapists and audiologists, school social workers, and psychologists. Supervisors of special education programs and directors of special education programs whose major responsibilities are in the supervision and administration of special education programs are considered as providing services under this Act." (Sec. 33-2002A *Idaho Code*)

If a child living in a non-transportation zone is eligible for transportation for another reason, the board of trustees of a local district may then reimburse the parent or guardian of the child for the costs incurred for the child's board and lodging, as authorized by the State Board of Education. (Sec. 33-1503 *Idaho Code*)

Transportation may be provided to and from the State School for the Deaf and the Blind. (Sec. 33-3405 *Idaho Code*)

The Idaho Commission for the Blind will contract with the U.S. Library of Congress, Division for the Blind and Physically Handicapped, to distribute talking book machines to people entitled to such services. (Sec. 67-0407 *Idaho Code*)

All districts in the state maintaining a state-licensed or state-sponsored system of care for expectant or delivered mothers under 21 shall provide instruction in accredited courses by qualified personnel. Upon satisfactory completion of required public school courses or correspondence courses from an Idaho state institution of higher learning, all districts shall issue credits or a diploma evidencing this achievement. (Sec. 33-2006 *Idaho Code*)

PRIVATE

School districts may contract with any private rehabilitation center, hospital, or corporation approved by the State Board of Education. See Finance. (Sec. 33-2004 *Idaho Code*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**ILLINOIS****RIGHT TO AIM EDUCATION**

Constitution: "The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education. . ." (Art. VIII, Sec. 1, III. Const.)

Compulsory Attendance Law: Any person having control of any child between the ages of seven and 16 shall send the child to some public school in the child's district of residence during the entire time the regular school term is in session.

Exemptions from the compulsory school attendance law may include "any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician; or who is excused for a temporary absence by the principal or teacher of the school which the child attends." (Sec. 26-1, III. Stats.)

Responsibilities: School boards of any school district shall establish and maintain the necessary special educational facilities as may be needed for one or more of the types of handicapped children who are residents of their school district and such children, residents of other districts, as authorized under Illinois law. (Sec. 14.01, III. Stats.)

POPULATION

Definitions: "'Physically handicapped children' means children, other than those with a speech defect, between the ages of three and 21 who suffer from any physical disability making it impracticable or impossible for them to benefit from or to participate in the normal classroom program of the public schools in the school districts in which they reside and whose intellectual development is such that they are capable of being educated through a modified classroom program." (Sec. 14-1.02, III. Stats.)

"'Maladjusted children' means children between the ages of three and 21 years, who, because of social or emotional problems, are unable to make constructive use of their school experience and require the provision of special services designed to promote their educational growth and development. No emotionally maladjusted child may be excluded by school authorities from a special education program on the grounds of his being so grossly handicapped as to make his education nonfeasible until after a joint consultation with the parents and the Department of Mental Health." (Sec. 14-1.03, III. Stats.)

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

"'Trainable mentally handicapped children' means children between the ages of three and 21 years who, because of retarded intellectual development as determined by individual psychological evaluation, are incapable of being educated properly 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 social adjustment and economic usefulness in their homes or in a sheltered environment. Any such child shall be regarded as eligible for special educational facilities only as long as benefit to him from the program can be determined to exist." (Sec. 14-1.05, III. Stats.)

"'Speech defective children' means children between the ages of three and 21 years whose diagnosis by a certified teacher meeting the requirements of the superintendent of Public Instruction as a qualified speech correctionist indicates that specialized instruction would improve or correct the defects." (Sec. 14-1.06, III. Stats.)

"'Multiply handicapped children' means children between three and 21 years who may be placed within two or more classifications of this article or at least two different programs provided under Section 14-1.02 of this article." (Sec. 14-1.07, III. Stats.)

"'Gifted children' means children whose mental development is accelerated beyond the average to the extent that they need and can profit from specially planned educational services." (Sec. 14A.2, III. Stats.)

"'Children with specific learning disabilities' means children between the ages of three and 21 years who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Such disorders include 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 handicaps, of mental retardation, emotional disturbance or environmental disadvantage." (Sec. 14-1.03, III. Stats.)

Age of Eligibility: All handicapped children are eligible for programs from age three to 21. (Sec. 14-1.01-1.07, Ill. Stats.)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: A census must be taken by the school districts before April 1 every fourth year of all handicapped children in or out of school. Findings are reported to the superintendent of Public Instruction by June 1 of each year the census is taken.

After the findings of the census are reviewed, the superintendent may call together two or more districts in which handicapped children reside who are not receiving the special education services they require for the purpose of recommending to a district to take the responsibility for the establishment and administration of a special education program. Prior to determining whether districts should jointly provide the services, geographic and other factors are to be considered. (Sec. 3-15.11 Ill. Stats.)

An annual report containing a census of all the children receiving special education services within the State Mental Health facilities during the year, attendance figures and per capita expenditures for special education is required from the Department of Mental Health. (Sec. 2-330, Ill. Stats.)

Each child between three and 21 who is ineligible for special education because of the severity of his handicap shall be reported to the superintendent annually. (Sec. 14-8.01, Ill. Stats.)

Screening: Physical examinations, including vision screening tests, prescribed by the Department of Public Health will be required of all pupils in the public, private, and parochial elementary and secondary schools immediately prior to entrance into kindergarten or the first grade, and immediately prior to or upon entrance into the fifth and ninth grades; or irrespective of grade, immediately prior to or upon entrance into any public, private or parochial school if that pupil has previously not been examined. Additional health examination of pupils may be required if deemed necessary by school authorities. (Sec. 27-8.111. Stats.)

Special Education Evaluation: An individual psychological evaluation must be used to determine placement for the educable and trainable mentally retarded. (Sec. 14-1.04 and 14-1.05, Ill. Stats.)

Speech defects must be diagnosed by a certified teacher who meets the requirements of the superintendent of Public Instruction for a qualified speech correctionist. (Sec. 14-1.06, Ill. Stats.)

The superintendent, with the advice of the advisory council, prescribes the standards for the eligibility and admission of pupils. No child may be eligible for services without a complete case study fully reviewed by professional personnel in a staff conference. Placement in special education programs may only be made upon the recommendation of qualified specialists. The superintendent, when establishing rules and regulations, must include within these rules a definition of case study, staff conference and qualified specialists, appropriate to each category of handicapped children. Educable and trainable mentally handicapped children, after being given a psychological evaluation, must be recommended by a school psychologist for such services. (Sec. 14-8.01, Ill. Stats.)

No child coming from a home in which a language other than English is the principal language may be assigned to any class or program of special education until he has been given, in the principal language of his home, tests reasonably related to his cultural environment. (Sec. 14-8.01, Ill. Stats.)

ADMINISTRATIVE RESPONSIBILITY

All special education facilities are under the supervision and subject to the approval of the superintendent of Public Instruction. With the advice of the advisory council, he prescribes the standards and makes necessary rules and regulations, including but not limited to, establishment of classes, training requirements of teachers and other personnel, eligibility and admission of pupils, curriculum, class size, housing, transportation, special instructional supplies, and the applications for reimbursement claims. (Sec. 14-8.01, 111. Stats.)

The Department of Children and Family Services is responsible for administering programs in state facilities for the deaf, blind, and orthopedically handicapped. (Chap. 23, 1963 Ill. Rev. Stats. Sec. 9)

PLANNING

The superintendent of schools in each county must appoint a seven-member special education advisory committee. The members hold office for four years. Appointees must be selected, as much as possible, on the basis of their knowledge or experience in the education of handicapped children. The county superintendent acts as executive secretary to the advisory committee. The committee must meet at least four times in each calendar year and is responsible for reporting to the superintendent of Public Instruction a comprehensive plan providing "a good common school education" for all resident handicapped children.

Advisory committees of two or more counties may cooperatively complete their plans when such an approach seems desirable due to "population sparsity, geographic factors, or . . . other substantial reasons."

Law Digest: Education of Handicapped Children

The superintendent of Public Instruction is responsible for providing competent professional consultants to the advisory committees. (Sec. 14-2.01, Ill. Stats.)

At the state level there is an Advisory Council on Education of Handicapped Children consisting of seven members appointed by the superintendent for seven-year terms. The directors of the Department of Children and Family Services and the Department of Mental Health are ex-officio members of the council because of those departments' responsibility for residential special education services. The council consults with the superintendent of Public Instruction regarding all rules and regulations, the functioning of county advisory committees and the approval and rejection of completed comprehensive plans submitted by the county special education advisory committees.

Within 60 days after receiving plans, the council must consider any regulation or plan proposed by the superintendent or any special education advisory committee. The superintendent shall select an employee from his office to serve as executive secretary to the council. (Sec. 14-3.01, Ill. Stats.)

FINANCE

Each school board must keep a detailed and separate account of all monies paid for the maintenance of special education services, reporting these expenditures by June 30th of the school year to the superintendent. An application for pre-approval of expenditures must be submitted to the superintendent no more than 30 days after the class or service has started.

These applications are limited to the cost of construction and maintenance of special education facilities designed and utilized to house instructional programs, diagnostic services and other special education services for handicapped children. The application may not include the cost of construction and maintenance of any administrative facility separated from the special education facilities designed and used to house instructional programs, diagnostic services and other special education services for handicapped children. (Sec. 14-12.01, Ill. Stats.)

Reimbursement claims for special education shall be made in the following manner: On or before August 1, each district files its report, computed in accordance with the rules of the superintendent with the county superintendent of schools. Data used as the basis for reimbursement claims shall be for the school year ending June 30. After approval by the county superintendent, they will be submitted by August 15 to the superintendent. After approval, the state report will be submitted by September 20 to the auditor of public accounts for preparation of the vouchers showing the amounts due the respective counties. If the superintendent finds that he is unable to make a final determination of the accuracy of his claims by September 20, he will direct the auditor to pay three-quarters of the claims by the 30th of September and the remainder by December 1. In this event, the amount of the final payment will be adjusted to reflect any partial disapproval of the claim by the superintendent. If the auditor pays three-quarters of the amount and the amount exceeds that which the district is legally entitled to receive, the superintendent will notify the district to return the money to the state treasury by December 1.

If special classes are held at an orphanage or training home or if state wards attend classes in a cooperative unit or local district, the eligible district shall be reimbursed in accordance with Sec. 14-12.01. (Sec. 14-7.03 Ill. Stats.).

The amount of tuition paid shall be determined by the actual cost of maintaining such classes. Costs for administration and supervision shall be computed on the percentage of ADA of children in special classes. (Sec. 14-7.03 Ill. Stats.)

If the money appropriated by the General Assembly is insufficient, it must be apportioned on the basis of the approved claims. If a school board fails to prepare and certify the report of claims by August 1 of any year and fails to prepare and certify such a report within 10 days after receipt of a delinquency notice sent by the superintendent by registered mail, the school district will forfeit its right to be reimbursed by the state for special education services. (Sec. 14-12.01, Ill. Stats.)

Reimbursement will be made in the following manner:

- For eligible physically handicapped children in hospitals or receiving home instruction; one-half of the teacher's salary but not more than \$1,000 annually for each child or \$5,000 per teacher, whichever is less. Children included for reimbursement under this section must receive a minimum of one hour of instruction each school day or a minimum of five hours each school week.

- Four-fifths of the cost of transportation for those physically handicapped, maladjusted, learning disabled, educable and trainable mentally handicapped, speech defective, and multiply handicapped children whom the superintendent has determined in advance require special transportation services to take advantage of special education facilities. Transportation costs are limited to expenditures other than costs of acquiring equipment, interest, and rental of facilities and will include a reasonable allowance of depreciation to be computed in accordance with the regulations of the superintendent.

- For all professional workers not mentioned in the rest of this section, the annual sum of \$5,000 per person for districts maintaining a fully approved program of special education.

- An annual sum of \$5,000 for one full-time qualified director of special education. Districts participating in a joint agreement special education program do not receive reimbursement for their own directors if reimbursement is made for the director of the joint agreement program. The allocation for determining reimbursement for less than a full-time basis and less than a school year will be determined by

rules of the superintendent.

5. For each school psychologist, the annual sum of \$5,000.
6. For each qualified teacher working in a fully approved program for preschool-age deaf or hard of hearing children, the annual sum of \$5,000.
7. For readers working with blind or partially seeing children, one-half of their salary but not more than \$400 annually per child. Such readers are not required to be certified, but must meet standards of the superintendent prior to their employment.
8. For necessary non-certified employees working in any class or program; one-half of the salary provided or \$2,000 annually per employee, whichever is less. (Sec. 14-13.01, III. Stats.)

If a child is attending a non-public school or special education facility, the district of residence may pay the actual cost of tuition or \$2,000 a year, whichever is less. A school district making such tuition payments is eligible for reimbursement from the state for the amount of such payments actually made in excess of \$600 per student. The reimbursement will be made in the same manner as reimbursement for public special classes. Transportation to private day schools is reimbursed in the same manner as transportation to the public schools. (Sec. 14-7.02, III. Stats.)

A school district constructing a building under a joint agreement program and having a shortage of necessary funds for the payment of its share of the building project, may be granted \$1,000 for each professional worker in the district. If, after this, the district is still short of funds, up to 50 percent of the reimbursements made to the district for regular special education costs in one year may be put toward the completion of the project. (Sec. 14-13.02111, Stats.)

The school board of any district with a population of less than 500,000 may, by proper resolution, levy an annual tax not exceeding two percent upon the full fair cash value as equalized or assessed by the Department of Revenue for not more than five years for special education building purposes including joint building programs, if there are not sufficient funds available in the building fund of the district to pay the cost of the building. The levying of this tax must be approved by the superintendent of Public Instruction. (Sec. 14-13.02, III. Stats.)

The allocation for determining reimbursement for less than a full-time basis and less than a school year will be determined by rules of the superintendent. When a district operates a school for a full year, it will be reimbursed by 1/185 more than the amount paid for each day the school operates over 185 days. (Sec. 14-13.01, III. Stats.)

For a child requiring extraordinary special education services, the district providing such services is eligible for state reimbursement for the per capita cost of educating that child in excess of \$600 annually. Maximum per child is \$1400. (Sec. 14-7.02a, III. Stats.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Two or more school boards may enter into joint agreements to provide needed special educational facilities and to employ a director and other professional workers. Provisions of the agreement shall include administration, staff, programs, financing, housing, transportation, an advisory body, and the withdrawal of districts from the joint agreement. This Act also provides for the designation of an administrative district to act as the fiscal and legal agent for the districts in the agreement. (Sec. 10-22.31a, III. Stats.) See Facilities.

Professional workers may be employed by one of the districts in the agreement but will be reimbursed "on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district supply professional workers for a joint program conducted in another district." (Sec. 10-22.31a, III. Stats.)

School districts constructing buildings under joint agreement programs, who have a shortage of necessary funds for the payment of the district's share of the building project, may be granted \$1,000 for each professional worker in the district. If after this the district is still short of funds, up to 50% of the reimbursements regularly made to the district for special education costs in one year may be put toward the completion of the project.

SERVICES

'Special educational facilities' includes special schools, special classes, special housing, special instruction, special reader service, braillists and typists for visually handicapped children, transportation, maintenance, instructional materials, therapy, professional consultant services, psychological services, school social worker services, special administrative services, salaries of all required personnel, and other additional educational services required by the child because of his disability, if such services are approved by the superintendent and the child is therefore under this article and the regulations of the superintendent." (Sec. 14-1.08, III. Stats.)

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A school psychologist is defined as a psychologist graduated with a master's or higher degree in psychology or educational psychology, whose course of study and standards of scholarship are approved by the superintendent. He/she must have had at least one school year of fulltime, supervised experience in the individual psychological evaluation of children approved by the superintendent; and must hold a valid four-year permit from the superintendent, renewable upon application and evidence of acceptable psychological work within the time period designated within the permit. (Sec. **14-1.09**, *Ill. Stats.*)

"Professional workers" are defined to mean trained specialists and are limited to speech correctionists, school social workers, school psychologists, psychologist interns, school social worker interns, special administrator interns, registered therapists, professional consultants, and special administrator supervisors, giving full time to special education, as well as teachers of any class or program meeting the requirements of this article, having the required special training and the understanding of techniques and special methods of instruction for handicapped children in special education programs. (Sec. **14-1.10**, *Ill. Stats.*)

Special education teachers must hold a valid certificate and have any special training that the superintendent requires. All other professional personnel employed in the class, service, or program, must have such a certificate and any special training that the superintendent may require. Persons to assist the teacher may be hired if they have the necessary training. (Sec. **14-9.01**, *Ill. Stats.*)

An Educational Materials Coordinating Unit is established in the Office of the Superintendent of Public Instruction to provide the necessary staff and resources for the coordination, cataloging, standardizing, production, procurement, storage, and distribution of the educational materials needed by visually handicapped children and adults. The staff and resources of an instructional materials center also include a library, audio visual program, and other types of instructional materials, which are adapted to the instruction of handicapped pupils.

A major purpose of the Unit is the improvement of the instructional programs for handicapped children and the in-service training of all professional personnel associated with programs of special education. (Sec. **14-11.01,111**. *Stats.*)

Districts maintaining a recognized high school may issue a certificate of graduation to handicapped pupils completing special education programs approved by the superintendent. (Sec. **14-6.01**, *Ill. Stats.*)

PRIVATE

Handicapped children may be sent to non-public schools for special education facilities which are in compliance with appropriate rules and regulations. The necessary transportation may be provided to the child, but not if he is attending a residential school. The district of residence may pay the actual cost of tuition charge for the child or \$2,000 per year, whichever is less, and may provide him with any necessary transportation. However, transportation will not be provided to a residential school. If a child attends a non-public school facility providing a summer school program, the tuition charged the child for the summer school program or \$500 per summer, whichever is less, may also be paid by the district with transportation to the school district of residence. A school district making such tuition payments is eligible for reimbursement from the state for all payments made exceeding \$600 per student. The district is eligible for reimbursement for summer school tuition from the state in all amounts made in excess of **\$100** per student. The reimbursement is paid in accordance with Section 14-12.01 for the school year ending June 30. If it otherwise qualifies, a school district is eligible for transportation reimbursement and for reimbursement of tuition payments under this section whether the facility is within or without the state. Nothing in this section allows the reimbursement to a school district for the amount paid for the tuition or transportation unless the district certifies to the superintendent that the special education program of the district is unable to meet the needs of the child because of the child's handicap and the superintendent finds that the school district is in substantial compliance with Section **14-4.01**. (Sec. **14-7.02**, *Ill. Stats.*)

PERSONNEL

The superintendent, with the advice of the advisory council, may make trainee or fellowship grants available to persons interested in working in the education of handicapped children for either part-time or full-time study designed to qualify them to become professional workers. To qualify for a traineeship a student must have earned at least 60 semester hours of college credit. To qualify for a fellowship, he must be a graduate of a recognized college or university. No more than **200** such grants will be given in any academic year and may not exceed \$1,500 per academic year for traineeships and \$3,000 for fellowships. An additional amount up to \$2,500 per grantee may be allowed to any approved institution of higher

learning in Illinois for tuition and fees. Grants to summer and part-time students are awarded on a prorated basis.

Following the completion of an academic program, recipients of a traineeship or fellowship are expected to obtain, within one year, employment in an approved special education program in Illinois. They must continue this employment for one-half year for each year of their traineeship or fellowship. If this requirement is not fulfilled they may be required to remit to the state all or part of their grant. (Sec. 14-10.01,111. *Stats.*)

The superintendent may contract with any institution of higher learning in Illinois to offer courses required for the professional training of special education personnel and may reimburse the institution of higher learning for any financial loss due to low enrollments, distance from campus, or any other substantial reason satisfactory to the advisory council. (Sec. 14-10.01, III. *Stats.*)

FACILITIES

Two or more school districts combining to form a joint agreement district for the provision of special education services may acquire, build, establish, and maintain sites and buildings necessary for the education of one or more types of handicapped children who are residents of the joint agreement area, with the approval of the Advisory Council on Education of Handicapped Children and the superintendent. The title to these sites may be held jointly by the trustees of the township or the county board of school trustees. After filing in writing the document which declares that the building is for the joint use of such districts (according to the terms of the agreement between the district), such joint agreement district possesses the right of eminent domain. (Sec. 10-22.31b, III. *Stats.*)

The question was asked whether the Handicapped Act, Chapter III, III. Rev. Stat., 1971, Sec. 11 et seq., which provides certain standards for the building of public facilities so as to accommodate the handicapped, applied also to the construction of a new high school. The answer is yes. Whether this means that an elevator must be in the new high school is a factual matter which the Attorney General does not answer. (*Op. Att'y. Gen., 8/16/73*)

Law Digest: Education of Handicapped Children**INDIANA****RIGHT TO AIM EDUCATION**

Constitution: "It shall be the duty of the General Assembly to encourage by all suitable means moral, intellectual, scientific, and agricultural improvement; and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all." (Art. VIII, Sec. 1, Ind. Const.)

Compulsory Education Law: Children between the ages of seven and 16 must attend the public schools or other schools taught in the English language open to inspection by local and state attendance officers. Children must attend schools during the entire time the public schools are in session in the school district in which they reside. School superintendents of any district may, with the approval of and under the regulations concerning the procedures and requirements for complete evaluation of children of the State Board of Education, exclude or excuse from school children found mentally or physically unfit for school attendance, but children may be excluded only for the present school year.

If a child otherwise subject to the compulsory attendance requirements is unable to attend school because of deafness, partial deafness, blindness, or partial blindness, the person having control or charge of the child must send the child who is between the ages of seven and 18 to the State School for the Deaf or the School for the Blind during the full school year unless discharged by the board of trustees of either of the schools.

Before any exclusion may be permitted, school officials must provide each child with a due process hearing as specified under the statutes. (*IC 20-8.1-5*)

Compulsory school attendance laws apply to all hearing handicapped children.

Medical care of handicapped children is the responsibility of the physician chosen by the family or guardian to attend that child. No handicapped child is excused from attending school unless the local health officer, upon a statement from the attending physician, certifies that attendance would be injurious to the child. (*IC 20-1-6-8*)

Responsibilities: School boards of any school corporations may, until July 1, 1973, and shall, thereafter, establish and maintain special education facilities for one or more types of handicapped children including the multiple handicapped. School corporations may, but are not required to, establish facilities for handicapped children below age six or above age **18**. (*IC 20-1-6-14*)

POPULATION

Definitions: "A 'handicapped child' means any child between the ages of three and 21 years, inclusive, who because of physical or mental disability is incapable of being educated properly and efficiently through normal classroom instruction, but who, with the advantage of a special education program, may be expected to benefit from instruction in surroundings designed to further the educational, social, and/or economic status of the child."

Children in attendance at state schools for the deaf, blind, mentally retarded, mentally ill, and epileptic are not eligible for services under the special education provisions.

Under the rules and regulations of the State Commission on General Education, multiple handicapped children are eligible for special education services. (*IC 20-1-6-1*)

Age of Eligibility: Services are mandatory for exceptional children between the ages of six and 18 and permissive for those from three to six and 18 to 21. (*IC 20-1-6-1*)

Special programs may be approved for deaf children beginning at six months of age. (*IC 20-1-6-1*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: All physicians, superintendents of hospitals, directors of local health and welfare departments, the state director of rehabilitation, superintendents of the state institutions serving the handicapped, or superintendents of school corporations that diagnose, treat, or provide care for handicapped persons must

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report the condition of all persons under their care to the State Department of Health within 60 days of beginning care. " 'Handicapped individuals' shall mean all individuals who by reason of physical, mental, or emotional defects or infirmity, whether congenital or acquired by accident, injury, or disease, are or may hereafter be totally or partially prevented from achieving the fullest attainable physical, social, economic, mental, or vocational participation in the normal process of living."

The reports will be solely for the use of the state government, to fulfill its legal obligations, and organizations having a legitimate interest in the information. Reports will not be open to public inspection or in any way be considered a public record. Reports from hospitals shall include birth defects. Reports of school corporations must include children excluded from school because of their disabilities as well as handicapped children attending regular or special education programs.

All reports will be forwarded to the State Commission for the Handicapped. The Commission is responsible for tabulating and analyzing the reports and providing information to state departments and organizations having legitimate interest in such information. (*IC 16-4-6-1 to 16-4-6-4*)

Boards of school commissioners and school boards of all cities and towns and township trustees of each township must annually report, under joint regulations of the State Board of Education and the Board of State Charities, the number of problem children and children three years retarded in mental development who attend the public schools or who are of school age and reside within the jurisdiction. (*IC 20-10-27-1*)

All physicians or optometrists must state in writing within ten days after diagnosis to the State Board of Health the name, age and address of all persons diagnosed as blind or having a visual impairment which interferes measurably with the person's normal daily activities or interferes with the person's ability to earn a livelihood. On the first business day of each month the State Board will send a copy of the report in the case of all persons over 17 to the agency for the blind and for persons under 17 to the agency and the Indiana School for the Blind. If requested, a copy will also be sent to the local school corporation and organizations serving the blind. All reports will be kept confidential and used solely for the purpose of determining eligibility of such persons for assistance or rehabilitation.

Upon receiving such a report the School for the Blind or the agency must contact persons named to ascertain their needs and to inform them of available local services. For children under 17, the findings must be sent to the agency for the blind. Physicians and optometrists are not prevented from making a referral to the local school corporation, agency or organizations working with the blind. (*IC 16-4 5-1*)

Screening: All political subdivisions of the state must conduct annual screening of the visual acuity of all children enrolled in or transferred to the first, third, and eighth grades, as well as all school children suspected of having a visual defect in schools under their jurisdiction. Regulations concerning vision testing, equipment, qualifications of vision testing personnel, and screening procedures are the joint responsibility of the State Boards of Health and Education. Records of all tests must be continuously maintained to provide information for interpreting, promoting, and maintaining the health of school children. (*IC 20-8-25-1*)

The board of school trustees and the board of school commissioners of every city or town and the trustees of any township must annually administer audiometric tests or a similar test with accepted scientific instruments or devices to determine the hearing efficiency of school children in grades one, four, seven and ten, all children transferred from other school districts, and all children suspected of having hearing defects. School corporations may hire necessary technicians to conduct the testing. Records of all tests will be continuously maintained to assist in diagnosing and treating any auditory abnormality.

Diagnosis and treatment is made on the recommendation of an explanation by a "practitioner of the healing arts with a limited license to practice." If the hearing of any child is impaired to the extent that he cannot be taught in the regular classes of the corporation, the trustees and/or commissioners should provide any necessary remedial measures, correctional devices, approved mechanical auditory devices, and prescribe courses in lip reading by approved instructors. The superintendent of Public Instruction and the director of Vocational Rehabilitation should cooperate with the local school corporations in providing hearing aids. All instructors in lip reading must be approved by the two departments. Training courses for teachers of the hard of hearing will be prescribed by the proper authorities in all state teachers colleges. (*Ch. 53, Acts of 1953*)

Special Education Evaluation: Eligibility for all special education classes and programs will be determined by appropriate specialists. (*IC 20-1-6-8*)

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ADMINISTRATIVE RESPONSIBILITY

The Commission on General Education shall adopt and establish the rules and regulations necessary for the administration of the special education program. (*IC 20-1-6-3*)

Schools or classes for handicapped children operated by the school corporations must adhere to the laws relating to the operation of the public schools and are under the supervision of the Division of Special Education. (*IC 20-1-6-3*)

A Division of Special Education is established under the State Board of Education. The director of the Division will be appointed by the Governor. The director is responsible for:

(1) general supervision of all classes and schools for handicapped children and coordination of the work of these schools;

(2) formulating, with the approval of the State Board of Education, rules and regulations governing the curriculum and instruction including the licensing of personnel in the field of education;

(3) inspecting and rating all schools or classes for handicapped children in regard to property, personnel, buildings, equipment, and supplies; and

(4) appointing necessary personnel needed to administer the special education services. (*IC 20-1-6-2*)

Schools or classes for handicapped children operated by the school corporations must adhere to the laws relating to the operation of the public schools and are under the supervision of the Division of Special Education. (*IC 20-1-6-3*)

The educational program of the state schools for the deaf must adhere to the standards established by the Department of Public Instruction for the public school classes, but the immediate supervision of schools is under the direction of the superintendent of the school, who is appointed by the state health commissioner. Subject to the approval of the state health commissioner, the superintendent of the school has complete charge and management of the school and is charged with the direction of the education of all students in attendance as well as the evaluation and improvement of the school staff educational program. (*IC 16-7-13-2 to 16-7-13-4*)

The State Board of Education is designated as the authority to accept any federal funds appropriated for the purpose of aiding in the education of handicapped children. (*IC 20-1-6-4*)

The State Departments of Health and Mental Health are responsible for residential special education programs. (*IC 20-1-7-1*)

The Indiana School for the Blind is administered by the State Board of Health and is under the complete administrative control and responsibility of the State Health Commission, but all educational facilities within the school must meet the standards established by the Department of Public Instruction for regular public schools. (*IC 16-7*)

PLANNING

By July 1971, all school corporations were to have submitted to the state superintendent a comprehensive plan delineating how all resident handicapped children are to receive special educational services. School districts were allowed to cooperatively draw up a plan for a joint school services program to meet the needs of all handicapped children within their jurisdiction. This approach was to be used because of population sparsity, geographic factors, or other substantial reasons which made it desirable. When formulating plans, school districts were to consider programs operated by the State Board of Health and Department of Mental Health. Professional consultant assistance to local school corporations was available from the superintendent of Public Instruction. (*IC 20-1-7-1*)

A state advisory council appointed by the superintendent assists the Department of Public Instruction in developing a statewide plan for free public school education for handicapped children. Because of the responsibilities of the State Departments of Health and Mental Health for residential special education programs, the commissioner of Health or his designate and the commissioner of the Department of Mental Health or his designate are ex officio members of the council. Members are selected on the basis of their knowledge of, or experience in, problems of educating handicapped children. Further responsibilities of the state advisory council include advising the superintendent and the commission on General Education regarding all rules and regulations, recommending approval or rejection of completed comprehensive plans of the school corporations, and recommending to the superintendent and the Commission on General Education a comprehensive plan meeting the needs of handicapped children. In the event any school district did not complete its plan by July 1971, a plan developed by the state advisory council will be disseminated to all school corporations affected by the plan. This plan is to be considered advisory only. Any plans proposed by school districts must be considered by the council within 60 days after their receipt.

The director of special education acts as executive secretary to the council and furnishes any professional and necessary clerical assistance. (/C 20-1-6-16)

FINANCE

Any school corporation maintaining a school will pay the operating expenses for each pupil attending the school and is entitled to receive state special education reimbursement. Any school corporation operating schools or classes shall send, upon the request of the Division of Special Education, to the office of the state superintendent a certified statement of the average cost per pupil for maintaining such education, excluding pupils attending the school and residing in other corporations, and the average cost of education per pupil for normal children based upon average daily attendance (ADA). The average cost for normal children will include state aid, if any.

Reimbursement to school corporations by the state is subject to any standards, requirements, rules and regulations of the Commission on General Education. Before any type of special class is organized, approval must be obtained from the Commission on General Education. (/C 20-1-6-3)

All claims approved by the state will be paid out of the common school revenue fund. An amount sufficient to cover all the claims is reserved by the state superintendent when making the semi-annual apportionment. Claims will be paid in the same manner as common school revenue funds are paid. If there is insufficient money in the common school revenue fund to pay all the claims, the claims will be paid out of the excise fund allocated to the public schools. A sufficient amount to pay off claims from the excise fund shall be reserved by the state superintendent. State reimbursement may not exceed 80 percent of the claims for approved special education programs. (/C 20-1-6-3)

The Commission on General Education must certify the amount spent for handicapped children to the auditor of the state who will reimburse the corporations 70 percent of the salary of speech and hearing therapists and occupational therapists; 50 percent of the cost for psychological services, special education administration, and salaries of paraprofessional personnel, and 80 percent of the approved cost of home teaching, school-to-home telephone, and transportation from appropriated funds.

For the support of approved special education classes the Commission on General Education will provide for a weighted average daily attendance assignment for each pupil in special education classes to be used for computing the minimum foundation funds when funds are available.

If the state receives funds from the U.S. government to aid in the operation of any school for handicapped children, the Division for Special Education may adjust the above to conform to and take into consideration the federal grant. (/C 20-1-6-3)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

School boards of one or more school corporations establishing and maintaining educational facilities and services for handicapped children exercise powers and duties similar to those prescribed for the establishment, maintenance, and management of other recognized educational facilities and services. School boards may include only eligible children in the program and must comply with all rules and regulations established by the superintendent and the State Board of Education. Any school corporation may issue diplomas or certificates of graduation to handicapped pupils completing special educational programs approved by the superintendent and the Commission on General Education. (/C 20-1-6-17)

If a child residing in a school district attends a class or school in another school corporation because of his handicap or multiple handicaps, his district of residence grants the proper transfer certificate to provide necessary transportation, according to rules of the Commission on General Education. The child's district of residence also pays the per capita cost of educating the child to the other school corporation.

If the school corporation is involved in the joint school service and supply program, tuition and transportation payments will adhere to the written agreement of the participating school corporations. If the transfer certificate is issued and payment is made on a per capita cost basis, the per capita cost is computed in the following manner. The cost of maintaining any special education facility for the current school year is first determined and includes the following expenses applicable only to this educational facility:

(1) salaries of teachers, professional workers, necessary non-certified workers, clerks, librarians, custodial employees, readers, and any district taxes specifically for pension and retirement benefits;

(2) educational supplies and equipment, including textbooks. If any equipment has useful life in excess of three years, its purchase price will be amortized in calculating cost over its useful life or for a period of five years, whichever is less;

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- (3) operation of the physical plant, including heat, light, water, repairs, and maintenance;
- (4) administrative cost and communication;
- (5) auxiliary services including health services, rental of buildings and equipment, and food services, but not including transportation; and
- (6) capital outlay expenditures including the cost of construction, remodeling, and payments for both interest and principal. Bonded indebtedness during the prior school year, in addition to an amount equal to five percent of the fair valuation of the existing plant, shall be included in the computation of the per capita cost.

The total cost thus determined will be deducted from the state reimbursement due, not including any state reimbursement for transportation. The net cost will be divided by the average number of pupils in average daily attendance in special education facilities for the school year in order to arrive at the net per capita tuition cost. (*IC20-1-6-18*)

Two or more participating corporations may provide for a special education school ("...a department, school or school corporation established, maintained, and supervised for the education of handicapped children in accordance with this section."), by adopting an agreement with the following provisions: (1) a plan for the organization, administration, and support of the school; (2) a date for the establishment of the school at the beginning of the school year; and (3) the extension of the special education school for a minimum period of five years, a provision that the school will extend from school year to school year unless canceled by the governing bodies of a majority of the participating school corporations at least one year prior to termination of the agreement.

The agreement is an identical resolution adopted by the governing bodies of all participating school corporations. During the term of the agreement, it may be modified by unanimous vote of all the participating school corporations.

The agreement may provide for the acquisition of sites, buildings, and equipment by purchase or by lease, from any of the participating school corporations for the term of the agreement.

The cost for the special education school in each school year will be borne by the participating school corporations in accordance with their respective percentage shares. A percentage share is the percent which a participating school corporation's assessed valuation bears to the total assessed valuation of all participating school corporations joining in an agreement. The "assessed valuation of a participating school corporation for any school year shall mean the net assessed valuation of such school corporation for the year immediately preceding March 1, adjusted in the same manner as any adjustment is made in determining the amount of state distribution for school support." Upon termination of the agreement, participating school corporations are liable for their respective percentage shares of any long-term leases or other long-term obligations on the same annual percentage share as if the agreement had not been terminated, unless the terms of the agreement provide otherwise.

If a teacher from any of the participating school districts becomes a teacher in the special education school, he retains tenure in the participating school corporation as if he has continued teaching in the participating school corporation. His employment may only be terminated by the governing board of the participating school corporation.

All agreements made under this section as well as any modifications are not effective unless they are approved by the General Commission of the State Board of Education.

A special education school may be operated and managed and its budget determined by a board consisting of the president (or trustee in the case of a school township) of the governing body whom the president (or trustee) has designated. The designated members may be changed by the president (or trustee) at any time.

The managing board of the special education school may designate by resolution three or more of its members to constitute an executive committee. This committee may exercise all the powers of the managing board except determining the budget. The committee will submit, however, a summary of its actions to the managing board at least semi-annually, and the resolution binding the local school corporations may be amended or changed at any time by the board. (*IC 20-1-6*)

SERVICES

A school corporation, acting individually or in a joint school service program with other corporations, may establish and maintain instructional facilities for the education of handicapped children including the multiple handicapped. They may also provide transportation for handicapped children residing in the geographical limits of the corporation to another school corporation maintaining the appropriate facilities. School corporations may provide home instruction for all handicapped children.

All nurses, therapists, doctors, psychologists, and related specialists employed for the special education program must be registered and authorized to practice under the laws of the state and are subject to any additional examination that the Division of Special Education may require. A school corporation, either individually or in a joint services program, may purchase special equipment. All handicapped children receive credit for completed school work on the same basis as normal children doing similar work. (IC 20-1-6-3)

A hearing handicapped child eligible for services in the training centers is defined as "any educable child of sound mind between the ages of three and 20 who has a hearing deficiency to the extent that it is impracticable or impossible for such child to benefit from or participate in a normal classroom program of the public schools in his district of residence, and his education requires a modification of the normal classroom program." (IC 20-10-28-1)

Teachers in classes and schools for handicapped children are appointed in the same manner as other public school teachers. They must possess the usual qualifications required of teachers and any special training the Division of Special Education may require. The qualifications of paraprofessional personnel are subject to the determination of the Department of Public Instruction and the State Board of Education. (IC 20-1-6-3)

In order to coordinate services to hearing handicapped children, the Hearing Commission was established. The Commission, composed of five members (one of whom is the state superintendent of Public Education), has authority to coordinate all activities relative to the education of hearing handicapped children and to cooperate with private organizations whose purpose is furthering the educational opportunities of the hearing handicapped. The Commission is also responsible for coordinating the programs of the Division of Special Education, the Department of Public Instruction, and the activities of the State School for the Deaf. With the approval of the State Board and the Hearing Commission, a school corporation may provide a training center for the instruction and training of hearing handicapped children.

The training centers are for the oral training of hearing handicapped children. There can be no more than five centers with a total of 15 training units in the state. A unit is a class established in a center, consisting of not less than six or not more than ten children. School corporations forming such units have the authority to convert, remodel, or construct school rooms for this purpose. The corporation must pay the cost of the conversion, remodeling, and/or construction and the cost of any necessary equipment, but the State of Indiana will reimburse the corporation in an amount not exceeding \$1,000 for the purchase of equipment. All plans and contracts must be approved by the Commission and the State Board. The cost of conversion, remodeling, and/or construction may be financed as other school buildings are financed.

School corporations operating training centers receive an amount equal to the per capita cost of educating normal children in the school corporation. At the end of each school semester, corporations must file with the State Board a certified statement of the average cost per pupil for maintaining these classes and the average cost per pupil for normal children based on the average daily attendance. The average class for normal children includes the apportionment of school unit funds and the state aid, if any. The State Board will reimburse the excess costs of the maintenance of these classes up to \$300. (IC 20-10-28-1)

Any deaf-blind child between ages four and 14 may apply, through any relative, friend, or person assuming responsibility for the child's care, to the superintendent of the State School for the Deaf for temporary admission to determine whether the child is a proper subject for limited care and education at state expense. After receipt of the application, the superintendents of the School for the Deaf and the School for the Blind will jointly determine if the child is eligible. He will receive a physical and a mental examination to determine if he could make normal progress and develop as much as could be reasonably anticipated.

After the examinations are completed, the superintendents shall present the entire case to the administrative head of the Division of Medical Institutions. If they find it in the interest of the child and the state to give the child care and education at state expense, they will then contract, on a year to year basis, with any school special education training center or institution providing services to deaf-blind children. The child may continue the schooling until he reaches age 21, if his progress warrants it. The cost will be paid equally from any funds appropriated to the Schools for the Deaf and the Blind. (IC 16-7-14)

Any parent or guardian unable to pay all or part of the cost of maintenance of a child in dormitories may apply to the county department of public welfare in the district of residence. The department will then investigate the financial condition of the parent or guardian and the needs of the child. If the department finds that the parent or guardian is unable to meet all or part of the expense of maintaining the handicapped child in the dormitory, and there is no other practicable way for the child to obtain an

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education, it shall give the necessary financial assistance up to 100 percent of the total maintenance. This assistance is to be repaid to the county welfare fund. These payments may be repaid direct to the parents or the authorities responsible for the operation and administration of the school. (IC 20-1-6-7)

Deaf pupils will be educated in the local school corporations of Indiana unless one of the following conditions exists: (1) the parent or legal guardian of a deaf child expresses preference that the child attend the Indiana School for the Deaf; (2) the comprehensive plan for serving deaf children in the resident school corporation or joint service and supply cooperative is not approved by the Department of Public Instruction because of inability to provide a comprehensive program according to state guidelines; (3) it is the considered opinion of the attending physician, the parents, the school administration and the State School for the Deaf, that the child should be placed in the Indiana School for the Deaf.

PRIVATE

The superintendent of public instruction may contract with private schools in or out of state to pay the excess cost of educating children of school age who may or may not be of normal intellectual capacity whose handicap is of such intensity as to preclude achievement in the local school setting and for whom it is economically unfeasible to establish a local or regional special education program. It must be determined through appropriate diagnosis that the child can profit educationally from this type of program. Also any payment of state monies may be made only in situations where the cost of the services is more than the regular cost of educating children of like age and grade levels in the child's community of residence, and after each local school corporation provides its share of the total tuition cost (the regular per capita cost of general education in that community). Local school boards may pay tuition support for handicapped children attending schools approved by the superintendent and the commissioner of Public Instruction. The Commission on General Education is responsible for formulating the rules and regulations governing the types of handicapped children eligible for this program. (IC 20-1-6-9)

PERSONNEL

The School for "Feeble-minded Youths" may make its resources available for the assistance and training of teachers of special classes in public schools. (IC 20-10-27-3)

FACILITIES

The Division of Special Education may authorize, with the approval of the State Board, school corporations to purchase, convert, remodel, or construct rooms or buildings for special schools for handicapped children. The director should consider geographical location of any previously authorized schools in an effort to get these schools located near the homes of handicapped children to be served. The school corporation will pay the cost of purchase, conversion, remodeling, and/or construction, and the cost of building equipment for any such school, and may finance the conversion, remodeling, and/or construction as other school buildings are financed. If all plans and contracts have been submitted in advance to the director of special education and have been approved by the board of education, the school corporation establishing the school may send all of its handicapped children there. They also shall admit, as long as the facilities permit, any other handicapped children in the state who are eligible for services and who are not provided with opportunities to attend adequate schools in their own school corporations. (IC 20-1-6-5)

School corporations establishing special schools or classes for the handicapped may purchase, convert, remodel, lease, or construct and equip any building necessary to provide dormitories for handicapped children receiving services. The cost of the dormitories and equipment will be financed with approval secured in the same manner as for school buildings for handicapped children. School corporations shall estimate the average cost for room, board, and medical and personal services for each handicapped child living in the dormitories and will charge the parent or guardian of any child living in the dormitories accordingly. The cost paid by the parent or guardian will be credited to the fund of the local school corporation for the education of the handicapped (IC 20-1-6-6)

A school corporation, acting individually or in a joint school services program with other corporations, may convert, build, or lease the necessary school buildings or dormitories, or they may use existing buildings for the purpose of establishing and maintaining classes for one or more pupils who are residents of the state and who are defined as handicapped. (IC 20-1-6-3) See Services.

IOWA

RIGHT TO AN EDUCATION

Constitution: "The board of education shall provide for the education of all the youth of the state, through a system of common schools and such schools shall be organized and kept in each school district for at least three months in each year. Any district failing for two consecutive years to organize and keep up a school as aforesaid, may be deprived of its portion of the school fund." (*Art. IX, Sec. 12 Iowa Const.*)

Compulsory Attendance Law: All persons having custody of any child, between the ages seven and 16 and in proper physical and mental condition, shall have the child attend some public school for at least 24 consecutive school weeks in any school year. (*Sec. 299.1 Iowa Code*)

A local board may exclude any child from school if it judges that he is too immature or abnormal to benefit from school, or that his presence may be injurious to the health or morals of other pupils (*Sec. 282.3, Iowa Code*)

School districts or county boards of education may exclude a child if he cannot sufficiently profit from the work of the regular classroom, or if he cannot benefit from a special class and instead needs the specialized instruction available in the special state schools. No person is required to take physical therapy or submit to medical treatment if it is against his religious convictions. A parent who is a member of such a religious group does not have to enroll his child in any program which uses medical treatment for disease. (*Sec. 281.8 Iowa Code*)

Policy: *It is the policy of this state to provide and to require school districts to make provision, as an integral part of public education, for special education opportunities sufficient to meet the needs and maximize the capabilities of children requiring special education. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Special classes, separate schooling or other removal of children requiring special education from the regular educational environment, shall occur only when the educational handicap is so severe that education in regular classes cannot be satisfactorily accomplished.

Responsibilities: The board of directors of any school or county board of education may provide special educational services to handicapped children. If there are not enough children of any special type in the school district to warrant establishment of a special class, these children may be instructed in any nearby school district. (*Sec. 281.4 Iowa Code*)

Children between seven and 19 years of age who cannot be educated in the public schools because they are deaf, blind, or severely handicapped will be sent to the proper state school unless exempted. [Any person having such a child in his custody must see that the child attends school during the school year.] (*Sec. 299.18 Iowa Code*)

*When a district provides special programs or services, it is the duty of parents or guardians of a child requiring special education to enroll the child, unless a doctor's certificate finds that it is medically inadvisable for the child to attend. (*Senate File 1163, Sec. 74*)

All school districts must provide special education services to all children requiring them as defined by Sec. 281.2 of the Iowa Code. The statutes or regulations do not define the amount of training needed before a child can be enrolled in special education. One cannot be excluded because he/she is not toilet trained. (*Op. Att'y. Gen., June 1971*)

POPULATION

Definitions: ["The term 'children requiring special education' shall be interpreted for the purpose of this chapter as either of the following:

"(1) Children under 21 years of age who are crippled, have defective sight or hearing or have an impediment in speech or heart disease or tuberculosis or who, by reason of physical defects, cannot attend the regular public school classes with normal children;

Note: All sections followed by an asterisk (*) take effect July 1, 1975; those in brackets ([]) are repealed on that date.

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"(2) Children under 21 years who are certified to be emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

"The term 'children requiring special education' shall include children under five years of age, but shall not include the blind, the deaf, and other physically and mentally handicapped children attending schools and institutions provided by the state." (Sec. 281.2 *Iowa Code*)

"Children requiring special education" means persons under 21, including children under five, who are handicapped in obtaining an education because of physical, mental, emotional, communication or learning disabilities or who are chronically disruptive, as defined by the rules of the Department of Public Instruction. (Sec. 281.2 *Iowa Code*)

Age of Eligibility: Special education services may begin at birth and extend through age 21. However, any person who, because of a congenital defect, accident, or prolonged illness, is unable to complete the special education requirements by his 21st birthday may have the period of special education extended for three years more. (Sec. 281.8 *Iowa Code*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: Within ten days after the regular July meeting of the school board, the secretary of the school board of each district must file with the county superintendent a report showing the names, ages, and post office addresses of all residents (regardless of age) who are so blind that they cannot acquire an education in the county schools; all persons between the ages of five and 35 who are so handicapped that they cannot obtain education in the public schools; and the name, sex, age, and disability of every physically handicapped or mentally retarded person of school age with the name and post office address of parent or guardian. (Sec. 291.10 *Iowa Code*)

The county or city assessor will record the names, ages, sexes, and post office addresses of all deaf, blind, or severely handicapped persons within the county. The assessor will forward these to the secretary of the State Board of Education within 30 days after they are completed. (Sec. 299.17 *Iowa Code*)

As part of the school census, each sub-director shall, between June 1 and 15 in every even numbered year, make a list, citing the names, sexes, ages, and disabilities of physically handicapped and mentally retarded persons of school age with the names and post office addresses of their parents or guardians. By June 20, the sub-director will send this to the school secretary of the township who will then compile the full record. (Sec. 279.22 *Iowa Code*)

The State Department of Public Health shall furnish, when requested, to the State Division of Special Education information obtained from birth certificates relative to the name, address and disability of any case of congenital deformity or physical defect. The State Crippled Children's Division will, when requested, furnish to the State Division of Special Education names, addresses, and disabilities of all children on their registers. (Sec. 281.5 *Iowa Code*)

Special Education Evaluation: Children requiring special education must be certified in accordance with requirements established by the Division of Special Education. Examinations of children must be made preliminary to certification. Necessary examinations are to be prescribed by the State Division of Special Education. Final decision in the case of disagreement or appeal will be the responsibility of the state superintendent. He may secure the advice of competent medical and educational authorities including the State Department of Health, university hospitals, State Department of Social Welfare, superintendent of the State School for the Deaf, superintendent of the Iowa Braille and Sight Saving School, and the superintendent of the State Tuberculosis Sanatorium. (Sec. 281.7 *Iowa Code*)

Assessment and Placement: *A child, his parent or guardian, or the child's school district may obtain a review of any action or omission of state or local authorities on the grounds that the child has been or is about to be:

- (1) denied entry or continuance in an appropriate program;
- (2) placed in an inappropriate program;
- (3) denied services because no suitable program of education is maintained;
- (4) provided with education insufficient in quantity to satisfy the law's requirements; or
- (5) assigned to a special education when he/she is not handicapped. (Senate File 1163, Sec. 74)

* If a patron is dissatisfied with the decision of the district board, he may appeal it to the area education agency board within ten days after the decision has been made by filing an affidavit of appeal. The area board shall hear the appeal within ten days of the receipt of the papers and decide it within three days of

the conclusion of the hearing and immediately notify all parties of the decision. This decision may be appealed by either party within five days after receipt of the notice of the decision.

Within ten days the agency administrator shall file all papers with the superintendent of Public Instruction. He/she shall hear the appeal within 15 days of the filing of the records. The superintendent's decision is subject to appeal in the district court; this decision may be appealed to the supreme court. Pending a final decision at any level, the order of the agency board from which the appeal is taken shall be in effect. (*Senate File 1163, Sec. 82*)

ADMINISTRATIVE RESPONSIBILITY

[The Division of Special Education is responsible for the promotion, direction, and supervision of education for children requiring special education in the public schools. The state superintendent, with the approval of the State Board, is responsible for organizing the Division and employing necessary personnel. (*Sec. 281.1 Iowa Code*)

The Division, subject to the approval of the State Board, has the following duties and powers:

- (1) Aiding in the organization of special schools, classes, and instructional facilities and supervising the system of special education;
- (2) Establishing the standards for teachers, giving them examinations and issuing them certificates;
- (3) Adopting plans for equitable reimbursement in whole or in part for the cost of carrying out programs in special instruction;
- (4) Adopting plans for the establishment and maintenance of day classes, schools, home instruction, and other methods;
- (5) Purchasing and otherwise acquiring special equipment, appliances, and other aids for use in special education as well as loaning and leasing the same under Department rules and regulations;
- (6) Prescribing the courses of study and curricula, special schools, classes, and special instruction, including physical and psychological examinations, and prescribing minimum eligibility requirements for children;
- (7) Providing for certification, by competent medical and psychological authorities, of the eligibility of children for admission to or discharge from special schools, classes, or instruction;
- (8) Initiating the establishment of classes for children requiring special education in hospitals and convalescent homes in cooperation with the management of such facilities and local school districts and county boards of education;
- (9) Cooperating with the school districts and county boards in arranging for any child requiring special education to attend school in a district other than the one in which he resides;
- (10) Cooperating with the existing agencies such as the State Department of Social Welfare, State Department of Public Health, State School for the Deaf, the Iowa Braille and Sight Saving School, the Tuberculosis Sanatorium, children's hospitals, or other agencies concerned with the welfare and health of children requiring special education and the coordination of the educational activities of the children;
- (11) Investigating and studying the needs, methods, and costs of special education for children requiring special education; and
- (12) Making other necessary rules and regulations. (*Sec. 281.3 Iowa Code*)

*A Division of Special Education shall provide special education programs and services to local programs and services to local districts. The director of special education shall properly identify children requiring special education and insure that each child receives an appropriate program, and coordinate the special education program within the area served. (*Senate File 1163, Sec. 6*)

*The State Board of Public Instruction shall remove from the approved list, for cause, any school district which fails to comply with regulations. During such time, parents may request the area education agency board to place their children in an approved school, with the district of residence responsible for tuition and transportation costs. (Parents may appeal to the State Board if they are dissatisfied with the new placement.) Any school or district removed from the approved list is ineligible to receive state financial aid during the period of noncompliance.

The State Board shall allow at least a year for a school or district to comply, if it is making a good faith effort towards compliance. (*Senate File 1163, Sec. 21*)

*The board of directors of any district or area education agency may provide special services and programs. It may:

- (1) operate programs;
- (2) acquire and maintain facilities;

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- (3) work cooperatively with participating school districts;
- (4) provide transportation;
- (5) employ personnel; and
- (6) utilize funds. (*Senate File 1163, Sec. 72*)

*A board of directors may operate special education centers to provide diagnostic and corrective services. Such centers shall be established as close to existing schools as possible. (*Senate File 1163, Sec. 72*)

*The enforcement of this law is the responsibility of the local board, the State Department through its inspectors, and the State Board for Vocational Education through its supervisors of vocational education, in conjunction with the area education agency. (*Senate File 1163, Sec. 84*)

The State Board of Regents is responsible for the Iowa Braille and Sight Saving School, the State School for the Deaf, the State Sanatorium, and the State Hospital-School. (*Sec. 262.7 Iowa Code*)

PLANNING

[Statutes contain no specific provisions for the handicapped in this area.]

*Any proposal for merger, consolidation or boundary change of local districts shall first be submitted to the area education agency board for approval before being submitted at an election. The agency board must file a tentative plan with the State Department within 60 days of presenting the proposal. (*Sec. 275.5 amended Iowa Code*)

The State Department shall cooperate with agency boards in making studies and surveys. In cases of controversy over the planning of joint districts, the matter will be submitted to the State Board. Within 30 days the decision may be appealed to the district court. (*Sec. 275.8 amended Iowa Code*)

"Program plans submitted to the Department of Public Instruction shall establish all of the following:

- (1) there are sufficient children in the area requiring special education;
- (2) the service will be provided by the most appropriate educational agency;
- (3) the agency providing the service has qualified personnel;
- (4) the instruction is a natural and normal progression of a planned course of instruction; and
- (5) all revenue raised for special education is actually spent for service delivery. (*Senate File 1163, Sec. 76*)

FINANCE

[Districts or county boards of education maintaining approved special education programs may receive state reimbursement for the excess cost of instruction above the per pupil cost of instruction in the regular curriculum of the district. If the program is established by the county board of education, the average cost of instruction of pupils in the participating districts will be determined in the following manner: cost of instruction for all pupils exclusive of those in special education will be determined on a per pupil basis. The total cost of instruction of all pupils in special education will then be determined on a per pupil basis. The excess cost per pupil in special education will be the difference between the cost per pupil of all children exclusive of those in special education and the cost per pupil in special education. Excess per pupil cost multiplied by the average number of pupils in special education in the district or county is the amount that that district or county is entitled to receive.]

The cost per pupil, both in special education and in the regular curriculum, is based on the following: general administrative costs, instructional costs, health service, attendance officers, plant operation, plant maintenance including equipment, transportation and insurance. (*Sec. 281.9 Iowa Code*)

[By June 20 of each year, the school districts or counties must report to the Division of Special Education any necessary information in order for the Division to determine the amount of reimbursement to which the county or district is entitled. (*Sec. 281.10 Iowa Code*)]

To help the State Board to estimate the costs of programs for exceptional children, after the annual school census the secretary of each school district will file a report with the superintendent. It will list the disability of every physically or mentally handicapped person of school age and other pertinent information. (*Sec. 281.5 Iowa Code*)

[If sufficient funds have been appropriated by the General Assembly, local boards shall provide auxiliary services and materials to students enrolled in nonpublic schools. Funds will be allocated to local districts on the basis of plans for the delivery of such services and materials. Schools which discriminate on the basis of race, color, creed, sex or national origin will not be reimbursed.]

Auxiliary services and materials includes health services, special education programs, remedial programs, library and resource centers, audio-visual services and equipment, guidance and testing services, scientific instruments and data processing services. (*Sec. 257.26 Iowa Code*)

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[A local district county or joint county system, or equivalent intermediate unit may provide excess auxiliary services. (*Sec. 257.26 Iowa Code*)]

There is no dollar limitation on the amount of money that can be spent for special education if it is needed.

*For the school year beginning July 1, 1975 and each succeeding year, school districts shall pay for the services provided through the area education agency with moneys available because of weighted enrollment. The money shall be paid to the district providing the services, except for transportation or other costs which may be paid by the district in which the child is enrolled.

To provide moneys to pay the costs of special education support services, each district shall add to its allowable growth for the school year beginning July 1, 1975, an amount equal to the cost per pupil in its area education agency, for special education support services needed by the agency for that year, depending on the approved program plans. Moneys for media services will be determined in the same way, not to exceed \$5 per pupil. (If a larger amount was budgeted in 1974, the amount shall not exceed 108%.)

To provide moneys to pay the costs of all other services which may be provided, each district shall add \$10 per pupil to its allowable growth, for the school year beginning July 1, 1975 only.

The Department of Public Instruction shall determine the per pupil amounts for each area education agency. (*Senate File 1163, Sec. 12*)

*For each school year, each district in the state is entitled to receive state school foundation aid, an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district and the state foundation base or the district cost per pupil, whichever is less. (*Senate File 1163 Sec 120*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

[County boards of education in two or more adjacent counties may, with the approval of their respective boards of directors of the county school systems, merge into one school system. The merger must be approved by the State Board of Public Instruction before becoming effective. The notice of the merger must be published at least 20 days prior to the effective date. The following provisions apply to merged systems:

(1) The merged school system must be known as the joint county system.
(2) It must have one tax base made up of the combined tax bases of the respective county school systems.

(3) It becomes effective on the July 1 following the approval of the merger.

(4) The territory of the joint county system is divided into six election areas by the affected county boards. If there are changes in the area of the system, the joint board of education will make the necessary adjustments to equalize territory and population size of the election areas. No change will be made less than 60 days prior to the date of the annual school election.

(5) There will be a joint board of education consisting of seven members, one elected from each of the respective election areas.

(6) Joint boards or county boards, subject to the approval of the State Board, may provide courses and services for physically, mentally, and educationally handicapped students; provide special and remedial courses and services, educational television, and vocational rehabilitation training centers and workshops, and may lease, acquire, maintain, and operate necessary facilities and buildings.

(7) Joint boards or county boards are authorized to apply for and accept available state and federal funds, and

(8) Joint boards exercise all the powers and duties imposed on county boards by statute. (*Sec. 273 Iowa Code*)]

[Children may be instructed in a nearby school district in which special classes have been established by mutual agreement of the board of directors of the affected school districts and by payment of tuition, or the county board of education may establish special classes in cooperation with local boards. (*Sec. 281.4 Iowa Code*)]

In some cases where services are not available in the child's home district, agreements may be made with other districts. For districts bordering on another state, a student could be sent to that state if services were available.

[To form the initial membership of the joint board of education, the respective county boards shall select members of their own districts (one per district) and one member at large. On the effective date of the joint system the respective county boards will cease to exist and the joint board will take over. (*Sec. 273.22 Iowa Code*)]

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*County school systems and joint county systems are abolished on July 1, 1975, and membership on such boards is terminated on that date.

In each of the merged areas of the state will be an area education agency governed by a board of directors. The agency shall have boundaries coterminous with the boundaries of the merged areas. (*Senate File 1163, Sec. 3*)

The duties of an area education agency board will encompass the following:

- (1) Determine policies for providing services.
- (2) Be authorized to receive and spend money for services.
- (3) Provide for advisory committees.
- (4) Be authorized to provide services either directly or by contractual arrangement.
- (5) Provide an educational program for children in a county operated juvenile home.
- (6) Prepare an annual budget, to be submitted to the Department of Public Instruction no later than December first preceding the next fiscal year for approval. The Department will review the budget before January first.
- (7) Meet quarterly with the members of the board of directors of the merged area.
- (8) Area education agencies may contract for services between themselves, and use facilities on a joint basis. (*Senate File 1163, Sec. 4*)

*An area agency's board of directors shall consist of the same number of directors as are authorized to serve on the board of the merged area. Directors shall be elected from director districts which are conterminous with the director districts for the election of members of the merged area board under Chapter 280A of the Code. Directors shall serve three year terms. The board of directors will be elected at director district conventions. (*Senate File 1163, Sec. 10*)

SERVICES

[When providing special services to children requiring special education, the board of directors of any school or county board of education may provide transportation; maintain one or more suitable special classes; provide for instruction of children in regular classes, and provide special facilities and equipment for special classes, special schools, or home instruction as part of the local or county school system. The board may also prescribe the use of other aids to special education such as physical therapy, corrective gymnastics, rest periods, warm lunches, social and vocational counseling, and training. Local districts and counties providing special education must employ qualified teachers certified as teachers for children requiring special education. (*Sec. 281.4 Iowa Code*)]

The State Board of Regents may maintain, in conjunction with the State University in Iowa City and the University Hospital, a hospital-school for the education and treatment of severely handicapped children. (*Sec. 263.9 Iowa Code*)

The hospital-school may provide education, care, and training for severely handicapped persons. The hospital-school is conducted in conjunction with the activities of the University of Iowa's Children's Hospital; as far as practicable, the facilities of the University Children's Hospital also will be utilized.

Persons under the care and supervision of the board of control, who are severely handicapped, may be transferred to the hospital-school on terms agreed upon by the State Board of Education and the State Board of Control. (*Sec. 263.10 Iowa Code*)

Persons eligible for services at the hospital-school for the severely handicapped include every resident of the state who is not more than 21 years of age, who is so severely handicapped as to be unable to acquire an education in the common schools, and every such person who is aged 21 and under 35 who has the consent of the State Board of Education. The term "severely handicapped" means, in this context: "persons who are educable but severely physically and educationally handicapped as the result of cerebral palsy, muscular dystrophy, spina bifida, arthritis, poliomyelitis, or other severe physically handicapping conditions." (*Sec. 263.10 and 263.11 Iowa Code*)

A child attending the hospital-school is counted as a pupil attending the public schools for state aid purposes. (*Sec. 265.6 Iowa Code*)

[Special contracts for the transportation of pupils entitled to transportation may be entered into only if it is more economical to make the special provision than it is to provide the same by a regular bus route, or if because of a child's physical or mental handicap, he may not be transported with safety by bus. (*Sec. 285.11 Iowa Code*)]

*The area education agency board shall furnish educational services and programs to the local districts, which may include the following:

- (1) in-service training for employees of school districts and area education agencies;
- (2) educational data processing;

(3) research, demonstration projects and models, educational planning and auxiliary services for children under age five through grade 12 who require special education. (*Senate File 1163, Sec. 3*)

If 60% of the number of local boards representing 60% of the districts' enrollment request that an additional service be provided, the area board shall arrange for the service to be provided to all districts in the area within the financial capabilities of the agency. (*Senate File 1163, Sec. 8*)

**Special education means classroom, home, hospital, institutional, or other instruction designed to meet the needs of children requiring special education, including transportation and corrective and supporting services.

Special aids and services shall be provided to children under five years of age if they will reasonably permit the child to enter the educational process or school environment when the child attains school age.

Every child requiring special education shall, if reasonably possible, receive a level of education commensurate with the level provided each child not requiring it. (*Sec. 281.2(2) Iowa Code*)

*The director of special education will establish special classes or home study services in hospitals, nursing, convalescent, juvenile, and private homes. (*Senate File 1163, Sec. 69*)

PRIVATE

[Statutes contain no specific provisions for the handicapped in this area.]

* All funds received by the child's district of residence for his education shall be paid by the district to the appropriate education agency, private agency, or other school district providing special education pursuant to a contract. (*Sec. 281.2(2) Iowa Code*)

*Any child requiring special education may attend school in a district other than his district of residence when there is no available special school, class, or instruction in the district in which he resides. (*Senate File 1163, Sec. 69*)

*The principal of a private school once during each school year, and at any time when requested in individual cases, shall furnish to the secretary of the school district a report of the names, ages, and number of days of attendance of each pupil in the school over seven and under 16. The report shall also include the course of study of each child, the texts, and the names of teachers. (*Senate File 1163, Sec 109*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

[Statutes contain no specific provisions for the handicapped in this area.]

*Before the board of directors may sell, lease or dispose of any property belonging to the school district it shall comply with the requirements set forth in Sections 297.15-20, and 297.93 and 94. (*Senate File 1163, Sec. 104*)

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KANSAS

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvement by establishing the uniform system of common schools and schools of a higher grade. . . ." (Art. VI, Sec. 2, *Kan. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 16 who are physically or mentally unable to attend school are exempt from the compulsory attendance requirements.

If a school district has provided special education facilities for an exceptional child, it is the duty of the parent or guardian to enroll the child, unless a doctor's certificate is filed with the clerk of the school district, showing that it is inadvisable for the child to receive special education services. (KSA 72-5339)

All parents, guardians, or other persons having control of a deaf or blind child, otherwise physically and mentally qualified and between the ages of seven and 21, must send the child to some suitable school where the blind and deaf are educated until completion of a prescribed course of study or until the child has reached age 21. Deaf children will receive instruction conducted either manually or orally, or both, at least nine months in each year. (KSA 72-5301)

Responsibilities: The board of education of every school district shall provide special education services for all exceptional children in the school district. Such services must meet the State Board's standards and criteria, and must be planned and operative not later than July 1, 1979. (Sec. 6, HB 1672, 1974)

The governing bodies of all school districts shall establish approvable special education services for all developmentally disabled children. Such services shall be planned and operative not later than July 1, 1974. (KSA 72-933)

Subject to the due process provisions of HB 1672, 1974, no school district shall be required to keep an exceptional child in regular instruction when the child cannot materially benefit from the work of the regular classroom, nor to provide such exceptional child with special education services for exceptional children when it is determined that the children no longer benefit therefrom, or needs more specialized instruction. Provided, however, that nothing in this section shall be construed to deny a child access to the educational system and education or training appropriate to the child's abilities. (Sec. 17, HB 1672, 1974)

When a school district provides special education services for exceptional children as required by this Act, and a determination has been made in accordance with the due process provisions of this Act, that a child is an exceptional child and special education services are necessary for such child, it is the duty of such child's parent or guardian to require the child to enroll for and attend the special education services which are indicated by such determination. (Sec. 18, HB 1672, 1974)

POPULATION

Definitions: "'Exceptional children' means persons who: (1) are of school age, according to the State Board rules and regulations (this age may differ from the compulsory school age); and (2) differ in physical, mental, social, emotional or educational characteristics to the extent that special education services are necessary to enable them to progress toward the maximum of their abilities or capacities." (H.B. 1672, 1974)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: In order to obtain data necessary for review of the progress or lack of progress in special education services, it is the duty of the State Department of Education to conduct an annual survey of the school districts showing the total number of exceptional children within the various categories of exceptionality in the state. The state Crippled Children's Commission and other state agencies having census data on exceptional children shall from time to time as requested furnish such data to the Department (Sec. 12, HB 1672, 1974)

Special Education Evaluation: No child from a home in which English is not the principal language may be placed in a special program until he has been given, in his own language, examinations reasonably related to his cultural environment. (Sec. 3, HB 1672, 1974) See Planning

In accordance with rules and regulations which shall be adopted by every board, each child, or his parents or guardians, shall be afforded the right to a hearing before he is:

- (1) (excluded, reassigned, or transferred from regular school classes on the ground that he is an exceptional child and cannot materially benefit therefrom; or
- (2) placed in, transferred to or from, or denied placement in special education services.

A written notice of a proposal to take any of the above actions must be given to the parents or guardians of the involved child. The notice must be mailed or personally delivered, and must:

- (1) describe the proposed action;
- (2) state the reasons for the proposed action;
- (3) inform the parents or guardians of the right to object to the proposed action at a hearing which may be had, upon request of one of the parents or guardians, not less than 15 days nor more than 30 days from the date on which such notice is received.

No action with regard to the child's exclusion, reassignment or transfer may be taken within the time period (of at least ten days) given the parents or guardians to request a hearing, except with the parents' written consent. (Sec. 13, HB 1672, 1974)

The hearing, which must be closed unless the parents request otherwise, shall be held at a time and place reasonably convenient to the parents or guardians, and conducted in accordance with rules and regulations adopted by the school board. Such rules and regulations must provide procedural due process, including:

- (1) the right of the child to have counsel of his own choice and to receive the advice of such counsel or other person whom he might select;
- (2) the right of the child's parents or guardians to be present at the meeting;
- (3) the right of the child and his counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and any other material witness;
- (4) the right of the child to present his own witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;
- (5) the right of the child to testify in his own behalf and give reasons in opposition to the proposed action;
- (6) the right of the child to have an orderly hearing; and
- (7) the right of the child to a fair and impartial decision based on substantial evidence.

The person or persons who conduct the hearing must be certified employees, but shall not be the same person or persons responsible for recommending the proposed action upon which the hearing is based.

At a reasonable time prior to the hearing, the parents or guardians or counsel of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action. (Sec. 14, HB 1672, 1974)

Within 24 hours after a hearing excluding an exceptional child from regular classes, a written notice of the result shall be sent by registered mail to the child involved, his parents, guardian or counsel. The result may be appealed up to ten days later by filing intention with the clerk of the Board. Within 20 days after filing, the appeal shall be heard by the Board or its appointed hearing officer. The parties involved will be notified five days prior to the hearing. The Board of Education will decide on the appeal not later than five days after the conclusion of the appeal hearing. (Sec. 15, HB 1672, 1974)

ADMINISTRATIVE RESPONSIBILITY

Administrative Responsibility: In order to comply with the special education law, each school district has the authority to:

- (1) establish and organize approvable special education services for exceptional children within its school;
- (2) provide for approvable special education services in the home, hospital or other facility;
- (3) contract with any school district for special education services, subject to the State Board's approval;
- (4) enter into cooperative agreements with one or more school districts for special education services, subject to the State Board's approval;
- (5) contract with any accredited private nonprofit corporation or any public or private institution within or without the state, which has proper special education services for exceptional children, subject to the State Board's approval;
- (6) provide transportation for resident and nonresident exceptional children to and from special education services attended, or provide all or part of the cost of room and board at the place where the special education services are located.

Special education services which are provided by school districts for exceptional children must meet standards set by the State Board in accordance with the state plan and are subject to the State Board's approval. Any contract entered into by a board under the provisions of this section may be changed or terminated by the legislature. (Sec. 8, HB 1672, 1974)

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The State Board may adopt rules and regulations for the administration of this Act and is responsible for adopting, amending, and administering the state plan. Such rules and regulations, except for emergency rules and regulations, are to have the force and effect of law unless modified by the Legislature in a bill or joint resolution. (Sec. 3, HB 1672, 1974)

The State Board of Social Welfare is responsible for the State School for the Emotionally Disturbed. (KSA 76-1701B)

The state schools for the mentally retarded are under the jurisdiction of the Department of Institutions. (KSA 76-1407)

The State School for the Education for the Deaf and the State School for the Blind are under the supervision of the State Board of Education. (KSA 76-1001)

PLANNING

"State plan" means the state plan for special education services authorized by this Act. (Sec. 2, HB 1672, 1974)

The state plan shall include:

(1)a statement of the objectives of state supervision of special education services in school districts and state institutions;

(2)provisions for the establishment, maintenance, and supervision of special education services in school districts and state institutions;

(3)prescribed courses of study and curricula necessary to meet requirements for approval of special education services;

(4)criteria for screening, diagnosis and certification of exceptional children including physical, educational and psychological examinations;

(5)definitions of the various categories of exceptionality;

(6)implementation dates of special education services for the various categories of exceptionality;

(7)standards for special education services to be received by each of the categories of exceptional children. (Sec. 3, HB 1672, 1974)

A State Advisory Council for Special Education is established, to consist of nine members to be appointed by the State Board of Education immediately upon the taking effect of this Act. Each appointment is to be for a fixed term of not more than three years. The terms of office of the original appointees are to be staggered so that an equal number of members is appointed each year after the original appointments. Members shall be representative of persons and community organizations interested in exceptional children, professions related to the educational needs of exceptional children local school districts, state institutions of higher education, and state institutions.

The State Advisory Council for Special Education shall:

(1)Advise and consult with the State Board in the preparation and administration of the state plan and in the formulation and review of rules and regulations adopted pursuant to this Act

(2)consider any problems presented to it by the State Board and give advice concerning such problems; and

(3)make recommendations to the State Board concerning special education services and perform other duties as specified by law

Members of the State Advisory Council for Special Education shall be paid compensation subsistence allowances, mileage and other expenses as provided by law.

The advisory council shall elect a chairman and a vice-chairman. The person in the Department specified under directions of the State Board to be the principal administrator of special education services shall be the secretary of the advisory council. The advisory council is to meet as often as may be necessary to fulfill its prescribed duties. (Sec. 4. HB 1672, 1974)

A Coordinating Council for Handicapped Children is established to coordinate programs for all handicapped children under age 21. The council is responsible for maintaining a directory of services available for the handicapped in Kansas; distributing information to parents, doctors, and other persons concerning these services; initiating coordinated planning by and between agencies and departments, private associations, organizations, and corporations; maintaining records and information concerning handicapping conditions; and recommending to public and private agencies working with the handicapped the need for additional services. The council's membership consists of the director of special education, a representative of the Crippled Children's Commission, the director of the Division of Maternal and Child Health of the State Department of Health, the director of Child Welfare Services of the State Department of Social

Welfare, the coordinator of children's services of the Division of Institutional Management of the State Department of Social Welfare, the director of the State Division of Vocational Rehabilitation of the State Department of Social Welfare, the director of the Division of Services for the Blind of the State Department of Social Welfare, the superintendent of the State School for the Deaf, the principal of the State School for the Visually Handicapped, a representative of the Kansas University rehabilitation unit of the Medical Center, a representative of the Kansas Association for Mental Health, a representative of the Kansas Cerebral Palsy Association, a representative of the Kansas Association for Retarded Children and a representative of the Kansas Council for Children and Youth. By November 30 of each year, the council will submit a written report of its activities, studies, and proposals to the governor. Copies of the reports will also be given to all agencies and organizations having membership on the Council and the proper committees of the Legislature. (KSA 74-6301-6)

A Coordinating Council for the Blind has the same purposes relating to the blind as the Council for the Handicapped has for all handicapped children. (KSA 74-4801)

FINANCE

In each school year, in accordance with appropriations for special education services provided under this Act, each school district which has provided special education services in compliance with the requirements of the state plan and the provisions of this Act, shall be entitled to receive:

(1) reimbursement for actual travel allowances paid to special teachers at a rate not to exceed that specified in K.S.A. Supp. 3203 for each mile actually traveled during the school year in connection with teaching duties in providing special education services for exceptional children. Such reimbursement is also not to exceed \$600 per special teacher per school year;

(2) reimbursement of 80% of actual travel expenses incurred for providing transportation for exceptional children to special education services, not to exceed \$600 per exceptional child per school year, not to be paid if the child has been counted in calculating the state transportation aid received by the district under general education provisions;

(3) reimbursement of 80% of the actual expenses incurred for the maintenance of an exceptional child away from home for the purpose of providing special education services, not to exceed \$600 per exceptional child per school year;

(4) after subtracting the amounts of reimbursement in subsections (1), (2) and (3) above from the total appropriation for special education services under this Act, a proportionate share of the remaining amount based upon the number of full-time equivalent special education teachers employed by the district as a percentage of such teachers employed in the state. For the purposes of this subsection, each professional is counted as one-half full-time equivalent special teacher. Special teachers in excess of the number necessary to comply with the special teacher/exceptional children ratio authorized by the State Board for the school district will not be counted in making computations under this section. (Sec. 19, HB 1672, 1974)

Payments will be made in a manner to be determined by the State Board, which will distribute funds as soon as it deems practicable and notify districts of any overpayments. If any district is paid more than it is entitled to receive under this Act, and fails to remit such overpayment to the state treasurer the State Board may deduct this amount from any future payments becoming due to the district.

If a district is paid less than the amount of its entitlement, the State Board must pay the additional amount due at any time during the school year in which the underpayment was made or within 60 days after the end of such school year. (Sec. 20, HB 1672, 1974)

The State Board shall be responsible for the distribution and allocation of state and federal funds for special education in accordance with appropriation acts and the state statutes. (Sec. 5, HB 1672, 1974)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

See Administrative Responsibility.

SERVICES

"Special education services" means programs for which specialized training, instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children. (Sec. 2g, HB 1672, 1974)

See Administrative Responsibility.

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PRIVATE

See Administrative Responsibility.

PERSONNEL

"Special teacher" means a person employed by a school district for special education services who is: (1) a teacher qualified to instruct exceptional children as determined by the State Board and who is so certified by the State Board; (2) a paraprofessional qualified to assist certificated teachers in the instruction of exceptional children as determined by standards by the State Board and who is so approved by the State Board. (Sec. 2h, HB 1672, 1974)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

KENTUCKY

RIGHT TO AN EDUCATION

Constitution: "The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state." (Sec. 183, Ky. Const.)

Compulsory Attendance Law: The board of education in the district of residence shall exempt from the compulsory attendance requirements every child of school age whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or who is enrolled and in regular attendance in state approved private or parochial school programs for exceptional children, or enrolled in a state supported program. Before an exemption is granted, the board must receive evidence (in the form of a signed statement of a licensed physician, psychologist, psychiatrist, or public health officer) that the condition of the child prevents or renders inadvisable attendance at school or application to study. For any child excluded because of his physical or mental condition, home, hospital, institution or other regularly scheduled and suitable instruction which meets the standards of the State Board shall be provided. (Sec. 159.030 KRS)

If school districts operate schools for the education of blind or deaf children, children between the ages of seven and 16 whose mental condition permits application to study will be enrolled in and attend schools regularly for the full term or until discharged by the board of education. If no provision is made for the education of these children by their school district of residence, the superintendent of Public Instruction, on recommendation of the state director of Pupil Personnel Services, may have the child enrolled in one of the state institutions for education. (Sec. 159.050 KRS)

Persons having custody or control of a deaf child between the ages of seven and 16 must have the child attend some public, private, or parochial school for hearing children or one in which deaf children are taught for the full term each year, unless the child is being given approved instruction at home. If the child's physical or mental condition is such that he could not profit from school, he is exempt from the compulsory attendance requirements for the deaf. (Sec. 167.090 and 167.100 KRS)

If the schools in the state providing education for the deaf are taxed to capacity and there is no other means of providing appropriate services, deaf children will be exempt from the compulsory requirements. (Sec. 167.120 KRS)

Responsibilities: If the respective parents of as many as eight trainable mentally handicapped children living in a school district wish to have special education classes established, school boards of any school district shall establish such classes in accordance with State Board requirements. School boards of any school district may establish and maintain special education programs for exceptional children who reside in their districts. (Sec. 157.230 KRS)

By July 1, 1974, all county and independent boards of education were to have in operation special education programs to the extent required by the plan approved by the State Board of Education, considering the recommendations of the State Task Force, and the Human Resources Coordinating Commission Council. If any county or independent board of education fails to operate and implement special education programs in accordance with the plan, the application of the county and independent board of education for minimum foundation payments may be considered insufficient. (Sec. 157.224 KRS)

POPULATION

Definitions: " 'Exceptional children' means persons under 21 years of age who differ in one or more respects from average or normal children in physical, mental, emotional, or social characteristics and in ability to such a degree that it is impracticable or impossible for them to benefit from or participate in, the regular or usual facilities or classroom programs of the public schools in the district in which they reside. These children's educational needs require a modification of the usual classroom program in order for them to attain the maximum abilities and capabilities. These children include, but are not limited to, those children hereafter described in Section 157.200 as well as the neurologically impaired, the emotionally disturbed, the learning disabled, the visually impaired, the hearing impaired, the retarded, those with communication disorders and those who are multiply handicapped.

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"'Multiply handicapped children' means those whose diagnosed handicaps are determined to be any combination of this section, whose needs demand the provision of special facilities, equipment or methods to make their educational program effective. (KR 157.200, Sub. 11, amend. 1974)

"'Physically handicapped children' means children, other than those with a speech defect, of sound mind, who suffer from any physical disability, making it impracticable or impossible for them to benefit from or participate in a normal classroom program of the public school in the school district in which they reside and whose intellectual development is such that they are capable of being educated through a modified educational program.

"'Speech defective children' means children whose speech has been diagnosed by a speech correctionist as deviating or different from average or normal speech, to the extent of hindering adequate communication in requiring specialized instruction for improvement or correction of the handicapped.

"'Educable handicapped children' means children who because of retarded intellectual development, as determined by recognized standardized tests, are incapable of being educated profitably and efficiently through ordinary classroom instruction, but whose intellectual ability would indicate a degree of scholastic attainment with the benefit of special educational methods, materials and facilities.

"'Trainable mentally handicapped children' are mentally handicapped children who because of retarded intellectual development, are incapable of being educated properly and efficiently through ordinary classroom instruction or special education facilities for educable mentally handicapped children, but who may be expected to benefit from training in a group setting in trying to further their social adjustment and economic usefulness.

"'Children with learning disabilities' are those children who have a disorder in one or more basic psychological processes involved in understanding or 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 terms do not include children who have learning problems, which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, emotional disturbance or environmental disadvantage." (Sec. 157.200 KRS)

Age of Eligibility: Exceptional children may receive services from birth through age 21. (Sec. 157.200 KRS) (Funds authorized by the Legislature for the education of handicapped children may be paid for children under six years of age.) (Op. Atty. Gen., May 10, 1972)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The director of pupil personnel services in each school district is required to annually discover all children within his district who are handicapped and report their names to the Department of Education on forms provided by the Department. (Sec. 157.260 KRS)

Special Education Evaluation: The superintendent of Public Instruction is authorized to employ two additional supervisors for the purposes of testing and classifying the mentally retarded. (Sec. 157.295 KRS)

Speech handicapped children may be diagnosed by a speech correctionist as deviating or different from average or normal speech. Educable and trainable mentally handicapped children are to be determined by recognized tests as those having retarded intellectual development. (Sec. 157.200 KRS)

The director of Special Education, with the approval of the superintendent of Public Instruction, will prescribe the rules and regulations and tests for determining eligibility of educable and trainable mentally retarded children for special education placement. Questionable cases will be determined by the director of Special Education after adequate examination and consideration of specific case histories. (Sec. 157.240 KRS)

Physically handicapped children, before entering into special classes, must be certified by competent and appropriate authority as approved by the state superintendent of Public Instruction. (Sec. 157.240 KRS)

ADMINISTRATIVE RESPONSIBILITY

The Department of Education is the agency for cooperation with state and federally approved treatment centers and local schools of Kentucky for carrying out the provisions for special children. The State Board of Education will make necessary rules and regulations for the proper administration of the special education program including, but not limited to the establishment of classes, eligibility and admission of

pupils, curriculum, class size limitations, housing, special equipment, and instructional supplies. Local supervision of the special education facilities must be approved by the division of Special Education according to the rules and regulations of the Board. (Sec. 157.220 KRS)

In addition to the two supervisors hired by the superintendent for testing and classifying the mentally retarded, he shall employ two supervisors to administer all other programs for exceptional children. (Sec. 157.295 KRS)

The Schools for the Blind and Deaf are under the supervision of the State Board of Education. (Sec. 167.150 and 156.010 KRS)

The Department of Mental Health administers the State Institution for the Mentally Retarded and Emotionally Disturbed. (210.040 KRS)

PLANNING

By June 1, 1974, all county and independent boards of education shall operate special education programs to the extent required by, and pursuant to, a plan which has been approved by the State Board of Education. If any county or independent board of education has failed to operate and implement special education programs in accordance with the aforesaid plans, the application of said county or independent board of education for minimum foundation payments may be considered insufficient. (Sec. 157.224 KRS)

FINANCE

One classroom unit shall be included upon the employment of each teacher approved to instruct exceptional children in accordance with the provisions of law and State Board regulations. One classroom unit will be included for each approved teacher. The State Department of Education is authorized to receive contributions and donations that may be made to carry out the provisions and requirements of KRS 157.200 to KRS 157.280. (KRS 157.360)

Exceptional children shall receive instruction in their home, in a hospital, or at a sanatorium. A minimum of two visits a week with a minimum of one hour of instruction per visit will be considered as equivalent to the attendance of one child five days in school. (Sec. 157.270 KRS)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If an insufficient number of exceptional children of compulsory school age of one classification live within a district or if a school district does not provide a special education program approved by the State Board of Education for that exceptionality, the Board shall contract with another county, district, or private organization maintaining a special program for that exceptionality. When a district or private organization undertakes to provide special education services in its classes for nonresident students, the district of residence will share the total cost of special education programs in proportion to the number of pupils or in accordance with contract agreements between the two districts or district and private organization. The district of the child's residence will pay for transportation to and from the class in another school district, or to the private organization, unless the board of the other district or the private organization provides transportation to the class. In this case the cost of transportation shall be included in the total cost of the special education facility. (Sec. 157.280 KRS)

The amount to be paid by the district of residence is not to exceed the amount designated by the State Department for a child of that exceptionality. (Sec. 157.280 KRS)

SERVICES

" 'Special educational facilities' means special schools, special classes, and special instruction. All special education facilities shall be under the supervision of the superintendent of Public Instruction." (Sec. 157.200 KRS)

Persons employed to teach in any special education program must have any special training that might be required by the State Board of Education. (Sec. 157.250 KRS)

If any exceptional child, even with the aid of transportation, cannot be assembled in a public school, instruction may be provided in the child's home or in a sanatorium. (Sec. 157.270 KRS)

The State Department of Education is authorized to spend available funds to send deaf-blind children to any facility, school, or institution within or without the state which provides a qualified program of

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education for these children. The funds may be expended for evaluation and diagnosis, room, board, tuition, transportation, and any other items relevant to the education of deaf-blind children. Under this section, deaf-blind children include those whose combination of deafness and blindness prevents them from profiting satisfactorily from educational programs provided either for the blind child or for the deaf child. The Division of Special Education within the State Department is responsible for determining what type of facility would be best to meet the needs of deaf-blind children and shall also cooperate with agencies, such as the Kentucky School for the Deaf and the Kentucky School for the Blind, to coordinate their educational activities for deaf-blind children. (Sec. 167-210-167.240 KRS)

Necessary transportation may be provided to handicapped children regardless of the distance they live from school. The State Board determines the type of handicapped pupil that qualifies for special type transportation. (Sec. 157.370 KRS)

The aggregate and ADA of transported pupils shall include all pupils who live more than one mile from school and handicapped children living less than one mile from school. (Sec. 157.370 (3) KRS)

Those qualified pupils for which the district provides special type transportation shall have their aggregate days attendance multiplied by 5.0 and added to that part of the districts ADA that is multiplied by the district's adjusted cost per pupil per day in determining the district's pupil transportation program cost for allotment purposes. (KRS 157.370amended 1974)

Local boards of education may contract to provide "related services" to exceptional children and their families when the desired services are not available through a public or private agency. (1972 S. 39, Sec. 2)

PRIVATE

In lieu of statutory requirements concerning education of handicapped children, and until such time as the local boards of education are able to provide adequate instruction and facilities for exceptional children in their respective districts, private schools that are providing instruction and facilities for exceptional children may qualify as state schools for exceptional children. (1970 H. 209, 1960 C. 107)

To qualify as a state school for exceptional children a private school shall:

- (1) submit to the State Board of Education with its application for such qualification the names and addresses of the governing body of the school. The State Board may approve or disapprove the governing body as it exists or may appoint any additional members it deems advisable;
- (2) submit the type of instruction and program now being provided, the qualifications of the instructors, and available facilities. The State Board may approve the facility, disapprove it, or make its approval contingent on such recommended improvements as it deems advisable.
- (3) once a school has qualified as a state school for exceptional children, the State Board, upon recommendation of the superintendent of Public Instruction, may allow to such a school \$109 annually per child in ADA, provided that the school continues to meet Board standards. (1970 H. 209, 1960 C. 107) See also Ad. Structure and Organization.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

LOUISIANA**RIGHT TO AN EDUCATION**

Constitution: "The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential."

"The Legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system." (*Art. VII, Preamble, Sec. 1, La. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 15 (i.e., from the seventh to the 16th birthday), are subject to the compulsory attendance requirements. (*LRS 17: 221*)

Children who are mentally, physically, or emotionally incapable of performing school duties and children unable to profit from further school experience are exempt from these requirements. These exemptions must be certified in writing by a psychiatrist, psychologist, recognized evaluation center, clinic, or other professionally qualified person or agency designated by a parish or city school board. (*LRS Sec. 17: 226*)

Every parent, tutor, or person having control of a mentally or physically deficient child must enforce his attendance at a special school or class if the programs have been provided by a state, parish, or city school board. This provision applies to blind, deaf, and spastic children when the special schools have available space and facilities for their training and when they meet the entrance requirements. (*LRS Sec. 17:234*)

Policy: It is and shall be the duty of the various branches and divisions of the public school system of Louisiana, both state and local, to offer the best available educational, learning, and training facilities, services, classes and opportunities to all children of school age within their respective boundaries. This includes all children of school age whether normal, exceptional, crippled, or otherwise either mentally or physically handicapped, and whatever may be the degree of that handicap. (*LRS Sec. 17:1941*)

If there are more than five children with any type of handicap or other exceptionality, the parents or guardians of such children may petition the parish or city board of education for the organization of an appropriate class or facility. The rejection of any such petition shall be subject to court reviews upon petition by the parents or guardians of such children. (*LRS Sec. 17:1951*)

In *Lebanks v. Spears*, eight black children classified as mentally retarded had been denied educational opportunities. Orleans Parish (New Orleans) School Board and the superintendent of schools were the defendants. Attorneys alleged a violation of due process, which discriminated against Black children, and sought an injunction to prevent arbitrary and biased classification and exclusion, and to prevent exclusion without a due process hearing. No trial was held. Defendants agreed to a consent order on April 24, 1973, which was effective May 31. Its features are: retarded children have a right to education, hearing, and review; persons over 21 have a right to training opportunities if denied them as children. The court continues to supervise defendants. (*lawsuit*)

POPULATION

Definitions: "'Physically handicapped and mentally handicapped and other exceptional children' includes slow learners, educable and trainable mentally retarded; deaf and hard of hearing; speech impaired; blind and/or partially sighted; emotionally disturbed; cerebral palsied; gifted; children with learning disabilities; crippled, and other health impaired children who by reason thereof require special educational and/or training services, facilities, and opportunities." (*LRS Sec. 17:1942*)

Age of Eligibility: Children are eligible for special education between ages three and 21. (*LRS Sec. 17:1942*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

It shall be the duty of all state agencies offering services to handicapped and other exceptional children to provide to appropriate parish and city school boards and/or the State Department of Education or its

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designated competent authorities, names, facts, and opinions pertinent to the proper educational or training placement of handicapped or other exceptional children who are enrolled or who expect to enroll in the public schools, and to advise other volunteer agencies by the State Board of Education of those facts concerning any child excluded from normal classes because of mental retardation. (LRS 17:1952)

Parish and city school boards shall, upon written demand by the parents or guardians of children having difficulties in normal school classes, have the child diagnosed and evaluated as above provided, unless such a diagnosis or evaluation has been made within the past one year. Diagnosis and reevaluation shall be required for each child every three years.

No child shall be excluded from normal classes because of mental or physical disability or handicap until his condition has been diagnosed and he has been recommended for available special education classes by one of the special education centers located in the state colleges and universities or by other competent authorities designated by the State Department of Education, pursuant to the rules and regulations of the State Board of Education. A personal consultation with the parent or guardian shall be provided. Upon request a written summary statement of the diagnosis and recommendation will be provided to the parent or guardian. The parent or guardian shall have the right to have the child retested by other competent public or private authorities, and, if the retesting justifies, to determine the correct evaluation in the district court or juvenile court of the child's domicile.

The parents and supervisor of special education services of the parish or city school board may request a reevaluation after six months of enrollment in a special education class. (LRS 17:1943)

Special education centers located in state colleges and universities are designated as competent authorities for the psychological and educational diagnosis and evaluation of handicapped and other exceptional children, and pupils may be assigned to such special classes or facilities, or for special education or training, only upon the recommendation of said special education centers or other certified state mental health centers and clinics which are approved by the State Department of Education for the evaluation and diagnosis of these exceptional and handicapped children. (LRS 17:1950)

ADMINISTRATIVE RESPONSIBILITY

The State Department of Education, with the approval of the State Board of Education, administers special education programs. The State Board establishes the necessary rules and regulations, prescribes standards, and approves the conditions under which the facilities are furnished or services provided. The state superintendent of education administers the State Board regulations. (LRS Sec. 17:1948)

The State Department of Hospitals administers institutions for the mentally retarded and mentally ill. (LRS Sec. 28:22 and 40:2013.40)

The State Department of Hospitals is also responsible for making the rules and regulations for the program providing services in private facilities. These regulations must include standards for determining the following:

- (1) the extent and nature of handicaps and conditions included in the program;
- (2) the probability that a child in the program will benefit or respond to special services;
- (3) that a proposed school or facility offers special services which are adequate to the needs of the child in the program;
- (4) that the special services needed by the child can only be provided by the unique services available in a particular residential facility; and
- (5) that the required special services cannot be provided by a community day care or out-patient facility geographically accessible to the child or by state maintained and operated residential facilities. (LRS Sec. 40:2125)

PLANNING

A ten-member commission on the mentally and physically handicapped is composed of the Director of the State Library for the Blind and Physically Handicapped, the commissioner of the Mental Retardation Division of the Department of Hospitals, the director of the Department of Health, the commissioner of Welfare, the director of Special Education of the State Department of Education, three members from the House of Representatives chosen by the Speaker, and two members of the Senate chosen by the President.

The commission is charged with the responsibility of coordinating existing programs in the areas of the mentally and physically handicapped and exploring the possibility of consolidation of these programs. In doing so, it will work with groups such as the mental retardation planning council and others in an effort to

give them assistance and to receive counsel for the implementation of their own plans and recommendations. (*LRS Sec. 40:2013.55-58*)

A 15-member advisory committee representing consumer groups, educators and professionals was appointed by the State Board to study the special education centers to determine their effectiveness and whether contracts to parish and city school boards should be extended. (*LRS Sec. 17:1950*)

Other groups which assist in the planning and implementation of programs of special education include a 21-member Advisory Committee for Gifted and Talented, a 27-member Advisory Committee on the Implementation of Act 368 of 1972 (legislation setting forth standards for special educational services), a 15-member Advisory Committee on Education of the Blind, a 13-member Advisory Committee on the Louisiana Learning Resources System, an 11-member Statewide Steering Committee on the Education of the Deaf-Blind, a 15-member Committee on Education of the Deaf in Louisiana, a 31-member Advisory Council on Specific Learning Disabilities, and a 14-member Task Force on Speech, Hearing and Language Services.

Each of these groups consists of professional representatives as well as representatives of governmental agencies, business, labor and industry, parents, and the general public.

FINANCE

All parish and city school board budgets may include salaries, according to the official Louisiana salary schedule, for qualified special education teachers and therapists involved in the teaching and/or training of any one type of "handicapped or other exceptional child." The allotment of teachers is based on the following minimum/maximum pupils per teacher or therapist:

- (1) Slow learner — one teacher per 12 to 18 pupils;
- (2) Educable mentally retarded — one teacher per ten to 15 pupils;
- (3) Trainable mentally retarded — one teacher per eight to 12 pupils;
- (4) Deaf or hard of hearing — one teacher per eight to ten pupils;
- (5) Blind or partially sighted — one teacher per eight to ten pupils;
- (6) Speech impaired — one therapist per 100 pupils;
- (7) Cerebral palsied — one teacher per eight to ten pupils;
- (8) Emotionally disturbed — one teacher per eight to ten pupils; and
- (9) Others as determined by the regulations of the State Board of Education.

If there are fewer than the minimum number of pupils per teacher, but not fewer than five, the state allotment is reduced one-tenth for each pupil less than the minimum. (*LRS Sec. 17:1946*)

Parish and state school agencies are authorized to cooperate with other public and private agencies interested in working for the education and training or evaluation of handicapped and other exceptional children. Parish and state school agencies are authorized to accept gifts or donations or other aid from these private agencies. (*LRS Sec. 17:1948*)

Certified teachers of exceptional children employed in the public schools are paid an amount equal to their base pay plus an additional 10 percent. (*LRS Sec. 17:427*)

If the parish or city school board contracts with another district or agency the parish or city school board is authorized to pay tuition or training costs not exceeding the average gross cost for each educable child in the school district plus the pro rata part of the state allotment provided above for serving pupils requiring special education, training, or opportunities. The time of payment may be determined by contract.

No pupil shall be eligible for funds for contract services under this Act unless he has been diagnosed and evaluated as eligible to enroll in an appropriate special education class or facility if such were available in his parish or city of residence.

Contracts for the services of the Department of Hospitals shall not be made with regard to any child with an I.Q. above 25 unless other handicaps make him totally unsuitable for special education or training from the public school system of Louisiana; provided, however, that the State Board of Education may contract with designated certified state mental health centers and clinics for the evaluation and diagnosis of handicapped children for assignment to special education classes. (*LRS Sec. 17:1947*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Whenever best educational or training results can be obtained by assembling special classes of any of the several types of children specified in **LRS Sec. 17:1942**, the parish and city school boards shall establish

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and maintain such special educational and/or training facilities and classes for such children. Adjacent and nearby parish and city school boards may pool their resources for this purpose. (LRS Sec. 17:1944)

SERVICES

No person without a valid degree or certificate and without the special training the state superintendent may require may be employed as a director, supervisor, therapist, or teacher of any special class or school. (LRS Sec. 17:1947)

Children diagnosed by competent authorities as requiring special educational services are entitled to be placed in special education classes with the following pupil-teacher ratios:

- (1) Slow learners — 1 teacher per 12-18 pupils
- (2) Educably mentally retarded — 1 teacher per 10-15 pupils
- (3) Trainable mentally retarded — 1 teacher per 8-12 pupils
- (4) Deaf or Hard of Hearing - 1 teacher per 8-10 pupils
- (5) Blind or Partially Sighted - 1 teacher per 8-10 pupils
- (6) Speech Impaired — 1 therapist per 100 pupils
- (7) Cerebral Palsied - 1 teacher per 8-10 pupils
- (8) Emotionally Disturbed — 1 teacher per 8-10 pupils
- (9) Severely and Profoundly Mentally Retarded — 1 teacher per 5-7 pupils
- (10) Learning Disabled — 1 teacher per 8-10 pupils
- (11) Others — as determined by regulations of the State Board of Education.

There shall not be a chronological age span of more than three years and an instructional span of not more than three grades and/or achievement levels applicable to all of the above categories.

The special education teachers, therapists, and aides employed by the state allotment as aforesaid shall be used entirely to serve those children needing special educational or training services for whose benefit the state allotment was made. If the children are not assembled in special classes these services shall be rendered under such rules and regulations as the State Department of Education and the parish or city school board may adopt. (LRS Sec. 17:1945)

The State Department of Hospitals may establish schools for the diagnosis, care, treatment, education, and rehabilitation of retarded persons. Eligible children include those whose physical, emotional, mental, or neurological condition so deviates from the normal that they cannot, without special therapy, training, education, or protective care, satisfactorily participate in community living. (LRS Sec. 28:2013-2123)

These schools are authorized to conduct research and training activities in the mental health field and to operate outpatient clinics and day care programs for persons whose condition does not require fulltime institutional care and treatment. (LRS Sec. 40:2013)

The State Department of Hospitals also administers an institution for the diagnosis, care, treatment, education, and rehabilitation of the mentally defective, epileptic, and other persons in need of care, treatment, education, and rehabilitation. This institution is known as the Pine Crest State School. The Department may conduct research and training activities in the mental health field at this school, as well as operate clinics and day care programs for persons whose condition does not require full institutional care and treatment. (LRS Sec. 28:22)

The House of Representatives passed a resolution urging and requesting local school boards to continue operating all special education classes in the various school buildings in which they are presently located; further requesting the school boards to provide the necessary attention, personnel, and facilities to continue the classes where federal funds are discontinued; and requesting all local boards to insure that all classrooms and other facilities designed and/or equipped to be used as special education classrooms in existing or newly designed buildings not be used for any other purpose. Further, special education classes have been instituted in several parish school systems throughout the state under various federally sponsored programs. These classes were instituted to meet a pressing need to assist the parents of handicapped children to resolve the many difficulties inherent in the education and training for life which these children face in everyday living. It is reasonable to assume that the federal government intended the local school systems to continue these worthwhile and necessary services or the classes would not have been organized; it is further the obligation of local school boards to provide for these services or such classes would not have been organized. Further, it is the obligation of local school boards to provide for the education of every child regardless of his special requirements if he is educable. All citizens regardless of their economic or cultural deprivation are entitled to a minimal state supported education for their children including those children with special educational needs. Because state law and state and local regulations provide for financial

support for teachers of all educable children and physical facilities in most cases have already been provided through federal funds, the House of Representatives with the Senate concurring resolved "that all local school boards of the state are hereby requested to continue in operation, in the various school buildings in which these classes are presently located, all special education classes." They further resolved "that such local school boards are requested to provide the necessary attention, personnel and facilities to continue such classes and hereby to continue the learning process of the students presently enrolled in such classes when federal financial support is discontinued from said classes." And "all local school boards are requested to continue to use classrooms and other facilities which have been designed for use by special education students for such purposes only." (*House Concurrent Resolution No. 480, Louisiana*)

Parish and city school boards may, with the consent and approval of the State Department of Education, contract with nearby public school districts, the State Department of Hospitals, or approved private schools, facilities, or contractors for the rendition of special educational and training services, on-the-job training, or distributive education to particular handicapped or exceptional children when for valid reasons it is not feasible or desirable for the parish or city school board to itself serve the particular child or children to the same extent. This shall not relieve the parish or city school board or State Department of Education of its obligation of supervision. (*LRS Sec. 17:1947*)

PRIVATE

Financial assistance may be provided to the parent or guardian of an exceptional child for the cost of room, board, training and/or therapy in a private residential facility for exceptional children if an appropriate state-owned and-operated facility is unavailable. (*LRS Sec. 40:2122*)

When the Department of Hospitals provides financial assistance for residential care of an exceptional child, the parent or guardian is required to contribute to the costs on a sliding scale basis established by the Department, which uses as its primary base the total taxable income reported for federal tax purposes from the preceding year. Assistance in defraying the cost of residential care is made only to supplement the basic parent or guardian support plus amounts and benefits available to the exceptional child or his parents or guardians from other sources. Other such sources include Social Security, Veterans Administration, private insurance. State Board of Health, State Department of Education (including special education and/or vocational rehabilitation), and Department of Public Welfare funds. (*LRS Sec. 40:2126*)

Financial assistance may also be provided to the parent or guardian of an exceptional child who is emotionally disturbed, learning disabled, mentally handicapped, or physically handicapped for the cost of day care, outpatient treatment, and/or therapy and other non-residential services in a private facility when an appropriate state facility is unavailable. (*LRS Sec. 40:2126*)

PERSONNEL

All funds received from fees paid by or on behalf of patients in state hospitals are deposited in a special account in the State Treasury known as "the research and training account." Funds in this account are used by the State Department of Hospitals to conduct research in problems relating to mental illness and mental retardation and for training programs for psychiatrists, neurologists, special educators, psychologists, nurses, technicians, social workers, occupational therapists, medical students, interns, residents, physicians, and professional trainees. Such training programs are to be designed to better qualify personnel for employment in state institutions and clinics for the mentally ill and mentally retarded as well as in hospitals owned and operated by the state. (*LRS Sec. 40:2113.1*)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

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MAINE

RIGHT TO AN EDUCATION

Constitution: "The Legislatures are authorized, and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools. . ." (Art. VIII, Me. Const.)

Compulsory Attendance Law: Children between the ages of seven and 17 are subject to the compulsory attendance requirements.

If a child between the ages of 15 and 17 is unable to pass the tests for a work permit because of subnormal mental capacity, he may receive a permit for employment in non-hazardous occupations under regulations of the commissioners of education and labor and industry. (RSM Sec. 911)

Policy: "It is declared to be the policy of this state to provide equal educational opportunities for all children. It is the purpose of this Chapter to insure that all school administrative units provide equal educational opportunities for all exceptional children." (RSM Sec. 3121)

Administrative units shall provide for such children a free public education appropriate to their needs. It is deemed appropriate to provide educational services in regular programs, with supportive assistance, unless evaluative data indicates to the commissioner that the child cannot be properly served in a regular program. (RSM Sec. 3121)

Responsibilities: "Every administrative unit shall appropriate sufficient funds and shall provide adequate instructional facilities for the education of all exceptional children. The guidelines developed by the commissioner will establish procedures to assure the rights of due process for all children referred to in this Title." (RSM Sec. 3128)

POPULATION

Definition: " 'Exceptional child' means any person between the ages of five and 20 determined to be mentally handicapped, emotionally handicapped, hearing impaired, language impaired learning disabled visually impaired, physically handicapped, or multiply handicapped, as defined by the Maine Department of Education and Cultural Services." (RSM Sec. 3123)

Age of Eligibility: Children may receive services from age five to 20. Speech handicapped children may begin receiving services at birth. (RSM Sec. 3123 and 3138)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: Every child in the public schools shall be tested and examined during every school year to see whether he is suffering from defective sight, hearing or any other disability or defect which prevents his receiving the full benefit of school work or which requires a modification of school work to prevent injury to the child and/or to secure the best educational results. Parents or guardians will be sent notice of any defects or disabilities. A record for each child will be kept in a form prescribed by the commissioner after consultation with the Department of Health and Welfare. (RSM Sec. 1135)

No juvenile offender between the ages of 11 and 17 who is deaf, mute, or blind, or who is a fit subject for one of the state hospitals for the mentally retarded or the mentally ill will be committed to the boys' or girls' training center. (RSM Sec. 2714)

The administrative unit shall establish procedures to identify all children who require special education and provide diagnosis and evaluation as necessary for the planning and implementation of a special education program for each exceptional child. Physical examinations or medical treatment are not required or authorized for any child whose parent objects on religious grounds. (RSM Sec. 3131)

The administrative unit shall keep current records of all exceptional children who have been evaluated, as well as other children in the district receiving home, hospital institutional or other special education in other than regular programs. (RSM Sec. 3132)

The administrative unit has a voice in the placement of a child in a special school. "It appears that the unit must at least approve the placement of exceptional children in a special school, indicating why the regular program is insufficient... the commissioner must approve such a placement... before reimbursement may properly occur." (*Op. Atty. Gen., Oct. 26, 1973*)

ADMINISTRATIVE RESPONSIBILITY

The commissioner of education must provide, or have administrative units provide, all regular and special education, corrective and supporting services required to provide exceptional children with a free public education appropriate to their needs. The commissioner has jurisdiction over all educational programs in state supported institutions not supervised by public school authorities. (*RSM Sec. 3122*)

The Pineland Hospital and Training Center is under the direction of its superintendent, who must be a hospital administrator or social worker. He is responsible for the training, education, treatment, and care of all persons at the hospital. (*RSM Sec. 2151*)

The Department of Educational and Cultural Services oversees the Governor Baxter School for the Deaf, including the employment of the teachers and prescribing the system of education and course of study. (*RSM Sec. 2903*)

Every administrative unit shall appropriate sufficient funds and provide adequate instructional facilities for the education of all exceptional children. (*RSM Sec. 3128*)

PLANNING

The commissioner shall make and keep current by annual review a state plan for the education of all exceptional children, which shall be presented to the governor and be made available for public distribution. (*RSM Sec. 3129*)

The administrative unit shall provide the commissioner with information needed to insure compliance with the state's policy of providing equal educational opportunities for all exceptional children. (*RSM Sec. 3130*)

If any administrative unit requests it, the commissioner shall provide technical assistance with plans. This does not mean that the responsibility or development of the plan will be transferred to the commissioner. (*RSM Sec. 3133*)

FINANCE

It is the Legislature's intent to reduce the burden of the cost of education borne by the property tax to 40% and to provide 60% of the total cost from state tax. This program will be implemented over a three year period—50% state, 50% local in 1974-75 and thereafter. The 40% property tax share will be financed through a uniform rate applied to all administrative units alike. This also will be implemented over a three year period. (*RSM Sec. 3711*)

Operating costs include all costs, except transportation, community services, capital outlay and debt service, reduced by tuition receipts, expenditures from all federal revenue sources and expenditures for special and vocational programs. Excess costs are expenditures made by local units for special and vocational programs. Special education, for subsidy purposes, shall include programs which have been approved by the commissioner for children with special needs. (*RSM Sec. 3712*)

The excess cost of special and vocational instruction on the secondary level shall be reimbursed. (*RSM 2356-B*)

If, at any time after July 1, 1975, an administrative unit is found by the commissioner to have failed to provide the necessary education to all exceptional children who by law are entitled to receive it, the commissioner may withhold all or such portion of the state aid for the administrative unit as, in his judgment, is warranted. The denial of state aid may continue until the failure to provide appropriate education for exceptional children is remedied.

No action shall be taken by the commissioner, except after public hearing, by the State Board of Education, on due notice and on a record that established the failure of the administrative unit to provide an appropriate education for exceptional children.

If the commissioner is presented with substantial evidence by an administrative unit that significant hardship exists, he may waive enforcement of this statute until July 1, 1977. (*RSM Sec. 3135*)

The state shall provide financial aid to administrative units for educational and related services provided by them for exceptional children. Such aid shall include the following elements:

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- (1) Remedial services. The education of exceptional children in school programs designed to meet their special needs, and the furnishing of corrective or remedial services designed to assist exceptional children;
- (2) Evaluation. Screening, diagnosis and evaluation as is necessary for the planning and implementation of a special education program;
- (3) Transportation. The furnishing of round-trip transportation to the facility where the public or private day program is provided;
- (4) Tuition. The furnishing of tuition to day or residential schools, in or out-of-state;
- (5) Room and board. The furnishing of room and board, not to exceed an amount determined by the commissioner, in lieu of daily conveyance to a special education facility, in or out-of-state;
- (6) Contracts. Contracts with appropriate agencies for provision of educational services for exceptional children, providing it is approved by the commissioner. (RSM Sec. 3136)

Any administrative unit operating a program under the authority granted in this Chapter may compute an annual tuition rate rate in either of the following manners: Actual costs—itemization of the actual costs of the program which was offered; or Salary—the salary paid to special education teachers shall be increased by 35% to compensate for the operating costs not included in salaries, and the resulting amount shall be divided by the average daily membership of students in special education classes for the same fiscal year. The per pupil cost thus determined shall become the legal tuition charge for the following school year. (RSM Sec. 3137)

A private school shall compute an annual tuition rate based on the actual per pupil cost incurred in the operation of the program during the preceding school year. The per pupil tuition charge shall be computed on the basis of financial reports filed by the private school. Such financial reports shall be filed July 15th of each year in such form as the commissioner may require, and the allowable tuition charge may not exceed the per pupil operating costs as determined from the financial reports of the preceding school year.

The commissioner shall approve all tuition charges. It is the legislative intent that any increase shall not be in excess of 15% of the preceding year's cost, unless sufficient evidence is presented to the commissioner by the private facility that a hardship would exist if the proposed tuition rate is not granted. Any administrative unit or private agency establishing a new special education program may charge a tuition rate which is based on the estimated cost of the new program as it is approved by the commissioner. (RSM Sec. 3137)

Appropriations made under this Chapter may be used to make expenditures to institutions and organizations for speech and language education of hearing and language impaired children who have not become of compulsory school age. (RSM Sec. 3138)

No parents of children who are sent to the Perkins Institute and the Massachusetts School for the Blind at Watertown, Massachusetts, will be discriminated against on account of the wealth or poverty of the family. All sums necessary for the support and instruction of the pupils at the institution, including all traveling expenses of the pupils, shall be paid by the state. (RSM Sec. 3502)

The commissioner is authorized to receive contributions and donations to be used with appropriations to meet statutory requirements. (RSM Sec. 3140)

At the discretion of the Department of Educational and Cultural Services, deaf children residing in other states may be admitted to the Governor Baxter State School for the Deaf. Reasonable compensation, fixed by the Department, shall be paid by the parents, guardian, or other responsible agency. Such income shall be credited to the General Fund. (RSM Sec. 2907)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Each administrative unit must provide appropriate education and training for exceptional children by any one or a combination of the following methods:

- (1) Approval. An appropriate program for exceptional children may be established in any administrative unit provided it is approved by the commissioner as to requirements for admission, teacher preparation, plan of instruction, necessary facilities and supervision.
- (2) Contract. An administrative unit may contract with, or pay tuition to, another administrative unit or any approved public or private agency or institution to provide a program for the education of exceptional children. Such contract must be approved by the commissioner.
- (3) Cooperative agreement. An administrative unit may enter into a cooperative agreement with one or more administrative units under sections 309, 309-A and 309-B. Programs established under this section must be approved by the State Board of Education.

In addition to subsections 1, 2 and 3, an administrative unit shall make any other provisions, subject to approval by the Commissioner, to insure the education of all exceptional children as may become necessary. (RSM Sec. 3127)

SERVICES

"It is deemed to be appropriate to provide educational services within regular programs with supportive assistance, within regulations promulgated by the State Department of Educational and Cultural Services. Exception to this policy shall be based on appropriate supporting evaluative data submitted by a school administrative unit to the commissioner explicitly indicating a child cannot be properly served in a regular program." (*RSM Sec. 3121 (1)*)

"'Special education' means classroom, home, hospital, institutional or other instruction to meet the needs of exceptional children, diagnosis and evaluation, transportation and corrective and supporting services as defined by the commissioner required to assist exceptional children." (*RSM Sec. 3123*)

Children may be admitted to Governor Baxter State School for the Deaf at age two and continue at the school for a period not exceeding 16 years. (*RSM Sec. 2904 and 2905*)

See Finance.

PRIVATE

An administrative unit may contract with, or pay tuition to, an approved private agency or institution to provide a program for the education of exceptional children, subject to the Commissioner's approval. (*RSM Sec. 3127(1)*)

PERSONNEL

Administrative units may appropriate money for in-service education of teachers and other school personnel. (*RSM Sec. 3134*)

FACILITIES

Physical aspects and specifications of schools, classrooms, and other facilities for use by exceptional children shall be related to their educational, physical, psychological and social needs. To this end, administrative units, agencies of the State and its subdivisions, and any private persons or entities constructing, renovating or repairing facilities with or aided by public funds, shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps and requirements of the exceptional children to be accommodated.

No school or school-related construction, renovation, remodeling, expansion or modification shall be eligible for state aid pursuant to Chapter 512, unless the State Board of Education finds that it is in conformity with Title 25, Section 2701 to 2703, prohibiting architectural barriers for the handicapped. (*RSM Sec. 3124*)

"'Special education facility' means a school or any portion thereof, intended for use in meeting the educational, corrective and related needs of exceptional children." (*RSM Sec. 3124*)

Plans and specifications for every special education facility must include a statement of the educational and related objectives and functions to be served and the uses to be made of the facility, as well as architectural plans and specifications. If an administrative unit submits plans and specifications for a building or other structure, which does not include appropriate accommodations for its exceptional children, the State Board of Education must require assurance that the unit has adequate special education facilities elsewhere. (*RSM Sec. 3125*)

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MARYLAND

RIGHT TO AN EDUCATION

Constitution: "The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the state a thorough and efficient system of free public schools; and shall provide by taxation or otherwise for their maintenance." (Art. VIII, Sec. 1, Md. Const.)

Compulsory Attendance Law: All children who are between the ages of six and 18 and who because of partial or total blindness are unable to receive an education in the ordinary public schools, must attend school or classes for the deaf or blind for eight months during the scholastic year, unless it can be shown that the child is receiving regular formal instruction during the same period in studies usually taught in the public schools to children of the same age. The superintendent or the principal of any school for the deaf or school for the blind or any persons they authorize may excuse cases of necessary absence of enrolled pupils. This section does not apply if the child's physical condition renders his instruction inexpedient or impracticable. (Art. 77, Sec. 108 ACM)

Every child between six and 16 years of age residing in the state shall attend some public school regularly during the entire period of each school year, unless it can be shown that the child is elsewhere receiving regular, thorough instruction during the period in the studies usually taught in the public schools to children of the same age. The superintendent or principal of any school, or their substitute may excuse cases of necessary absence among its enrolled pupils. The provisions of this section shall apply to any child who has a mental, emotional or physical handicap, but do not apply to a child whose mental, emotional, or physical condition is such as to render his instruction as above described detrimental to his progress; nor shall it apply to a child whose presence in school constitutes a danger of serious physical harm to others. In any such instance it shall be within the discretion of the superintendent of schools of the particular county or of Baltimore City, acting with the advice of the school principal, supervisor, pupil personnel supervisor, or visiting teacher, and with the written recommendation of a licensed physician or certified psychologist, to make other appropriate provisions for the free education of any pupil to whom the above provisions apply, or to permit the parents or guardians of that pupil to withdraw him from public school, for as long as the child's attendance in a public school continues to be detrimental to his progress or his presence in school continues to constitute a danger of serious physical harm to others. When a child is withdrawn from the public school as provided in this section the board of education of the particular county or of Baltimore City shall make some other appropriate provision for the child's education. If no appropriate educational placement is immediately available the local board shall make some interim provisions for the child's education until such time as appropriate placement becomes available. Every person having under his control a child between six and 16 years of age shall cause the child to attend school or receive instruction as required by this section. Nothing in the provision of this section shall be construed to require the school attendance of any child legally withdrawn from school before July 1, 1969.

Any person violating any provisions of this section is guilty of a misdemeanor and liable to a fine not exceeding \$50.00 for each offense. (Art. 77, Sec. 92 ACM)

Responsibilities: The state and its several counties shall make available free educational programs for all handicapped children, including those children who are severely handicapped, in accordance with this section.

The State Board of Education shall, in the form of by-laws, promulgated on or before July 1, 1974, adopt standards for the identification, diagnosis, examination, and education of all children in this state through age 20 who are found to be in need of special educational services, whether or not such children are receiving non-duplicative services from other governmental agencies. The standards for the education of handicapped children enrolled in programs operated by agencies other than the boards of education of the several counties or the Board of School Commissioners of Baltimore City shall not be lower than the standards for the education of children enrolled in programs operated by the boards of education of the several counties or the board of school commissioners of Baltimore City.

The local boards shall provide or arrange for appropriate facilities and services for all identified handicapped children.

Such appropriate educational services should begin as soon as the child can benefit from them, whether or not he is of regular school age. (Art. 77, Sec. 106A ACM)

A lawsuit, *Maryland Association for Retarded Children v. State of Maryland* (filed 1972), charged that all handicapped children in the state were denied free, publicly-supported educational programs suited to their needs.

A decision was reached in a Baltimore Circuit Court in April, 1974, and modified in May, 1974.

The decree stated that:

- (1) Maryland law guarantees free education to all children
- (2) the state had until December, 1974, to adopt adequate standards for educational programs in day care centers and state institutions, and until September, 1975, to comply with them.
- (3) children could not be referred to private facilities without being provided funds to pay for those programs

On May 30, 1974, the state asked the court to allow it until September, 1975, to comply with the provisions requiring additional funding. The court agreed, but reserved jurisdiction in order to be able to require the state to comply if it fails to do so voluntarily.

POPULATION

Definitions: Handicapped children are defined as "those children with 'mental, physical or emotional handicaps'" (Art. 77, Sec. 92 ACM)

Age of Eligibility: Children may receive services from birth to 20. See Services. (Art. 77, Sec. 106A ACM)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: County boards of education, and the Board of School Commissioners of Baltimore City may conduct, under the direction of the county superintendent or the superintendent of Public Instruction of Baltimore City, a school census of handicapped children under 18 years of age including preschool handicapped children. All information collected under this section will be reported to the State Board of Health. (Art. 77, Sec. 57 ACM)

All boards of education in the county schools and Baltimore City are to furnish to the respective health departments any information relative to children with physical, mental and/or emotional handicaps living within their school system. The health department will record such children needing additional diagnostic or treatment services and will refer the children to the boards of education for evaluation. (Art. 77, Sec. 99 ACM)

Screening: The State Board shall develop and implement a program to be administered by county and Baltimore City school boards to evaluate each student entering his first year in any primary grade for the purpose of identifying learning disabilities, regardless of how such learning disabilities were caused. (Art. 77, Sec. 98CACM)

The boards of county school commissioners who have appointed a school physician will have the vision and hearing of every child attending the public schools tested at least once every two years. To secure the best educational results, the board will also check for any other physical disability which would require a modification of school work in order to prevent injury to the child. Notice of any disease or defects will be given to the parent or guardian of the child along with advice relating to treatment. (Art. 77, Sec. 138 and 139 ACM)

After exhaustion of all locally available administrative remedies and procedures, a parent or guardian of a mentally, physically or emotionally handicapped child or the board of education responsible for providing special education for such a child, with good cause, may request in writing to the State Board of Education, a review of: (1) diagnosis; (2) evaluation of educational programs provided for the child by the local or regional board of education; or (3) the exclusion or exemption from school privileges of the child by the local or regional board of education.

The State Board shall, on receipt of request for a review within 60 days establish a hearing board of not less than three persons knowledgeable in the fields and areas significant to the educational review of the child. Members of the Hearing Board may be employees of the State Department or may be qualified persons from outside the Department. No person shall serve as a member of the hearing board who participated in the previous diagnosis, evaluation, prescription of special educational services, and other educational records of the child, which records shall be furnished by the local or regional board of education.

The hearing board may dismiss any request for review, which after a review of the educational records of the child, it deems to have been made without good cause. The hearing board may hear any additional

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testimony as it shall deem relevant. The board may require a complete and independent diagnosis, evaluation and prescription of educational programs by qualified persons, the cost of which shall be paid by the State Board of Education.

The hearing board shall have the authority to confirm, modify, or reject any diagnosis, evaluation, or educational program prescribed or exclusion or exemption from school privileges and prescribe alternate special educational programs for the child. Appeal from the decision of the hearing board shall be to the circuit court for the county in which the child resides; and, if the child resides in Baltimore City, to any one of the three common law courts of the supreme bench.

Members of the hearing board, other than those employed by the State Department of Education, shall be paid reasonable fees and expenses as established by the State Board of Education. (Art. 77, Sec. 100A ACM)

ADMINISTRATIVE RESPONSIBILITY

The Maryland School for the Deaf and the School for the Blind are responsible for keeping the State Board of Education completely informed regarding the educational program and administrative policies of the schools. In the State Department of Education, the School for the Deaf, the School for the Blind and local public school systems are required to work cooperatively to meet the educational needs of deaf, hard of hearing, blind, and partially sighted children. (Art. 77, Sec. 107 ACM)

The state superintendent is responsible for approving any program offered by any institution under the supervision of the Department of Juvenile Services, the Department of Correction and the Department of Mental Hygiene, if such program complies with the standards of the State Board of Education. (Sec. 28, Ch. 2, 1969)

The State Board is responsible for setting up the standards, rules, and regulations to examine, classify and educate children with mental, physical, or emotional handicaps who can benefit under the provisions of special education. The standards, rules, and regulations, including the prescribing of qualifications of teachers, curriculum and equipment and supervision of the program, are initiated by the State Board. When setting up standards for emotionally disturbed children, the State Board shall seek the advice and guidance of the State Department of Health and Hygiene, and these two agencies shall cooperate in developing the standards, rules, and regulations. (Art. 77, Sec. 101 ACM)

PLANNING

Each county board of education must plan an adequate educational program for each school age handicapped child residing within its boundaries.

By joint resolutions, the Legislature of the State of Maryland requested the governor to abolish the Governor's Interdepartment Council and Advisory Committee on the Handicapped and appoint a commission to study the needs of the handicapped, with the commission not composed of more than 15 members including representatives of the medical and teaching professions, state and local administrative agencies, interested volunteer organizations, and the General Assembly. The Legislature has expressed the feeling that for the purposes of coordinating all necessary programs and services for handicapped citizens a group of individuals free from bureaucratic entanglement can better carry out the function. (*Resolution No. 29, 1971*)

Upon adopting the standards, the state superintendent of schools shall develop a plan for the provision of special education services for children through age 20 who are in state institutions. The plan shall be in accordance with the standards. The State Board of Education shall review and approve the plan.

It shall be the mandatory duty of each local board of education to implement the plan for its subdivision as approved or developed by the State Board or state superintendent, as provided herein, in accordance with the provisions thereof.

The State Board shall, at least annually, review the approved plans. Amendments to an approved local plan may be made by a local board of education upon recommendation of the state superintendent and upon the approval of the State Board.

Each plan submitted by a local board of education, and each plan developed and promulgated by the state superintendent, shall include a detailed estimate of the number of children who will receive special educational services under the plan and the annual cost of implementing the plan. The programs and services provided to any child authorized and funded under present laws shall remain in effect and not be diminished prior to or during the phase-in of the plans provided for in Section I of this Act.

Education personnel must consult with public and private agencies and persons concerned with and knowledgeable about the problems of children in need of special educational services.

Upon the adoption of standards by the State Board, each local board of education must promptly and diligently develop a plan for the provision of special educational services in accordance with such standards. The plan must provide for the education of all handicapped children, including the severely handicapped, whose parents or guardians are domiciled within the county. Prior to the adoption of a local plan, the local board of education must consult with public and private agencies and persons concerned with and knowledgeable about the problems of children in need of special educational services. Nothing herein shall preclude a local board of education from developing a plan which exceeds the state standards. The State Department must provide reasonable assistance to the local boards of education in the development of the plan. The local plan must provide for full implementation of programs within five years on an annual phase-in basis. Each local board of education must submit its plan to the state superintendent within nine months after adoption of the standards by the State Board with implementation to commence with the school year next following submission of the plan. "Local board of education," as used in this subtitle, includes the Board of School Commissioners of Baltimore City, and "county," as used in this subtitle, includes Baltimore City. See Right to Education.

The state superintendent of schools must review each local plan, and, if he finds it to be in accordance with the standards adopted by the State Board of Education and the requirements of this section, he shall recommend the plan's approval.

If he finds it not to be in accord with such standards or the requirements of this section, he shall return it to the local board of education with his written statement of the areas or manner in which the plan does not comply. In either case, he must take such action within 60 days after receipt of the local plan. If, within 60 days after return of the plan by the state superintendent, the local board does not submit a plan which, in the judgment of the superintendent, conforms to the state standards and the requirements of this section, the superintendent must thereupon develop a plan for the subdivision. Prior to the approval of the plan by the State Board of Education the subdivision shall be afforded an opportunity to review the plan with the state board. [Art. 77, Sec. 106A ACM]

FINANCE

The expenses incurred in supporting and establishing classes for the mentally, physically, and emotionally handicapped are reimbursed by the state in the same manner as other school programs, but in calculating the cost of the minimum program is a basis for determining the amount of the state's share of current expenses. Each professional staff member employed in the teaching of the handicapped is included as a professional staff member in making the calculation. Districts will also receive \$1,000 toward the cost of teachers, special equipment, nursing, therapeutic treatment, transportation, and any other necessary operating costs per child or the actual cost of such services, whichever is less, and any additional amount per child included in the annual sub-budget by the General Assembly. (Art. 77, Sec. 101 Md. Stats.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

See Private.

SERVICES

"The term 'special educational services' means those educational services necessary to assure that all children with handicaps which impede their ability to learn are afforded the opportunity to attain appropriate levels of knowledge and learning skills consistent with their potential, and shall include the full range of such services, including but not limited to special equipment, therapeutic treatments ancillary to education, and transportation, whether provided as part of or additional to regular classroom placement or in separate public or private classes or facilities. Appropriate educational services are to begin as soon as the child can benefit from them, whether or not he is of regular school age." The standards shall include qualifications for teachers, administrators, and other professional, paraprofessional, and non-professional persons, procedures for identifying, testing, and diagnosing children in need of special educational services, guidelines for curricula, instructional materials, equipment, and the organization, administration, and supervision of the program, including accounting, auditing, and reporting procedures. (Art. 77, Sec. 106A ACM)

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Provision must be made for local, regional and/or state day and residential centers for children who cannot reasonably be served in the regular public schools, and coordination of such special educational services with services rendered by other governmental agencies. Prior to adopting these standards, the State Board must consult with public and private agencies and persons who are concerned with and knowledgeable about the problems of children needing special education services.

In providing special education services to handicapped children, transportation will be provided for all enrolled students in public schools and in schools maintained by any state agency, as well as in any non-public educational facility approved by the State Department of Education, if enrollment and transportation have been approved outside the state. (Art. 77, Sec. 99 ACM)

The governor shall place in the budget each year a sum for training handicapped children who are under age six. Any money appropriated for this act will be spent for children who are defined as children "with a physical, mental and/or emotional impairment, which in the judgment of the Department, makes a special educational and training program necessary or desirable to help the child attain a scholastic achievement as near normal as feasible." Children suffering from mild, moderate, severe or profound hearing losses are included. (Art. 77, Sec. 102 ACM)

PRIVATE

If any subdivision of this state is not providing special programs and services for handicapped children who attend an in or out-of-state school providing appropriate instruction and which is approved by the State Board the parents of such children will receive state reimbursement of \$1,000 or the actual cost, whichever is less, as well as any additional amount included per child in the annual budget to assist in paying tuition and/or fees for the instruction of the child. (Art. 77, Sec. 100 ACM)

*This section will be deleted from the law as of July 1, 1975.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

MASSACHUSETTS

RIGHT TO AN EDUCATION

Constitution: "It shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences and all seminaries of them; especially the University of Cambridge, public schools, grammar schools in the towns . . ." (*Ch. 5, P. 2, Mass. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 16 are subject to the compulsory attendance requirements.

Children whose physical or mental condition renders attendance inexpedient or impracticable are excused from the compulsory attendance requirements. No physical or mental condition capable of correction or allowing the child to receive special instruction at state expense in an institution other than a public day school, exempts a child from the compulsory attendance requirements. (*Sec. 76-1 and 76-2 Mass. Gen. Law*)

All persons having control of a deaf child between the ages of seven and 18 must have the child attend some suitable school. If a physical or mental condition other than the child's deafness renders attendance inexpedient or impracticable or if he is receiving approved private instruction, the child is excused from the requirements. (*Sec. 76-2A Mass. Gen. Law*)

Policy: The Legislature of the State of Massachusetts has found that past development of special education programs resulted in a great variation of services to children with special needs—some children having a greater educational opportunity than others in less favored categories or environments. The Legislature further found past methods of labeling and defining needs of children had a stigmatizing effect and caused special programs to be overly narrow and rigid both in their content and in their exclusion and inclusion policies. Because it is state policy to provide an adequate publicly-supported education to all resident children, this Act provides for a flexible and uniform system of special educational opportunities for all children requiring special education and provides for a flexible, nondiscriminatory system for identifying and evaluating individual needs of children requiring special education; further, it requires evaluation of the needs of the child and the adequacy of the special education program prior to placement and periodic evaluation of the benefit of the program to the child and his needs thereafter; and finally, it prevents denials of equal educational opportunity on the basis of national origin, sex, economic status, race, religion, and physical or mental handicap in the provision of differentiated educational services.

This Act is designed to remedy past inadequacies and inequities by:

- (1) defining needs of children requiring special education in a broad and flexible manner leaving state agencies with the ability to provide the more detailed definitions, recognizing that these children have varieties of characteristics and needs, all of which need consideration if a child's educational potential is to be realized;
- (2) providing the opportunity for a full range of special programs;
- (3) requiring that a program promised to be special actually benefits the child assigned to it; and
- (4) replacing the present inadequate and antiequalizing formula for distribution of state aid for special education programs with an equalizing one which encourages cities, towns, and regional school districts to develop adequate special education programs over a reasonable period. (*Sec. 1, Chap. 766, 1972*)

Responsibilities: All school committees must annually report, according to Department regulations, the assignment by sex, national origin, economic status, race and religion of children by age level into special education classes. If in any district's special education program, there is a pattern of assignment throughout the district on the basis of sex, national origin, economic status, race and religion of students substantially disproportionate from the actual distribution, the Department shall notify the district of its prima facie denial of equal educational opportunities. The Department is then responsible for holding a public hearing to investigate such prima facie denial at which time the local district must show that the disproportion is necessary to promote a compelling educational interest of the affected children and the state. If the district fails to do this, a denial of equal educational opportunity is declared by the Department, which orders the district to submit a plan to eliminate the denial effective for the next school year. If the Department views

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the plan as inadequate or if implementation of the plan proves inadequate, the Department may then request the Attorney General to proceed to the Superior Court for all necessary injunctive and other relief. If the *prima facie* denial is continued without elimination for a period of two consecutive years in any district, any person residing in the school district may bring suit in the Superior Court of his residence to determine whether there is adequate justification for the *prima facie* denial, and if there is not, to obtain the necessary and appropriate injunctive or other relief. (Sec. 6, *Chap. 71B*, 1972)

POPULATION

Definitions: "School age child with special needs" is a child who, because of temporary or more permanent adjustment difficulties or attributes arising from intellectual, sensory, emotional, or physical factors, cerebral dysfunction, perceptual factors, or other specific learning disabilities or any combination thereof, is unable to progress effectively in a regular school program and requires special classes, instruction periods, or other special education services in order to successfully develop his individual educational potential." (Sec. 1, *Chap. 71B*, 1972)

"School age child requiring special education," is any child with special needs who requires special education as determined in accordance with the regulations set forth by the Department." (Sec. 1, *Chap. 71B*, 1972)

Age of Eligibility: "School age child" is any person from ages three to 21 who has not obtained a high school diploma or its equivalent." (Sec. 1, *Chap. 71B*, 1972)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: The school committee and the Board of Health (in those districts where school health service is the responsibility of the Board of Health) shall have every child in the public schools examined at stated intervals, including his original entry into the schools, as determined by the Department of Public Health, after consultation with the Department of Education and the medical profession. Children will be examined for defects in sight or hearing or any other physical defects which would prevent the child receiving the full benefit of school work or would require a modification of the work in order to prevent injury to the child or to secure the best educational results. Parents or guardians of the children will be notified if the child is found to be suffering from any disease or defect or if any child is found to have any defect or disability requiring treatment. (Sec. 71-56, *Mass. Gen. Law*)

No child may be assigned to a special education program unless an evaluation of the child's needs and the particular program that the child is likely to benefit from has been determined. The child and his program must be re-evaluated at least annually to determine whether the child is benefiting from the program according to standards set forth below. If the program is not benefiting the child and another program may benefit him more or the program has benefited the child sufficiently to permit his assignment, the child will be reassigned. In the event of a consistent failure to benefit children, a program shall be abolished or altered. (Sec. 2, *Chap. 71B*, 1972)

In accordance with the regulations, guidelines, and directives jointly issued by the Department with the Departments of Mental Health and Public Health and with the assistance of the Department of Education, the school committees of every city, town, or school district will identify all school age children with special needs. They will diagnose and evaluate the needs of these children and propose special education programs to meet their needs, provide or arrange for the provision of the programs, maintain a record of the identification, diagnosis, proposal, and program actually provided, and make any required reports to the Department. Until otherwise proven, every child is presumed to be appropriately assigned to a regular education program and not to be a school age child with special needs or a school age child requiring special education. No school committee may refuse a child with special needs admission to school or continued attendance in a public school under Department rules. No child refused attendance or continued attendance will be denied an alternative form of education approved by the Department through a tutoring program at home, through enrollment in an institution operated by a state agency, or through any other program approved for the child. No child may be placed in a special education program without prior consultation, evaluation, re-evaluation, and consent as specified and implemented by Department regulations.

Within five days after a child enrolled in a regular education program has been referred by a school official, parent or guardian, judicial officer, social worker, family physician or other person having custody of the child, to determine whether the child needs special education, the school committee must notify the

parents or guardians of the child in writing in the primary language of the home of the referral, the evaluation procedure to be followed, and the child's right to individual evaluation at facilities approved by the Department under regulations adopted jointly by the Department of Mental Health, Department of Youth Services, Department of Public Health and Department of Public Welfare, and their right to appeal any evaluation, first to the Department and then to the courts. Within 30 days after the notification, the school committee must provide an evaluation as described below.

The evaluation must include an assessment of the child's current educational status by a local school department representative, an assessment by a classroom teacher who has had the child as a pupil in the classroom, a complete medical assessment by a physician, an assessment by a psychologist, nurse, social worker or guidance counselor of the general home situation and pertinent family history factors, and assessments by any other specialists required in accordance with the diagnosis, including when necessary but not limited to, assessments by neurologists, audiologists, ophthalmologists, and specialists competent in speech. Requirements for persons assessing children requiring special education will be developed by joint regulations of the Departments of Education, Mental Health, Public Health, Public Welfare and Youth Services. These departments through their joint regulations will define the circumstances under which the requirements of any or all of these assessments may be weighed as long as an evaluation is appropriate to the needs of the child if provided. Those persons assessing the child will maintain a complete and separate record of all diagnostic procedures used and their results, conclusions reached, suggested courses of special education and medical treatment best suited to the individual's needs, and the specific benefits expected from this action. A proposed special education program may include a continuum of services ranging from a regular program with modifications through services provided in a residential setting. The persons assessing the child will present a method of monitoring the benefits of the special education to the child and the conditions which would indicate that the child should return to regular classes and/or a less restrictive educational environment and expected results of regular class placements. [Sec. 3, Chap. 71B, 1972]

If a child with special needs requires medical or psychological treatment as part of the special education program or his parent or guardian requires social services related to the child's special needs, this treatment and services or both will be made available in accordance with joint regulations of the Departments of Education, Mental Health, Public Health, and Public Welfare in connection with the child's special education program. It is the responsibility of each school committee to provide these services if indicated by each child's educational plan. Reimbursement for the cost of this treatment or services will be made according to the provisions of Section 13 (see Finance).

Upon completing the evaluation, the child may obtain an independent evaluation from child evaluation clinics or facilities approved by the Department jointly with the Departments Public Health, Mental Health, Youth Services and Public Welfare, (a Regional Review Board composed of one representative of each of these departments approves facilities), or at private expense from any specialist not on the approved list. The original record and clinical history from both the evaluation provided by the school committee and the independent evaluation must be made available to parents, guardians, or persons having custody of the child.

Separate instructions, limited to the information required for adequate care of the child, are distributed only to persons directly concerned with the child's care. Otherwise, these records will be confidential.

Hearings may be held by the Department regarding the evaluation. These hearings must be held in accordance with the provisions of Chapter 30A. The parents, guardians, or other persons having custody, as well as a child over 18 years of age have the right to refuse the education program suggested by the initial evaluation and request a Department hearing of the evaluation of the child and an appropriate educational program. When an additional plan is rejected, that action automatically triggers the "30 Day Cooling Off Period" where every attempt is made to reach an informal agreement to a plan. Following that time, if an appeal is indicated, all parties continue in that endeavor. Within 45 days a decision will be rendered. At the conclusion of the hearing, with the consultation and advice of the appropriate advisory council, the Department may recommend alternative placements to parents, guardians, or other persons with custody and they may either consent to or reject these proposals. If rejected and the program desired by the parents, guardians, or persons with custody is a regular education program, the Department and local school committee will provide the child with the educational program chosen, except where the placement would seriously endanger the health or safety of the child or substantially disrupt the program of other students. In these circumstances the local school committee may proceed to the Superior Court with jurisdiction over the residence of the child to make this showing. If this is shown, the Court is authorized to place the child in an appropriate educational program.

If the parents, guardians or persons with custody reject the educational placements recommended by the Department and desire a program other than a regular education program, the matter is then referred to the

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State Advisory Commission on Special Education to be heard at its next meeting. The Commission must make a determination within 30 days of the meeting regarding the placement. If this placement is rejected, they may proceed to the Superior Court with jurisdiction over the residence of the child, and the Court is authorized to order the placement of the child in an appropriate program.

During the evaluations, assessments, and hearings a child will be placed in a regular education program, unless the placement endangers the health or safety of the child and substantially disrupts the education programs of other children.

No parent or guardian of any child placed in a special program will be required to perform duties not required of a parent or guardian of a child in a regular school program.

Within ten months of placement in a special program and at least annually thereafter, the child's educational progress will be evaluated in the manner described above. If the evaluation suggests the initial evaluation was in error or a different program or medical treatment would now benefit the child more, an appropriate reassignment or alteration in treatment is then recommended to the parents, guardian, or person with custody of the child. If the evaluation shows that the program does not benefit the child to the maximum extent feasible, then the child will be reassigned.

Evaluations and assessments of children in special education programs are confidential and may be used only for the administration of special education, including, but not limited to, inspection by the Department and regional and state advisory councils to insure that every program benefits children assigned to it. (Sec. 3, *Chap. 71B, 1972*)

No results of standardized or local tests of ability, aptitude, attitude, affect, achievement or aspiration may be used exclusively in any selection of children for referral, evaluation, diagnosis, or evaluation. These tests must be approved by the Department according to all regulations issued by the Board to assure that they are as free as possible from cultural or linguistic bias or whenever necessary, separately evaluated with reference to the linguistic and cultural group to which the child belongs. (Sec. 7, *Chap. 71B, 1972*)

A child placed in a special education program as of the effective date of this Act (September 1, 1974) is presumed to be appropriately assigned to the program until an evaluation according to the provisions of Section 3, Chapter 71 B indicates that another program would benefit the child more. (Sec. 16, *Chap. 766, 1972*)

No child with special needs in a program on the effective date of the Act may be removed from the program without written consent of his parents, guardians or other person with custody of the child. (Sec. 17, *Chap. 766, 1972*)

ADMINISTRATIVE RESPONSIBILITY

The responsibility of providing adequate educational programs falls on each school committee to provide an education for each child whose parents' legal residence is in that city or town.

The Department of Education shall, in cooperation with the Departments of Public Health, Mental Health, and Welfare, establish regulations for programs for children with special needs. These regulations must include, but are not limited to, a definition of special needs, emphasizing a thorough narrative description of each child's developmental potential to minimize the possibility of stigmatization and to ensure the maximum possible development of each child. The definition must have the flexibility to include children with multiple needs. (Sec. 2, *Chap. 71B, 1972*)

The powers and duties of the Division of Special Education include the following:

(1) to regulate, consult with, and assist school committees to identify, classify, refer, and place children requiring special education;

(2) to regulate all aspects of and assist in the development of all special education programs either partly or wholly state supported;

(3) to coordinate the expertise of professionals from appropriate disciplines within and without the Department of Education and to coordinate the services of all state agencies providing educational assessment and educational services to children requiring special education;

(4) to compile data on and require all public schools and agencies and any private schools or agencies receiving funds to provide information relating to all children requiring special education and in all special education programs either wholly or partly state supported;

(5) to periodically review and analyze the data mentioned above to evaluate programs and disseminate statistical data upon request to any citizen or agency within the state. All records pertaining to individuals are confidential;

(6) to develop public information programs regarding the nature and extent of special education needs of children and the availability of special education programs to meet these needs;

(7) to develop and recommend to the State Board certification standards for educational personnel employed in the special education programs and regulations encouraging a greater use of ancillary personnel;

(8) to cooperate with and assist public and private colleges and universities to develop courses and programs to prepare graduates to serve the educational requirements of these children;

(9) to receive and investigate complaints and to conduct public and executive hearings with subpoena power on behalf of an individual child or a group of children receiving or requiring special education and regarding any aspect of any special education program and to initiate its own investigation without a complaint;

(10) to receive and allocate federal and state funds subject to the priorities of this law and the State Board;

(11) to recommend to the Board of Education any rules, regulations, or guidelines and to issue necessary directives to carry out this law and to execute any other provisions relative to administering special education programs;

(12) to provide for the maximum practical involvement of parents in the planning, development, and evaluation of programs in the districts serving their children;

(13) to approve the purchase, lease, and maintenance of all special education equipment for the instruction outside of the classroom of handicapped children for whom attendance in public school is unfeasible and to regulate the conditions under which a child may be considered so handicapped;

(14) to investigate into and hold hearings upon *prima facie* denials of equal educational opportunities "by reason of national origin, sex, economic status, race, religion, or physical or mental handicaps of school age children requiring special education." The Division may issue any declaratory and injunctive orders necessary to cure any actual denials of equal educational opportunity because of discrimination on basis of any of the above;

(15) to require public and private schools or educational agencies receiving state funds to establish cost accounting and reporting procedures, forms, schedules, rates, and audits conforming with Department standards and to report to the Department as required;

(16) to conduct or contract with any federal, state, or private agency for research and development projects to improve special education program quality or efficiency;

(17) to allocate resources proportionately if funding shortages occur;

(18) to place children in special schools or agency programs near their residences and to allow other placements if suitable public programs and services are unavailable;

(19) to take all steps including but not limited to public hearings and investigations to insure that local and state expenditures provide the maximum feasible benefit to all children requiring or receiving special education;

(20) to develop and recommend appropriate parent counseling or educational programs necessary for the child's educational development; and

(21) to recommend to the Board that special education funds be withheld from cities, towns, school districts, private schools, or agencies not complying with regulations or not carrying out plans for compliance within a reasonable period of time; however, the Board is not prevented from withholding state and federal funds to the extent deemed necessary in Section 1G, Chapter 15. {Sec. 2, Chap. 766, 1972}

The Division must have a sufficient number of bureaus to enable it to carry out its functions. The board upon the recommendation of the commissioner of Education and associate commissioner for Special Education will appoint a director with experience in the education of such children for each bureau. One bureau, the Bureau of Child Advocacy within the Division of Special Education will be responsible for holding hearings and conducting investigations mentioned in numbers 8, 13, and 18 above (Sec. IN, Chap 15, 1972)

In each Department of Education Regional Office there must be a Regional Branch for the Division of Special Education. Each branch will be headed by a director chosen in the same manner as directors of the Division's bureaus.

Regional branches will have the following functions:

(1) to consult with and assist school committees in implementing regulations, guidelines, and directives of the Department;

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- (2) to directly assist school committees in identifying, diagnosing, and evaluating children with special needs and developing special programs to meet their educational needs;
- (3) to approve all special education placements made by school committees;
- (4) to assist and encourage implementation of joint collaborative agreements between two or more school committees to provide special education;
- (5) to investigate and evaluate any special education program at the Department's request or on its own initiative;
- (6) to maintain a list and inform school committees of professional personnel within and without the region qualified to assist these children and to make this information available upon request to parents, guardians, or persons having custody of such children; and
- (7) to have any other responsibilities delegated to it by the Department. (Sec. 1 O, Chap. 15, 1972)

The Department of Education, after consulting with the Departments of Mental Health, Public Health, Public Welfare, and Youth Services, is responsible for defining the circumstances in which school committees may be required to provide special classes, instruction periods or other special education programs for school age children with special needs and shall also provide standards for class size, curriculum, personnel and any other aspects of the special education program. (Sec. 9, Chap. 71B, 1972)

The Department will maintain a school department for school age children in all institutions under the control of the Departments of Mental Health, Public Health, and Youth Services, that will provide support and care for resident children with special needs. They will act jointly with the Department having control over the particular institution, but appropriation for the administration of the school departments will be administered by the Department of Education. School departments will be administered by a director appointed jointly by the commissioner of education and the superintendent of the institution. Each department will have a staff as determined jointly by the two departments. The regulations, jointly promulgated, apply to school departments within institutions. Nothing in this section will affect the continued authority of departments operating these institutions over all non-educational and all treatment programs for residents or patients in the institutions under their control.

The director and staff of each school department in any institution will be employees of the Department of Education, which will assume the cost of all aspects of the educational program. The school departments in institutions operate 12 months of the year. The salaries and benefits paid must be at least equivalent to the average statewide public school salaries of comparable personnel in the public schools, adjusted to account for the longer school year. Nothing in this section shall operate to remove from employment any educational personnel already employed by any institution now under the administration of the departments of Mental Health, Public Health or Youth Services, or to reduce their salaries or other employee benefits.

PLANNING

Because present inadequacies and inequities in providing special education services have resulted largely from a lack of significant parent and lay involvement in overseeing, evaluating, and operating special programs, this Act is designed to insure this involvement by creating regional and state advisory committees with significant powers and specifying an accountable procedure to evaluate each child's needs before placement in a program and periodically thereafter. (Sec. 1, Chap. 766, 1972)

In each region there must be a Special Education Advisory Council consisting of at least 16 members appointed by the Department after consulting with the regional branch director. At least eight of the members must be parents residing in the region with children in special educational programs; however, no more than two parents may have children not attending public school day programs. No member may be appointed for more than two consecutive terms. Each council shall advise the regional branch regarding all aspects of special education within the region and will submit a written annual report on the quality and adequacy of the region's program to the State Advisory Commission. In addition, the council shall hear and transmit to the State Advisory Commission complaints and suggestions of persons interested in special education in the region. Council members shall be granted access to special education programs and information about these programs subject to the Board restrictions regarding confidentiality. The regional branch of the Division of Special Education will assist them in carrying out these duties. Members of the Council will be reimbursed only for necessary expenses incurred while performing Council activities. (Sec. IP, Chap. 15, 1972)

A State Advisory Commission for Special Education will be formed consisting of two members elected from each of the regional advisory councils, at least one of whom will be a parent or guardian of a child receiving special education. The commissioners of the departments of Mental Health, Public Health, and Public Welfare will each appoint a representative to serve as an ex-officio member of the Commission. Members will be reimbursed only for necessary expenses incurred in the performance of their duties. The

Commission shall submit an annual report to the Department evaluating the quality and adequacy of special education programs and recommending any improvements. The Department will implement the recommendations of the Commission or will state in a written reply why the recommendations cannot or should not be implemented. In these circumstances, the bureau responsible for hearing complaints and conducting investigations in the Division of Special Education will attempt to resolve the disagreement informally; however, if a settlement cannot be reached the State Board will conduct public hearings to investigate the basis of the disagreement and resolve any dispute between the Commission and the Department. (Sec. 1Q, Chap. 15, 1972)

The secretaries of the executive offices of Human Services and Education must jointly submit an annual report to both the Governor and Legislature to evaluate the success with which their departments have cooperated to implement this Act and submit any recommendations for approving the ability of this state to meet the needs of such children. (Sec. 15, Chap. 71, 1972)

FINANCE

Any school committee providing or arranging for special education services will pay for special education personnel, materials and equipment, tuition, room and board, transportation, rent, and consultant services necessary to provide these services. A school incurring obligations as a result of Chapter 71B must include in its budget for the fiscal year beginning September 1, 1973, and annually thereafter, funds sufficient to comply with the provisions of this Chapter. The amount will be added to the annual budget appropriation for school purposes and will be a portion of the amount necessary in each city or town "for the support of public schools for the purposes of, and enforceable pursuant to, Section 34, Chapter 71, notwithstanding any general or special laws or charter provisions which limit the amount of money that may be appropriated in any city or town for school purposes." (Sec. 5, Chap. 71B, 1972)

Costs in instruction, training and support including the cost of special education personnel, material, equipment, tuition, transportation, rent, consultant services of the children in special classes, instruction periods or other programs shall be reimbursed for the cost exceeding the average per pupil expenditure of the city, town or school district for the education of children of comparable age by the state, not exceeding 110 percent of the applicable state average expenditure for each pupil minus that state average expenditure. The Department shall differentiate between types of programs on the basis of the amount of time a child requires special programs outside of the regular classroom to meet his particular needs and the ratio of personnel to pupils required for these programs. This reimbursement is made only after approval and certification by the Department that these are reasonable expenditures and the funds were actually expended in special education classes and instruction programs meeting state standards and requirements. The costs for each special education pupil shall be "reimbursable expenditures" within the meaning of Chapter 70, in an amount not exceeding the average pupil expenditure for the city, town or school district and will be reimbursed under Chapter 70.

The Department will reimburse the city or town in which any child three through 21 resides who attends a clinical nursery school or a child who, because of insufficient classroom space in a clinical nursery school, attends a clinical nursery school, day care center or other institution for the care and educational treatment of retarded children conducted by a school or college accredited by the state, or a retarded person attending an educational, habitational, or day care facility or program of the Mental Health Department, by paying one-half the cost of transportation for each child and the full cost for each adult to and from the facility on each day the school is in session.

Any reimbursement to cities and towns will be made to the school committees and will be applied to the cost of programs. (Sec. 12 Chap. 71B, 1972)

By November 20th each year the state treasurer will pay to any city or town or regional school district sums as certified by the Commissioner for special equipment purchased, leased, and maintained or for classes or special instruction periods conducted. (Sec. 14, Chap 71B, 1972)

The amount reimbursed to a city, town or school district under Section 13 of Chapter 71B of the General Laws, inserted by Section 11 of this Act, combined with reimbursements for special education programs under Chapter 70 of the General Laws, shall not be less than the reimbursement for special education programs received for the fiscal year 1974, until and unless said city, town, or school district qualifies for a lesser amount after September 1, 1979. (Sec. 21, Chap 766, 1972)

A local school committee is not responsible for more than the average per pupil cost for continued placement of children with special needs who are enrolled in an institution, with the state paying the tuition at the effective date of this Act. (Sec. 18, Chap. 766, 1972)

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ADMINISTRATIVE STRUCTURE AND ORGANIZATION

To provide special education for all children needing it, the school committee of any school district may enter into a collaborative agreement with any other school committee to jointly provide special education or, subject to the consent of the parent or guardian and any constitutional limitations, may enter into agreement with a public or private school, agency, or institution to provide the necessary services within the school district. When school committees jointly collaborate to provide special education, an agreement will designate one city, town, or school district as the operating agency. The funds received by the operating agency from other districts or appropriated by the agency to fulfill the obligations of the agreement, in addition to any gifts or grants, will be deposited with and held as a separate account by the agency's treasurer. The school committee may apply these funds to the cost of programs operated under this agreement without any further appropriations. (Sec. 4, *Chap. 71B*, 1972)

Because professional services and resources must be available to cities, towns, and regional districts on a regional basis if this program is to be successfully implemented within a reasonable time period, this Act strengthens and regionalizes the Division of Special Education in the Department of Education and provides for meaningful cooperation among agencies concerned with children with special needs. (Sec. 1, *Chap. 766*, 1972)

SERVICES

In the Division of Special Education there is a library center for the acquisition, maintenance, and distribution of books and other materials for the instruction of visually handicapped children. (Sec. 15-15B, *Mass. Gen. Law*)

"'Regular education,' is the school program and pupil assignment which normally leads to college preparatory or technical education or to a career."

"'Special education,' means educational programs and assignments, namely special classes, programs or services designed to develop the educational potential of children with special needs, but not limited to educational placements of children by school committees. Children receiving or requiring special education are entitled to participate in any of the following types of programs:

- (1) supplementary direct or indirect instruction, consultation service, materials, equipment, or aid provided to children or their regular classroom teachers directly benefiting such children; (Regular program with modifications)
- (2) supplementary individual or small group instruction or treatment in conjunction with a regular classroom program; (Regular program with no more than 25% time out)
- (3) integrated programs during which a child may be assigned to special resource classrooms but attends regular classes to the extent he is able to function within them; (Regular program with no more than 60% time out)
- (4) full-time special class teaching or treatment in a school building; (Substantially separate program)
- (5) treatment or teaching at home;
- (6) full-time teaching or treatment in a special day school or other type day facility;
- (7) teaching or treatment at a hospital;
- (8) teaching or treatment at a short or long-term residential school;
- (9) parent-child instruction;
- (10) a diagnostic program; or
- (11) any combination or modification of the above programs or other programs, services, treatments, or experimental provisions that have prior approval of the Department. (Sec. 2, *Chap. 71B*, 1972)

Admission to programs on a preschool level (at an earlier age than which schooling is ordinarily provided) is determined by each child's educational plan. The programs are regulated by the Department of Education and are restricted to children with substantial disabilities adjudged by these departments to require special preschool programming. (Sec. 2, *Chap. 71B*, 1972)

The Department, in cooperation with cities and towns, is to establish recreation programs for school age children with special needs. The programs will be under the direction and approval of the Division, and the Department will reimburse cities and towns for one-half the cost, including transportation of children to and from the program each day it is held. The Department will fully reimburse the city or town in which the children are residents for the cost of transportation to and from a recreation program at any state facility conducting approved recreation programs. (Sec. 11, *Chap. 71B*, 1972)

If a school age child with special needs attends a school approved by the Department within or out of the city or town of residence of the parent or guardian, the school committee of residence may be required to provide transportation once each day including weekends, wherever applicable to and from school. When

a child is in attendance, reimbursement will be provided to the city or town providing transportation according to Section 13, Chapter 71 B. (Sec. 8, Chap. 71B, 1972)

A city or town providing instruction to a child who is a resident of an institution but not a resident of the city or town may receive from the state the school expenses incurred by the child's attendance, to be determined by the Rate Setting Commission. The amount received by a city or town is limited to the annual per pupil cost of education as determined under Section 7, Chapter 76. No costs may be reimbursed under this section which would be reimbursable under Section 13, Chapter 71B. (Sec. 11, Chap. 76, 1972)

PRIVATE

On an annual basis the Department, when requested by the parent or guardian and on the recommendation of the local school committee and upon approval of the Regional Review Board, may refer children requiring special education to any institution or approved private school either in or out of the state offering curriculum, instruction, and facilities appropriate to the child's needs and approved by the Department under regulations jointly promulgated by it and the Department of Mental Health, Public Health, Public Welfare and Youth Services. The curriculum of these institutions must be equivalent insofar as the Department deems feasible to the curriculum of children of comparable age and ability in a public school of the state. Prior to acting on any such request the Department must determine the nature and extent of the child's special needs. They must require the local school committee and regional advisory council to prepare and submit plans detailing the time needed to establish adequate facilities for children with special needs in their own city, town, or school district and must ascertain whether adequate facilities and instruction programs are available and when adequate facilities can be made available in a city, town or school district of residence. Until adequate facilities are available the child will be placed in the most adequate program available as determined by the Department. The Department shall further define by regulation the circumstances in which it would be directly responsible for placing children and by the standards available to the public, determine the method and order of these placements; however, no child will be denied access to any programs operated by the departments of Mental Health, Public Health or Public Welfare, to which in the judgment of the operating department the child should be admitted.

The expenses of the instruction and support actually furnished to the child, including traveling expenses whether daily or otherwise but not exceeding ordinary and reasonable compensation, will be paid by each LEA and reimbursed by the state to each city and town, but the Department shall issue joint regulations with the Mental Health, Public Health and Public Welfare Departments defining circumstances in which the state will be required to pay all of the cost and the cases when a parent or guardian may be required to reimburse the state for part or all of the cost. However, the cost to the school committee for such a placement cannot be less than the average cost per pupil of comparable age children within the city, town, or school district. In determining the cost to the parent or guardian, if any, no charge will be made for any educational support, only for support and care. In determining a parent or guardian's cost the Department will apply criteria taking into account relative ability to pay.

The Department shall direct and supervise the education of all children, and the commissioner will state in his annual report their number and cost of their instruction and support, the manner in which the appropriated money has been expended, to what extent reimbursed, and any other important information. Nothing in this clause affects the continued authority of the Departments of Mental Health and Public Health over all non-educational programs and all treatments for residents and patients in institutions under their control. (Sec. 10, Chap. 71B, 1972)

PERSONNEL

Special education scholarships not exceeding \$300 yearly may be given to high school graduates of the state who qualify for entrance into a public or private college other than the State College at Fitchburg. At any one time 25 scholarships is the maximum to each of the freshman, sophomore, junior and senior classes. The maximum number of scholarships is 100 per year. The scholarship continues as long as the student remains in good standing and pursues certification as a special class teacher of the mentally retarded. No student may receive a scholarship for more than four years. (Sec. 69-7C, Mass. Gen. Law)

FACILITIES

No school construction project will be approved unless and until the school Building Assistance Bureau and the Division of Special Education are satisfied that adequate provisions have been made for children with special needs. (Sec. 14. Chap. 76. 1972)

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MICHIGAN

RIGHT TO AN EDUCATION

Constitution: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and means of education shall forever be encouraged." (*Art. XI, Sec. 1, Mich. Const.*)

"The Legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition . . ." (*Art. XI, Sec. 9, Mich. Const.*)

Compulsory Attendance Law: Unless the parents or legal guardian of the child refuse to have the child medically or clinically examined, no child may be expelled or suspended from school because of a physical handicap unless the board of education obtains a certified statement from a physician that the child is so physically handicapped he should not attend school. No child may be excused because of a mental or emotional handicap unless the board of education has obtained a statement from a psychiatrist, a child center, or a clinic or other appropriate agency approved by the superintendent that the child is incapable of benefiting from public school attendance. (*Sec. 340.613, Mich. Stats.*)

A local board may expel or suspend any pupil guilty of persistent disobedience or gross misdemeanor if the interests of the school demand it. If there is a suspicion that the pupil is handicapped and has not been evaluated, he will be immediately evaluated by the intermediate district of which the local district is a constituent. (*Sec. 613, Act No. 198, Public Acts of 1971*)

Responsibilities'. Each local board shall provide special education programs and services to develop the maximum potential of handicapped persons on its districts' record under section 298c for whom appropriate education and training programs can be provided under the intermediate district's plan in any of the following ways or a combination of them:

(1) operate the program or service;

(2) contract with its intermediate district, another intermediate district or local district, an adjacent school district in a bordering state, the Michigan Schools for the Deaf or Blind, the Department of Mental Health or Social Services, or any combination of the above, to deliver special education programs or services. Districts may also contract with a State Board approved agency for the delivery of ancillary professional special education services. The local board's intermediate district must be a party to the contract even if not participating in the delivery of programs or services. (*Sec. 771a, Act. No. 198, Public Acts of 1971*)

Beginning with the 1973-74 school year and continuing thereafter, if a local district claims an emergency exists because of extreme financial conditions, insufficient operating funds, or a severe classroom shortage and claims that this emergency prevents it from providing special education in compliance with section 771a, the district must apply, in writing, to the State Board by July 1 of that school year for approval to provide special education not complying with the section. (*Sec. 252b, Act. No. 198, Public Acts of 1971*)

In its application the district must demonstrate the need to provide noncomplying programs and services and delineate the programs and services it can provide and the efforts it will undertake to alleviate the emergency. If the State Board finds an emergency does exist, it may approve the application. The filing date may be extended for good cause. (*Sec. 252b, Act. No. 198, Public Acts of 1971*)

If the State Board determines a district is not in compliance with Sec. 771a without prior approval, the State Board is required to notify the district in writing of its noncompliance. If the district does not submit proof of compliance or of unforeseen emergency within 30 days after receipt of the notice, the State Board shall direct the intermediate district of which the local district is a constituent to provide complying services and programs. The intermediate district shall provide only those programs or services not in compliance with section 771a. If an intermediate district is directed to provide programs, they will be funded as if conducted by a local district with the local district contributing to the intermediate district the unreimbursed cost of the programs or services. (*Sec. 252b, Act No. 198, Public Acts of 1971*)

POPULATION

"'Handicapped person' means a person identified by an educational planning and placement committee as severely, trainable, or educable mentally impaired, emotionally impaired, hearing, visually, physically and otherwise health impaired, speech and language impaired, homebound, hospitalized, learning disabled or having a combination of two or more of these impairments and requiring special education programs and services." (*Sec. 340.1702 Mich. Stats.*)

Age of Eligibility: Handicapped persons are eligible for special education programs and services until age 25. (Sec. 298c, *Act 198, Public Acts of 1971*)

Operating districts may provide programs for handicapped persons over 25.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: Intermediate school boards shall receive reports of persons under the age of 25 who are or may be handicapped. Such reports may be made by parents or guardians, or with parents' or guardians' consent, by physicians, registered nurses, social workers, or other qualified professional personnel. No person making such a report in good faith shall incur any liability for doing so. (Sec. 298c, *Act 198, Public Acts of 1971*)

Curriculum, eligibility for special education programs and services, and review procedures regarding placement in special programs shall be determined by rules established by the State Board. (Sec. 773a, *Act 198, Public Acts of 1971*)

ADMINISTRATIVE RESPONSIBILITY

The superintendent of Public Instruction is responsible for establishing qualifications of all professional personnel including teachers, diagnosticians, aides, and social workers employed in programs for trainable mentally handicapped children operated by intermediate school districts. (Sec. 317d, *Mich. Stats.*)

Intermediate school districts operating programs for the trainable must comply with the requirements of the superintendent as to the establishment of services, eligibility, pupils, sizes of classes, housing, equipment, instructional programs and territory to be served before the cost of the programs may be reimbursed. (Sec. 317e, *Mich. Stats.*)

Special education personnel must meet State Board requirements and qualifications. (Sec. 772a, *Act 198, Public Acts of 1971*)

Class size, program size, quantity and quality of equipment, supplies and housing, adequacy of methods of instruction and the length and content of the school day must be in accordance with State Board special education rules. (Sec. 773a, *Act 198, Public Acts of 1971*)

PLANNING

Beginning with the 1973-74 school year and continuing thereafter, the State Board shall:

(1) develop, establish, and continually evaluate and modify in cooperation with intermediate school districts a state plan for special education providing for the delivery of programs and services to develop the maximum potential of handicapped persons and coordinating all programs and services;

(2) require intermediate districts to submit plans according to subdivision (a) of section 298c and approve these plans; and

(3) establish rules for the requirements of the plans and procedures for submitting them.

The final plan shall include recommendations for funding of special education programs and services. (Sec. 252b, *Act 198, Public Acts of 1971*)

Each intermediate board shall:

(1) develop, establish, and continually evaluate and modify in cooperation with its constituents school districts, a special education plan providing for delivery of special education programs and services to develop to the maximum potential all handicapped persons included in number six. The plans must coordinate all special education services and programs operated or contracted for by constituent districts.

(2) contract for the delivery of services or programs according to the intermediate plan. The intermediate district under contract may operate a special education program or service, furnish transportation and room and board;

(3) employ or otherwise engage special education personnel in accordance with the district's plan and appoint a special education director meeting State Board qualifications and requirements;

(4) accept and use available private and government funds and contributions to provide appropriate special education programs and services;

(5) lease, purchase, or otherwise acquire vehicles, sites, buildings, or portions of them, and equip them as necessary for its staff, programs, and services not regarding Section 298a subsection (1), subdivision (1);

(6) maintain a record of all handicapped persons up to age 25 who have not completed a normal course of study and graduated from high school and who are residents of one of the constituent districts, and the

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special education programs and services in which the person is participating, if any, as of the fourth Friday following Labor Day and the Friday before Memorial Day. The basis on which the district of residence is determined will be decided by State Board regulations. (Sec. 298c, Act 198, *Public Acts of 1971*)

(7) have the right to place in an appropriate education program any handicapped person for whom a constituent district is required to provide special education programs or services under section 771a;

(8) investigate special education programs and services conducted by or contracted for by the Board or its constituent districts and report in writing to the local district and State Board any matters it deems in noncompliance with any contract, statute, or rule governing the special education programs or services or the intermediate district's plan;

(9) operate, according to section 252b, or contract for the programs and services as if a local district under section 771a. The contract, providing for the items in section 771a, must have State Board approval. Transportation and room and board, or both, must be provided by the intermediate boards for persons participating in programs or services conducted as if a local district under sections 601 and 601a.

(10) evaluate pupils pursuant to and in accordance with section 613. (Sec. 298c, Act 198, *Public Acts of 1971*)

FINANCE

Boards coming under the provisions of sections 307a to 324a are required to expend funds received under section 314a according to State Board rules. (Sec. 317a, Act 198, *Public Acts of 1971*)

Boards operating or contracting for programs or services are entitled to carry children in membership in the same manner as local districts and shall receive their proportionate share of available state funds. State Board rules shall govern the calculation of "membership." (Sec. 318a, Act 198, *Public Acts of 1971*)

For programs and services as determined by the Department of Public Instruction, reimbursement shall be at 75% of the actual cost of salaries, not to exceed \$8,100 for any individual salary. If the appropriation exceeds the amount necessary to fund this scale of reimbursement, the scale shall be prorated upward accordingly. A program begun after the official membership count date shall receive a prorated reimbursement. (Sec. 51, Act. 258, *Public Acts of 1972*)

The Board of Education of a local district shall provide for the transportation of handicapped persons who otherwise would be unable to participate in a special education program. (Sec. 601, Act 198, *Public Acts of 1971*)

For the 1974-75 school year, \$90,051,500 is allocated for reimbursement to districts for special education programs, services, and personnel, including programs for children with learning disabilities.

A board of education of a local district shall not solicit reimbursement from a handicapped person or his guardian for any cost of a special program attributed to room and board. However, the board does have a right to reimbursement for room and board in an amount reasonably afforded by such person, and in accordance with the board's rules.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Intermediate school districts possess all the rights of the county districts they succeeded. When constituent districts reorganize into a single district, the reorganized district is a constituent to the intermediate district designated by the board of the reorganized districts. If a decision is not made within 30 days after the effective date of the reorganization, the State Board shall make it. By resolution of its board any constituent district may become constituent to another contiguous intermediate district if the board of each affected intermediate district approves. If the intermediate district to which annexation is proposed has adopted this Chapter's special education provisions or has bonded indebtedness outstanding for special education building facilities for the trainable mentally retarded, registered electors of the district to be annexed must vote to accept these provisions and to assume a prorata share of any bonded indebtedness outstanding. An annexation becomes effective only if the applicable issues relating to special education programs, vocational technical programs, and bonded indebtedness are approved at the same district election.

If a school district constituent to an intermediate district with a bonded indebtedness is transferred to another intermediate unit, the territory of the annexed district remains as part of the intermediate district from which it transferred for levying debt retirement taxes for the bonded indebtedness until the bonds are redeemed or sufficient funds are available in debt retirement funds for that purpose. For all other purposes, the annexed district is a constituent of the intermediate district to which it was annexed.

Local district contracts providing for services or programs must specifically provide for: necessary special education buildings, equipment, and personnel to operate the program or service; transportation or room and board, or both; contribution of the sending district in accordance with State Board rules. This section should be interpreted to allow for program operation by state departments without local contribution, and any other matters deemed appropriate by contracting parties.

All programs and services operated or contracted for by local districts must be in accordance with the intermediate district's plan. Additional services not included or required by the plan may be provided by local districts. Intermediate school districts may operate programs for the trainable mentally handicapped. (Sec. 771, *Mich. Stats.*) (See Planning)

SERVICES

"'Special education programs and services' as used in this Act means educational and training programs and services designed for handicapped persons operated by local school districts, intermediate school districts, the Michigan School for the Blind, the Michigan School for the Deaf, Department of Mental Health, Department of Social Services, or any combination thereof, and ancillary professional services for handicapped persons rendered by agencies approved by the State Board of Education." (Sec. 10, *Act 198, Public Acts of 1971*)

The programs provided shall include vocational training but do not have to include college or university level academic programs. (Sec. 10, *Act 198, Public Acts of 1971*)

"'Special education personnel' as used in this Act means persons engaged in having professional responsibility for the training, care and education of handicapped persons in special education programs and services which include, but are not limited to, teacher aides, social workers, diagnostic personnel, physical therapists, occupational therapists, audiologists, speech pathologists, instructional media-curriculum specialists, mobility specialists, consultants, supervisors and directors." (Sec. 11, *Act 198, Public Acts of 1971*)

Local boards shall provide transportation by a contractual or other arrangement for handicapped persons who without such transportation would be unable to participate in an appropriate special program operated or contracted for by local districts under section 771a. These provisions do not apply to persons at the Michigan School for the Blind, School for the Deaf, or Department of Mental Health or cial Services facilities. (Sec. 601, *Mich. Stats.*)

In a similar manner to transportation, local boards shall provide room and board to handicapped persons. (Sec. 601a, *Mich. Stats.*)

PRIVATE

If districts provide auxiliary services to handicapped children in public schools, they shall provide the same services to children in non-public schools. These services include "health and nursing services and examinations. . .; speech correction services; visiting teacher services for delinquent and disturbed children; school diagnostician services for all mentally handicapped children; teacher counselor services for physically handicapped children; teacher consultant services for mentally handicapped or emotionally disturbed children; remedial reading; and such other services as may be determined by the Legislature." (Sec. 662 *Mich. Stats.*)

PERSONNEL

The Department of Education with the advice of the Divison of Exceptional Children may make traineeship and fellowship grants available to persons interested in part time or full time study in programs designed to qualify them as teachers and other workers in special eduation. To qualify for a traineeship persons must have earned at least 60 semester hours of college credit, and to qualify for a fellowship one must be a graduate of a recognized university. No more than 200 grants on a full time basis may be given in any academic year and they may not be in amounts exceeding \$1500 per academic year for traineeships and \$3,000 for fellowships, except an additional amount may be allowed to an approved institution of higher learning for tuition fees. Part time students and summer session students may be granted awards on a prorata basis.

The Department of Education may contract with any approved institution in the state to offer courses required for the professional training of special education personnel and may reimburse the institution for any financial loss due to low enrollment, distance from campus, or other reasons satisfactory to the Department.

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Following the completion of an academic program after receipt of a traineeship or fellowship, grantees are expected to obtain within one year employment in an approved special education program in Michigan. They must continue such employment for each half year of their traineeship or fellowship. If they do not fulfill this requirement they will be required to remit to the state all of the money they received. (*Senate Bill 1182, Public Acts of 1966*)

FACILITIES

Intermediate boards providing services to handicapped children within constituent districts may not appropriate funds to maintain or construct buildings to house special education classes unless the buildings are owned by the constituent school districts and are under the administration of the board of education of the special education center. ("Special education center" means a constituent school district which, by action of its board, contracts with the board of an intermediate district to provide special education to non-resident pupils.)

Intermediate school districts operating programs for the trainable mentally retarded may purchase, construct, lease, or otherwise acquire necessary housing and land. (Sec. 317f, *Mich. Stats.*)

By a majority vote of registered school electors within the intermediate district, voting on the question at an annual election, these districts may borrow money and issue bonds to defray all or any part of the cost of purchasing, erecting, completing, remodeling, improving, furnishing, refurnishing, equipping, or re-equipping buildings to house the program for the trainable and other related facilities, and acquiring, repairing, developing or improving sites. No intermediate district shall issue bonds for the purposes mentioned in this section for the trainable mentally handicapped in special education for an amount greater than 1.5 percent of the total assessed valuation of the intermediate district, nor may the bonded indebtedness of any intermediate district extend beyond a period of 30 years for the money borrowed. (Sec. 317g, *Mich. Stats.*)

Boards of education of any school districts except primary districts or intermediate districts may construct facilities and purchase sites and equipment to operate day camp programs for severely handicapped children and adults not eligible for the educational programs described under Section 771 to 780. (Sec. 587a, *Mich. Stats.*)

MINNESOTA**RIGHT TO AN EDUCATION**

Constitution: "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature to establish a general and uniform system of public schools." (*Art. VII, Sec. 1, Const. of State of Minn.*)

Compulsory Attendance Law: All children between the ages of seven and 17 are subject to the compulsory attendance laws and must attend a public or private school for at least nine months during the school year. A child may be excused from the requirement upon the application of his parent, guardian, or any other person having control of the child to any member of the board, truant officer, principal, or city superintendent for the whole or any part of the school year by the board of the district in which he resides, if it is shown to the satisfaction of the board that the child's bodily or mental condition is such as to prevent his attendance at school or application to study for the required period. The clerk of the school board must keep a record of the excuses. Each excuse will state the reason for the excuse, and a copy will be forwarded to the commissioner of education. (Sec. 120.10 MSA)

No school board may exclude, expel or excuse, without sufficient cause, any person from school privileges if he is entitled to admission as a student to the district schools. If a person has been excluded, expelled, or excused by a school board, the action of the board will be reported to the commissioner of education within 30 days. (Sec. 127.071 MSA)

Responsibilities: Programs for the trainable mentally retarded shall be provided either within or without the district. If the provision of such instruction, training, and services would result in hardship or injury to the child, the school board may appeal the mandatory provisions of this Act to the commissioner of education who will then determine the provisions to be made by the district for the education of the child. (Sec. 120.17 MSA)

All school districts and unorganized territories shall provide special instructions and services for educable handicapped children of school age in the district, and they may also provide special training and services.

Districts may provide special education services to those children who have not yet reached school age. Districts which have less than a minimum number of eligible handicapped children as determined by the State Board regulations shall cooperate with other districts to maintain a full sequence of programs for education, training, and services for handicapped children. (Sec. 120.17 MSA)

POPULATION

Handicapped children in Minnesota include "every child who is deaf, hard of hearing, blind, partially seeing, crippled or who has defective speech or who is otherwise physically impaired in body, or limb, so that he needs special instruction and services, but who is educable as determined by the standards of the State Board."

"Every child who is mentally retarded in such degree that he needs special instruction and services but who is educable as determined by the standards of the State Board is a handicapped child."

"Every child who by reason of an emotional disturbance or a special behavior problem needs special instruction and services, but who is educable, as determined by the standards of the State Board, is a handicapped child."

"Every child who is mentally retarded in such degree that he requires special training and services and who is trainable as defined by standards of the State Board is a trainable handicapped child." (Sec. 120.03 MSA)

Age of Eligibility: School age means the ages of four to 21 for children who are deaf, blind, crippled or have speech defects; ages five to 21 for mentally retarded children; and six to 21 for emotionally disturbed children. In no cases shall services extend beyond secondary school. (Sec. 120.17 MSA)

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IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: An annual school census shall be taken, including an enumeration of all children requiring special education by categories designated by the State Board, and as required for reports of the commissioner of education. The school census shall show the name and date of birth of each person and the name and address of his parent or guardian or other person having control of the child and any other necessary data. Conducting the census is the responsibility of the individual school districts. [Sec. 120.095 MSA)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for promulgating the rules and regulations relative to the qualifications of essential personnel, courses of study and training, methods of instruction and training, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and any other rules and standards necessary for instruction of handicapped children. (Sec. 120.17 MSA)

Though the state institutions for the deaf, blind, emotionally disturbed, and mentally retarded are under the administration of the Department of Public Welfare, the children at the institutions are encouraged to enroll in the public schools in the district in which the institutions are located. The children will be considered as regularly enrolled in the public schools. (Sec. 120.17MSA)

PLANNING

A State Advisory Board on Handicapped, Gifted, and Exceptional Children, consisting of 12 members appointed by the governor, is created to serve in an advisory capacity to the State Board of Education the Commissioner of Public Welfare, and the State Board of Health. The Board will aid in formulating policies and encouraging programs for exceptional children, and is also responsible for continuously studying the needs of exceptional children. (Sec. 121,34 MSA)

FINANCE

The state shall pay to any district and unorganized territory: (1) 60 percent of the salary of essential personnel involved in the educational program for the handicapped. This amount cannot exceed \$5300 for the normal school year for each full time person employed, or a prorata amount for part-time persons or those employed for a limited time, including summer school; and (2) for the employment of an individual jointly with another district or districts, or unorganized territory in its educational program for handicapped children, 60 percent of the salary of essential personnel, but not exceeding \$5,300 per year for each full time person employed. (Sec. 124.32 MSA)

Districts or unorganized territories will receive for purchased or rented supplies and equipment an amount equal to one-half of the sum actually expended, but not exceeding an average of \$50 in one school year for each handicapped child.

When a handicapped or mentally retarded pupil cannot be transported on a regular school bus, each district or unorganized territory will be reimbursed for transportation or board or lodging and the prorated amount for summer school for mentally retarded or otherwise handicapped students when approved by the State Board. Actual transportation costs may be reimbursed but not exceeding \$225 annually. Treasury funds may be used to reimburse expenditures for conveying handicapped pupils between home and school and within the school plant. If school districts provide transportation for children residing within the district attending a licensed state activity center, the district is eligible for reimbursement for mentally retarded or otherwise handicapped children. (Sec. 131.087MSA)

When a handicapped child is placed in a residential facility approved by the commissioner and established primarily to serve handicapped children, and when the child's educational program is approved by the commissioner, the state shall pay to the resident district an amount not to exceed 60% of instructional costs charged to the resident district less the foundation aid per pupil unit payable to the resident district. Not more than \$300 000 shall be spent annually for purposes of implementing this subdivision. If that amount does not suffice the aid shall be prorated among all qualifying districts. (Sec 124.32 MSA)

Approval of a nursery school program for a hearing impaired child is contingent upon periodic in-service training of the nursery school teachers serving hearing impaired children, as well as periodic site visitation of

the nursery school by special education personnel providing the individual tutoring and responsible for the supervision of the comprehensive program for the hearing impaired child and his family.

Any district wishing to apply for a preschool program for hearing impaired children using federal monies must contact the Special Education Section, Department of Education, to determine appropriate financing.

Foundation aids will be prorated on the usual basis. If a preschool hearing impaired child is receiving instruction for two periods a week, on separate days, he would earn 1/2 unit for each session in attendance. The foundation aid will be .5 (one half unit) based upon average daily attendance.

The state shall reimburse each district or unorganized territory the actual cost incurred in providing instruction and services for a handicapped child whose district of residence has not been determined and who is temporarily placed in a state institution or a licensed residential facility for care and treatment. This section does not apply to a child placed in a foster home or a foster group home.

Upon following such procedure as requested by the commissioner of education a district or unorganized territory providing instruction and services for such handicapped child may bill the state the actual cost incurred in providing said services including transportation costs and a proportionate amount of capital outlay and debt service, minus the amount of foundation aid, special education aid, transportation aid, and any other aid earned in behalf of such child, such action pursuant to limits set forth in Minnesota Statutes, Section 124.32, Subdivision 4. (Sec. 124.32 MSA)

Subdivision One. For the 1974-75 school year the state shall pay to each school district for all school transportation and related services for which the district is authorized by law to receive state aid:

- (1) the lesser product of either: (a) the actual net operating cost per eligible pupil transported during the 1975 fiscal year times the number of eligible pupils transported during the 1975 fiscal year or (b) 110 percent of the actual net operating cost per eligible pupil transported during the year ending June 30, 1973, times the number of eligible pupils transported during the 1975 fiscal year;
- (2) minus the amount raised by a levy of one mill times the adjusted assessed valuation which is used to compute the transportation levy limitation for the levy collected in calendar year 1974;
- (3) plus, the amount of depreciation for one year on the school bus fleet computed by the Department of Education on a straight line basis at the rate of ten percent per year of the net cost of the fleet.

Subdivision Two. Notwithstanding Subdivision One, for the 1974-75 school year the state shall pay to school districts having boundaries coterminous with the boundaries of a city of the first class for all school transportation and related services for which a district is authorized by law to receive state aid: 80 percent of the lesser product computed pursuant to clause (1) of subdivision 1 plus 80 percent of the amount computed pursuant to clause (3) of Subdivision One.

The state shall pay to each school district 30 percent of its estimated school transportation aid entitlement for the 1975 fiscal year on or before each of the following dates: September 30, December 31, and March 31. The actual balance for the district shall be paid on or before August 31 of the following fiscal year.

Subdivision Three—Special Payment In addition to other payments authorized by law, August 31 in fiscal year 1975 only, the state shall pay to each school district ten percent of the amount paid to the district in fiscal year 1974 for school transportation services provided in fiscal year 1973. (Sec. 124.222 MSA)

For the 1974-1975 school year and thereafter, school transportation and related services for which state transportation aid is authorized are:

(1) Transportation or board of resident pupils who reside one mile or more from the public schools which they could attend, or transportation to, from, or between the schools they attend pursuant to a program approved by the commissioner of education, or who reside one mile or more from a private school actually attended, but only to the extent permitted by Minnesota Statutes, Section 123.76 to 123.79 with respect to private school pupils; provided that state transportation aid is authorized in an amount not to exceed \$700 annually for the transportation of any elementary pupil, or the Commissioner determines that the transportation is necessary because of extraordinary traffic hazards.

(2) Transportation to or board and lodging in another district of resident pupils of a district without a secondary school; the pupils may attend a classified secondary school in another district and shall receive board and lodging in or transportation to a district having a classified secondary school at the expense of the district of the pupil's residence.

- (3) Transportation for residents to a State Board-approved secondary vocational center.

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- (4) Transportation or board and lodging of a handicapped pupil when he cannot be transported on a regular school bus, and the conveying of handicapped pupils between home and school and within the school plant.
- (5) Transportation of resident handicapped children to licensed daytime activity centers.
- (6) When necessary, board and lodging for nonresident handicapped pupils in a district maintaining special classes.
- (7) Services described in clauses (1) to (6) when provided in conjunction with a State Board-approved summer school program. (Sec. 124.223 MSA)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The parent or guardian of a handicapped child residing in a district not providing special instruction and services within its boundaries may apply to the commissioner for services for his child under one of the methods provided. If the commissioner finds that the local district is not providing the services, he will arrange for the special instruction needed. If the services are provided outside the district of residence, transportation or board and lodging and tuition will be paid by the district of residence.

The tuition rate will be the actual costs of providing special services to the handicapped children, including a proportionate amount of capital outlay and debt service minus the amount of special aid for handicapped children received on behalf of that child. If the boards involved cannot agree upon a tuition rate, a board might apply to the commissioner to fix the rate. He will then set aside a date for a hearing giving each board at least ten days' notice. After the hearing the commissioner will make his orders fixing the tuition rate which will be binding on both school districts.

Any school district, or unorganized territory or combinations thereof, may enter into an agreement to provide special instruction and services to handicapped children. One of the participating units may employ and contract with necessary personnel to offer services in the several districts or territories, and each participating unit will reimburse the employing unit a proportionate amount of the actual costs of providing the special instruction and services, less the amount of state reimbursement which will be claimed in full by the employing district.

Responsibility for special instruction and services for a handicapped child temporarily placed in a district other than his district of residence will be determined in the following manner: (1) the school district of residence of the child will be the district in which his parent resides, if living, or his guardian, or the district designated by the commissioner of education, if neither the parent or guardian is living within the state; or (2) the district providing the instructional program will bill the district of the child's residence for the actual cost of providing the program as outlined above, except that the board, lodging, and treatment cost incurred on behalf of the handicapped child placed outside of his school district of residence by the commissioner of Public Welfare, the commissioner of Corrections, or their agents for reasons other than the provision of special education needs do not become the responsibility of either the district providing the instruction or the district of the child's residence. The district of residence will pay the tuition and other program costs to the district providing the instruction, and the district of residence may claim foundation aid for the child. Special transportation costs will be paid by the district of residence. The district of residence is eligible for state transportation reimbursement. (Sec. 120.17 MSA)

Responsibility for special instruction and services for handicapped children placed in a state institution on a temporary basis will be determined in the following manner: (1) when the educational needs of the child can be met through the institutional program, the cost for such instruction shall be paid by the department to which the institution is assigned; (2) when it is determined that the child can benefit from public school enrollment, provision for instruction will be made in the following manner: (a) the commissioner of education and the commissioner of the department responsible for the institution will jointly determine the child's eligibility for special instruction and services; (b) the school district where the institution is located shall provide an appropriate educational program for the child and will make a tuition charge to the district of residence for the actual cost of providing the program; and (3) the district of the child's residence will pay the tuition and other program costs and may claim foundation aid for the child. The legal residence of the handicapped child for whom parental rights have been terminated by court order and who has been placed in a foster facility will be the school district in which he has been placed. The school board of the district of residence will provide the same educational program for the child as it provides for all resident handicapped children in the district. (Sec. 120.17 MSA)

Two or more of the independent school districts numbered 621 through 624 in Ramsey County and independent school districts 832 and 834 of Washington County may enter into an agreement to establish a

special intermediate school district with a majority vote of the full membership of the board of each of the concerned districts. When the resolution is adopted by the board of one of the districts, it must be published at once in a general circulation newspaper in the district. If a petition for referendum on the question of the district entering into the agreement is filed with the clerk of the board within 60 days after publication of the resolution, and signed by 5% of the qualified voters of the district, no board is able to decide the question of whether the district shall enter into an agreement until the agreement has been submitted to the voters at a special election. If a majority of votes cast on the question within the district is in favor of the question, the board may then proceed to enter into an agreement to establish the special intermediate school district. The school district will be known as the Northeastern Metropolitan Intermediate School District, State of Minnesota. The commissioner is responsible for assigning an appropriate identification number.

The intermediate district will be responsible for furnishing to all eligible persons residing in any part of the district instruction in vocational-technical education and special education. The intermediate school board, in order to pay for any administrative, planning, operating, or capital expenses is certified by the county auditor of each county as a single taxing district with the ability to levy an annual tax. (*Chapter 267, 1971*)

SERVICES

Special instruction or training or services for handicapped children may be provided by one or more of the following methods: (1) special instruction and services in connection with attending regular elementary school classes; (2) the establishment of special classes; (3) instruction and services at the home or bedside of the children; (4) instruction and service in other districts; (5) instruction and services in a state college laboratory school, or a University of Minnesota laboratory school; (6) instruction and services in a state residential school or a school department of a state institution approved by the commissioner or any other method approved by him; (7) instruction and services in other states; or (8) contracting with public private or voluntary agencies. (Sec. 120.17 MSA)

PRIVATE

The following types of facilities may be approved by the commissioner:

- (1) a residential facility operated by a public school district and designed to serve the low incidence handicapped, the multiple handicapped, or the most severely handicapped children, either within or outside of the state, or a state residential school outside of the state;
- (2) a private nonsectarian residential facility designed to provide educational services for handicapped children either within or outside of the state;
- (3) a state hospital or private nonsectarian residential center designed to provide care and treatment for handicapped children. (Sec. 124.32 MSA)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area .

Law Digest: Education of Handicapped Children**MISSISSIPPI****RIGHT TO AN EDUCATION**

Constitution: "It shall be the duty of the Legislature to encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement by establishing a uniform system of schools by taxation or otherwise, for all children between the ages of 6 and 21 years, and as soon as practicable to establish schools of higher grades." (*Art. VII, Sec. 201 Miss. Const.*)

Compulsory Attendance Law: Trustees of school districts have the authority to suspend or dismiss pupils when the best interests of the school make it necessary to deny admission, suspend, or dismiss children who are found to be so mentally or emotionally abnormal that their attendance at school is detrimental to the best interest of the child involved or to the other pupils attending the school. (*Sec. 37-7-301, Miss. School Code*)

Policy: "The purpose of Sections 37-23-1 to 37-23-9 is to provide competent educational services and equipment for exceptional children as defined in this Act for whom the regular school facilities are not adequate." (*Sec. 37-23-1, Miss. School Code*)

The intent of the Legislature is to develop and make available to children who are experiencing learning problems or show evidence of potential learning problems a comprehensive program of services that will raise the quality of education for all children in need of such services. (*S.B. 2095, 1974*)

Responsibilities: In any school district where properly interested persons or agencies, or the parents or guardians of five or more of any one type of exceptional children, or of types which may be taught together, with the exception of those children possessing an exceptionally high degree of intellect, ability or creative talent, petition the board of trustees or governing board of the district for a special class or classes, the school authority shall request, within 30 days of the date of the filing of said petition with said board, the State Department of Education to cooperate in securing a screening team, approved by the State Department, to diagnose and evaluate the exceptional children referred to the school authority by the petitioner, parents or guardians, district school personnel, governmental and nongovernmental agencies which serve the same area as the school district.

Where the screening team identifies five or more exceptional children of any one type, or of types that can be instructed and trained together, the school authority shall request that the State Department of Education cooperate in the establishment of the necessary class or classes under rules and regulations established for this purpose by the State Department. Two or more school districts may join together and contract to establish a special class or classes. (*Sec. 37-23-7, Miss. School Code*)

POPULATION

"Any child of educable and trainable mind under 21 years of age for whose particular needs instructional care and training are not available in this state, or who cannot pursue regular class work due to reasons of defective hearing, vision, speech, mental retardation or physical condition or because of a high degree of intellect, ability or creative talent as determined by competent professional persons in such disciplines as medicine, psychology, special education, speech pathology and social work, shall be considered an exceptional child for purposes of this Act; provided, that the professional persons are approved by the State Board of Education." (*Sec. 37-23-3, Miss. School Code*)

Age of Eligibility: Children are legally eligible for services from birth through age 21. (*Sec. 37-23-3, Miss. School Code*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: The boards of trustees of municipal separate school districts may employ physical education instructors and visiting nurses. The trustees may provide, either acting singly or jointly with other boards of trustees, for medical inspection of school children. (*Sec. 37-9-5, Miss. School Code*)

It is the intent of the Legislature to coordinate existing resources in the state for diagnostic services, while going into remote areas where such resources as not available or within reasonable proximity. {S.B. 2095, 1974}

ADMINISTRATIVE RESPONSIBILITY

Courses of study, teacher-pupil ratios, adequacy of methods of instruction, in-service training, qualifications of teachers and technicians, and necessary equipment for special education must comply with the requirements established by the State Board of Education. (Sec. 37-23-9, *Miss. School Code*)

The boards of trustees for the schools for the deaf and the blind are responsible for the overall administration of the educational programs within the institutions. (Sec. 6785-03 *Miss. Stats.*)

The State Board of Mental Institutions is responsible for institutional programs for the mentally retarded and emotionally disturbed.

The State Board of Education shall employ a supervisor of special education whose duties shall be to aid, foster, promote, inspect, and guide the program for exceptional children as authorized by this Act. The State Board of Education shall prescribe the exact duties of the supervisor, among which shall be the following:

- (1) see that the provisions of the Act concerning eligibility of children for the program are carried out;
- (2) examine budgets, plans, and applications to assure the expenditure of funds in keeping with the provisions of this Act;
- (3) formulate standards and approve classes for their efficient operation;
- (4) provide guidance and assistance in planning and organizing classes;
- (5) give consultative services to administrators and teachers of exceptional children;
- (6) advise with parents on problems of exceptional children;
- (7) prepare bulletins and instructional aids and materials;
- (8) arrange workshops, conferences and institutes for the inservice training of teachers; and
- (9) disseminate information on the program. (Sec. 37-23-5, *Miss. School Code*)

PLANNING

The State Superintendent of Education shall appoint a Learning Resources Advisory Committee not to exceed 30 members, composed of professional educators actively engaged in the education or administration of exceptional children and special programs, university personnel, and parents of exceptional children. The committee shall meet quarterly or upon call of the superintendent and will be purely advisory. Members shall be paid expenses incurred in discharging official responsibilities. (S.B. 2095, 1974)

FINANCE

The State Board of Education pays the county superintendents and/or trustees of municipal separate school districts the cost of education over and above the average per capita cost of educating normal children in the respective school districts. The Board also pays the excess cost of those attending special classes outside their regular school districts. (Sec. 6631-04 *Miss. Stats.*)

Local boards of trustees are required to include in their annual budget a sufficient sum to provide teacher and technician salaries, special services, transportation, appliances, and any equipment required by the State Board. In no event shall the excess cost paid local administrative units by the State Board exceed \$200 per child per school year in special education classes. (Sec. 6631-05, *Miss. Stats.*)

Instruction in hospital schools is reimbursed in the following manner: In cases where children are residents of school districts other than those administering the program, the boards of trustees of districts of residence pay to the board of trustees of the educating district a pro rata part of the expenses of furnishing the program. The payments are made out of the county school funds, district funds, or any other funds available for the operation and maintenance of the schools of the county or district in which the child resides. The amount paid is based upon but cannot exceed the per pupil cost of education of exceptional children in the district of residence. The amount paid is fixed by the State Board of Education. If the amount is not paid, the State Board deducts the amount due to the educating district from the next allocation of minimum foundation school funds due to the non-paying district. The State Board then pays the educating district. If the amount paid to the district is not sufficient to cover the cost of the education,

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including minimum foundation program funds, the State Board is empowered to provide up to \$300 per child in average daily attendance in the program. If it appears that the \$300 limitation would make it impracticable to operate such a program, the State Board is empowered to exceed the \$300 limit. (Sec. 37-11-11, *Miss. School Code*)

Reimbursement for programs conducted by state operated universities or colleges will be in the following manner: The boards of trustees of the districts in which the child resides will pay to the comptroller of the university or college furnishing the program the pro rata part of the expense for furnishing the program within the university or college. Payments may be made from county school funds, district funds, or any other funds available for the operation or maintenance of the schools of the county in the district in which the child is a resident. Any child receiving services under this Act will be counted as in attendance from his home district for the purpose of average daily attendance in the allotment of teachers in the minimum foundation program. The amount so paid shall be based upon, but shall not exceed the current per pupil cost of education in the school district of the child's residence. The amount paid by the county and the school district of the child's residence shall be fixed by the State Board of Education. If the amount is not paid by the school district, upon due demand, the State Board of Education shall deduct any amount from its next allocation of minimum foundation funds and will remit the same to the comptroller of the university or college. If the amounts paid by the districts of residence of the children are not sufficient to cover the cost of the program, the State Board of Education, from its special education fund, may pay up to \$300 per child in average daily attendance. At its discretion, the State Board may exceed the limit of \$300 if it would make it impracticable to operate such a program. (Sec. 37-23-31, *Miss. School Code*)

Sixty percent of a teacher unit will be authorized for each teacher employed in a special education class. (Sec. 6248-02 *Miss. Stats.*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Two or more school districts may join together by contract to establish a special class or classes. See Finance. (Sec. 37-23-7, *Miss. School Code*)

If five or more children of educable mind under age 21 who are deaf, aphasic, emotionally disturbed or possess any other low incidence condition are unable to have their educational needs met in the regular public school program, they may be trained in a program structured by a state supported university or college with the approval of the State Department of Education. Any state supported university or college conducting an approved full time medical teaching program may contract with any private school, non-profit corporation, the Mississippi School for the Deaf, or state-supported institution providing appropriate special education services, if the private school corporation or institution offering the services has been conducting an approved program for at least one year prior to the contracting. See Finance. (Sec. 37-23-31, *Miss. School Code*)

SERVICES

When at least five children of educable mind between the ages of six and 21 are confined in a hospital for an extended period of time, these children are provided a program of education, instruction, and training. The need for the extended hospitalization must be certified by the chief of staff of the hospital, and the ability of the children to do school work must be certified by qualified psychologists and/or educators approved by the State Board of Education. (Sec. 37-11-11, *Miss. School Code*)

The administrative unit in which the hospital is located is responsible for the provision of education. Classroom space, furniture, and facilities must be provided by the hospital. The hospital must enter into a contract with the local administrative unit saying that the hospital will provide the necessary space, furniture, and facilities as well as provide for their upkeep, fuel, and other necessary expenses for the successful operation of the program. See Finance. (Sec. 37-11-11, *Miss. School Code*)

Children who are physically handicapped or crippled may receive transportation to the public schools, regardless of the one mile transportation limitation, if the failure to provide it would result in undue hardship. (Sec. 6336-04 *Miss. Stats.*)

In a Class 1 county having a total population of more than 100,000 in the 1960 census, a total assessed valuation in excess of \$60,000,000 and which borders the Gulf of Mexico and contains a federal military base, a board of education may establish a child development center for children of the county who are mentally or physically retarded or otherwise unable to attend the public school. These children include, but

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are not limited to, those with educable or trainable minds under age 21 and for whose particular educational needs institutional care and training are not available. In addition, the child cannot be able to pursue regular classwork because of defective hearing, vision, speech, mental retardation, or physical conditions. This condition must be determined by competent medical authorities and psychologists approved by the State Board. This program specifically includes, but again is not limited to the provision for the deaf and blind under age six if early training is in accordance with the most advanced and best approved scientific methods of instruction, taking into consideration the best interests of the child and his improvement at the time during which he is most susceptible to improvement. (Sec. 37-23-91, *Miss. School Code*.)

Braille print will be taught in the School For the Blind. The use of this print is included in high school literary courses for students at the school. Every teacher and instructor in the State School for the Deaf whose duties include the oral instruction of pupils must become acquainted with the most efficient and advanced methods of lip reading. These teachers must also be masters of the manual alphabet in order to communicate with pupils who cannot read lips and to aid student participation in activities outside the classroom. All pupils entering the school will be given oral instruction until it is clearly determined whether they can master lip reading to the extent that satisfactory progress can be made in their studies. Manual instruction will be provided in all subjects for all pupils unable to progress under oral instruction alone. (Sec. 6785-05 *Miss. Stats.*)

The Department of Education is directed to establish a Learning Resources System to be implemented and administered by the Department (S.B. 2095, Sec. 3, 1974)

The following services will be offered by the Learning Resources System:

- (1) continuous upgrading of testing and evaluation of students not progressing satisfactorily and of preschool students evidencing potential problems;
- (2) development of information on programs for the instruction of exceptional students;
- (3) provision of professional services and consultation to schools and other related agencies;
- (4) evaluation of current services;
- (5) in-service teacher training programs;
- (6) maintenance of a computer reference by district on pupils who have received services to assure that appropriate educational procedures are being developed and utilized. (S.B. 2095, Sec. 5, 1974)

PRIVATE

Children under the age of 21, who have not graduated from high school and who cannot pursue regular class work due to reasons of defective hearing, vision, speech, mental retardation, or other mental or physical conditions as determined by competent medical authorities and psychologists, are entitled to receive state financial assistance to attend parochial or private schools. (Sec. 37-23-63, *Miss. School Code*)

The State Department of Education has the authority to enforce reasonable rules and regulations and establish standards for the administration of this program consistent with the maintenance of high quality programs for the benefit of those exceptional children served. (Sec. 37-23-65, *Miss. School Code*)

Financial assistance to students attending private or parochial schools is paid in the following manner: the Department of Education determines the amount to be paid by prescribing classifications of applicants and programs developed so that all applicants having the same classification receive equal financial assistance. Financial assistance cannot exceed the obligation actually incurred by the applicant, and no applicant will receive more than \$240 per school year from available state funds. If the Department disapproves an application, it must send notice to the applicant, through the parent, guardian, or person standing in loco parentis by certified mail. The applicant may, within ten days after receiving this notice, file a petition in the chancery court of the county for a hearing on the matter on all questions of fact and of law. The petition shall be served on the state superintendent.

The Board prepares a certified transcript of the record of the case for the office of the clerk of the court. The record must include a copy of the application and any official findings, orders, and rulings of the Board in the case. The Board shall also have 30 days after the filing of the petition to appear and file exceptions, answers, and other pleadings. The board may be granted, by order of the court, additional time for preparation of the certified transcript of the record and for appearing and filing an exception, answers, or other pleadings. After considering the law, the pleadings, and evidence that may be introduced in the case, the court may modify it or reverse the findings of the Board and make issue and enter its judgment accordingly. Appeal from any such judgment shall be subject to the procedures applicable to appeals and ordinary civil action. Any person who seeks to expend any financial assistance for any purpose other than payment or reimbursement to any school commits a misdemeanor, and upon conviction is punished by a fine not exceeding \$500 or not more than six months in jail or both. (Sec. 37-23-69 thru 37-23-75, *Miss. School Code*)

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Schools may be private or parochial. The State Department has the authority to enforce reasonable rules and regulations and to establish standards for the administration of the program. (Sec. **37-23-65**, *Miss. School Code*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

MISSOURI

RIGHT TO AN EDUCATION

Constitution: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years." (Article XI, Sec. 1 Mo. Const.)

Compulsory Attendance Law: Children between the ages of seven and 16 are subject to the compulsory attendance requirements, but "a child who, to the satisfaction of the superintendent of schools of the district in which he resides, or if there is no superintendent, then the chief school officer, is determined to be mentally or physically incapacitated may be excused from attendance at school for the full time required or any part thereof. . ." (Sec. 167.031 RSMo.)

Policy: In order to fully implement the state constitution's mandate for free public school education of all persons under 21 years of age, it is declared the policy of the state of Missouri to provide or to require public schools to provide special educational services sufficient to meet the needs and maximize the capabilities of all handicapped and severely handicapped children. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment, and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of the state. (Sec. 162.670 RSMo.)

To the maximum extent practicable, handicapped and severely handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of such children in the regular school environment shall be overcome whenever practicable by the provision of special aids and services rather than by separate schooling for the handicapped. (Sec. 162.680 RSMo.)

Responsibilities: The board of education of each school district in this state, except school districts which are part of a special school district, and the board of education of each special school district shall provide special educational services for handicapped children five years of age or more residing in the district and may provide special educational services for handicapped children under the age of five years residing in the district. (Sec. 162.700 RSMo.)

The board of education of the special district may establish schools within any school district comprising the special district for any of the children designated in this Act, and may establish programs for any such children within any school district included in the special district, if the number of children available for instruction is sufficient under standards determined by the State Board of Education. (Sec. 162.880 RSMo.)

POPULATION

"Handicapped children" are children under the age of 21 who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services in order to develop to their maximum capacity.

"Severely handicapped children" are handicapped children under the age of 21 who, because of the extent of the handicapping condition or conditions, as determined by competent professional evaluation, are unable to benefit from or meaningfully participate in programs in the public schools of a regular or special nature.

"Gifted children" are children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum. (Sec. 162.675 RSMo.)

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Age of Eligibility: Children are eligible for special education services between the ages of five and 21. (Sec. 162.700 RSMo.)

They may be eligible before age five if the district elects to provide the program.

IDENTIFICATION, EVALUATION, AND PLACEMENT

The board of education of each school district, including school districts which are part of a special school district, shall annually take a special census of handicapped and severely handicapped children under the age of 21 residing in the district or whose parent or guardian resides in the district. The census shall include the name of the child, the parent or guardian's name and address, the birth date and the age of the child, and the handicapping conditions. Where medical or other information is available it shall be used in establishing the handicapping conditions, or if such information is not available, the statement of parents or other qualified observers of the child shall be accepted for the census report pending competent medical, psychological, or other recognized evaluation.

The census results shall be reported to the Division of Special Services of the State Department of Education by May 15 of each year. It may be a continuous census, but only those residing in the district as of May 1 of each year shall be reported. State aid may be withheld from any district failing to submit a census report. (Sec. 162.695 RSMo.)

Every local school district or, if a special district is in operation, every special school district shall obtain current, appropriate diagnostic reports for each handicapped child prior to assignment in a special program. These records may be obtained with parental permission from previous medical or psychological evaluation, may be provided by competent personnel of the district or special district, or may be secured by the district from competent and qualified medical, psychological or other professional personnel. (Sec. 162.700 RSMo.)

The board of education shall notify the parent/guardian if his child is diagnosed, evaluated, re-evaluated or assigned, inform him of the results and the recommended assignment, or change or denial of assignment of the child to a particular class or program. The notice shall be sent by certified mail, return receipt requested. Upon request, the parent will be allowed to examine his child's records, including diagnosis and evaluation. The notice shall also contain information as to the procedure for requesting a review of any action taken by the board or the State Department. (Sec. 162.945 RSMo.)

The notification shall contain the information that upon written request to the board of education or to the State Department of Education within ten days of the date of the notification the parent or guardian will be entitled to a hearing on the action. Such a hearing, if requested, shall be held not more than 30 days after receipt of the request. If no request for hearing is made, the assignment or other action shall be made.

The notification shall also contain the information that upon written request by the parent or guardian to the board of education or the State Department of Education, whatever the case may be, at any time but not to exceed once per year, a reevaluation shall be made. (Sec. 162.950 RSMo.)

No change in the assignment or status of any handicapped or severely handicapped child shall be made within the period afforded the parent or guardian to request and obtain a hearing under Sections 162.950 and 162.960 except that such change may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be sooner made but without prejudice to any rights that the child and his parent or guardian may have pursuant to this Act or otherwise pursuant to law. (Sec. 162.955 RSMo.)

The hearing provided for in Section 162.950 shall be conducted by the chief administrative officer of the school to which assignment has been made. The hearing shall be informal, witnesses need not be sworn, and a record of the proceedings need not be made. The school district or the State Department of Education shall see that the parent or guardian or their representative is advised of and permitted to review all diagnoses, evaluations and reevaluations obtained by the board of education or the State Department of Education which pertain to the child. The school district or State Department shall fully advise the parents or guardian or their representative of each reason for taking the proposed action. The parents or guardian or their representative may present any information whether written or oral to the officer which pertains to the recommended action. Cross-examination is permitted. (Sec. 162.960 RSMo.)

If a satisfactory solution is not reached at this hearing, the parent or guardian may appeal within ten days to the board of education of the district or, in the case of a state school, to the State Board. Not more than 30 days after receipt of the request for appeal, a hearing shall be held before either the board of education of the district, or in the case of a state school, before the State Board. At least 14 days written notice shall be given to the parents or guardian of the child of the date, time, and place of hearing. The

board of education of the district may designate a person or persons not directly connected with the original decision and the State Board of Education may designate a member of the staff of the State Department in Jefferson City to hold the hearing and to recommend to the board findings of fact and specific action. Findings of fact and a final decision shall be rendered at the earliest possible time but in no event longer than 30 days after the day the hearing is concluded. (Sec. 162.960 RSMo.)

At any hearing held pursuant to Section 162.960(2) of this Act, the parents or guardian or their representative shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person and to be represented by counsel. Prior to the hearing, the parents or guardian or their representative shall have access to any reports, records, clinical evaluation, or other materials upon which the action to be reviewed was wholly or partially based which could reasonably have a bearing on the correctness of the determination.

A complete record shall be made of all proceedings at this hearing and shall include verbatim transcription of all testimony and all documents, writings or other evidence presented by any party. (Sec. 162.960(4), RSMo)

The decision of the board of education of the district or the State Board of Education shall be final except that any person aggrieved by the decision may appeal as provided in Chapter 536, RSMo. A copy of the board's decision together with a copy of its findings of fact shall be mailed on the day the decision is rendered to the parent or guardian by certified mail, return receipt requested. (Sec. 162.965 RCMo.)

The State Department of Education may assign severely handicapped children, except severely handicapped children residing in special school districts and in district approved special educational services for such children, to state schools for severely handicapped children, the School for the Blind or the School for the Deaf. Furthermore, the State Board may contract for the education of a severely handicapped child with another public agency or with a private agency when it determines that such an arrangement would be in the best interests of the severely handicapped child. Assignment of severely handicapped children under this section shall be made to a particular school or program which, in the judgment of the State Department, can best provide special educational services, and such assignment shall be made upon the basis of competent evaluations; provided, however, the assignment may be appealed by a parent or guardian pursuant to Sections 60-66 of the Act. Children who are not residents of this state may be admitted to these schools if the schools have the capacity to receive them and upon payment of full tuition and costs as prescribed by the State Board of Education. (Sec. 162.970 RCMo.)

The superintendent of the School for the Blind shall have the eyes of all admitted students examined by a physician or ophthalmologist. If it appears that medical treatment may improve the child's sight, the superintendent, with the parent's consent (and that of the student when practicable), shall have the treatment performed. If successful, the student will be discharged from the school. (Sec. 162.775 RCMo.)

ADMINISTRATIVE RESPONSIBILITY

If a district is unable to provide appropriate programs of special instruction for severely handicapped children, the State Board shall provide services for them. This does not prevent any district from conducting such a program, except that it must provide substantially the same services that would be provided in a state-operated school. Such a program must also be approved by the State Board. (Sec. 162.725 RCMo.)

The State Board shall establish state schools for severely handicapped children residing in districts where specialized services are not available. The State School for the Blind (St. Louis) and the School for the Deaf (Fulton) are within the Division of Special Services. (Sec. 162.730 RCMo.)

The State Board shall be responsible for: (1) determining standards for instruction and personnel in state schools. Instruction must be aimed at developing the mental, physical, vocational and social abilities of students and preparing capable students for admission to post-secondary programs; (2) promulgating all rules and regulations governing enrollment; (3) determining and approving all policies for the operation of said schools or programs. (Sec. 162.730 RCMo.)

The State Department may assign severely handicapped children to appropriate state schools, or contract with other agencies when it determines that such an arrangement would be in the child's best interests. Assignment to the most appropriate program will be made on the basis of competent evaluations. Parents may appeal the assignment. (Sec. 162.735 RCMo.)

If the State Board determines that handicapped children residing within the district may better be provided special services by the district, it shall order the district to provide special services. (Sec. 162.705 RCMo.)

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The State Board shall appoint a section head and other personnel to supervise programs for the severely handicapped. It shall also appoint superintendents of the state schools. (Sec. 162.760 and 162.765 RCMo.)

PLANNING

The state commissioner of education may appoint such state and area advisory committees as he deems necessary to review special educational services to handicapped and severely handicapped children and to consider any problems presented by the commissioner of education with respect to the provision of educational services to handicapped and severely handicapped children and to give advice thereon. Such committees shall include persons broadly representative of community organizations interested in the handicapped and severely handicapped, professions related to the educational needs of the handicapped and severely handicapped, and the general public. The members of such committees shall serve at the discretion of the commissioner of education. (Sec. 162.690 RCMo.)

There shall be boards of advisors for the Missouri School for the Deaf and for the Missouri School for the Blind, each composed of five members, appointed by the Governor with the advice and consent of the Senate. The members of each board shall hold their offices for the term of four years and until their successors are appointed and qualified. The boards shall act in an advisory capacity in regard to the maintenance, operation, management, control and all other matters relating to the conduct and improvement of the Missouri School for the Deaf and the Missouri School for the Blind. The boards of advisors for each school shall meet bimonthly. At the regular meeting following the appointment of new members, each board shall organize by electing one of its number President and one Vice President and shall elect such other officers as it deems necessary. Three members of the board constitute a quorum but no business shall be transacted unless the majority of the whole board votes therefor. Each board member shall receive as compensation for his services the salary of one hundred dollars per annum and his actual expenses. (Sec. 162.760- 162.800 RCMo.)

FINANCE

Each district maintaining special programs for handicapped children shall receive from the state \$6,000 for each approved class per school year. Exceptions are classes for the educable mentally retarded, \$4,500; and remedial reading classes, \$3,500. This is in addition to aid under Sec. 163.031. For approved classes for children aged three to five, state aid is calculated under Sec. 163.017, Mo. Stats, for all age levels. The district shall also receive half the amount provided under Sec. 162.975 RCMo.

For programs for the gifted, aid will be half the cost of personnel and materials.

For each professional, other than classroom teachers, working full time with handicapped children, \$4,000 will be apportioned.

For each aide, districts will receive \$2,000. ("Class" means a group of not less than ten children unless a smaller grouping is found necessary by the State Board).

Districts shall receive up to \$800 per year for each homebound child or for one receiving services outside the special class in a contractual arrangement.

The district receives \$1 for each handicapped child listed on the annual census. (Sec. 162.975 RCMo.)

Each special district formed under provisions of this Act shall receive an amount for each pupil in average daily attendance equal to the sum of the amounts received by all districts comprising the special district for the preceding school year under provisions of Section 163.031, RSMo., divided by the total number of children of school age in average daily attendance in the schools of such district during that year. A student enrolled in classes or programs in both the special district and a component district or a pupil enrolled in a local district who needs itinerant or temporary services provided by the special district shall continue his enrollment in the local district for purposes of apportionment of state aid on average daily attendance. The special district may include the pupils in classes approved for special categorical aid. The district providing transportation may claim state transportation aid. (Sec. 162.935 RCMo.)

The special school district is entitled to apportionment of state aid in the same manner as six-director school districts even though the tax rate levied by the special school district is less than that required by Section 163.021, RSMo. (Sec. 162.935 RCMo.)

The board of education of the special school district shall determine as nearly as possible the per capita cost of its programs and file the same with the State Department of Education. Upon approval thereof by the State Department, the board of education of the special school district shall require of all resident students desiring to participate in the programs of the special school district a tuition fee in an amount approved by the State Department. (Sec. 162.980 RCMo.)

Per pupil costs of contractual arrangements shall be the obligation of the district of residence, except districts which are part of a special school district, or special district of residence. However, if the contract is with another district or special district, the district providing the services shall include children served under such agreements in determining the amount of state aid to which said district is entitled as provided in Section 68 of this Act. Such state aid shall not be used in determining the total per pupil cost for which the district of residence is responsible. If the contract is with a public agency or a nonprofit organization, the district of residence shall be entitled to receive state aid as provided in Section 163.031, RSMo., and in Section 162.980 of this Act. Where the State Board of Education contracts for special educational services pursuant to subsection 1, it shall submit to the responsible district a bill for the per pupil cost payable by that district under the terms of this subsection. Failure of a district to pay such cost within 90 days after a bill is submitted by the State Board shall result in the deduction of the amount due from subsequent payments of state moneys due such district or special district. (Sec. 162.705 RCMo.)

State aid shall not be granted unless the professional personnel employed in special educational programs have been specially trained for work in the programs and the amount of such training shall be in accordance with regulations promulgated by the State Board of Education. In approving special education programs for state aid, the Department of Education shall determine that the quality of programming, the supportive staff and services, facilities, supplies and transportation are at least equal to that provided normal children attending school in the district. Auxiliary personnel to assist teachers of handicapped and severely handicapped children may be employed in accordance with standards established by the State Board. (Sec. 162.715 RCMo.)

The district of residence of each child attending a state school for the severely handicapped, or an institution providing contractual services, (except special districts) shall pay an amount equal to the average sum produced per child by the local tax effort.

At the end of each fiscal year the State Department determines the amount due from each district and if any district fails to pay within 90 days of notification, it shall be deducted from the next regular apportionment of the district's state funds. (Sec. 162.740 - 162.745 RCMo.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If a school district or special district fails or is unable to provide special educational services to each handicapped child as required in this Act, the district shall contract with a nearby district, or districts, or public agency or agencies for such special education services. If the board of education of the district finds that no adequate program for handicapped children is available in nearby districts or through public agencies, it may contract with nonprofit organizations within the state which have programs meeting the State Board's standards. If such district fails to contract for such services, the State Board may contract with a nearby district or districts or public agency or agencies. Assignment of handicapped children under this section shall be made to a particular school or program which, in the judgment of the State Department can best provide special educational services to meet the child's needs and such assignment shall be made upon the basis of competent evaluation. The State Board may seek the advice of established and ad hoc advisory committees in developing standards for approving programs and costs of programs operated by nonprofit organizations. (Sec. 162.705 RCMo.)

The voters may organize and create a special district for the primary purpose of:

- (1) educating and training handicapped children within the special district; and
- (2) providing vocational education for residents of the special district. (Sec. 162.815 RCMo.)

A special district may include more than one district and be established irrespective of county boundaries. Boundaries shall coincide with the boundaries of the districts included in the special district. The special district shall be in addition to the school districts comprising the special district. When the new district is organized, it shall be a body corporate and a political subdivision of the state and be known as "The Special District of..." (Sec. 162.830 RCMo.)

SERVICES

"Special educational services" are programs designed to meet the needs and maximize the capabilities of handicapped children and include, but are not limited to, diagnostic and evaluation services, student and parent counseling, itinerant, homebound and referral assistance, organized instructional and therapeutic programs, transportation, and corrective and supporting services. (Sec. 162.675 RCMo.)

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The district responsible for furnishing special services shall provide necessary transportation for all handicapped children in the district, including to and from contracted day classes. (Sec. 162.710 RCMo.)

Where a sufficient number of children are gifted and their development requires programs or services beyond the level of those ordinarily provided in regular public programs, districts may establish special programs. (Sec. 162.720 RCMo.)

"A special school district formed under the provisions of House Bill 1096, 76th General Assembly: (1) would immediately upon formation become responsible for providing vocational education and special education for physically and mentally handicapped children resident within the county or counties included in the special district; however, the board of education of a special district would be required to accomplish at any given time only that which is reasonably possible; (2) would have no legal obligation to employ special education teachers under contract by component districts at the time of formation of the special district; (3) should present an estimate of the amount of money to be raised by taxation for the ensuing school year and the tax rate necessary to sustain the schools of the special district for the ensuing school year to the county clerk of each county included within the special district on or before July 15; and (4) may secure special educational services and vocational training services for children within its boundaries by contracting with any school district which has authority to furnish such services. If House Bill 474, 77th General Assembly, is signed by the Governor, it will not affect the organization or existence of an already existing special district, but will govern the operations of all special districts." (Op. Att'y. Gen., July 11, 1973)

Special district component districts shall provide appropriate remedial reading programs to children in whom no other handicapping condition is discernible. (Sec. 162.700 RCMo.)

If any child cannot economically, safely, or conveniently attend classes, home instruction may be provided. Regulations for home instruction will be established by the State Board of Education. Boards of education may provide transportation to and from school for all exceptional children who could not otherwise attend. State aid is provided for such transportation. (Sec. 178.260 RCMo.)

The State Board of Education is responsible for formulating plans and for establishing in any county or district composed of two or more counties training centers for trainable mentally retarded children whom the State Board determines are capable of profiting by specialized instruction. (Sec. 162.380 RCMo.)

PRIVATE

The State Board may contract with a private agency when it determines that this would be in the child's best interests. (Sec. 162.735 RCMo.)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

MONTANA

RIGHT TO AN EDUCATION

Constitution: "It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state." (Art. X, Sec. 1, Mont. Const.)

Compulsory Attendance Law: A child between the ages of seven and 16 (and who has completed the eighth grade) will be exempted from the compulsory school attendance provisions "upon satisfactorily showing that the bodily and mental condition of the child does not permit his attendance at school." (Sec. 75-2901 RCM)

Local boards do have the right to exclude persons of severe delinquent behavior. (Sec. 75-5003 RCM)

Responsibilities: The respective parents of four or more persons requiring special education of the kind provided for educable and trainable mentally retarded children, educationally handicapped children, emotionally handicapped children or physically handicapped children may petition the board of trustees to establish a special education program. Parents residing in different districts may petition the board of trustees in each district to cooperatively establish a special education program. The inter-local cooperative agreement may be used to establish a multi-district program. (Sec. 75-7807 RCM)

The board of trustees responsible for the operation of any school district *shall* establish and maintain at least one special education program for:

- (1)ten or more educable mentally retarded (EMR) children;
- (2)seven or more trainable mentally retarded (TMR) children;
- (3)ten or more physically handicapped children (Sec. 75-7805 RCM 1974)

The trustees *may* establish a special program for:

- (1)four or more EMR children;
- (2)four or more physically handicapped children;
- (3)four or more TMR children;
- (4)four or more educationally handicapped children between the ages of six and 21;
- (5)children who are hospitalized or homebound;
- (6)EMR and TMR children; educationally and physically handicapped children under six, when the superintendent determines that programs will benefit the child;
- (7)Educable mentally retarded, educationally handicapped and physically handicapped persons between 21 and 25 whom the superintendent feels will benefit. (Sec. 75-7806)

After July 1, 1979, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped child, as defined, between six and 21 who cannot benefit sufficiently from the regular programs of instruction because of his mental, physical, emotional or learning problems. (Sec. 75-7805 RCM)

POPULATION

Definitions: Handicapped children are defined as follows:

"(A) Mentally retarded children are children who are not capable of profiting from the general educational program of the public schools because their mental ability is substantially below the mental ability of average children of the same age. These children may be considered in three groups as follows:

- (1) Educable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an 11 year old, but not less than that of a seven year old;
- (2) Trainable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven year old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands;
- (3) Custodial mentally retarded. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication."

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(B) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac impairment, cerebral palsy, chronic health problems, or other physical handicaps including inadequate speech, hearing and vision. (Sec. 75-7801 RCM)

(C) Educationally handicapped children means persons under 21 years of age who require special assistance. Their learning disorders include, but are not limited to, visual perception handicaps, brain injury, minimal brain dysfunction, dyslexia, behavioral maladjustment and emotional disturbances. Disorders are not the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. (Sec. 75-7801 RCM)

Age of Eligibility: Services may be provided to the physically handicapped and the educable mentally retarded from six to age 21. (Sec. 75-5001 RCM)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: At the time of the annual school census, the clerk of each school districts within each county with the aid of the public health nurse, school nurse, or public health medical officer should attempt to ascertain the names of all handicapped children in the district and any information concerning them required by the state superintendent of public instruction. The survey of handicapped children does not need to be conducted annually, but must be made at least once every four years at the time of the annual school census, as directed by the state superintendent in cooperation with the State Board of Health. (Sec. 75-1904 RCM)

Special Education Evaluation: No mentally handicapped child can be deprived of school privileges without the express approval of the state superintendent of Public Instruction, acting upon appropriate medical, psychiatric, or psychological advice. All children so excluded must be brought to the immediate attention of the local welfare department and the proper authorities of the state training school charged with the responsibility of providing adequate training, protection, and care, as far as parents are willing to accept these services. (Sec. 75-5004 RCM)

The determination of children requiring special education or the type of education needed by these children is the responsibility of the superintendent of public instruction in cooperation with appropriate medical, psychiatric, and psychological advice. (Sec. 75-5003 RCM)

The State Board of Health shall provide the medical, psychiatric, and psychological services necessary to assist the state superintendent in diagnosing, recommending care, or passing upon the eligibility of children for admission to or discharge from special education programs for the mentally handicapped. (Sec. 75-5006 RCM)

ADMINISTRATIVE RESPONSIBILITY

The state superintendent of Public Instruction with the approval of the State Board of Education is responsible for establishing regulations and prescribing the necessary qualifications for teachers of mentally handicapped children. The state superintendent, with the assistance of the State Board of Health and with the approval of the State Board of Education, is responsible for directing and supervising special education programs for mentally and physically handicapped children. He also appoints a supervisor for special education.

The state superintendent is the agent for cooperation and consultation with federal agencies, other agencies, and private bodies on public school education for mentally and physically handicapped children, reserving to other agencies the full responsibilities of other aspects of the care of such children. Courses of study, sizes of classes, adequacy of instructional methods, the distances to be traveled to each school or class, and the necessary equipment for special services for mentally and physically handicapped children must comply with the requirements prescribed by the State Board of Education. (Sec. 75-5006 RCM)

The state superintendent, with the approval of the State Board of Education, is responsible for preparing the courses of instruction in the discovery and education of exceptional children. (Sec. 75-1402 RCM)

The supervisor for special education must be a graduate of a four-year accredited institution of higher learning with a master's degree representing at least one year of postgraduate training in exceptional child care, guidance and testing and, in addition, two years' experience in the same. (Sec. 75-1403 RCM)

The supervisor shall be responsible for "discovering the exceptional child throughout the state by observation, examination, and by intelligence, emotional, and achievement tests, and any other methods deemed necessary and expedient by him and to administer an educational program for exceptional children and supervise subjects and methods used in the classrooms and schools affecting exceptional children." Provisions of this Act are not mandatory on any school or school district.

The supervisor is also responsible for seeing that the necessary courses of instruction are available for all teachers in training and inservice. He may recommend ungraded classrooms in schools, and "he may hold conferences, cooperate, advise, and investigate the school superintendents, principals, school faculties, individual teachers, parents, school boards, and other interested groups. He may also suggest physical examinations and perform any other duties not specified by this Act but directed to him by the State Board of Education or by the state superintendent." (Sec. 75-1404 RCM)

The State Department of Institutions is responsible for administering the institutions for the mentally retarded and the emotionally disturbed. (Sec. 80-1401 RCM)

The State Board of Education is responsible for the State School for the Deaf and the Blind. (Sec. 75-301 RCM)

PLANNING

The superintendent of Public Instruction may appoint a volunteer board of various exceptional child specialists, to whom the supervisor of special education shall periodically report and from whom he may receive counsel. (Sec. 75-1405 RCM)

FINANCE

For the purpose of establishing the maximum budget without-a-vote amount for the current year special education program in a school district, the superintendent of public instruction will determine the total estimated cost of the district's program on the basis of a budget submitted by the district. For each program the budget will indicate:

- (a) estimated allowable operating costs;
- (b) number of pupils expected;
- (c) any other data required by the superintendent for budget justification purposes.

If a program is implemented or expanded during a school term too late to be included in the budget determination, allowable costs may be added to the maximum budget-without-a-vote amount for the subsequent year, under emergency budget provisions. (Sec. 75-6905.20 and 21 RCM)

State reimbursement for an approved in-school class having seven or more handicapped students is computed on the basis of 45 in average number belonging (ANB).

If a class has less than seven students, the ANB will be computed on the basis of the number of students at a rate not exceeding six ANB per student, but no classes with less than four children will be approved.

For other approved special education programs such as speech and hearing therapy, home and hospital tutoring, school-to-home telephone communication, or other individual programs, the ANB will be computed according to a schedule prepared by the state superintendent on the basis of the time required and the degree of special education provided. In these cases, the ANB cannot exceed six for each exceptional child enrolled in the program.

Any district operating an approved special education class or program for children under the age of six or for persons between 21 and 25 shall be eligible for financial assistance. (Sec. 75-7816 RCM)

The state superintendent establishes a schedule for transportation reimbursement. These expenditures are added to the transportation budget of the district. The state will reimburse two-thirds of the approved transportation, and the county will reimburse the remainder of approved transportation according to the schedule.

If a special education class or program is to be offered for the first time and has been approved by the state superintendent prior to the adoption of a preliminary budget, the board of trustees of a local district may include in the budget the number anticipated to be the eligible ANB, subject to the approval of the state superintendent.

If a child is sent to an institution supported completely by state funds, the child's home district or county is required to pay tuition for the child if while at the institution he attends public school classes in another district. (Sec. 75-7810 RCM)

The board of county commissioners of any school district providing special education services for crippled children may levy a tax not exceeding one mill on the dollar on all taxable property within the

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district in addition to all other levies for school purposes. This tax would be used for the support and maintenance of special education services to crippled children, but the board of school trustees of the district requiring such a tax must call an election in the manner prescribed by law for extra levies to obtain the approval of the district to make the levy. The election must be held before July 1. (Sec. 75-1406 RCM)

Budgeted special education funds may be spent only for approved special education purposes, and shall be accounted for separately from the balance of the school district general fund. The unexpended budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education. (Sec. 75-6906(3) RCM)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Two or more districts may combine to provide educational services to handicapped children. Also, the board of trustees in a local district may arrange to use the services of any approved mentally retarded or physically handicapped children's classes and may provide transportation to and from school for all handicapped children enrolled in a state approved special education program. (Sec. 75-5003 RCM)

If a child who is mentally retarded, physically handicapped, or both is enrolled in a state approved program maintained by an elementary or high school district other than his district of residence, he will be included in the computation of ANB in the district maintaining the program. The child's district of residence will pay to the district twice the tuition for regular education students. (Sec. 75-5003 RCM)

The board of trustees of any district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative program, or by participating in a regional services program. (Sec. 75-7805 RCM)

SERVICES

The school board in all districts shall conduct, with the approval of the superintendent of public instruction, special schools for the instruction of children who cannot profitably or properly be cared for in the usual schools. Any child of school age whose conduct and habits are such that he cannot with profit to himself or justice to the other members of the school be restrained and instructed in the usual schools may, upon complaint to the person having legal control of the child, the principal or head of the school where the child is attending, or the truant officer, be required by the superintendent of schools where he is enrolled to attend a special school as provided in this section until the child's habits and conduct become such as to make it advisable and proper for him to be received again in the usual school. (Sec. 75-6310 RCM)

The board of trustees responsible for the operation of any public school may establish special education programs for educable and trainable mentally retarded and physically handicapped children under age six when the superintendent of public instruction has determined that such programs will: (1) enable a child to achieve levels of confidence that he will be able to profit from a general education program which he could not do without a special education program; (2) permit the conservation or early acquisition of skills that will tend to provide the child with equal opportunity to take his place with normal children in a general education program; or (3) provide other demonstrated educational advantages that will materially benefit the child. (Sec. 75-5001 RCM)

The board of trustees of any school district may provide, at its discretion, services for the education of crippled children between the ages of five and 16 who because of their physical handicaps cannot attend regular public school classes. The board may furnish home tutorial service, or transportation to and from school facilities locally or elsewhere in the state that best meet the child's needs. This decision will be reached by the local board of trustees together with the superintendent of schools based upon recommendations of the Division of Crippled Children's Services and the State Board of Health. (Sec. 75-1406 RCM) (See Responsibilities)

All children entitled to attend the State School for the Deaf and Blind may attend such school until they attain age 21. There is no lower age limit. (Sec. 80-105and80-107 RCM)

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**NEBRASKA****RIGHT TO AN EDUCATION**

Constitution: ". . . it shall be the duty of the Legislature to pass suitable laws . . . to encourage schools and the means of instruction." (*Art. I, Sec. 4, Neb. Const.*)

"The Legislature shall provide for the free instruction in the Common Schools of this state of all persons between the ages of five and 21 years." (*Art. VI, Sec. 6, Neb. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 16 are subject to the compulsory attendance requirements.

Truancy laws apply to all children of school age, including handicapped children.

When an exemption from the compulsory attendance laws is claimed because of mental or physical incapacity, school boards have the right to employ a physician or persons skilled in mental diagnosis to examine the child. If the physician or person skilled in mental diagnosis declares that the child is capable of undertaking the work of the school, then such child is not exempt from the requirements of the compulsory attendance laws. (*RSN 79-203*)

All children between the ages of seven and 16 years of age who, because of partial or total blindness, are unable to obtain an education in the public, private, denominational, or parochial schools of the state, shall be required to attend the Nebraska School for the Deaf or School for the Blind until graduated or discharged by the superintendent, unless they are not eligible for admission to the school because of reasons of mental or physical incapacity. (*RSN 79-204*)

Responsibilities: The State Board of Education shall, at the state's expense, make such provisions as are deemed expedient for the care and education of children who are both deaf and visually handicapped or otherwise multihandicapped, and for whom there is no other provision in Nebraska law for educating and training. (*RSN 43-607*)

The state will provide an education at the Nebraska School for the Deaf to all acoustically handicapped children. (*RSN 79-1903*)

"The Legislature desires to reaffirm its position that all children in the State of Nebraska, regardless of physical or mental capacity, are entitled to a meaningful educational program, it shall be the duty of the board of education of every school district to provide or contract for special education programs for all resident children who would benefit from such programs. Such programs shall include, but not be restricted to, the development of self-realization, social awareness, economic usefulness, and civic responsibility." (*Sec. 1, LB 403, 1973*)

"The special education programs may be provided by any school district by contracting with another school district, or by some combination of school districts, an educational service unit, combination of educational service units, the local or regional office of mental retardation, any programs operated or approved by the State of Nebraska, or any combination thereof. Any office of mental retardation program receiving funds under the provisions of this Act shall not use such funds to match state funds under the provisions of other programs. The members of the boards of education of any school districts not offering special education programs acceptable to the State Board of Education on or before October 1, continuously thereafter, shall be no state funds shall be paid to any school district as long as such violation exists. On September 15, 1976 and on September 15 of each succeeding year, the commissioner of education shall present to the State Board of Education, the attorney general, the Department of Administrative Services, the state treasurer, and the executive board of the Legislative Council, a list of all school districts not providing or contracting for approved programs. (*RSN 43-462*)

This Act shall apply to any children from age five to age 18. The State Department of Education, Division of Vocational Rehabilitation shall assume responsibility for the training of those individuals whose education or training is terminated and for whom additional supportive services are required. (*Sec. 6, LB 403, 1973*)

POPULATION

Definitions: " 'Handicapped children' shall mean either physically handicapped, educable mentally handicapped, emotionally disturbed, specific learning disability children, mentally retarded or other such children as shall be defined by the State Department of Education."

" 'Physically handicapped children' shall mean children:

- (a) who are residents of Nebraska;
- (b) who are below the age 19;
- (c) who are crippled, visually handicapped, acoustically handicapped, defective in speech, cardiopathic, tubercular, cerebral palsied, orthopedically handicapped, or otherwise physically handicapped; and
- (d) who by reason of their physical defects, are unable to attend regular public school classes are not physically adapted to hold full-time membership in regular school facilities, or who, in order to profit from regular school instruction, need facilities and procedures not available in the regular public school classes attended by physically normal children. Such definition must include the physically handicapped child with mental retardation if, in the opinion of the examining physician, educational psychologist, psychologist, or psychiatrist, the child's condition can be improved materially by education and treatment."

" 'Educable mentally handicapped' shall mean children of school age who, because of retarded intellectual development as determined by individual psychological examination and deficiencies in social adjustment, require additional supportive services in order to function profitably within regular educational programming."

" 'Emotionally disturbed' shall mean children with behavioral disorders variously designated as neurotic, psychotic, or character disordered, and whose disabilities may manifest themselves in school accomplishment, social relationships, or feelings of self inadequacy and may result from experience or biological limitations."

" 'Orthopedically handicapped children' shall mean those whose locomotion, mobility, or use of limbs is impaired by crippling by (a) congenital anomaly, (b) birth injury, (c) trauma, (d) tumor, (e) infection, (f) disease, or (g) other conditions such as fragile bones or cardiac impairment." (RSN 43-604)

" 'Specific learning disability children' shall mean those children of school age who have a verified 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 inability to listen, think, speak, write, spell, or do mathematical calculations. This does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental disturbance, or of educational disadvantage."

" 'Mentally retarded' shall mean children who would benefit from training or education in the areas of self-care, social adjustment to their immediate surroundings, and vocationally-related activities which will contribute to their economic usefulness in the home or in a specialized situation providing for activities such as sheltered work experience and a supervised living environment."

" 'Multihandicapped children' shall mean children who have two or more coincidental and educationally significant physical or psychological handicaps or both physical and psychological handicaps. This includes physically handicapped children with mental retardation if, in the opinion of the examining physician and psychologist, the child's condition can be improved materially by education and treatment." (RSN 43-604)

When services are provided by local school boards in day schools for the deaf, a deaf child shall be defined as "[a] ny person of sound mind who by reason of defective hearing cannot profitably be educated in the public schools as other children are." (RNS 79-1414)

Age of Eligibility: Handicapped children are eligible for services between the ages of five and 21. Certain multihandicapped children are eligible for services from birth through age 21.

In the special program for the deaf-blind, the age of eligibility may be extended past 21 for "such meritorious deaf and visually handicapped pupils recommended by the commissioner of education, principal or chief officer of the school which they attend." (RSN 43-601)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: Within ten days prior to the annual district meeting or school election, the secretary of the school board shall conduct a census of the district including a list in writing of the names of all children under 21 years of age and the names of all taxpayers. The listing of children shall separately identify the mentally and physically handicapped. A classification of mentally handicapped may be made only by a licensed psychologist or practitioner of medicine or surgery. A copy of the list shall be forwarded to the county superintendent.

The board of education of a Class IV school district may establish a permanent and continuing census of school children. In a Class IV district, the list of all children and taxpayers does not have to be reported to the county superintendent, but the names of all children under 21 years of age must be kept in a depository maintained by the school district, subject to inspection at all times. Names of all taxpayers do not have to be included. (RSN 79-458)

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All school census enumerators shall register the name, age, sex, nationality, and residence of parent or guardian as well as a brief statement of the physical condition of all crippled children from birth to age 21. These shall be recorded by the county superintendent of schools who then reports to the commissioner of education. The commissioner, after tabulating the results for the whole state, forwards a copy of the census to the Department of Public Welfare or any other state commission, board, or division having supervision of crippled children. At the discretion of the commissioner, a copy of the census may be furnished upon request to any voluntary state organization doing work for crippled children. (RSN Sec. 71-14-6)

In order to assist the State Department of Education to assess the needs for special education programs and establish such programs, each educational service unit, county superintendent, and each local or regional office of mental retardation must report by February, 1974 on appropriate forms all children receiving services from each agency.

All county superintendents must annually report by July 15 to the superintendents of the School for Deaf and School for the Blind, all deaf and blind children residing in their districts. (RSN 79-318)

Evaluation and Placement: Superintendents, principals, teachers, members of the board of education and board of trustees, or a parent or guardian of a handicapped child may apply to the superintendent of schools if the child resides in a high school district, or to the county superintendent of schools, otherwise, for an application for special instruction. (RSN 43-603)

The parent or guardian of any child who believes the child is in an inappropriate program may file a written appeal to the State Department of Education, which shall review the facts in all cases and determine whether the child is in an appropriate program. If the Department determines that the program is inappropriate, it shall then assist the school district in making an appropriate placement. If it determines that the child is in an appropriate program, it shall notify in writing the parent or guardian of their finding and the basis for it. (RSN 79-444)

Whenever a child is forced to temporarily leave his school district of residence to receive special education or treatment, and resides in a residential facility, boarding home, or foster home for the duration of his special education or treatment, the parent or guardian of the child shall provide for the cost of residential care, but no parent or guardian shall be required to pay the cost of residential care if the parent or guardian has filed an affidavit or other satisfactory evidence with the State Board showing that he is not possessed of an estate or income sufficient to pay for the residential care without depriving himself or others dependent upon him of reasonable support and maintenance. (RSN 43-626)

Whenever a parent or guardian has provided the satisfactory evidence as described above, the state shall provide payment for the reasonable cost of residential care as long as the special education or treatment is provided within the state and within a program approved by the State Department. These provisions do not apply to children enrolled in the Nebraska School for the Deaf or the Nebraska School for the Visually Handicapped, or the Nebraska School for Trainable Children. The State Department is responsible for adopting appropriate regulations to implement the above provisions. These regulations must be consistent with those adopted by the Department of Public Institutions under Sec. 83-371. (RSN 43-627)

ADMINISTRATIVE RESPONSIBILITY

The State Department of Education shall have the general control of all educational programs for acoustically handicapped persons including programs at the Nebraska School for the Deaf. (RSN 79-1901)

The director of Public Welfare, on behalf of physically and mentally handicapped children, is responsible for obtaining admission to state schools and other suitable schools, hospitals, and other institutions. The director may provide for care in free boarding homes and for medical supervision, including for any crippled child in need, necessary medical or surgical care in a suitable hospital, sanatorium, preventorium, or any other institution. The director may pay for such care from public funds, if necessary. (RSN 43-507)

"If a delinquent, defective or physically handicapped child" is released from a state institution, the director of Public Welfare is responsible for ascertaining the conditions of the home and the character and habits of the parents of the child and making any recommendations as to the advisability of returning the child home." (RSN 43-508)

All special education programs must be reviewed at least biennially by the State Department of Education. (RSN 43-609)

To enable the State Department to determine the effectiveness of the programs and services being provided, the Department shall conduct a continuing evaluation of the different types of programs and services provided. In conducting these evaluations, the Department shall take into account such factors as

numbers and types of students, class sizes, qualifications of staff, and other factors which it deems appropriate. An evaluation of all programs and services must be made in a manner to compare the relative effectiveness of the same or similar programs or services provided in different locations.

Evaluation studies shall be designed to provide the Legislature, State Department of Education, school districts, and other servicing agencies with the following information:

- (1) a detailed description of groups served;
- (2) a detailed description of the kinds of programs or services provided and their cost per unit of service, as well as the cost of each service; and
- (3) a detailed description of the effectiveness of the program or service. (RSN 43-609)

No special education program may receive reimbursement unless the program meets State Department standards. However, temporary approval for a one-year period may be given if standards have not been met. No temporary approval may be given after the third year of operation of any special education program or after October 1, 1976. (RSN 43-609)

The State Department of Education has the authority to supervise and administer any educational or training program established in the state by the federal government. (RSN 79-329)

PLANNING

In order to assist school districts in determining the need for special education programs in their districts, and the establishment of needed programs, all school boards within the state were to have reported by February 1, 1974, on forms provided by the State Department of Education, the names of all children within their districts who would profit from special education programs together with a plan for providing special education programs for the school years 1973-74 and 1974-75 and budget figures for these programs. The plan and budget form had to conform to State Department guidelines as set forth in this Act. The identification of children, special education program plans, and budget requests must be amended annually by August 1 so that there is always on file in the State Department a two-year projected plan, number of children identified, and budget requests. The State Department shall review the plan of the districts and the budget requests. Any program that provides for the residential care of children shall show the costs of such care separately from the education program. (RSN 43-643)

Each plan for the provision of special education programs must include the following:

- (1) a description of the types of services to be offered and the number of children receiving the services;
- (2) the servicing agencies and the services provided by each;
- (3) a five-year projection of needs for each service group commencing with the fiscal year for which the plan is adopted. This projection must include a priority listing of the resources required to meet the needs of each service group and the estimated cost of developing and acquiring these resources;
- (4) a detailed presentation of all expected expenditures by sources of funds;
- (5) a detailed description of the methodology to be used by the agency for evaluating the results of the programs and services being provided for each service group. This methodology shall permit program evaluation including the relative cost and effectiveness of alternative forms and patterns of services; and
- (6) a description of the procedures used to insure that students are placed in appropriate educational programs.

These procedures must be approved by the State Department of Education. (RSN 43-649)

The Nebraska Coordinating Council for the Handicapped is responsible for coordinating all programs for the handicapped, including children from birth. The Council shall maintain a directory of services available for the handicapped in the state, distribute information to parents, doctors, and other persons concerning such services, initiate coordinated planning by and between the agencies and departments of the state, private associations, organizations, and corporations for the handicapped, maintain records and information concerning handicapping conditions and the handicapped in the state, and make recommendations to the public and private agencies working with the handicapped concerning needs for additional services or areas in which coordination of services may benefit the handicapped. The following shall be voting members of the Council;

- (1) from the Department of Public Welfare, the director of Social Services; the director of Medical Services; and the director of Crippled Children's Services, or their designated representatives;

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(2) from the Department of Public Institutions, the director of Medical Services; the director of Mental Retardation; the director of Rehabilitative Services for the Visually Impaired; and the Director of Beatrice State Home or their designated representatives;

(3) from the Department of Education, the director of Special Education; the director of Vocational Rehabilitation; the superintendent of the Nebraska School for the Deaf; the superintendent of the Nebraska School for the Visually Impaired; and the administrator of the Nebraska School for Trainable Children; and

(4) from the Department of Health, the director of Maternal and Child Health or his designated representative.

The Council may appoint ex-officio non-voting members to represent private associations, organizations, or corporations for the handicapped. When a private group representing the handicapped requests representation on the Council, the Council will appoint one of the group's members to serve as an ex-officio, non-voting member. (RSN 43-654)

The Council shall annually elect from its own members a chairman and vice-chairman. (RSN 43-655)

By November 30th annually the Council shall make a written report of its activities, studies, and proposals to the governor. Copies must be distributed to each of the agencies and organizations with membership on the Council and proper committees of the Legislature. Each state agency represented on the Council is authorized to furnish to the Council such information, data, statistics, and reports as requested that are not confidential in nature. Such information must be furnished within six months of the request. (RSN 43-656)

The Council shall meet initially within 90 days of the passage of the Act and bimonthly thereafter. The chairman may call special meetings. A quorum consists of seven members and the chairman, but the chairman votes only in cases of a tie. At its first meeting the Council shall adopt its rules of procedures and may adopt such bylaws and rules and regulations as it deems appropriate. Members are only reimbursed for their actual and necessary travel expenses. (RSN 43-657)

For administrative purposes the Council shall be placed within the State Office of Planning and Programming as a separate program. Office facilities, equipment, and supplies may be made available to the Council by the state agencies represented on the Council. The State Department of Education shall develop the rules and regulations necessary to implement the Council. (RSN 43-658—43-660)

FINANCE

Effective July 1, 1974, the State Department shall reimburse each district for 90% of the excess cost of the special education programs. (LB 403) 95814

By September 1, 1974, the State Board shall certify to the governor, the executive board of the Legislative Council, and the members of the State Board of Equalization and Assessment the amount needed to be raised by taxes to implement the special education program. This amount is \$20 million for 1975-76 (estimated by the Legislature). (LB 772)

For a child attending a program outside his district of residence, the servicing agency will be paid its average per pupil cost by the child's home district, effective July 1, 1974. (RSN 43-647)

Parents of children attending the Nebraska School for the Deaf and the School for the Blind will assume the costs for clothing and transportation. If the parents are unable to pay, these costs will be paid for from the county general fund of the child's district of residence. (RSN 79-1909 and 79-2007)

The State Board of Education is authorized to accept, on behalf of the State School for the Visually Handicapped, the School for the Deaf, and on behalf of any school for mentally retarded children exclusively owned by the state and under control and supervision of the state, donations of real property or bequests for other property or both, if in its judgment any such device, donation, or bequest is in the best interest of any school or attending student. (RSN 79-328)

Sufficient funds shall be appropriated by the Legislature to carry out the provisions of section 43-601 and sections 43-604 to 43-616.01, such funds to be channeled through the State Department of Education, and the Department shall be authorized to expend such funds upon proper vouchers approved by the Department and warrants issued by the director of Administrative Services for: (1) financial reimbursement to local school districts, educational service units, agencies, and parents or guardians, including full reimbursement for the amount expended pursuant to sections 43-607 and 43-616.01 for actual transportation expenses per year not to exceed \$400 for handicapped and trainable mentally retarded children; (2) instructional aids and consultative, supervisory, research and testing services to local school districts; and (3) salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education. (RSN 43-611)

The expenses of the program for the multihandicapped established by the provisions of sections 43-629 to 43-632 shall be paid by the state, but the parents or guardians of multihandicapped children who are able wholly or partly to provide for their support and care, to the extent of their ability, shall be required to make payment for diagnosis of the children's disabilities and needs and for medical treatment received under the program. (*LB 403, 1973*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The board of each educational service unit in cooperation with local boards of education is responsible for providing within each geographical area, supplementary services such as guidance and counseling, remedial instruction, special education, and instructional materials services. The boards are also responsible for planning and coordinating services within their own geographical area whenever services are offered on a cooperative basis between local school districts, and for contracting for educational services with the board of any other educational service unit, any other educational agency, or with any other appropriate state or federal agency or office. (*RSN 79-2208*)

The county superintendent of schools may use high school tuition money to provide educational opportunities for handicapped students residing in districts not maintaining a high school. (*RSN 43-606*)

The Board of Regents of the University of Nebraska may cooperate with public or private agencies engaged in the care and rehabilitation of any handicapped children to make available an interchange of facilities and treatment services under terms agreed upon by the board of regents of their several agencies desiring the use of any such land. (*RSN 85-179*)

SERVICES

Special education shall mean the provision of educational experiences and services through the use of special facilities and special adaptive classrooms, or either of the same to provide special instruction to handicapped children. (*RSN 43-604*)

Boards of education shall furnish one of the following types of education to resident handicapped children:

(1) They may pay the per pupil cost of programs in any other district or educational service unit and provide for transportation expenses. Parents may be reimbursed for transportation expenses at 12 cents per mile for each day in attendance. If a parent has more than one handicapped child enrolled in a program at the same location, the aggregate amount of payments may not exceed the transportation cost of one child;

(2) They may provide for transportation expenses within the school district for deaf, visually handicapped, orthopedically handicapped, trainable mentally retarded, seriously emotionally disturbed, specific learning disability, or other handicapped children enrolled in a special program in the district, and for whom transportation is required. A parent or guardian transporting a child is paid for each day of attendance 12 cents per mile actually travelled between the residence and the school. If the parent or guardian has more than one child enrolled in a program at the same location, the aggregate amount will not exceed the cost of one child per year;

(3) Districts might also provide for transporting children enrolled in the Nebraska School for the Deaf or the School for the Visually Handicapped by reimbursing parents or guardian for expenses. This reimbursement is paid at the rate of 12 cents per mile actually travelled between the place of residence and the state-operated school. The payment to the parent or guardian shall be limited to an amount determined by no more than five trips per year and not to exceed \$400 per year. Payment to the parent or guardian of a deaf or visually handicapped child transporting the child daily is limited to the number of days of attendance. Any parent or guardian having more than one deaf or visually handicapped child shall be limited to an aggregate amount not exceeding payment based upon the cost of transporting one child enrolled in the state-operated School for the Deaf and Visually Handicapped the greatest distance from his place of residence;

(4) Visiting teachers for the homebound;

(5) Correspondence instruction approved by the commissioner; and

(6) Any other method of instruction approved by the commissioner. (*RSN 43-607*)

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At state expense, a program for the care of deaf-blind and other severely multihandicapped children is established. These children may be sent to any school or institution in the U. S. maintaining an accredited school or department for those children. Pupils receiving services under this program cannot be withdrawn from the program without the consent of the commissioner or State Board of Education. (RSN 43-601)

Local boards, with Department approval, may establish special schools to instruct children who cannot profitably or properly be cared for in regular schools. School age children who are habitually truant or incorrigible or whose conduct and habits are such that they cannot, with profit to themselves or in justice to the school, be retained or instructed in the usual schools, may, upon complaint of: (1) the person having legal or actual control of the child; (2) the principal or head of the school that the child is attending; or (3) the attendance officer, be required to attend a special school until their habits and conduct allow them to be received in the usual schools. These schools must be as good in conveniences, equipment, and conditions of health as other schools in the district, and the teachers must be prepared by training and experience to instruct such children. (RSN 79-212)

School districts not conducting adequate programs for the trainable may contract with another school district, educational service unit, public agency, or nonprofit private corporation to provide appropriate services. (RSN 43-613)

Transportation may be provided to a residential school, a program in another school district, or in the district of residence.

There is established a program for the educational, social, and medical requirements of multi-handicapped children who are state residents and for whom there are no other suitable existing services and facilities in the state. This program shall be administered by the University of Nebraska Medical Center in cooperation with the institutions of higher education and elementary and secondary schools in the state and the State Department of Education. The program hereby established shall include: (1) diagnosis and evaluation of the child's disabilities and needs, medically and educationally; (2) the development of a plan for the medical treatment and management necessary to relieve as many of the physical and mental problems as possible; (3) the development of an educational plan, and (4) coordination of supportive services at the local level. (RSN 43-630)

The State Department of Education is authorized to establish and supervise residential schools for the mentally retarded. (RSN 43-617 and 43-618)

The Nebraska School for the Visually Handicapped is the state resource center for all education programs for visually handicapped children. It provides services such as in-service training of teachers, itinerant teaching, counseling services, equipment, books, and learning media to local school districts and educational service units. (RSN 79-2002)

The State Department of Education is responsible for the education of visually handicapped persons who cannot acquire an education in the public schools. (RSN 79-2003)

Teachers in local day schools for the deaf are employed as other public school teachers are employed. All such persons appointed to teach in the schools must have had special training for teaching and shall be graduates of the training for teachers of the deaf by the oral method and must meet the qualifications required by law of a teacher and any other training requirements as may be established by the Board of Education. The "so-called oral method shall be used by such teachers and if, after a fair trial of nine months, any child, for any reason, shall be unable to learn such oral method, no further expense shall be incurred in the effort to teach such child." (RSN 79-1413)

The Department of Public Institutions may provide educational services to those persons unable to attend the School for the Visually Handicapped. (RSN 83-210)

School boards conducting such schools must annually report to the Department of Education such facts concerning the school as it may require. (RSB 79-1410)

At state expense, a program for the care of deaf-blind and other severely multi-handicapped children is established. Liable expenses under this program include the mother-teachers, and maintenance of the mother-teachers and any deaf-blind or other severely multi-handicapped children. These children may be sent to any school or institution in the United States maintaining an accredited school or department for such children. Pupils receiving services under this program cannot be withdrawn without the consent of the commissioner or State Board of Education. (RSN 43-626)

Public school districts, combinations of public school districts and educational service units, and combinations of educational service units have the authority to set up one or more approved residential schools for the trainable mentally handicapped. Supervision of these schools will be under the governing body or bodies which set them up. They must comply with the rules and regulations adopted by the State Department of Education. (RSN 43-620)

The teachers, or teachers in charge of any special programs or in local residential schools for the trainable, must be qualified in the training and education of such children. All other personnel known as teacher aides shall have any qualifications that the governing body of the school prescribes, and for at least three but not more than six days in each year, participate in training activities designed and made available through the State Department of Education. Wherever possible, no more than three children may be assigned to one teacher aide, and each qualified teacher shall be responsible for supervising no more than five teacher aides. (RSN 43-625)

Nothing prevents any administrative unit from utilizing its own funds to establish pre-kindergarten programs. (RSN 79-444)

PRIVATE

The Board shall, upon the written request of the parents or guardian, send such children as it considers proper subjects for education, to any institution in the U. S. selected by the Board, now or hereafter recognized and accepted as maintaining an accredited or approved school or department to give instruction to such children. Upon like request, and with like approval, the Board shall continue for a longer term instruction of such meritorious pupils recommended by the commissioner of education, principal, or chief officer of the school which they attend. No such pupil shall be withdrawn from such school except with the consent of the commissioner or of the State Board of Education. In the event such pupils shall be sent to such a school, the expenses of the instruction and support of such pupils therein, including their necessary traveling expenses, whether daily or otherwise, but not exceeding ordinary and reasonable compensation therefor, shall be paid by the State of Nebraska. (RSN 43-601)

PERSONNEL

The State Department, cooperating with institutions of higher education and regional and local educational agencies, is authorized to develop and coordinate the implementation of a program to academically prepare resource personnel. (RSN 43-604)

The State Board of Education shall review special training programs offered by any school district. It per school year, and that one teacher shall not supervise more than two aides. (RSN 43-625)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

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NEVADA

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year. , ." (Art. XI, Sec. 2, Nev. Const.)

Compulsory Attendance Law: All children between the ages of seven and 18 must attend school, but such attendance will be excused when satisfactory evidence is presented (to the board of school trustees of the school district in which a child resides) that the child's bodily or mental condition or attitude is such to prevent or render inadvisable the child's attendance at the school or application to study. A certificate in writing from any reputable physician filed with the board stating that the child is unable to attend school or his attendance is inadvisable must be taken as satisfactory evidence by the board. (NRS Sec. 392.050)

No minor shall be required to take advantage of the special provisions for the education of handicapped minors if the parent or guardian of the minor files a statement with the board of trustees of the district showing that the minor is receiving adequate educational advantages. (NRS Sec. 388.460)

Responsibilities: The Legislaure declares that the basic support guarantee expressed in NRS 387.122 established financial resources sufficient to insure a reasonably equal educational opportunity to handicapped minors residing in Nevada. The board of trustees of a school district shall make the special provisions necessary for the education of handicapped minors. (NRS Sec. 388.450)

Any school district furnishing education to physically or mentally handicapped children shall furnish such education to any resident handicapped minor of the school district. (NRS Sec. 388.480)

See Administrative Responsibility.

POPULATION

Definitions: "'Handicapped minor' means any person under 18 who deviates either educationally, academically, physically, socially or emotionally so markedly from normal growth and development patterns that he cannot progress effectively in a regular school program and therefore needs special instruction or special services." (NRS388.440)

Age of Eligibility: Aurally and visually handicapped children may be admitted into special programs at any age under five; other handicapped children may be admitted at age five. Academically talented minors may be admitted at age four. Enrollment or attendance of all these children may be counted for apportionment purposes. (NRS Sec. 388.490)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: All teachers in the public schools shall observe and inspect, separately and carefully, every child under their care for evidence and/or symptoms of visual, auditory, or physical defects. In cases where defects are believed to exist, the teacher should notify the parents of the child regarding the probability of their existence and recommend that proper medical and dental attention be secured for the child. In school districts in which state, county, or district public health services are available or conveniently attainable, these services will be utilized to meet the responsibility assigned to teachers. If such services are not available, the board of trustees or the board of education of the local district may employ qualified personnel to do the same. (NRS Sec. 392.450)

Before any child is placed in a special program for handicapped children, a consultation shall be held with his parents or guardian. An examination shall be conducted to determine to what extent the child deviates from normal growth and development patterns. (NRS Sec 338.470)

Evaluation and Placement: The board of trustees of each school shall establish the standards for eligibility for special education. These standards must adhere to the standards of the Department of Education. (NRS Sec. 388.450)

Before any child is placed in a special program for handicapped children consultation with the parents or guardian must be held and an examination administered to determine the extent to which the child deviates from normal growth and development patterns. This examination must be given in accordance with standards prescribed by the State Department of Education. In any specific case, if the governing board of a school district deems it necessary, a psychiatrist may be consulted. (NRS 388.470)

Handicapped children may be instructed in special ungraded schools or within special programs established for their instruction. (NRS Sec. 388.500)

The district shall annually send to the superintendent names of all children instructed, including those receiving services under cooperative arrangements between the Division of Vocational Rehabilitation and the Department of Education. (NRS Sec. 388.450)

ADMINISTRATIVE RESPONSIBILITY

The State Department of Education prescribes the minimum standards for the special education of handicapped minors. No state funds will be granted to any school district until its program of instruction for handicapped children is approved by the State Department of Education. (NRS Sec. 388.520)

PLANNING

Statutes contain no specific provisions for handicapped in this area.

FINANCE

The Legislature declares that the proper objective of state financial aid to public education is to insure each Nevada child a reasonably equal educational opportunity. Recognizing wide local variations in wealth and costs per pupil, the state should supplement local financial ability to whatever extent necessary in each school district to provide programs of instruction in both compulsory and elective subjects that offer full opportunity for every Nevada child to receive the benefit of the purposes for which public schools are maintained. Therefore the quintessence of the state's financial obligation for such programs can be expressed in a formula partially on a per pupil basis and partially on a per program basis, as: State financial aid equals school district basic support guarantee minus local available funds produced by mandatory taxes. This formula is designated the Nevada Plan. (NRS Sec. 387.121)

The Legislature has declared that the statutory basic support guarantee established financial resources sufficient to insure a reasonably equal educational opportunity to handicapped minors residing in Nevada. (NRS Sec. 388.450)

The State Board of Education shall apportion to each school district the sum of \$500 for each handicapped child receiving services. (NRS Sec. 387.125)

See Administrative Responsibility.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Statutes contain no specific provisions for the handicapped in this area.

SERVICES

Handicapped children may be instructed in special ungraded schools or classes. (NRS Sec. 388.500)

Transportation may be provided to pupils attending special schools or classes for the handicapped. (NRS Sec. 388.510)

The superintendent of public instruction is authorized to make arrangements with any institution for the deaf, mute, or blind in any state for the admission, education, and care of such children or to provide for the support and care of any deaf, mute, or blind person in this state by placing such a person in a foster home or other residential facility in a county of this state having an educational program, if the home county of the deaf, mute, or blind person does not have such a program. (NRS Sec. 395.0110)

In order to be eligible for benefits under this Act, a person must meet the following qualifications:

- (1) be mentally or physically capable of receiving education or instruction;
- (2) be free from offensive and contagious diseases;
- (3) be unable to pay for his support, education, and instruction at an institution for the deaf, mute or blind;

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(4) his parent, relative, guardian, or nearest friend is unable to pay for his support, education, and instruction in an institution for the deaf, mute, or blind;

(5) be a resident of the state. No person over age 21 would be eligible under this section unless he has been a resident of the state for a period of five years preceding the date of application.

The parent, relative, guardian, or nearest friend of such a handicapped person may apply directly to the board of county commissioners for services under this Act. Upon receipt of the application, the superintendent is instructed to make the necessary arrangements for the education and care of deaf, mute, or blind persons. Before any such person is placed in a home other than that of a relative, he must obtain a certificate of approval from the state welfare administrator. (*NRS Sec. 395.020, 395.030, 395.040*)

Provision shall be made at state expense to transport the handicapped person to the institution, foster home, or residential facility. (*MRS Sec. 395.050*)

A parent, relative, guardian, or nearest friend of a visually or aurally handicapped person who resides in a county school district having no provision for the education of such handicapped persons (and therefore, not qualified under the above section) may make direct application for educational benefits to the superintendent of public instruction. There is provision for the superintendent of public instruction to enter into a contract with the parent, relative, guardian, or nearest friend of aurally or visually handicapped persons to share the cost of providing for educational benefits. Such contracts shall have the following stipulations:

(1) the share of the cost for the education and support of such visually or aurally handicapped persons by the state shall not exceed that provided aurally or visually handicapped persons in the previously noted section, and

(2) there will be no cost to the state for medical expenses.

The superintendent's authority to enter into these contracts will be the same as his authority in Section 395.040. (*NDS Chap. 135, adding a new section to Chap. 395*)

PRIVATE

See Services.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Boards of school trustees may purchase sites and buildings in the same manner as other school sites and school buildings. They may also rent suitable property at an economical rental, without being so directed by a vote of the district. Boards may also accept gifts or donations of sites and buildings for such purposes. (*NDS Sec. 388.500*)

NEW HAMPSHIRE

RIGHT TO AN EDUCATION

Constitution: "It shall be the duty of the legislature and magistrates in all future periods of this government, to cherish the interests of literature and the sciences, and all seminaries and public schools. . ." (Art. 83, ft. 2, N.H. Const.)

Compulsory Attendance Law: Each child between the ages of six and 16 will attend a public school within the district, public school outside the district to which he is assigned, or an approved private school during the school year unless he has been excused from attendance on the grounds that his physical or mental condition is such as to prevent his attendance or make it undesirable. (NHRSA 193:1)

Policy: "It is hereby declared to be the policy of the state to provide the best and most effective education possible to all handicapped children in the state of New Hampshire." (NHRSA 186-A:1)

Responsibilities: No public official, agent, or representative, in carrying out the special education provisions, is authorized to take charge of any child over the objection of the parents of the child or of persons standing in loco parentis to the child except by a proper court order. (NHRSA 186-A.13)

All handicapped children capable of benefiting by instruction will attend an approved school program. If a physically handicapped child over age 21 is capable of benefiting from instruction and applies for continued education services, the instruction may be continued until he has acquired an education equivalent to a high school education or has attained age 31. (NHRSA 186-A.6)

POPULATION

Definitions: " 'Physically handicapped' shall mean a child between the ages of 0 and 21 years, married or unmarried, whose activity is or may become restricted by reason of a physical defect or infirmity, however caused, so as to reduce his normal capacity for education or self support, or both.

" 'Intellectually handicapped' shall mean a child between the ages of 0 and 21 years, married or unmarried, whose activity is or may become so restricted by intellectual handicap, however caused, as to reduce his normal capacity for education or self support, or both.

" 'Emotionally handicapped' shall mean a child between the ages of 0 and 21 years, married or unmarried, who by reason of internal emotional conflict, home conditions or general environment, has behavior and/or emotional problems or is otherwise unable to make normal social or educational adjustment but who has sufficient intellectual and emotional capacity to be able with clinical diagnosis, proper treatment, training and remedial education, to become a responsible and self supporting citizen.

" 'Handicapped child' shall mean any child who is handicapped by one or more of the above defined handicaps." (NHRSA 186-A.2)

Age of Eligibility: Handicapped children are eligible for services from birth to 21. (NHRSA 186-A:2)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: School boards must report, by October 1 annually to the State Department of Education, the number of handicapped children in their school districts. Later reports will be made when any other handicapped children are located within the districts. (NHRSA 186-A.4)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education, acting through the commissioner of education, is responsible for preparing, developing, and administering plans to provide educational services for the handicapped. It has the authority to establish a program of special education with appropriated or available funds and may appoint any necessary personnel to operate the program. It is also authorized to cooperate with the federal government or any government agency to develop plans for the education of handicapped children and to

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receive and expend all funds acquired from the federal government or its agencies. The school districts are authorized to receive and incorporate in their budgets and expend any such federal funds. (NHRSA 186-A:3,10,11)

The State School for the Mentally Retarded is under the supervision of the commissioner of Health and Welfare. The State School for the Emotionally Disturbed is under the supervision of the Division of Mental Health, Department of Health and Welfare. (NHRSA 126-A:30)

A school district shall establish programs for handicapped children, or pay tuition to an approved class in another district or to a private facility. Eligibility for this type of special education class shall be determined by the school board under regulations promulgated by the State Board of Education. (NHRSA 186-A:7)

PLANNING

An approved plan for the education of handicapped children will be submitted by the State Board of Education to school districts. The school districts may employ this plan to educate handicapped children capable of benefiting by instruction or training within the specific districts (except as noted within the Right to an Education section). (NHRSA 186-A:5)

FINANCE

The State Board of Education is authorized to pay to any school district or private organization operating an approved program a portion of the actual cost of the education of each resident child as long as the program meets the standards of the State Board and funds are appropriated. (NHRSA 186-A:H)

The expenses incurred by the school board in administering the law in relation to the education of the handicapped are paid to the district from funds appropriated or made available to it. (NHRSA 186-A:12)

Whenever any handicapped child shall attend, with the State Board's approval, any approved public or private school in or out of the state, the child's district of residence shall appropriate and pay a portion of the costs incurred in the manner and up to the amounts provided by RSA 193:4 and 194:27 (state average tuition). If the Board determines that circumstances warrant it, the district may pay tuition at a rate higher than that specified in these sections. (NHRSA 186-A:8)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If a school district does not establish approved classes or programs for handicapped children, it shall contract for an approved program or class maintained by another district or by a private organization. (NHRSA 186-A:7)

The State Board of Education may assign pupils to approved schools for handicapped children as provided in NHRSA 193:3. (NHRSA 186-A:8)

See also Finance.

SERVICES

The school board will furnish suitable transportation to all handicapped children able to be transported from their homes to the places where instruction or training is furnished. The responsibility of the school districts for transportation may not exceed, per pupil, an amount equal to the responsibility of the district for tuition as specified in NHRSA 193:4.

If the cost of transportation constitutes an unreasonable expense, the school board, at the expense of the local district, may board the child near the place where the instruction or training is furnished and provide transportation to the place of instruction or training. If, in the judgment of the school board the circumstances warrant, the school district may pay for transportation at a higher per pupil rate than that specified. (NHRSA 186-A:9)

PRIVATE

See Administrative Structure and Organization and Finance.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

NEW JERSEY

RIGHT TO AN EDUCATION

Constitution: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in this state between the ages of five and 18 years." (*Art VIII, Sec. 4, N.J. Const.*)

Compulsory Attendance Law: All children will attend the public schools of the district unless it is shown to the satisfaction of the Board of Education that the mental or bodily condition of the child prevents his benefiting from instruction or his attendance at school." Nothing herein shall be construed as permitting the temporary or permanent exclusion from school by the Board of Education of any district of any child between the ages of five and 20, except as explicitly otherwise provided by law." (*N.J.S. 18A:38-6*)

Responsibilities: "It shall be the duty of each Board of Education to provide suitable facilities and programs of education for all children who are classified as handicapped under this Chapter, except those so mentally retarded as to be neither educable nor trainable. The absence or unavailability of a special class facility in any district shall not be construed as relieving the Board of Education of the responsibility for providing education for any child who qualified under this Chapter." (*N.J.S. 18A:46-13*)

Special education programs and services for handicapped children enrolled in public schools are mandated by law. (*N.J.S.A., 18A:46*)

A pupil may be refused admission to or excluded temporarily from the schools of any district for a reasonable time, pending his examination and classification, pursuant to this Chapter. (*N.J.S. 18A:46-16*)

Any child whose mental retardation is so severe that he is diagnosed as not trainable may be denied admission to, or excluded from, the public schools. (*N.J.S. 18A:46-17*)

POPULATION

Definition: "As used in this Chapter 'handicapped child' includes any child who is mentally retarded, visually, auditorily, or communication handicapped, neurologically or perceptually impaired, orthopedically handicapped, chronically ill, emotionally disturbed, socially maladjusted, or multiply handicapped." (*N.J.S. 18A:46-1*)

Mentally retarded children are divided into the following three categories: "(a) educable mentally retarded children, who are those who may be expected to succeed with a minimum of supervision in homes and schools and community life and are characterized particularly by reasonable expectation that at maturity they will be capable of vocational and social independence in competitive environments; (b) trainable mentally retarded children, who are so severely retarded that they cannot be classified as educable but are notwithstanding potentially capable of self help or communicating satisfactorily or participating in groups or directing their behavior so as not to be dangerous to themselves or others and achieving with training some degree of personal independence and social and economical usefulness within a sheltered environment; and (c) children who are so mentally retarded as to be neither educable or trainable." (*N.J.S. 18A:4&9*)

Age of Eligibility: Services must be provided to children between the ages of five and 20 and may be provided to those under five and to those over age 20 who have not completed high school.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: All boards of education are responsible for identifying, according to State Board rules, children between the ages of five and 20 in the public schools of the district who are not being properly accommodated because of their handicaps. (*N.J.S. 18A:46-6*)

The boards of education will annually report to the county superintendent, who in turn reports to the commissioner, the names of all children in special education programs, names and addresses of the parents or guardians having control or custody of them and the category into which they have been classified. This report must also include the names and addresses of handicapped children not attending school. The

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commissioner will make the information in the reports available to state agencies charged with the care and treatment of any particular category of handicapped children. (N.J.S. 18A:46-7)

All physicians in charge of a case of "mental deficiency or epilepsy" and the medical supervisor of any school who have reason to believe that a person attending the school is "mentally deficient or has epilepsy" will report the case to the assessor of the township in which the person resides. (N.J.S. 26:5-1)

All physicians shall report all cases of cerebral palsy under their care if the patient is under 18 as well as any new cases of cerebral palsy regardless of the age of the patient. Reports are made to the local boards of health. The State Department of Health will furnish the forms and prescribe the regulations in which the reports are to be made. (N.J.S. 26.5A-1)

Screening: The medical inspector or nurse, under the immediate direction of the medical director, will examine all children to learn whether defects exist and will keep a continuous record of their growth and development. The record is the property of the Board of Education and will be delivered by the medical inspector or nurse to his successor in office. (N.J.S. 18:14-57)

Special Education Evaluation: When in the commissioner's opinion the results of a survey of handicapped children warrant it, he shall, with State Board approval, establish a department of child study to perform the required services at the county level. He shall appoint a supervisor for one or more of these county departments, as well as such additional personnel as he considers necessary to make a child study team. The chairperson is appointed by the county superintendent(s) or by the commissioner. The commissioner coordinates the work of these departments and teams. (NJS 18AA6-3)

Each county child study team shall consult with local boards of education in the fields pertaining to identification, diagnosis, evaluation and placement of children needing special education services, social case work, remedial instruction, and additional responsibilities as determined by the commissioner, with State Board approval. (N.J.S. 18A:46-5)

Boards of education, separately or jointly will employ psychological examiners or contract with approved clinics and agencies to have psychological evaluations performed. (N.J.S. 18A:46-11) With the approval of the State Board of Education and the State Board of Control, the commissioner will prescribe standards for approving clinics or agencies furnishing services. (N.J.S. 18A:46-12)

Any child refused admission or excluded will be re-examined if requested by the parent or any other person having custody and control of the child, after a year has elapsed from the date of the previous examination. (N.J.S. 18A:46-17)

Boards of education are not required to provide any further educational program for children who have been admitted to the State School for the Deaf, but they are required to furnish necessary daily transportation to and from the school for non-boarding pupils, if the transportation is approved by the county superintendent. (N.J.S. 18A:46-13)

ADMINISTRATIVE RESPONSIBILITY

With the consent of the State Board, the commissioner, according to the rules and regulations prescribed by him with the approval of the State Board, will provide special education facilities and educational programs meeting the requirements of this Chapter. Periodically by the use of available members of his staff, he will publish bulletins and through any other means available, encourage boards of education to establish programs. (N.J.S. 18A:46-15)

The commissioner may require periodically the educational, financial, and statistical reports from governing boards. (N.J.S. 18A:46-16)

The commissioner is responsible for coordinating the county departments of child study for the general administration of special education services. In order to carry out these provisions, he will appoint persons qualified to administer educational services in the field of education of the handicapped including each of the following disability groups: mentally retarded, orthopedically handicapped, communication handicapped, visually handicapped, neurologically and perceptually impaired, chronically ill, emotionally disturbed, socially maladjusted and the auditorily handicapped. He will also appoint a consultant experienced in child psychiatry and specialists in school psychology, health service, school social work, learning disabilities, special education, and any other necessary personnel. (N.J.S. 18A: 46-3)

PLANNING

The commissioner will appoint bi-annually an advisory council consisting of at least seven but no more than 15 representatives of professional and lay interests. The council will advise in the promulgation of rules, regulations, and implementation of the special education laws, and the establishment of standards and qualifications for professional personnel. Appointments to the council must be approved by the State Board. (N.J.S. 18A:46-2)

FINANCE

The Board of Education will furnish daily transportation to all handicapped children who qualify. The school district providing transportation will receive state aid for 75 percent of the cost if the necessity for this transportation and the cost and method of transportation has been approved by the county superintendent. (N.J.S. 18A:46-23)

The commissioner shall fix the terms of office and salary of the supervisor and other members of the child study team. Their salaries will be paid in the same way that other state salaries are paid. The supervisor shall not serve more than two counties, and will not be paid more than \$750 per year, per county. (N.J.S. 18A:46-5)

Each state college operating approved special classes or classes for handicapped children is paid \$2,000 per class. Local school districts, whether operating special education classes separately or jointly, are reimbursed in the following manner:

(1) cost of operating an educational program for the handicapped (including a cost for identification, examination, supervision and other special education services approved by the commissioner) will be reimbursed at the rate of 50 percent, except that no local district jointure commission or college demonstration school will receive more than \$3,000 a class in state aid and one-half of the approved portion paid to another school, district or state operated facility, or private school;

(2) seventy-five percent of the cost of furnishing transportation within the state if it has been approved by the commissioner;

(3) state aid in the amount of one-half of the apportionment to jointure commissions to any contracting district for operational expenses will be paid to the contracting districts. State aid will be apportioned to each contracting district in accordance with the number of pupils enrolled from the district;

(4) whenever approved special education services are provided by a county special services school district, it shall be entitled to the aid that would otherwise be available for such services if provided by any of the participating local districts. The aid will be in lieu of reimbursement to each local school district. (N.J.S.A. 18A:58-6)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The commissioner may require a board of education having appropriate facilities to provide services to children from other districts or require any board of education not having the necessary facilities to provide the facilities and services required to be provided and to receive pupils from other districts. The board of education, jointure commission, state operated facility or private school which receives pupils from another district will determine tuition rates to be paid by the sending board of education. In no case will the tuition rate in a non-public school exceed the maximum day class per pupil cost of education in similar classes in public schools as determined by the formula prescribed by the state commissioner. (N.J.S.A. 18A:46-20 and 21)

If a board of education enters its pupils into special education services in another district, it may not withdraw the pupils to enter them in another district, unless "good and sufficient reason exists for such a change and unless an application is made and approved by the commissioner." If either the receiving or sending board of education is dissatisfied with the determination of the commissioner on any application, the matter may be appealed to the State Board, which may affirm, reverse, or modify the commissioner's decision. (N.J.S. 18A:46-22)

Any two or more districts may provide facilities, examinations, or transportation under the terms of the agreement adopted in resolutions by all involved boards of education. Cost will be apportioned among the districts. All agreements must be approved by the commissioner. (N.J.S. 18A:46-24)

If two or more boards of education decide to jointly carry out their special education responsibilities, they may, in accordance with the rules and regulations of the State Board and with the approval of the

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commissioner, adopt joint resolutions to establish a jointure commission to provide these services. The commission is composed of representatives of the respective Boards of Education (N.J.S. 18A:46-25)

The jointure commission has the authority to:

- (1) provide and maintain necessary facilities by acquiring land, buildings, and furnishing or renting;
- (2) take any necessary action to conduct proper educational programs for children referred to the commission by boards of education or members of the commission;
- (3) employ necessary principals, teachers, and other officers or employees who have the same rights and privileges as those similarly employed by local boards of education;
- (4) accept pupils from other school districts and fix the tuition rate; and,
- (5) apportion among the districts the amounts of capital and per capita operating costs in the programs.

Within the limited responsibilities of providing services to handicapped children, the commission has and may exercise all powers of a board of education. (N.J.S. 18A:4&26)

Contracting boards of a jointure commission shall: (1) raise the amounts apportioned by the commission in the same manner as other school funds for capital and current expenses; (2) pay the commission their apportioned amounts; (3) be responsible for classifying children within the districts and referring them to the commission; and, (4) provide transportation for children to and from schools referred to the commission. (N.J.S. 18AA:6-27)

Contracting districts may withdraw from the commission in accordance with the State Board rules and regulations, additional districts may become contracting districts, additional districts shall become contracting districts when directed by the commissioner, and a contracting district shall withdraw from the commission when directed by the commissioner. (N.J.S.A. 18A:46-28)

A county board of freeholders may establish a county special services school district for the education and treatment of handicapped children if it finds that the need exists. Before making any finding, the board must hold at least one public hearing with at least ten days notice of time and place in a newspaper of general circulation within the county. The State Board is responsible for prescribing the rules and regulations to organize, manage, and control the special service school. If a tuition rate not exceeding 50 percent of the cost for such education is paid by sending districts, the board of education of the county special services school may receive pupils from other counties as far as their facilities may permit. Any schools established under this Act must accept all eligible pupils within the county if the facilities are available. Payments will be made quarterly to the receiving districts by each sending district. The rate of annual tuition cannot exceed 50 percent of the pro rata annual cost of operating and maintaining the county special services school district after deducting from such costs all amounts of aid received by this district from the county, state, or federal government, but excluding any cost from the amount of required payments of interest or principal on bonds or notes of the county issued for purpose of the district. (N.J.S.A. 18A:4&29)

The aggregate amount of all these payments and tuitions may be anticipated by the board of education of the county special services school district and by the board of freeholders of the county with respect to the annual budget. Amounts of all annual tuition payments paid by any school district will be raised each year in the annual budget of the other school districts paid to the county special services school districts. The board of education in any county special services district, with the approval of the board of freeholders, will provide for the establishment, maintenance, and operation of dormitory or other boarding care facilities for pupils attending one or more of its schools. The board will provide for establishment of health care services and facilities. (N.J.S.A. 18A: 46-31)

The course of study in the special services schools must be approved by the commissioner and the State Board. As a first priority, programs should be established that are not available in any other school in the county, especially for those with unusually severe disabilities or unusual multi-disabilities. Then courses of study should be established which may be available but for which there is not sufficient capacity to accommodate all the students identified and classified as requiring these courses. The school year for these districts begins on July 1 and ends June 30. (N.J.S.A. 18A:46-32)

Each county special services district has a board of education consisting of a superintendent of schools ex officio and six persons appointed by the director of the chosen board of freeholders. In any county having a county mental health board, its chairperson of the board also serves as an ex officio member, but is not entitled to vote on any matter before the board. All members of the board shall have shown an interest in children with an unusual disability or in the field of mental health. (N.J.S.A. 18A:46-35)

Annually, by February 1, the board of education of county services to school districts will deliver to each member of the board, school estimates in an itemized statement as to the amount of money estimated to be necessary for care and expenses and for repairing and furnishing schools or buildings. Between

February 1 and February 15, the board will fix and determine, by official action taken at a public meeting, the amount of money necessary for the use of the district. The amount will be appropriated and collected by the board of chosen freeholders in the same manner as money appropriated for other purposes in the county. If the board of education of the special services district finds it necessary to raise money to purchase land or buildings for school purposes or for erecting, enlarging, improving, repairing, or furnishing buildings for the use of the district, the board will prepare and deliver to each member of the board statements of the amount of money estimated to be necessary for these purposes. Money needed for these purposes may be obtained in the same manner as the county raises money for these purposes including issuance of bonds or notes of the county pursuant to the local bond law. {N.J.S.A. 18A:46-40)

Proceeds of the sale of any of these obligations will be paid to the treasurer of the county special services district. If for any reason the proceeds are not applied to necessary special education purposes, the board of education of the county special services district may transfer the remaining balance to the capital outlay in the county school district.

All teachers, principals, and other employees of the board of education of the county special services district possess all the rights and privileges of teachers, principals, or employees of other boards of education of the other school districts. Whenever a county special services school district is established, the treasurer of the school district will be paid by the commissioner an amount equal to that raised in the county for establishing the school district, exclusive of the amount appropriated for purchasing land or erecting buildings. The state will annually then appropriate an amount equal to the amount appropriated by the county for the operation of the district. {N.J.S.A. 18A:46-43, 44)

Boards of education of special services school districts shall appoint an advisory committee of at least ten members, consisting of representatives of recognized organizations, working exclusively with children classified as having unusual disability and, in any county with the Department of Child Study, the county child study supervisor. The committee must meet at least four times a year to consider or refer to the board and make any recommendations to it. (N.J.S.A. 18A:46-45)

SERVICES

Children classified as needing special education shall be classified according to abilities to benefit from specified types of educational services. These services must be conducted according to the rules and regulations of the commissioner and the State Board. The types of services to be provided include but are not limited to: (1) casework with the pupil at home or at school; (2) counseling and guidance; (3) remedial instruction; (4) special scheduling of the school program including part-time attendants and special or regular classes in other agencies or institutions; (5) special grouping in school for children whose prognosis is favorable to return to the regular program; and, (6) arrangement through the commissioner for direct services from the county department of child study. (N.J.S. 18A:46-10)

Special education services required may be provided by one or more of the following:

- (1) special classes in the district including classes in hospitals, convalescent homes, or other institutions;
- (2) special classes in the public schools of another district or an adjoining or nearby state;
- (3) joint facilities including classes in hospitals, convalescent homes, or other institutions provided by an agreement between one or more school districts;
- (4) a jointure commission program;
- (5) a state operated program;
- (6) supplementary instruction in school if, in the judgment of the Board of Education, the handicapped pupil is best served in this manner; and,
- (7) sending children capable of benefiting from a day school instructional program to privately operated nonprofit day classes in the state or a state within 400 miles of Trenton. (With the approval of the commissioner and to meet particular circumstances, the child may be sent a greater distance from Trenton. The services of these schools must be non-sectarian, and they may be only provided if it is impractical to provide services according to items one through five. Individual instruction is provided at home or in school, if it is impractical to provide a suitable special education program according to all seven above.) (N.J.S. 18A:46-14)

If a child is in a hospital, convalescent home, or other institution within the state or nearby state, the board of education of the district of residence will pay the tuition of the child. The board may also furnish services to children over the age of 20 without a high school diploma and to children under age five. (N.J.S. 18A:46-14)

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A board of education is not required to provide any further program for children who have been admitted to the Marie H. Katzenbach School for the Deaf, but must furnish necessary daily transportation for nonboarding pupils when the superintendent approves it. (*N.J.S. 18A:46-13*)

With the consent of the State Board, and according to Board regulations, the commissioner shall approve all special facilities and education programs which meet the requirements of this Chapter. He shall continually review such programs, and whenever he judges that handicapped children of one or more disability groups are not receiving satisfactory education programs, despite the operation of approved programs, he shall order special classes to be established. The facilities of one or more boards of education or jointure commissions shall be used.

The commissioner shall continually review the operation of such classes. If any are unsatisfactory, he shall take the necessary steps to improve the operation, including the use of different receiving and sending districts, jointure commissions, or the addition or withdrawal of sending districts to or from existing jointure commissions. (*N.J.S.A. 18A:46-15*)

PRIVATE

See Services and Finance.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Boards of Education are required to include facilities for the handicapped in all plans for construction of public buildings. Regulations will prescribe the type of facilities, including: (1) a principal entrance with an approved ramp access; (2) on floors occupied by students, at least one watercloset stall and drinking fountains for each sex accessible to wheelchair pupils; (3) a wheelchair-accessible elevator in multi-story buildings; (4) one working area in laboratory and shop facilities dimensioned for use by physically handicapped students; and, (5) a wheelchair-accessible to a public phone. (*Chap. 42, 1972*)

NEW MEXICO

RIGHT TO AN EDUCATION

Constitution: "Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and free from sectarian control and said schools shall always be conducted in English." (*Art. XXI, Sec. 4, N. Mex. Const.*)

"Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law." (*Art. XII, Sec. 5, N. Mex. Const.*)

Compulsory Attendance Law: Children, who are six years old by January 1 of a school year and until they reach age 17, shall attend a public school, a private school maintaining approved courses of instruction, or a school conducted by a state institution. A child is specifically exempted from the provisions if he is physically or mentally incapable of attending the public schools. A local superintendent may excuse any resident child below age nine. (*Sec. 77-10-2 NMSA*)

All persons having control of a blind child between the ages of five and 21 who cannot be educated in the public schools must send the child to the School for the Visually Handicapped for at least seven years unless the child is taught in an approved private school, at home, or in a similar institution in another state or unless the child is suffering from a physical or mental disability which prevents him or her from attending the Institute. Children under age five may be admitted into the Institute. (*Sec. 73-23-3 NMSA*)

Responsibilities: The state requires all districts over a five year period to provide special education to meet the needs of all exceptional children. Each district is required to meet the educational needs of at least 1/5 of its eligible exceptional children during the 61st fiscal year (1972); at least 2/5 in the 62nd; 3/5 during the 63rd; and 4/5 during the 64th fiscal year. All children will be served by 1977. (*Sec. 77-113 NMSA*)

The state is required to offer equal educational opportunities to all children in the state. "Thus, children who qualify for special education are entitled to a free public school education." (*Op. Att'y. Gen., Dec. 22, 1971*)

POPULATION

Definitions: "'Exceptional children' means children whose abilities render regular services of the public schools to be inconsistent with their educational needs." (*Sec. 77-11-3.1 NMSA*)

Age of Eligibility: Children are eligible to receive special education services beginning at legal school age (six years of age by January 1 of the school year) until they reach age 21. (*Sec. 77-11-3 NMSA*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: Superintendents of all school districts, by August 1 and January 1 of each year, must report to the superintendent of the School for the Visually Handicapped all school age blind children who reside within their districts. The superintendent of the Institute is then required to communicate to the parent, guardian, or person having control of the child, the provisions of this Act. (*Sec. 73-23-5 NMSA*)

Special Education Evaluation: The Department of Education, with State Board approval, is required to set the standards for diagnosis and screening and educational offerings for exceptional children. (*Sec. 77-11-3.2 NMSA*)

ADMINISTRATIVE RESPONSIBILITY

Regulations and standards will be developed by the State Board for the conduct of the special schools and classes of the public school system and in all institutions wholly or partly supported by the state. (*Sec. 77-11-3.1 NMSA*)

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The School for the Deaf is under the control of a five-member board of regents appointed by the Governor. (Sec. 73-24-3 NMSA)

The School for the Visually Handicapped is under the supervision of an independent board of directors. (Sec. 73-23-1 NMSA)

The Department of Hospitals and Institutions administers the state institutions for the emotionally disturbed and the Los Lunas Hospital and Training School for the mentally retarded. (Sec. 34-3-5 and 34-1-12 through 34-3-14 NMSA)

PLANNING

The State Board is required to adopt and keep current a state plan of special educational policies, programs, and standards. (Sec. 77-11-3.2 NMSA)

FINANCE

A. For the purpose of the Public School Finance Act, special education programs for exceptional children are those approved by the Department of Education and classified as follows:

- (1) Class A programs, in which a specially trained teacher travels from class to class or school to school assisting teachers and students on a part-time basis and in which the ratio of students to teachers is prescribed by the Department of Education;
- (2) Class B programs, in which a specially trained teacher is assigned to a classroom, called a "resource room" and works with students on a regular part-time basis and in which the ratio of students to teachers is regulated by special education standards approved by the State Board of Education;
- (3) Class C programs for moderately handicapped students who are either homebound or whose needs require a specially trained teacher working in a special classroom; the ratio of students to teachers in Class C programs is regulated by special education standards approved by the State Board of Education; and
- (4) Class D programs for severely handicapped students, in which a specially trained teacher is assigned full-time to a special classroom and in which the ratio of students to teachers is regulated by special education standards approved by the State Board of Education; students in Class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 77-11-3.3 NMSA 1953.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section must have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the Department of Education before the students can be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

- (1) the number of full-time specially trained teachers assigned to Class A programs multiplied by the cost differential factor 20;
- (2) the number of resource rooms devoted to Class B programs multiplied by the cost differential factor 20;
- (3) the special education ADM in Class C programs multiplied by the cost differential factor 1.9; and
- (4) the special education ADM in Class D programs multiplied by the cost differential factor 3.8. (Sec. 77-18.4 NMSA)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

With the approval of the State Superintendent, a school district may contract with another school district to educate or train handicapped children. The agreement will provide for payment for the special education facilities or services provided. (Sec. 77-11-13 NMSA)

SERVICES

"Special education" means the provision of services additional to, supplementary with, or different from, those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials, and equipment to meet the needs of exceptional children." (Sec. 77-11-3.1 NMSA)

PRIVATE

The responsibility of school districts and state institutions to provide exceptional children with a free public education is not diminished by the availability of private schools and services. If such schools and services are utilized, the state continues to be responsible to assure that all exceptional children receive the education to which the laws of the state entitle them. School boards may make agreements with nonsectarian, nonprofit, educational training centers to educate exceptional children and provide payment for this education. Such payments will be made by the local board from the basic distribution and any other available funds. All agreements between local boards and nonsectarian, nonprofit, educational training centers must be approved by the State Superintendent, and must provide for diagnosis and an educational program for each child meeting state standards. The agreements must also acknowledge the authority and responsibility of the local board and the Department to conduct on-site evaluations of programs and pupil progress to ensure meeting state standards. Children attending such training centers will be counted in the district membership on the same basis as regular students. The distribution will be made to the school district purchasing the services from the appropriation for the basic program distribution. (Sec. 77-11-3.2 NMSA)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

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NEW YORK

RIGHT TO AN EDUCATION

Constitution: "The Legislature shall provide for the maintenance and support of the system of free common schools, wherein all the children of this state may be educated." (Sec 1, N. Y. Const.)

Compulsory Attendance Law: Children between the ages of six and 16 and who are in a proper mental and physical condition are subject to the compulsory education requirement. (Sec. 3205 N. Y. Ed. Law)

A minor whose mental and physical condition is such that attendance at school endangers his health and safety or that of other children or who is "feeble-minded" to the extent that he is unable to benefit from instruction is not permitted to attend school.

A child whose mental or physical condition is such that he does not attend school due to the lack of facilities for his care, transportation, and instruction, will be permitted to attend school when the lacking facilities are provided. If prohibited from attending school due to a physical condition which could be remedied by reasonable measures, the child may only be temporarily excluded from school. The determination of a physical or mental condition will be based only upon an actual examination of the child by a person qualified by appropriate training and experience in accordance with state and district requirements. The State Education Department will designate the person having the required qualifications to make a mental or physical examination in behalf of any local school authorities, but in a city with a population of 1,000,000 or more the superintendent will designate the person. (Sec 3208 N. Y. Ed. Law)

Responsibilities: The board of education in each city and each union free school district is required to furnish suitable education and facilities for children by means of home teaching, transportation, school-to-home telephone, and special classes. The needs of the individual child determine which services should be rendered. If there are ten or more handicapped children who can be grouped homogeneously in the same classroom for instructional purposes, the Board shall establish such special classes necessary to provide the instruction, adapted to the mental attainment and the physical conditions of the children. (Sec. 4404 N.Y. Ed. Law)

The board of education and board of trustees in each school district containing less than ten handicapped children shall have the power to furnish suitable educational facilities by means of home teaching or transportation to school. The needs of the individual child will determine the specific services to be rendered. The board is also empowered to contract with the board of another district, Board of Cooperative Educational Services, or a vocational education county board for services for children. (Sec. 4404, N.Y. Ed. Law)

The board of education in each school district in which there are ten or more handicapped children who can be grouped homogeneously in the same classroom, shall establish such special classes as are necessary to provide instruction adapted to the mental attainments of the children from their fifth birthday until the school year during which they attain their 21st birthday. Or, a board of education shall contract with the board of education of another school district, the Board of Cooperative Educational Services (BOCES), or vocational education or extension board to educate these children. (Sec 4404 N.Y. Ed. Law)

The board of education or trustees of each school district in which there are ten or more delinquent children shall establish such special classes as may be necessary to provide instruction adapted to the capabilities of such children under rules to be established by the commissioner of education.

The board of education of each union free, central or city school district in which there are ten or more non-English speaking children may establish such special classes as may be necessary to provide instruction adapted to such children under rules to be established by the commissioner of education (Sec 4404 N.Y. Ed. Law, but see Sec. 3204)

The district may establish the ages of such children to be instructed and trained from the age of three, four, or five to 21.

The board of education or the board of trustees of any school district which contains less than eight handicapped children with retarded mental development having intelligence quotients of less than 50, and with the approval of the commissioner of Education, any such board in any school district which contains eight or more but less than 20 such children shall have the power and it shall be their duty to contract with the board of education of another school district, a Board of Cooperative Educational Services or a

vocational education and extension board of a county for the instruction and training of such children. (Sec. **4406 N.Y. Ed. Law**)

The State Education Department shall have the power and duty to provide within the limits of the appropriations made, home-teaching, transportation, scholarships in non-residence schools, tuition or maintenance and tuition in elementary, secondary, higher, special and technical schools, for handicapped children in whole or in part from funds of the Department, when not otherwise provided by parents, guardians, local authorities or by other sources, public or private. When the family court, or the board of education of the city of New York shall issue an order to provide for the education, including home-teaching, transportation, scholarships, tuition or maintenance, of any handicapped child, the commissioner of Education, if he approves such order, shall issue a certificate of such effect in duplicate, one of which shall be filed with the clerk of the board of supervisors or other governing elective body of the county or chief fiscal officer of a city and one in the office of the commissioner of Education. (Sec. **4403, N.Y. Ed. Law**)

Pupils enrolled in nonpublic schools (pursuant to Sec. 3602C) shall receive such services in regular classes of the public schools and shall not be provided such services separately from pupils regularly attending the public schools. (Sec. **3602C, N.Y. Ed. Law**)

All deaf children below age three resident in the state for at least one year are eligible to receive approved educational services in approved residential or day schools, with tuition paid by the state. The child must attend the facility nearest his legal residence; the state does not pay room and board. The commissioner of Education may waive the one-year residence requirement, as well as the requirement that the child attend the school nearest his residence. (Sec. **4204A, N.Y. Ed. Law**)

POPULATION

Definitions: "A 'handicapped child' is one, who because of mental, physical or emotional reasons cannot be educated in regular classes but can benefit by special services and programs to include but not be limited to, transportation, the payment of tuition to Boards of Cooperative Educational Services in public school districts, home teaching, special classes, special teachers, and resource rooms." (Sec. **4401 N.Y. Ed. Law**)

"Pupils with handicapping conditions" are those who are trainable or educable mentally retarded, visually impaired, hearing impaired, physically handicapped, severely speech impaired, or emotionally disturbed, and who attend special educational programs. (Sec. **3602, Sub. 2, par. f, N.Y. Ed. Law**)

Age of Eligibility: Children are eligible for special education services from their fifth birthday until the end of the school term during which they become 21. (Sec **4404 N.Y. Ed. Law**) (See also Responsibilities)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The board of education or trustees of each school district will ascertain, under regulations of the commissioner and with the approval of the regents, the number of children in each district and the handicapped children in each district under age 21. (Sec. **4404 N.Y. Ed. Law**)

The Legislature finds and declares that the establishment of a mandatory learning impediment screening program which will enable school districts to detect quickly and accurately the presence of handicaps likely to impede the learning process in individual children at the earliest possible point during their schooling is an essential first step toward realizing its goal of maximizing the educational opportunities of all children in the state of New York.

The commissioner of Education directed every school district and Board of Cooperative Educational Services to inform him in writing, not later than January 1, 1974, whether tests to detect the presence of handicaps which would impede the learning process in any way are administered to all children, or to what percentage of children, under what circumstances, and at what point of time during their schooling. Every school district and BOCES was also directed by the commissioner to inform him, at the same time, of the name(s) of the screening test(s) employed for the initial screening of children and whether they include evaluations of a child's general behavior motor and sensory integration, laterality and directionality, visual and auditory perception and acuity, conceptual skills, language development and previous academic experience. (Sec. **4408 N.Y. Ed. Law**)

Screening: All principals or teachers in charge of public schools will report to the medical inspector names of all pupils who have not furnished health certificates or who are handicapped. The medical

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inspector will then have each of these pupils separately examined and tested to discover whether any of them are suffering from defective sight, hearing or any other physical disability which will prevent them from receiving the full benefit of school work or which requires modification of the work to prevent injury to the pupils. If after the examination it is noted that the child is afflicted with defective sight, hearing or any other physical disability, the principal or teacher having charge of the school will notify the parent or other person with whom the child lives as to the existence of the disability. If the parent or guardian is unable or unwilling to provide the necessary relief and treatment for the child, the medical inspector will then be notified, and it is then his responsibility to do so. (Sec. 904 N. Y. Ed. Law)

Special Education Evaluation: Boards of education of each school district will have suitable examinations made to ascertain the physical, mental, and social causes of such failures or under-achievement of all pupils in the public schools who are not attending a special class, but who have failed continuously in their studies or are listed as under-achievers. Examinations will be made, in the same manner and at the same time as established by the commissioner, to determine if the child is incapable of benefiting through ordinary classroom instruction and whether the child may be expected to profit from special education facilities. The commissioner will prescribe rules and regulations to carry out the program. (Sec. 4404 N.Y. Ed. Law)

ADMINISTRATIVE RESPONSIBILITY

The State Education Department is responsible for: (1) maintaining a register of handicapped children and using all measures to adequately meet the physical and educational needs of these children; (2) stimulating all private and public efforts to treat, care, cure, and educate handicapped children and for coordinating such efforts with the governmental agencies; and (3) formulating such rules and regulations pertaining to the physical and educational needs of such children as the commissioner of Education shall deem in their best interest. (Sec. 4402 N. Y. Ed. Law)

The New York State School for the Deaf is under the jurisdiction and control of the Education Department. (Sec. 4351 N.Y. Ed. Law)

PLANNING

Any school district receiving an apportionment partially attributable to Sec. 3602, Sub. 9, was to have submitted a plan describing the expected use of such funds and the expected impact of the proposed plan by September 1, 1974, and every third year after that. The plan will follow rules prescribed by the commissioner. (Sec. 3602, Sub. 10b, N.Y. Ed. Law)

FINANCE

One-half of the cost of providing home-teaching, transportation, scholarships in non-residence schools, tuition and maintenance, as provided in subdivision one of this section, as certified by the commissioner of Education, is charged against the county or city in which any handicapped child resides, and the remaining one-half of the cost shall be paid by the state out of monies appropriated. All claims for services and supplies and for other expenses incurred in providing such home-teaching, transportation, scholarships and tuition shall be paid in the first instances by the board of supervisors or other governing elective body of the county or chief fiscal officer of a city in which the handicapped child resides, upon vouchers presented and audited in the same manner as in the case of other claims against the county or city. (Sec. 4403 N.Y. Ed. Law)

The Legislature shall appropriate an amount sufficient to pay one-half of all the claims paid by a county or city for the purposes specified. The clerk of the board of supervisors or other governing elective body of each county or chief fiscal officer of a city which has paid claims as provided shall, not oftener than once in each month, transmit to the commissioner of Education a certified statement in the form prescribed by him, stating the amount expended for the purposes specified, the date of each expenditure, and the purpose for which it was made. Upon the receipt of such certified statement the commissioner shall examine it, and if such expenditures were made as required by law he shall approve it and transmit it to the comptroller for audit. The comptroller shall issue his warrant in the amount specified in such approved statement for the payment of monies appropriated to the county treasurer of the county or chief fiscal officer of a city by which such payments were made. (Sec. 4403 N. Y. Ed. Law)

A district's total aidable pupil units for computing operating aid is the sum of the district's weighted ADA computed according to Sec. 3602, sub. 2, par. a, b, and c. Pupils in grades 7-12 shall be measured at one unit instead of 1% units, except during 74-75, as noted below.

Attendance of children with handicapping conditions shall be multiplied by 100%. Computation will be made without reference to attendance periods. (*Sec. 3602, Sub 8 and 9, N. Y. Ed. Law*)

In computing a district's total aidable pupil units for the school year starting July 1, 1974, pupils in grades 7-12 for whom a district has not received any kind of additional apportionment will be measured at 1 1/4 units. (*Laws of 1972, Ch. 241*)

Any district which receives an apportionment partially attributable to the weightings outlined above or pursuant to subdivision 17 of this section shall use the total apportionment for locally administered programs for such pupils in accordance with the commissioner's regulations. These regulations shall provide for the most educationally advantageous plan for each pupil and shall include annual district reporting requirements which will identify such students, describe how the money was spent and evaluate the effectiveness of expenditures on the results obtained. For any district beginning its apportionment July 1, 1974, and limited by the preceding section 9 of this act, the regulations shall apply only to the amount computed by multiplying the district's total (limited) apportionment by the ratio that the unlimited apportionment bears to the total apportionment.

A district spending part of its apportionment in an unauthorized manner in the base year shall be reduced in the current year's apportionment by the amount spent in unauthorized ways. (*Sec. 3602, Sub. 10, N.Y. Ed. Law*)

School districts with populations over 125,000 are entitled, for each severely handicapped pupil in attendance, to the following amount: (3.000 - .015 AV x district's actual valuation).

RWADA	ADA
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Severely handicapped means trainable mentally retarded, severely crippled and health impaired, severely hearing impaired, severely emotionally disturbed or multiply handicapped children who either attend special district schools or public or private schools contracted by the district.

For pupils in grades 10-12 attending occupational programs, the district is entitled to an amount for each pupil computed in this way: (\$1,200—15 x district's actual valuation),

1,000	ADA
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Handicapped children claiming aid other than on the basis of ADA may not be used for computation under this section. (*Sec. 3602, Sub 17b and c*)

Full financing is authorized for the education of deaf children under three who attend a school for the deaf, or a day institution. \$200,000 was appropriated in 1974. (*Sec. 3340 N. Y. Ed. Law*)

Any district having a provisional growth index larger than 100% shall be paid an additional amount in the current year. (*Sec. 3602, Sub. 11, N. Y. Ed. Law*)

Each district shall be apportioned, for operating expense aid, \$440 per total aidable pupil unit in the base year 1973-74 and for each school year after that. (*Chap. 566, Sec. 2, Laws of 1967 amended*) (Applies only to special school districts, which are those not having voters with taxable property.)

\$77 million is appropriated to the Department of Education out of money in the state treasury's general fund for additional payments required by this Act during the 1974-75 state fiscal year. (*Laws of 1974, Ch. 241*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

School districts, with the approval of the commissioner of Education, may jointly provide cooperative services for operation of special classes for handicapped children as part of a board of a BOCES. BOCES units may provide a variety of services in addition to special education on a cooperative basis. Districts within the BOCES unit who require any of its services must apply to the board of the district which then applies to the Department of Education for approval. Any component school district not wishing to participate in any specific BOCES unit service is not responsible for paying its share of the cost. (*Sec. 1958 N.Y. Ed. Law*)

Blind or deaf persons attending colleges, universities or technical or professional schools within the state (including agricultural or technical schools and state institutes of applied arts and sciences) other than schools especially established for the deaf or blind will receive state payment in the amount of \$500 yearly to employ readers (for the blind) or tutors (for the deaf). If a college, university, or technical or

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professional school is located outside of the state and conforms with state requirements, \$500 will also be paid to the student. (Sec. 4210 N. Y. Ed. Law)

Boards of education or trustees in each school district will provide suitable transportation to and from special classes as determined by the individual pupil requirements. Transportation will be rendered to all children regardless of the school they regularly attend. (Sec. 4404 N.Y. Ed. Law)

In districts where schools for the handicapped exist or may be established, and which are incorporated and approved, the board of education shall not be required to supply additional special classes for the children provided for. The local boards of education are empowered to contract with such schools for the education of such children. (Sec. 4404, N.Y. Ed. Laws)

SERVICES

The State Education Department shall have the power and duty to provide handicapped children within the limits of appropriations with home teaching, transportation, scholarships in non-residential schools, tuition and/or maintenance in elementary, secondary, special, or technical schools or in institutions of higher education financed wholly or partially from state funds. These are provided if not otherwise provided by parents, guardians, local authorities, or any other public or private sources. (Sec. 4403, 4404, N. Y. Ed. Law)

"Services" means instruction in occupational and vocational education, education for students with handicapping conditions, and related counseling, psychological and social work services for pupils in nonpublic schools. (Sec. 3602-c, N. Y. Ed. Law)

"Education for students with handicapping conditions" means special education programs designed to serve persons under 21 who because of mental, physical or emotional reasons, cannot be educated in regular classes but can benefit from special programs. (Sec. 3602-c, N. Y. Ed. Law)

PRIVATE

The following institutions for the instruction of the deaf and of the blind shall be subject to the visitation of the Commissioner of Education:

- (a) The New York School for the Deaf;
- (b) The Lexington School for the Deaf;
- (c) St. Mary's School for the Deaf in the City of Buffalo;
- (d) New York State School for the Deaf;
- (e) St. Joseph's School for the Deaf in the City of New York;
- (f) Rochester School for the Deaf in the City of Rochester;
- (g) New York State School for the Blind in the City of Batavia;
- (h) New York Institute for the Education of the Blind in the City of New York;
- (i) Lavelle School for the Blind in the City of New York;
- (j) Mill Neck Manor School for the Deaf in Nassau County;
- (k) St. Francis De Sales School for the Deaf and Hard of Hearing;
- (l) Clearly Deaf Center, Inc. in the County of Suffolk

It shall be the duty of the Commissioner:

- (1) To inquire into the organization of the schools and the methods of instruction.
- (2) To prescribe courses of study and methods of instruction that will meet the requirements of the state for the education of state pupils.
- (3) To make appointments of pupils to schools; to transfer such pupils from one school to another as circumstances may require; to cancel appointments for sufficient reason.
- (4) To ascertain by a comparison with other similar institutions whether any improvement in instruction and discipline can be made, and for that purpose to appoint from time to time suitable persons to visit the schools.
- (5) To suggest to the directors of such institutions and to the Legislature such improvements as he shall judge expedient.
- (6) To make an annual report to the Legislature on all of the matters enumerated in this subdivision and particularly as to the condition of the schools, the improvement of the pupils, and their treatment in respect to board and lodging. (Sec. 4201 N. Y. Ed. Law)

All children who are both blind and deaf or both blind and cerebral palsied shall be admitted as state pupils into one of the institutions described for the instruction of the deaf or blind and under the same conditions of eligibility as are provided for the admission of deaf or blind state pupils. The rate per capita allowed for such blind and deaf and blind and cerebral palsied state pupils shall be not less than double the annual rate per capita allowed for state pupils who are deaf or blind, and shall be paid in the same manner as prescribed for deaf state pupils.

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At the discretion of the commissioner of Education a sum not to exceed that provided in the paragraph above for the instruction of a deaf and blind child within the state shall be available in the same way that out-of-state programs are funded. (Sec. **4409 N. Y. Ed. Law**)

Whenever a blind or deaf person who is a citizen of this state and a pupil in actual attendance at a college, university, technical or professional school, located in this state and authorized by law to grant degrees, other than an institution established for the regular instruction of the blind or deaf, shall be designated by the trustees as a fit person to receive the aid provided for, there shall be paid by the state a sum for textbooks and pamphlets used by such pupil, or to aid a deaf student receiving instruction. In case such a school as will meet the needs or requirements of such a pupil is not located within this state, a sum of \$500 shall be paid to such a school in another state which shall conform to the requirements of this section, while such pupil is attending. A sum of \$400 per annum shall be also available to aid a deaf student in receiving instruction in a regularly approved institution for the deaf located outside of the state but within 1 50 miles of its borders.

Such money shall be paid annually, after the beginning of the school year of such institution, by the commissioner of taxation and finance on the warrant of the comptroller, to the treasurer of such institution. The account shall be verified by the president of the institution and accompanied by his certificate that the trustees have recommended the pupils named in the account.

The trustees of any of the institutions shall recommend no blind or deaf person who is not regularly matriculated, and who is not in good and regular standing, and who is not working for a degree from the institution in which he is matriculated; and no blind or deaf person shall be recommended, who is not doing the work regularly prescribed by the institution for the degree for which he is a candidate. The monies so paid to any such institution shall be disbursed for these purposes by and under the direction of its board of trustees. (Sec. **4210 N. Y. Ed. Law**)

PRIVATE

When it shall appear to the satisfaction of the Department that a handicapped child, who in the judgment of the Department can reasonably be expected to benefit from instruction, is not receiving such instruction because there are no adequate public facilities within this state because of the unusual type of handicap or combination of handicaps, the Department is authorized to contract with an educational facility located within or without the state, which in the judgment of the Department can meet the needs of such child. The Department is further authorized to expend for such purpose a sum of not to exceed \$2,500 (\$4,100,000 has been appropriated for that purpose) per annum for each such pupil.

The school district of which such a child is a resident at the time of admission to such an educational facility shall be required to reimburse the state for such child in an amount equal to the difference between the per pupil amount expended by the district for operating expenses or the limitation on such operating expense, whichever is lesser, and the per pupil aid computed in accordance with paragraph f of the subdivision. The comptroller may deduct from any state funds which become due to a school district an amount equal to the reimbursement required to be made by such school district and the amount so deducted shall not be included in the operating expense of such district for the purposes of computing the apportionment for operating expense.

The State Education Department shall maintain a register of such educational facilities which, after inspection, it deems qualified to meet the needs of such child for instruction and shall also determine the eligibility of such educational facility to receive the funds hereinbefore specified. (Sec. **4407 N. Y. Ed. Law**)

Any unusual type of handicap or combination of handicaps, deaf, blind, and deaf-blind are eligible for private placement if no public facilities are available.

All school districts shall furnish services to pupils attending private schools in their district upon the written request of the person having legal custody of such pupil. The request must be filed with the local board before the first day of June preceding the school year for which the request is made. The failure or refusal of a board to comply with a request will be reviewable only by the commissioner after an appeal is made. (Sec 3602-c 2 N. Y. Ed. Law)

Children who are both blind and deaf, children who are both blind and cerebral palsied, and children who are both blind and handicapped as defined in Section **4404** will be admitted "as state pupils" to an institution for the instruction of the deaf or blind. The per capita rate allowed each child shall not be less than double the annual per capita rate allowed for "state pupils" who are deaf or blind and will be paid in the same manner as prescribed for destitute students. In addition, a program operates for children who are both blind and cerebral palsied or children who are blind and/or otherwise handicapped. Children may be

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sent to institutions within or without the state which, in the judgment of the commissioner, meet their needs in order to continue their education. (Sec **4209 N. Y. Ed. Law**)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

The state allows a per pupil reimbursement for the construction of facilities, based on pupil capacity. All of these facilities shall include space appropriate for remedial programs for the handicapped. (Sec. 3602, Sub. 6, *N. Y. Ed. Law*)

NORTH CAROLINA**RIGHT TO AN EDUCATION**

Constitution: "The General Assembly shall provide taxation and otherwise for a general and uniform system of free public schools which shall be maintained at least nine months in every year, and herein equal opportunities shall be provided for all students." (*Art. IX, Sec. 2, Subsec. 1, N.C. Const.*)

Compulsory Attendance Law: If any child is afflicted with mental, emotional, or physical incapacities which make it unlikely that the child could substantially profit by instruction in the public schools, the child need not be presented for enrollment, if evidence of medical, social, psychological, and education evaluation has been presented to the superintendent of the city or county schools. (*Sec. 115-166 NCGS*)

Every deaf and blind child between the ages of six and 18 of sound mind who qualifies for admission into a State School for the Deaf or the Blind will attend a school that has an approved program for the deaf or the blind.

A comprehensive program for hearing impaired children of preschool age is provided in the public schools so that they may be taught and instructed during the critical learning years. Also provided is a comprehensive program for school age children who, while not deaf, have some degree of hearing impairment which calls for and lends itself to special instruction implemented by trained teachers and special equipment. It is further the purpose of this Act to provide a system for the identification and professional evaluation of preschool children who have impaired hearing. (*Sec. 115.315.1 NCGS*)

It is advantageous that hard-of-hearing children of school age be, as far as possible, educated in a normal public school environment in their home community and in the presence of children not handicapped by hearing impairment rather than in the isolation of special programs. At the same time the General Assembly recognizes the continuing and strong need for the state's residential schools for the deaf and affirms continued support in the schools. It is not the purpose of this Act to duplicate in any manner the function of the residential schools for the deaf.

A blind child may attend a public school for not less than nine months each year. Parents, guardians, or persons having control of every blind or deaf child must send the child to some school for instruction. The superintendent of any school for the deaf or blind may exempt a child from attendance at any session or during any year and may discharge from his custody any blind or deaf child whenever it seems necessary. The exemption or discharge must be reviewed by the board of directors of the school if petitioned by a parent, guardian, or other person having control of the child. No board is required to review any exemption more than once during any calendar year. If a blind or deaf child at the age of 18 is still unable to become self-supporting because of his handicap, he may continue to attend the school until the age of 21 unless he becomes self-supporting prior to that period.

Parents, guardians, or other persons having control of a child between the ages of six and 18 who is deaf or blind and who fail to enroll the child in school are guilty of a misdemeanor. Upon conviction, they will be fined or imprisoned at the discretion of the court. (*Sec. 115-172 and 115-173 NCGS*)

Superintendents of city and county districts are required to report the names and addresses of parents, guardians, or persons having control of any deaf or blind children residing within their unit to the superintendent of the appropriate institution and to the Department of Public Instruction. (*Sec. 115-175 NCGS*)

Policy: The General Assembly of North Carolina declares that the policy of the state is to ensure every child a fair and full opportunity to reach his full potential and that no child shall be excluded from service or education for any reason whatsoever. (*Sec. 2, Chap. 2193, 1973 Session*)

Responsibilities: The state shall develop a system of educational opportunities for all children with special needs, require the identification and evaluation of the needs and the adequacy of various education programs before placement, and shall provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter. The state shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child. (*Sec. 3, Ch. 1293, 1973 Session*)

The General Assembly finds that a current census of all children with special needs is urgently needed and is necessary in order to enact appropriate services and education programs for all children with special

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needs, and appropriates \$50,000 each to the departments of Human Resources and Public Education with the requirement that they work in cooperation to plan and conduct the census. (Sec. 6, Chap. 1293, 1974)

Special education classes may be established and organized in any administrative unit or district which has one or more handicapped individuals, with the approval of the State Superintendent of Public Instruction and the State Board of Education. (Sec. 115-200 NCGS)

In *North Carolina Association for Retarded Children, Inc. v. State of North Carolina*, the North Carolina A.R.C. and 13 mentally retarded children are the plaintiffs. The defendants include the state, various state agencies and department heads, a city school district, and a county school district. Plaintiffs allege that the state failed to provide free public education for the state's estimated 75,000 mentally retarded children, a violation of rights and due process. A reversal of discriminatory practices and a guarantee of rights for plaintiff children are sought. This case was filed May 19, 1972. An expanded complaint filed July 31, 1972, joins this suit with *Crystal Rene Hamilton v. Dr. J. Iverson Riddle, Superintendent of Western Carolina Center, et al.* The expanded suit focuses on state institutions for the mentally retarded. The case is in the discovery process and a full hearing is scheduled.

In *Hamilton v. Riddle*, Crystal Rene Hamilton, an eight-year-old mentally retarded child placed temporarily at Western Carolina Center, represents the class of school-age mentally retarded children residing in North Carolina. The defendants are the Superintendent of the Western Carolina Center, the Secretary of the North Carolina Department of Human Resources, the State Superintendent of Public Instruction, and the Chairman of the Gaston County Board of Education. Attorneys allege that the state has not provided equal educational facilities for the plaintiff, denying her equal protection of the law as guaranteed under state statutes and the U. S. Constitution. Also challenged is the state's arbitrary selection of children eligible for education and the financial demands for treatment placed on parents. Appointment of a three-judge court is sought to hear the case. Enforcement of state equal protection statutes and repeal of those contrary to this and an injunction preventing Western Carolina Center from evicting Crystal is also requested. The case, filed May 5, 1972 is still pending, (lawsuit)

POPULATION

Definitions: Programs are organized under the supervision of the state Superintendent of Public Instruction for "handicapped, crippled, and other classes of individuals requiring special types of instruction." (Sec. 115-200 NCGS)

"Child with special needs" is defined as "any child who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, environmental factors, or other specific learning disabilities is inhibited from achieving his full potential. This includes but is not limited to, the educable, trainable, profoundly and functionally retarded, emotionally disturbed, learning disabled, the physically handicapped or other impaired including hospitalized, homebound, or pregnant, the deaf or hearing-impaired; the language or speech-impaired, the blind or visually-impaired, gifted and talented, autistic, dependent, abused, neglected, multiple-impaired and socially maladjusted" (Sec. 3 Chap 1293, 1973 Session)

"The child with a learning disability exhibits a difference in one or more of the basic psychological processes involved in understanding or using spoken or written language. These may be manifested in differences of listening, thinking, talking, reading, writing, spelling, or arithmetic. They include conditions which have been referred to as perceptual handicap, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc. They do not include learning differences which are due primarily to visual, hearing, or motor handicaps, to mental retardation, or to emotional disturbances." (H. R. 549, Sec. 1) (Sec. 2, Chap. 549, 1974)

"Deaf" shall include the congenitally and adventitiously deaf and shall mean "those children in whom a sense of hearing is nonfunctional for the ordinary purposes of life."

"Hard of hearing" refers to children whose hearing "is functional with or without a hearing aid."

"Hearing impaired" is inclusive of both hard of hearing and deaf and refers to "any child in whom there is some substantial degree of hearing impairment which calls for special instruction or special equipment in the learning processes." (Sec. 115-315.2 NCGS)

Age of Eligibility: Children are eligible for services from birth to age 21. (Sec. 3, Chap. 1293, 1974)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The State Board of Education is responsible for adopting necessary rules and regulations for taking a complete census of the school population and maintaining in the superintendent's office of each administrative unit a continuous census of the school population. If any parent, guardian, or other person having the custody of a child refuses to give authorized persons the necessary information to enable these

persons to obtain correct information, or willfully makes any false statement relative to the age or the mental or physical condition of any child, he is guilty of a misdemeanor. (Sec. **115-161 NCGS**)

When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the preschool-age children residing in each unit for the purpose of determining the identity of the hearing impaired. The Superintendent shall then make a full report to the Board as to his findings and shall thereafter report to the Board, from time to time, any other such hearing-impaired children within the administrative unit when they shall come to his attention. All preschool children included in the program shall first be afforded an otological and audiological examination.

Screening: Under the general supervision of the state superintendent there is a comprehensive program of physical education and health education. All teachers and principals are required to screen and observe all pupils in order to detect signs and symptoms of deviations from normal, and to report their findings according to state policies.

"With' the cooperation of the State Board of Health, the state superintendent will make rules and regulations regarding screening and observation by teachers and for the medical and psychiatric examination of pupils attending the public schools. Chronic remediable defects of underprivileged children may be corrected out of school health funds. (Sec. **115-204 NCGS**)

A child, his parent or guardian may obtain review of an action or omission by state or local authorities on the ground that the child has been or is about to be:

- (a) denied entry or continuance in a program appropriate to his needs;
- (b) placed in a program which is inappropriate, unsuitable, or inadequate to his condition and needs; or
- (c) assigned to a special program when he is not a child with special needs.

The parent or guardian of a child placed or denied placement in a program shall be notified promptly by registered or certified mail, return receipt requested, of the action or impending action, and of his right to a review of the determination and of the procedures for obtaining such review. The notice shall contain information that a hearing may be held before the local school board, for educational matters, or before the Governor's Advocacy Council, in the case of human resource matters, within 15 to 30 days after the date on which the notice was received. Within 30 days after a decision, the parent or guardian may file a written request for an appeal of the decision to the State Superintendent of Public Instruction or the Secretary of Human Resources. Any appeal of these decisions to the General Court of Justice must be made within 30 days of the notice of such decision.

All hearings shall be closed unless the parent or guardian requests otherwise.

Ordinarily no change in the program assignment or status of a child with special needs may be made within the period afforded the parent or guardian to request a hearing, unless the parent or guardian consents to such a change.

However, if the health or safety of the child or of any other individual would be endangered by delaying the change in assignment, the change may be made sooner, but without prejudice to the legal rights of the child or of his parents or guardian. (Sec. 10, Chap. 1293, 1974)

ADMINISTRATIVE RESPONSIBILITY

The State School for the Deaf is under the supervision of an independent board of directors and a superintendent; (Sec. **115-336 NCGS**)

There shall be organized and administered a program of training for the educable mentally handicapped children residing within the state. It shall be a continuing program. The State Superintendent of Public Instruction, subject to approval of the State Board of Education, shall formulate reasonable rules prescribing the program and the procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. In order to assure maximum participation by the local school administrative units, full information on the rules and regulations and other pertinent information shall be forwarded to the local school units in time for them to meet the requirements to qualify for participation in the program. (Sec. **115-300 NCGS**)

County and city boards of education are hereby authorized to establish training programs for training the educable mentally retarded children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such a program.

There shall be organized and administered a program of training for the trainable mentally retarded children residing within the state. The State Superintendent of Public Instruction shall formulate reasonable

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rules prescribing the general or specific nature of the program and the procedures for its operation and maintenance. He shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. Residence within the school administrative unit shall not be a factor in establishing a child's eligibility to attend such a training center. (Sec. 115-296 NCGS)

There shall be organized and administered a program for the education of hearing-impaired children residing within the state. Such program shall be available to all preschool hearing impaired children between the ages of one and six and all hard-of-hearing children of school age. This will be a continuing program. The State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall formulate reasonable rules prescribing the program and procedures for its operation and maintenance and shall prescribe rules for determining a child's eligibility for participation on the basis of adequate individual audiological and medical evaluation and other related factors. However, children who are of school age and who are/upon medical evaluation are found to be deaf, may be instructed in the North Carolina School for the Deaf. In order to assure maximum participation by local school administrative units, full information on the rules and regulations and pertinent information shall be forwarded to the local school unit in time for them to meet the requirements in qualifying for participation in the program.

There is hereby created within the State Department of Public Instruction a section to be known as the Section for the Education of Children with Learning Disabilities.

The Section for the education within the public school system shall be administered by a section director under the general supervision of the state superintendent. The section director shall be appointed by the state superintendent subject to the approval of the State Board. The salary of the section director shall be determined by the State Personnel Board upon recommendation of the State Board and shall be adequate to obtain a person highly trained and qualified by reason of education and experience in the area of dealing with children with learning disabilities. The State Board is authorized to provide the section director with such assistance, clerical help, and travel allowances as it may determine necessary to carry out the responsibilities of his office.

The section director shall recommend and the state superintendent appoint, with the approval of the State Board, a supervisor for testing and pupil classification who shall in cooperation with existing testing and pupil classification services of the Department of Public Instruction, be charged with the responsibility of testing and evaluating all children in the public school system, or who are of compulsory school attendance age, for the purpose of identifying children with learning disabilities. Said supervisor shall be a person well trained in testing and diagnosis of learning disabilities and professionally qualified to carry out this responsibility. In addition, the section director shall recommend that the state superintendent appoint with the approval of the State Board, such specialists as may be necessary for adequate counseling and identification of those children with learning disabilities throughout the state; and the State Board shall provide necessary funds for office expense and travel for the conduct of their work.

In each of the three regional centers staffed by the State Department of Public instruction, appropriate programs of education for children with learning disabilities shall be established and developed by a district supervisor of education for children with learning disabilities. These regional consultants shall be recommended by the section director and shall be well trained and experienced in the area of learning disabilities. These regional consultants shall be provided with funds for office expense and travel allowances. Their duties shall include assistance to local administrative units in planning programs and developing curricula for children with learning disabilities.

The section director, under the direction of the State Board and in accordance with the rules and regulations prescribed by it, is authorized to perform such other powers and duties as the Board may prescribe for the implementation of the purposes of this Act, including the following: research studies which will develop techniques, curricula, and materials especially applicable to children with learning disabilities; recommendation of special books, materials, and other supplies to be purchased by the State Board for the proper implementation of this Act, including the local programs provided in section 8; direction of the regional education consultants provided for in Section 6 in the development of proper curriculum and studies to fit the individual needs of children with learning disabilities within the district of the supervisor and of the local administrative units within such districts; and establishment of standards for the teachers of children with learning disabilities to be employed or paid in whole or in part pursuant to the provisions of this Act, and to give such examinations or tests as may be necessary to determine such qualifications. (Chap. 580, 1974)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

County and city boards of education are hereby authorized and empowered to establish training programs or centers for trainable mentally retarded children. Boards of education in adjacent administrative units may, by written agreement, jointly operate such a program. In addition to such other funds as may be available for this purpose, county or city boards of education establishing such programs are authorized to expend any state or local funds apportioned to them under the provisions of this article, and may also receive gifts to be used for such programs. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to enable the establishment, maintenance and operation of training programs or centers established pursuant to this article, and the tax levying authorities are authorized to allow budgetary items and to levy proper taxes. (Sec. 115-297 NCGS)

SERVICES

County or city boards of education, under their own rules and regulations, may provide for the transportation of children with special needs, such as the mentally retarded and physically handicapped, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. If state funds are insufficient for the transportation approved by the local boards, local funds may be used for this purpose. (Sec. 115-183 NCGS)

It is the intent of this Act to provide a comprehensive educational program for preschool hearing impaired and school age hard of hearing children, including a system for identification and evaluation, in a "normal public school environment in their home community." The continuing need for the state's residential schools for the deaf is recognized. (Sec. 115-315.1 NCGS)

County and city boards of education are authorized to establish programs for preschool hearing impaired and school age hard of hearing children in each administrative unit. Boards of education in more than one administrative unit may jointly operate such programs. At the local board's discretion the local unit superintendent shall conduct a survey of the preschool age children to determine the identity of the hearing impaired and shall report, "from time to time, any other such hearing impaired children" in the unit when they come to his attention. All preschool children included in the program must be given otological and audiological examinations. (Sec. 115-315.4 NCGS)

After establishing instructional programs for preschool hearing impaired children and school age hard of hearing children, the city or county board of education in any administrative unit(s) may request an allotment of teachers from the State Board of Education. The State Board may provide such teacher allotments from the appropriation made to the Nine Months' School Fund. When such a request is disapproved under regulations established by Section 115-315.3, or because of lack of funds, the reason for such disapproval shall be certified by the State Superintendent of Public Instruction to the State Board and the superintendent of the local unit. (Sec. 115-315.6 NCGS)

The Dean of the School of Medicine of the University of North Carolina is directed to establish in the Department of Psychiatry in the Biological Sciences Division of the Child Development Institute "The Institute for the Treatment and Education of Children Afflicted with Autism and Related Communication Handicaps." (Ch. 1007, 1971)

The Institute will consist of three regional centers. (Ch. 1007, 1971)

The function of the Institute shall be the identification, evaluation, and education of children with autism and related communication disorders. Educational and training programs for such children shall be offered along with "support and training for their parents." The Institute will conduct research, including program evaluation, development of new treatment, educational techniques, and related programs concerning problems of communication development. It will also provide demonstration classes, train teachers, and provide consultation and support classes for communication handicapped children in cooperation with the Department of Public Instruction, which is hereby directed to support and assist the Institute in the accomplishment of the functions of the Institute. (Ch. 1007, 1971)

To the extent possible, funds from annual program support are to be appropriated equitably to the three regions in appropriate local areas, as determined by the Dean of The School of Medicine, for the establishment of classes for communication for handicapped and autistic children. Classrooms shall serve children in areas outside of regular school districts, and "shall not be considered part of the superintendent's general special education program." Children may be admitted to classes as soon as their educational handicap can be identified. The Institute shall assure the active involvement and training of the parents of the children served in the methods of educating such children. (Ch. 1007, 1971)

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County and city boards of education may adopt rules and regulations allowing handicapped children to attend for a period of less than six hours daily. (NCGS 115-36)

See Finance.

PLANNING

The Departments of Human Resources and Public Education shall use the results of the census to jointly develop a state plan for providing equal education and services to children with special needs. The plan shall include the number and geographic distribution of children with special needs, a listing of all public and private special education and service programs available in the state, and the number of children served by each program. A preliminary plan containing the actions required by the Departments of Human Resources and Public Education for securing full compliance with state policy, specifying a date by which the state shall accomplish the intent of this Act, and including an estimate of the cost of full implementation of the policy, shall be submitted to the 1975 General Assembly. (Sec. 7, Ch. 1293, 1974)

Each state agency and department having responsibilities for providing services to children and their families, including children with special needs and children in early childhood, shall submit to the Governor's Advocacy Council on Children and Youth a plan of services for children that includes:

- (1) descriptions of the kinds of services and programs it provides;
- (2) the characteristics of the children to be served through each program, including eligibility and entrance requirements;
- (3) the geographic distribution of services;
- (4) the projected budgets for each service or program as well as the cost per unit of service;
- (5) the client fees to be charged for each service;
- (6) the mechanism for evaluating and providing technical assistance and staff development to each service or program;
- (7) provisions for parent and child participation and involvement.

The Council shall review each plan and make recommendations to agencies and departments, and report to the General Assembly relative to the expansion, deletion, improvement and coordination of programs and services for children.

The Council shall provide information and assistance to parents and children interested in obtaining assistance and services. (Sec. 110-71, NCGS)

The General Assembly has established an Advisory Council to the State Board of Education, called the Council on Educational Services for Exceptional Children. It shall consist of 17 members: two appointed by the Governor, two Senate members appointed by the Lieutenant Governor, two members of the House appointed by the Speaker, and 11 members appointed by the State Board of Education. The State Board shall designate a member from the first three categories to be chairperson. The full term for appointments subsequent to the initial appointments shall be for four years.

The duties of the Council shall be to carry out periodic review of the exceptional child programs in the public schools and to receive complaints from citizens concerning all aspects of the operation of the public schools dealing with the exceptional child; to review these complaints; and to make recommendations, by majority vote, to the State Board of Education on corrective actions and programming.

The Council shall meet no less than once every three months, and shall be provided secretarial and clerical staff to accomplish its objectives. (Chap. 1079, 1974)

FINANCE

The State Board of Education is authorized to provide from available funds a program of special education. The State Board is also authorized to receive contributions and donations to be used in conjunction with any appropriations to carry out the special education program. (Sec. 115-200 NCGS)

The State Board shall, when sufficient state funds are available, provide first for the allotment of a sufficient number of teachers so as to prevent teacher loads from being too great in any school. The Board has discretionary authorization to make an additional allotment of teaching personnel, including special education personnel, to county and city administrative units to be used jointly or separately, as the Board prescribes. The salary of all such personnel shall be determined in accordance with the salary schedule adopted by the Board. Teaching personnel may also be allotted, at the Board's discretion, for experimental purposes, to county and city administrative units. (Sec. 115-11 NCGS)

The superintendent of each school administrative unit is required to submit to the State Board a statement, certified by the Chairman of the Board, showing the organization of the schools in his unit and

any additional information that the State Board may require. The Board shall then determine the number of instructional personnel to be included in the state budget in not more than three categories: general teachers, vocational teachers, and special education teachers. (Sec. 115-59 NCGS)

Expenditures in the school budget for the operation of the school system shall be listed by county and city board of education under these separate funds: "The Current Expense Fund; the Capital Outlay Fund; and the Debt Service Fund." The Current Expense Fund includes the cost of purchasing instructional apparatus and equipment and salaries for trained instructors and teachers for preschool and school age children whose hearing is impaired. (Sec. 115-78 NCGS)

In addition to such other funds as may be available for their purposes, county and city boards of education establishing programs for the preschool age hearing impaired and school age hard of hearing are authorized to expend any state or local funds appropriated to them under the provisions of this article. County and city boards may also receive and expend gifts. Any funds received by way of gifts for use of the hearing impaired program shall be faithfully accounted for the same as if such funds were public funds. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to facilitate the establishment, maintenance and operation of programs pursuant to this article, and the tax levying authorities of the counties and municipalities involved are authorized to levy proper taxes. (Sec. 115-315.5 NCGS)

In addition to such other funds as may be available for their purpose, county or city boards of education establishing programs for educable mentally handicapped children are authorized to expend any state or local funds apportioned to them under the provisions of this article. County and city boards may also receive and expend gifts. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to facilitate the establishment, maintenance, and operation of training programs pursuant to this article and the tax levying authorities are authorized to allow said budgetary items and to levy proper taxes. (Sec. 115-302)

When the county or city board of education in any administrative unit shall approve the establishment of a training program for educable mentally handicapped children, it may request from the State Board of Education an allotment of teachers and such other allotments as may be applicable to the program. When the program in a unit or a combination of units meets the reasonable rules and regulations prescribed in accordance with Sec. 115-300, the State Board of Education may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months' School Fund, notwithstanding any limitations expressed or implied on the amount for teachers and other allotments for this program in the Appropriations Act. Whenever a request is disapproved, either for failure to qualify under the rules and regulations established under the authority of Sec. 115-300 or because of lack of funds the reason for such disapproval shall be given in writing by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units which make the request and to the Advisory Budget Commission. The Director of the Budget upon request from the State Board of Education, is authorized to transfer to the Nine Months' School Fund any state funds which the State Board of Education may find available in any budget for a program which has been disapproved for lack of funds. (Sec. 115-303 NCGS)

In making allotments to the administrative units for this program, the State Board of Education is authorized to determine the allotment of teachers and other applicable allotments which are deemed adequate to support the training program in each unit or combination of units. Even though such allotments exceed those which would be required for a program for normal children, it may make allocations on that basis. The State Board of Education is authorized to provide a separate salary schedule for teachers serving this program. (Sec. 115-305 NCGS)

From the appropriations provided for the purpose of this article, the State Board of Education shall allocate and transfer to the State Department of Public Instruction an amount sufficient to provide personnel to determine eligibility for and generally to administer and supervise the program for trainable mentally retarded children established under the provisions of this article. (Sec. 115-298 NCGS)

The State Board of Education, upon the finding in any school unit of need for the program, official and public interest, and evidence of a financial ability to maintain a satisfactory program, shall allocate to the local board of education available state-aid funds. State funds shall be allocated uniformly to boards of education on a per capita basis, not less than \$360,000 per fiscal year, for each eligible child enrolled in the program. (Sec. 115-299 NCGS)

For the fiscal year 1974-75, the following budget was recommended by the Advisory Budget Committee and approved and enacted by the 1974 General Assembly:

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A. 400 additional non-categorical positions for teachers of exceptional children	\$4,563,392
B. Funds for services for an additional 700 Trainable Mentally Handicapped pupils @ \$1,049 per pupil per annum	734,300
C. Increase the Grant-in-Aid funds from \$1,049 to \$1,272 per Trainable Mentally Handicapped in ADM per year:	
1. Continuation Budget (3,858)	860,334
2. Expansion Budget (700)	156,000
D. 60 school psychologists to local units for diagnostic and follow-through activities	900,000
E. 50 additional categorical teaching positions in the area of Learning Disability	570,424
F. Funds to establish four demonstration centers, wherein comprehensive services for children with learning disabilities can be implemented and evaluated under a controlled environment	150,000
G. Pre-school and school-age programs for children with hearing impairments who need a specialized program	150,000
H. Instructional materials to school units receiving learning disability teacher allotments	25,000
Total	\$8,109,550

The State Board of Education is authorized to expend public funds to defray the reasonable cost of motor vehicle transportation for autistic and communication handicapped children and deaf and blind children to the nearest proper public educational institution located within the state. (Ch. 1351, 1974)

PRIVATE

To provide children with an educational opportunity which may not exist in the public schools, "it shall be the policy of this state to make an educational experience available to each eligible child" for private or out-of-state education. (Sec. 115-316.7 NCGS)

Children eligible for an educational expense grant include the seriously emotionally disturbed, the severely learning disabled, the visually and/or hearing handicapped and impaired, the multiple handicapped, the mentally retarded, and the crippled or other health impaired child. Every exceptional child residing in the state eligible to attend a public school may apply for an education expense grant. It shall be signed under oath or affirmation by the parent or guardian or the person standing in loco parentis to the child for whom application is made. (Sec. 115-316.8-11 NCGS)

It shall be state policy to provide an educational expense grant to each eligible child to cover the cost of tuition in a private or out-of-state educational facility, but the amount of such grant may not exceed \$2,000 per year per child. (Sec. 115-315.10)

The State Board is authorized to receive sums from the General Fund or from other sources the General Assembly may authorize, or from any public or private donor "for the purpose for which they have been provided." The State Board shall also establish criteria and procedures for determining who will receive educational expense grants and shall establish criteria for the approval of private and out-of-state education facilities. (Sec. 115-316.12 NCGS)

PERSONNEL

A scholarship training program is established to train teachers of the mentally retarded and to train teachers in the use of techniques used for teaching handicapped children. (Ch. 845, 1963)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

NORTH DAKOTA**RIGHT TO AN EDUCATION**

Constitution: "The legislative assembly shall provide . . for a uniform system of free public schools throughout the state, beginning with the primary and extending throughout all grades up to and including the normal collegiate course." (*Art. VIII., Sec. 147, N.D. Const.*)

Compulsory Attendance Law: Parents or guardians of a deaf child who is at least four years of age or of any blind or mentally deficient child from seven to 20 years, both inclusive, shall send the child if deaf to the School for the Deaf at Devil's Lake, if blind, to the School for the Blind at Grand Forks, and if mentally deficient, to the State School at Grafton. The child must attend one of these or another adequate institution for the entire school year unless excused by the superintendent of the institution. Adequate institutions shall mean any school, public or private, specializing in the training of handicapped children as stated." (*NDS Sec. 34.1-02*)

Parents, guardians or other persons having control of a child of compulsory school age are excused from having the child attend school if it is shown to the satisfaction of the school board, subject to appeal as provided by law, that one of the following reasons exists: (1) the child is in such mental and physical condition as to render attendance and participation in the regular and special education program inexpedient and impracticable, as evidenced by a licensed physician if required by the board; (2) no school exists, by the direct route within two miles of the child's residence. There are three further qualifications: the child must be in a school district which does not pay for transportation (in accordance with the schedule contained in this Chapter), for the equivalent of lodging or tuition from other schools with the approval of the parent or guardian, or furnish vehicular transportation by public conveyance for the child; or (3) no school exists within six miles of the child's residence by the nearest route. This is applicable if the child's residence is within a district which does not furnish vehicular transportation or public conveyance for children living more than six miles from the nearest school. Reasons 2 and 3 cited above do not apply in the case of deaf, blind, or mentally deficient children. (*NDS Sec. 15-34-03*)

Responsibilities: The school districts shall provide special education to exceptional children. They may do so jointly with one or more other districts and shall cooperate with the State Advisory Council, the director of Special Education, and the institutions of the state. Plans for implementation of special education must be drawn by each district by July 1, 1975. Special education services shall be fully implemented by July 1, 1980. (*NDS Sec. 15-59-04*)

Districts may provide special education to gifted children. (*NDS Sec. 15-5904*)

The Attorney General was asked to give an opinion on the question of the timing of the implementation of the new mandatory law, passed July 1, 1973, but not to be fully implemented until July 1, 1980. The question was asked as to what time a district must provide special education. The Attorney General's office provided the guidelines in an informal opinion. "We believe the mandate for special education became effective July 1, 1973. We also believe, however, that the legislature recognized it would be a practical impossibility to have a fully implemented program by that time and that is the reason for the subsequent dates. Therefore, while a school district may not be able to provide a complete program of special education on July 1, 1973, neither do we believe the district can do nothing about providing a program for a child already identified as handicapped. The statute obviously requires the districts to begin to offer such a program now with an acceleration so that it will be fully implemented by July 1, 1980. If districts cannot offer a full program at this time, it does not excuse them from a bona fide effort to begin the program immediately." (*Op. Att'y. Gen., Aug. 6, 1973*)

POPULATION

Definitions: " 'Exceptional child' shall mean a natural person to the age of 21 who, because of mental, physical, emotional or learning characteristics, requires special education services. This may include a handicapped or a gifted child."

" 'Handicapped child' means one who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, specific learning disabled, crippled, or otherwise health impaired who by reason thereof requires special education and related services." (*NDS Sec. 15-59-01*)

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Age of Eligibility: Special education services may be provided to children between ages five and 21. Deaf children must begin school at age four.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The board of education in all classes of school districts must conduct in every odd numbered year, between June 1 and 20, a census of all unmarried persons under age 21 residing in the school district.

The following information is to be collected during the census:

- (1) "The names of all deaf, blind, and mentally deficient persons between the ages of five years and 25 years residing in the district, including all such persons who are too deaf or mentally deficient to acquire an education in the common schools."
- (2) The names and ages of all crippled persons of any age, residing in the district.
- (3) The names and post office addresses of the parents or guardians of all persons mentioned above.

The census returns must be sent to the county superintendent before July 15. A copy of the report is retained in the office of the clerk of the school district. (*NDS Secs. 15-25-13 and 15-47-13*)

After completion of the census, county superintendents are required to forward a copy of the enumeration of deaf persons to the superintendent of the School for the Deaf, of blind persons to the superintendent of the School for the Blind, and of mentally deficient persons to the superintendent of the Grafton State School. (*NDS Sec. 15-47-13*)

Every school district shall keep a current record of all school age handicapped children who are residents of the district. (*NDS Sec. 15-59-04.1*)

If county superintendents report any persons of school age who are alleged to be physically or mentally defective to the County Board of Health, the Board must investigate the report and direct the School Board, Board of Education, or the person in charge of the child to take any necessary action. (*NDS Sec. 15-47-23*)

The births of all children with a visible, congenital deformity must be reported to the Division of Child Welfare within three days of the birth. The report must include the date and place of birth, sex, names of the parents, names of the physician or other persons attending the birth, diagnosis and description of the deformity, and any other required information.

Children born out of wedlock with a congenital deformity in a licensed maternity home or hospital must be reported by the licensee of the home or hospital. All births occurring outside of maternity homes or hospitals will be reported by the physician in attendance. In the absence of a physician, the registered nurse or other attendant is responsible for reporting. (*NDS Sec. 50-2002 and 50-2003*)

Every public school superintendent, physician, otologist, audiologist, nurse, clinic, hospital, and social and welfare agency must report in writing to the superintendent of the North Dakota School for the Deaf the name, age, residence, and any other pertinent information of all persons under 21 who are deaf or hard of hearing. All reports must be forwarded to the superintendent within 30 days after diagnosis, examination, or discovery. (*Sec. 2, Chap. 273, 1971*)

Every superintendent, physician, ophthalmologist, optometrist, nurse, clinic, hospital and social and welfare agency is required to report in writing to the School for the Blind the name, age, and residence of all persons under 21 who are blind within the definition of blindness. They are also required to furnish any additional pertinent information requested by the superintendent of the School. All reports must be forwarded to the superintendent within 30 days after diagnosis, examination, or discovery. A blind person shall be diagnosed as one who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with corrective lenses or if the widest diameter of his visual field is no greater than 20 degrees. (*Sec. 1, Ch. 273, 1971*)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Public School Education shall constitute the Advisory Council on Special Education. (*NDS Sec. 15-59-02*)

The superintendent of Public Instruction, with the advice of the Advisory Council, shall employ a qualified director of special education and any other necessary personnel. (*NDS Sec. 15-59-03*)

The Advisory Council on Special Education, acting through the office of the superintendent of Public Instruction, is responsible for establishing general state policy for the special education program and for coordinating all available services. It also cooperates with private agencies, soliciting their advice and cooperation in establishing policy in the coordination and development of special education programs.

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The director of Special Education, with the approval of the Advisory Council, prescribes the rules and regulations for special education and assists the school districts in the inauguration, administration, and development of special education programs. The director also establishes standards and approves certification of schools, teachers, facilities, and equipment. *(NDS Sec. 15-59-05)*

The director of institutions establishes the rules and regulations for the program of sending deaf-blind children to out-of-state schools and institutions. State institutions for the deaf, blind, mentally deficient, and emotionally disturbed are under the supervision of the director of institutions. *(NDS Sec. 15-47-34)*

PLANNING

Each school district shall submit a plan with the superintendent of Public Instruction for implementing special education in the district by July 1, 1975. Special education services shall be fully implemented by July 1, 1980. *(NDS Sec. 15-59-04)*

FINANCE

"Exceptional children who are enrolled in approved special education programs shall be deemed to be regularly enrolled in the school. Districts providing such programs shall be included in determination of elementary per pupil payments from the county equalization fund whether such pupils are regularly attending school in the school or school district receiving such payments or not. If the director of special education determines that the district has made expenditures for each exceptional child equal to the average expenditures made for other students, and the parents or the person legally responsible for the child have made adequate efforts to provide needed education, or that adequate reasons otherwise exist for the provision of special education to such child. . .", then reimbursement is made to the school or school district. Reimbursement cannot exceed one and one-half times the state's average per pupil cost computed by the Department of Public Instruction for the preceding year or two times the average per pupil cost for transportation, equipment, and residential care. *(NDSSec. 15-59-06)*

Children attending the State School for the Deaf receive a free education. *(NDS Sec. 25-07-04)*

The North Dakota Finance Committee pays, from the county equalization fund to the State School for the Blind and the State School for the Deaf, per pupil costs of the actual educational costs. *(NDS Sec. 15-4.01-07)*

The superintendent of Public Instruction may apply for, administer, receive, and expend any federal aid for which this state may be eligible, in the administration of this Chapter within the limits of legislative appropriation. School districts, county special education boards, and multi-county special education boards shall be eligible to serve as the local education agency for application. *(NDS Sec. 15-59-05.1)*

The county board of special education shall annually prepare a program for special education in the county and a budget necessary for implementation. The program and budget shall be submitted to the board of county commissioners at the same time and in the same manner as other statements on budgetary matters. If they are approved by the board the county commissioners may budget funds from the county general fund and, in addition, upon approval by a majority of the voters may levy a tax not to exceed three mills upon all taxable property in the county for the purpose of carrying out such programs. The mill levy shall be over and above any mill levy limitation provided by law. The county treasurer shall credit the proceeds of the levy, together with any other funds received from the state or other sources for special education purposes, to a special education fund. Such funds shall be expended as directed by the county board of special education upon vouchers approved by the county superintendent of schools. Such specific expenditures need not be approved by the board of county commissioners. *(NDS Sec. 15-59.1-02)*

Upon filing a petition signed by five percent of the electors of the county with the board of county commissioners at least 30 days in advance of any regular county election, the question of whether to continue the mill levy for financing the special education program shall be submitted to the voters at the next regular county election. If the levy is disapproved by a majority of votes cast at this election, the board of county commissioners shall immediately discontinue it, but levies previously spread upon the tax rolls shall not be invalidated. A subsequent vote upon their question may be had at any regular county election after a new petition is filed. *(NDS Sec. 15-59.1-03)*

If the budget and program submitted by the county board of special education are approved by the Department of Public Instruction, any payments for special education under the provisions of section 15-59-06 shall be made to the county board of special education and disbursed by the board. If they are not approved, payments shall be made to the school districts in the county providing special education

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facilities. Nothing contained in this section shall alter the method of making per-pupil payments out of the county or state equalization fund to the county equalization fund. (*NDS Sec. 15-59.1-05*)

The multiple county board shall prepare a program and budget and submit it to the joint board of county commissioners for approval in the same manner and the same time as provided in the case of individual county programs. The amount budgeted and approved shall be prorated among the counties according to the assessed valuation of each county or upon any other basis as the respective boards of county commissioners shall agree. The amount prorated shall be included in the respective county budgets in the same manner and shall be subject to the same procedures, limitations, and conditions as those specified for individual county special education budgets and tax levies. Provisions applicable to individual county programs in regard to approval by the Department of Public Instruction and payments from the state and the state or county equalization funds shall also apply to multiple county programs. (*NDS Sec. 15-59.1-07*)

The question of whether to continue the mill levy to finance the individual county's prorated share of the costs of the multiple county special education program may be submitted by petition to the voters of the individual county at a regular county election. The board of county commissioners shall immediately discontinue such levy, if voted down, but levies previously spread upon the pay rolls shall not be invalidated. A subsequent vote upon the question of authorizing a mill levy may be had at any regular county election after a petition is filed. (*NDS Sec. 15-159.1-08*)

School districts in counties which have not adopted county or multiple county programs shall continue participation in programs of special education as authorized by other provisions of law until such time as a county or multiple county board of special education is appointed and a program and budget are submitted to and approved by the board of county commissioners and the Department of Public Instruction. (*NDS Sec. 15-59.1-10*)

The school board of any district may send elementary or high school pupils into another school district or to an accredited institution of another state and pay their tuition when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so. The school board may arrange, and when petitioned to do so by a majority of electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to other districts or institutions where they can be taught conveniently. Tuition and transportation to and from such other schools or institutions will be provided. (*NDS Sec. 15-40.2-01*)

Students may attend a school in a bordering state under the following circumstances: (1) a student lives within 40 miles of another state or in a county bordering on another state. The school board of residence may contract with the bordering state; and (2) a student resides within a school district which is annexed to or reorganized with another district or districts, and which has been sending students to a school district in a bordering state because of proximity or terrain.

If a request for attendance is denied under subsection 1 or 2 of this section by the school board of residence, an appeal may be made to the three-member committee referred to in Section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the State Board of Public School Education, whose decision shall be final. In the event that the district does not comply with a decision requiring that tuition charges be paid, county equalization fund payments and state payments shall be withheld as provided in Section 15-40.2-05. (*NDS Sec. 15-40.2-09*)

Payments shall be made by the county of the pupil's residence in an amount equal to the per-pupil payments as provided in Sections 15-40.1-07 or 15-40.1-08 as the case may be, and the remainder of the pupil's tuition as determined under Section 15-40.2-10 shall be paid by his district of residence. Pupils shall be certified by the district or institution in the bordering state to the county superintendent of the county of the pupil's residence, and payments shall be made from the county to the school districts or institution in the bordering state.

This section shall not be construed to require the district of residence to provide pupil transportation, or payment in lieu thereof, for pupils for whom the payment of tuition has been approved. (*NDS Sec. 15-40.2-09*)

The superintendent of Public Instruction may enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating pupils in the public schools or institutions of bordering states. Such reciprocal agreements may provide for payment on a per-pupil basis from the county equalization fund in a sum equal to payments received by the district of the pupil's residence from the county equalization fund. The superintendent of Public Instruction, by certificate to the Department of Accounts and Purchases, shall authorize payments from the appropriation for state payments. The county equalization fund for the attendance of pupils in bordering

states, and the Department of Accounts and Purchases, within the limits of legislative appropriations, shall make such payments. The balance of the tuition payment by the pupil's district of residence shall not exceed the amount established by reciprocal agreement less the amount from the county equalization fund to the school district or institution in the bordering state. (NDS Sec. 15-40.2-10)

This will apply only to districts in counties contiguous to the state line or within 40 miles of it. It allows school districts to pay tuition for the child's attendance in a public school or institution.

House Bill 1090, Chapter 171 of the 1973 Session Laws, Section 15-59-04 of the North Dakota Century Code provides that the cost may be paid by the local school district for the transportation of exceptional children to a state institution or other state school on a day-student basis. However, there is no statute which allows for the payment of tuition by a school district to a state institution or the collection of tuition by a state institution. Tuition may be paid to a contracted private institution, however, by the school district if appropriate education cannot be provided in the public schools.

Payments to private institutions would be mandatory if special education is not provided in the school district. However, if the districts are providing special education as required by law, it is doubtful that the parents can demand tuition payment to a private institution. Cost of room and board may also be paid in excess of tuition to private institutions. These costs must be applied for and must be granted by the director of Special Education. (Op. Att'y. Gen., August 6, 1973)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The county superintendent of schools shall appoint a county board of special education, consisting of three to five members at large. Each member must be approved by the board of county commissioners. Terms of office shall be for two years and shall be arranged as follows: (1) if three members are appointed, no more than two terms shall expire in any one year; (2) if four members are appointed, no more than two terms shall expire in any one year; and (3) if five members are appointed, no more than three terms shall expire in any one year.

At the time of the initial appointment, the decision as to which terms are to expire at the end of the first year shall be determined by lot by the county superintendent. Vacancies shall be filled in the same manner as original appointments. The county superintendent shall serve as secretary and executive officer of the board. Board member expenses shall be paid the same way as those of other county officials. (NDS Sec. 15-59.1-01) (See Finance)

The superintendent of Public Instruction shall enforce state educational standards for all special education programs in institutions wholly or partly supported by the state, and not supervised by public school authorities. (NDS Sec. 15-59.06-1)

The county board annually prepares a budget and a program for special education. These are submitted to the board of county commissioners at the same time and in the same manner as other budget statements and matters are filed. (See Finance)

The county board may contract with any school district inside or outside of the county to provide special educational services for educable handicapped children. After approval by the county commissioners, the program plan and budget must be submitted to the Department of Public Instruction for approval. (NDS Sec. 15-59.1-04)

The county commissioners of two or more counties may decide to form a multiple county board of special education. The board will consist of one member, appointed by the county superintendent from each county commissioner district within the counties. The multiple county board shall designate one of the county treasurers to act as treasurer of special education funds and one of the county superintendents to act as secretary and executive officer of the board. Remaining members perform any duties in connection with the special education program designated by the board. The approval procedure and the raising of the mill levy is the same for multiple boards as it is for individual boards. (NDS Sec. 15-59.1-06)

Any county may withdraw from a multiple county program by resolution of its board of county commissioners. The withdrawal takes effect one year after notice of withdrawal is given to the remaining boards. The withdrawing county remains obligated for those costs prorated to it for the period prior to the effective date of withdrawal.

School districts in counties which have not adopted county or multiple county programs will continue district special education programs only until county or multiple county boards of special education are appointed. (NDS Sec. 15-59.1-01 to Sec. 15-59.1-10)

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SERVICES

" 'Special education' shall mean the provision of facilities, instruction, supervision, and other necessary services as not otherwise provided such children in the public schools and institutions except that necessary services may be provided for blind children even though the same are provided in state institutions."(/VDS Sec. 15-59-01)

The director of institutions may send deaf-blind children, under age 21 and for whom there are no facilities within the state, to any school or institution outside North Dakota, providing there is an approved program for such children. Funds may be spent for room, board, tuition, transportation, and other items necessary for the education. (NDS Sec. 15-47-34)

No transportation shall be furnished to a deaf, blind, or mentally deficient child who is not attending the public schools of the district. (NDS Sec. 15-34-07)

Children attending the State School for the Deaf must be transported to the school by their parents or by the county in which the child resides. (NDS Sec. 25-07-04)

Boards of county commissioners shall order the county to pay transportation expenses to and from the School for the Deaf for indigent children. They shall levy a sum sufficient for such transportation. In order to avoid delay, the superintendent of the school may pay for the transportation and forward an itemized statement of the expense to the county auditor. The board of county commissioners shall then order the repayment to the superintendent who will account for such money to the director. (NDS Sec. 25-07-07)

The School for the Deaf at Devils Lake shall be considered as part of the system of free public schools in the state. (NDS Sec. 15-47-02)

PRIVATE

Any school district having physically or mentally handicapped or learning disabled children for whom the district has no public schools with the necessary facilities which will accept them, shall contract with an approved accredited, private, non-sectarian, non-profit corporation inside or outside the state. The contract must stipulate that the school district pays the private agency an amount for the school year equal to three times the state average per pupil elementary or high school cost. If a student will be attending for less than a school year, the cost will be prorated on a monthly basis. The school district shall count any student attending school under such an arrangement as a regularly enrolled student of the district, which makes the district eligible for 60 per cent reimbursement from county equalization funds. (NDS Sec. 15-59-07)

PERSONNEL

Statutes contain no specific provisions for handicapped in this area.

FACILITIES

Statutes contain no specific provisions for handicapped in this area.

OHIO

RIGHT TO AN EDUCATION

Constitution: "The General Assembly shall make such provisions . . . as . . . will secure a thorough and efficient system of common schools throughout the state . . ." (Sec. 2, *Ohio Const.*)

Compulsory Attendance Law: All children between the ages of six and 18 are of compulsory school age and are subject to the rules relating to compulsory education. Neither they nor the person in charge of them are excused from the compulsory requirements because the children's residence is seasonal, the parents of the children are residents of another state, or the children have attended school for the legal period in another state. (Sec. 3321.01 ORS)

The parent, guardian, or any other person having control of a child of public school age who has not been determined to be incapable of profiting substantially by further instruction will cause the child to attend a school conforming to the minimum standards prescribed by the State Board for the full time school is in session. (Sec. 3321.03 ORS)

Authorities may grant excuses from future attendance at school and for past absences if the district superintendent excuses the child for any part of the rest of the current school year, upon satisfactorily demonstrating that the child's physical or mental condition does not permit his attendance at school during the period. The superintendent must file in his office a copy of the excuse, demonstrating how the child's inability to attend school was determined. Once the child is no longer disabled such excuses are no longer valid, and may be recalled. At this point the child or his parents, guardians or other person having control over him may be proceeded against after due notice whether or not the excuse is recalled. County or local boards of education or private or parochial school governing authorities may prescribe procedures for excusing children from school for any sufficient reason. (Sec. 3321.04 ORS)

A child of compulsory school age may be determined to be incapable of profiting substantially by further instruction. The State Board may prescribe standards and examinations or tests by which the incapacity may be determined as well as the agencies or individuals by which they will be applied and conducted. The capacity of a child to benefit substantially by further instruction must be determined with reference to the specific instruction available to the particular child in the public schools of the district in which he resides. No child may be determined to be incapable of profiting substantially by further instruction if the superintendent of public instruction, pursuant to Board Standards, finds that it is feasible to provide him (in the district or elsewhere in the public school system) special classes or schools, or individual instruction through which he might substantially profit according to his mental capacity. In prescribing, formulating, or applying such standards, examinations, or tests, the State Board may call upon, for assistance and advice, any other department or bureau of the state or any appropriate department of any university supported wholly or partly from state appropriations.

The results of the examinations or tests and the recommendation of the agency or individual conducting them are reported to the superintendent who, subject to the standards of the Board, may make the determination about the child. If the child is determined to be incapable of profiting substantially by further instruction, that determination will be certified by the superintendent of Public Instruction to the district superintendent who shall place the child under the supervision of a visiting teacher or the attendance officer as long as the child is of compulsory school age. The superintendent shall keep a record of all children determined to be incapable of profiting substantially by further instruction. Upon request of the parents, guardians, or persons having control of the child whose residence has been changed to another district, the superintendent of schools will forward the card showing the status of the child to the superintendent of the new district. The State Board of Education may revoke any determinations made under this section. A child determined to be incapable of profiting substantially by further instruction will not be admitted to the public schools of the state while the determination remains in force. (Sec. 3321.05 ORS)

A principal, superintendent or district head may suspend a student for up to ten days. Within 24 hours, he must notify the parents and the clerk of the Board of Education of the action taken and the reason for it.

At any meeting of the school board the student or his parents may appeal the action. The board may act upon the exclusion only at a public meeting, and by majority vote may reinstate the student. No suspension or expulsion shall last longer than the current semester. (Sec. 3316.66 ORS)

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Responsibilities: Upon the petition of the parents or guardians of eight crippled or educable mentally retarded children in any school district, the board of education in that district shall apply to the State Board for permission to establish a special class. If permission is granted, the class shall be established not later than the beginning of the following school year. (Sec. 3323.04 ORS)

Any district having physically or emotionally handicapped children, who not even with the help of transportation are able to be assembled in a school, will provide home instruction. (Sec. 3323.05 ORS)

Classes for deaf and blind children over the age of three, and classes for physically, emotionally, or mentally handicapped persons over the age of five may be established by a local board of education. (Sec. 3323.01 ORS)

POPULATION

Definitions: " Any person of sound mind, who by reason of defective hearing or vision, or by reason of being so crippled as to be physically unable to properly care for himself without assistance cannot properly be educated in the public schools as other children, shall be considered deaf, blind, and crippled within the meaning of section 3323.01 and 3323.08 of the Revised Code. Persons with partial vision may also be instructed under such sections." (Sec. 3323.03 ORS)

A trainable retarded person is defined as "a person who has been determined by the proper authorities to be ineligible for enrollment in the public school because of mental deficiency of such nature and such degree that the person is incapable of profiting substantially by any educational program which should be provided by such public school." (Sec. 5217.01 ORS)

Age of Eligibility: The State Board of Education may grant permission to any board to establish and maintain classes for the instruction of deaf or blind persons over the age of three and for classes for physically, emotionally, or mentally handicapped children over age five. Services may be established to age 18 and may be extended to 21. The Board may grant permission to a local board to establish classes and services for persons below the age limits, and include parental counseling. Classes will be established on an experimental basis: goals and objectives shall be specified and the program reviewed in June to see if goals were met. The State Board will study these reports to determine if classes should be continued. (Sec. 3323.01 ORS)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: The State Board of Education or Department of Health may provide for the medical examination of school children including vision and hearing screening. (Sec. 3313.68 and 69 ORS)

Evaluation and Placement: The State School for the Deaf is open to residents who are deaf, partially deaf, and both blind and deaf if it is determined that they cannot be educated in the public school system because of their handicap. The superintendent of the School for the Deaf may pay the expenses necessary for the instruction of children who are deaf and blind residents of the state in any suitable institution. (Sec. 3324.011 ORS)

Blind and partially blind residents of the state who cannot be educated in the public schools due to their handicap may be eligible for admittance into the School for the Blind. (Sec. 3325.02 ORS)

Any child attending the School for the Deaf or Blind who, in the opinion of the superintendent of the School and the superintendent of Public Instruction, is not making sufficient progress in the School or industrial work to justify his continuance as a pupil may be returned to his parents, guardians, or proper agency. (Sec. 3325.03 ORS)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education will select competent persons to inspect at least annually all classes, to direct and supervise other special education services, and to report concerning the instruction in these classes, the conditions under which they are maintained, the conditions under which any persons enrolled in the classes are boarded, and the extent and nature of all other services related to education affecting physically, emotionally, or mentally handicapped persons. The State Board will also prescribe standard requirements for physically and mentally handicapped children and for the instruction and services of all types of handicapped children for which all school districts are entitled to state reimbursement or aid.

These requirements shall include: conditions under which the schools are conducted and services rendered, methods of instruction, child study, counseling, adjustment, the qualifications of teachers and personnel in charge of child study and counseling and the conditions and terms under which they are employed, the special equipment and agencies for instruction provided and the conditions of the rooms and buildings in which the schools are held. (Sec. 3323.02 ORS)

The superintendent of schools in each district must, by October 15 of each year, certify to the State Board the total average daily membership in special programs in his system. (Sec. 3317.03 ORS)

The Department of Mental Health and Mental Retardation is responsible for administering the programs for the trainable mentally retarded. (Sec. 5119.60 ORS)

The State School for the Deaf and the State School for the Blind are under the supervision of the State Board of Education, which will appoint a superintendent for each school, each of whom will serve at the pleasure of the State Board. (Sec. 3325.01 ORS)

The County Children Services Board is empowered to find foster homes, within or without the county, for children in need of protective services. This includes handicapped children from other counties attending special schools in the county. (Sec. 5153.16 ORS)

PLANNING

Approval of funds for special education programs will be contingent on State Board approval of a comprehensive plan submitted by July 1, 1973 or subsequently amended.

The plan must include:

- (1) Provision for an organizational structure and necessary staffing for the identification and placement of handicapped children in appropriate programs.
- (2) Provision for an organizational structure for the necessary supervision and staffing of programs and services.
- (3) Provision for the programs and services necessary to meet the educational needs of every handicapped child in the school district in accordance with standards and eligibility criteria of the State Board.

When approving the organization of special education, the State Board must provide that no school district be excluded from the state-wide plan. A district may have a plan providing for a cooperative arrangement with one or more other school districts to provide classes or other special programs of instruction for all physically, emotionally and mentally handicapped children resident in that school district; or a district may contract with another school district for service in such classes which meet the established standards in compliance with this section.

All plans are kept current.

FINANCE

By October 15 each year, the superintendents of schools of all districts must certify, to the State Board of Education, the total yearly membership in regular day classes for the first full school week in the month of October as well as the ADM of all deaf, blind, emotionally disturbed, crippled, and neurologically handicapped children in classes approved annually by the State Board of Education. No child shall be counted more than once in the ADM by the school district. (Sec. 3317.03 ORS)

For the purpose of calculating payments under sections 3317.02 and 3317.16 of the Revised Code the following shall be determined for each school district:

- (1) The number of vocational educational units or fraction thereof approved annually by the State Board of Education on the basis of standards, rules, and regulations adopted by the Board.
- (2) The number of classes for deaf, blind, emotionally disturbed, crippled or neurologically handicapped children or fraction thereof approved annually by the State Board.
- (3) The number of special education classes or fraction thereof including those for educable mentally retarded, defined as children with an intelligence quotient of at least 50 and not more than 80 and for speech handicapped children approved annually by the State Board.
- (4) The number of units for child study and occupational, physical, and speech and hearing therapy or fraction thereof approved annually by the State Board.
- (5) The number of units for special education supervisors and special education coordinators approved annually by the State Board.

The total number of classroom units approved annually by the State Board for vocational and special education shall not exceed the number of classroom units included in the State Board's estimate of School

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Foundation Program cost and with appropriations thereto by the General Assembly or as approved by the state controlling board or the state emergency board. (Sec. 3317.05ORS)

A unit funded pursuant to Sec. 3317.02 of the Revised Code shall not be approved for funding in a district if the unit services another district already receiving payment. This does not apply to a unit approved by the State Board prior to April 1, 1973.

Districts may combine partial unit eligibility for special education programs, and they may be approved for state funding in one district. (Sec. 3317.052 ORS)

When a child who is a resident of one district attends classes in another district because special services are provided, and the cost exceeds the amount received by the district of residence and the amount received by the State Board, then the district of residence shall pay the other district excess cost. This is determined by using the formula approved by the Department agreed upon in the contract made between the two districts. The Department shall certify the amount of the payments under chapter 3317 for such handicapped pupils for each school year ending on the 30th of July. (Sec. 3323.11 ORS)

The State Board of Education may arrange with any Board of Education which maintains a class for the instruction of blind, deaf, or crippled persons, or affords special instruction for such children who are not school residents of the district, to pay for the board of any such persons under such standards and with such restrictions as the State Board of Education prescribe. (Sec. 3323.12 ORS)

In addition to funds paid to districts through the School foundation Program, they may receive an amount for the approved cost of board and transportation for physically and emotionally handicapped children attending regular education classes.

The approved cost of home instruction for physically or emotionally handicapped children and other special instructional services for physically or emotionally handicapped children are also reimbursed. The distribution of these funds is made on the basis of standards adopted by the State Board of Education. (Sec. 3317.06 ORS)

By June 30 each year, county child welfare boards must report to the commissioner of Mental Hygiene, the names and addresses of all persons enrolled in a training center or workshop for the mentally deficient (trainable mentally retarded), the period of time each person was enrolled, an itemized report of the expenditures as approved by the commissioner, and the net per capita cost for operating the training center and workshop. After approval, the Division of Mental Hygiene will reimburse the agency operating the center up to \$300 per year for each person enrolled in the training center or workshop. (Sec. 5127.03 ORS)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Two or more districts may arrange cooperatively to employ special education personnel.

If the tuition rate paid by the sending district exceeds the per capita cost for the instruction of the child, the board of education of the sending district shall pay directly to the board of the servicing district the excess cost as determined by a formula approved by the Department of Education and agreed upon in contracts entered into by the boards of the districts concerned at the time the district operating the special class accepts the child for enrollment. (Sec. 3323.11 ORS)

Tuition rates for handicapped pupils receiving special services in a district other than their district of residence are determined by computing the total expenditures of the schools in the receiving district. The operating cost is computed by deducting the amounts expended for capital outlay, permanent improvements, debt service, transportation, operation of school lunchrooms, tuition to other school districts, operation of kindergarten classes, operation of summer schools, part-time school, evening schools, and maintenance of playgrounds, from total expenditures. Depreciation charges not exceeding three percent annually based on the actual cost to the district may be added, plus any amount of private donations or grants. Federal grants and all property except land used in conducting the school will be subtracted from the total. From the operating cost plus depreciation charges will be deducted the proceeds of all state monies apportioned to the district, interest on the irreducible debts and income from school trusts and land rental funds. The remainder is divided by the number of pupils in daily membership in grades one to 12 inclusive. Attendance for any part of the month is regarded as attendance for a month unless the annual session is terminated before the end of the full month. The amount of tuition computed in this section must be certified by the board of education in the district of attendance to the board of education of the district of residence for approval and payment. If no agreement is reached as to the amount payable or if the board of education of the district of residence refuses to pay the amount, the board of education of the district of attendance will notify the superintendent. The superintendent will then determine the correct amount and will deduct the same from the amount of state funds, if any,

allocated to the district of residence and transfer them to the receiving district. The superintendent will send to the district of residence an itemized statement showing any deductions. (Sec. 3317.08 ORS)

See Facilities.

Two or more districts or high schools may share an approved unit for a work-study coordinator.

The boards of education of any school districts may, subject to the approval of the superintendent of Public Instruction, enter into agreements for the joint or co-operative construction, acquisition, or improvement of any building, structure or facility benefiting the parties thereto, including, without limitation, schools and classrooms for the purpose of Chapter 3323 of the Revised Code, and for the management, operation, occupancy, use, maintenance, or repair thereof, or for the joint or co-operative participation in programs, projects, activities, or services in connection with such buildings, structures, or facilities. (Sec. 3313.92 ORS)

Special education units for deaf, blind, emotionally disturbed, crippled, neurologically handicapped and educable mentally retarded may be operated by a county board of education which shall be eligible for funding under division (C) (3) of section 3317.02 of the Revised Code.

The board of the district in which such child is a school resident may contract with the board of another district for the transportation of such child into any school in such other district, on terms agreed upon by such boards. Upon direction of the State Board of Education the board of the district in which such child resides shall pay for his transportation and the tuition. (Sec. 3323.10 ORS)

SERVICES

Teachers in special education classes are appointed in similar fashion as other public school teachers. They must possess the usual qualifications required of teachers in the public schools and any special training requirements the State Board of Education or local boards may require. Teachers of the homebound must be properly certificated.

The so-called "oral system" must be taught by teachers in the schools for the deaf and if, after a fair trial of nine months, any child is unable to learn by this method he may then be taught the manual method at a separate school. (Sec. 3323.06 ORS)

The districts may maintain child study, counseling, adjustment, and special instructional services, including home instruction, for deaf and blind persons over three and for all other persons over age five whose learning is retarded, interrupted or impaired by other physical, emotional or mental handicaps. In addition to these programs, the State Board may grant permission to districts on an experimental basis to establish classes and provide services to children below the age limits specified. (Sec. 3323.01 ORS)

The State Board of Education may arrange with any board of education maintaining a class for the instruction of blind, deaf or crippled persons to provide special instruction for nonresident children and to pay for the board of any person. (Sec. 3023.12 ORS)

If another school district within the same county or an adjoining county is the source of 60 percent or more children in a hospital or institution, the board of that district will educate all children within the institution. In any case, the board providing the educational facilities will be entitled to all monies authorized for the attendance of pupils provided by the education foundation program, tuition, and any additional compensation provided for crippled children. Any board which provides the educational facilities for children in a county or municipal institution established for the care and treatment of children who are delinquent, unstable, or socially maladjusted will not be entitled to any money provided for crippled children. (Sec. 3313.55 ORS)

PRIVATE

School districts may receive from the State Board, in addition to Minimum Foundation Funds, an amount approved by the State Department to provide services and materials for pupils attending non-public schools within the district for programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped, including speech and hearing therapy services. The services provided to children in non-public schools of the state are on the same basis as those to children who are attending the public schools of the state. (Sec. 3317.06 ORS)

"A county board of mental retardation established under R.C. Chapter 5126, is unable to contract for the service of an administrator on a yearly basis in order to circumvent the civil service statutes of this state.

"A board of county commissioners, but not a county board of mental retardation, may grant a salary in excess of the amount set forth in R.C. 143.10 for an administrator of a board of mental retardation." (Op. Att'y. Gen., July 27, 1973)

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PERSONNEL

The State Board of Education may arrange by written agreement with the board of trustees of any college or university, with the teacher education department of the college or university, for classroom and in-service training of teachers of handicapped children. (Sec. **3323.01 ORS**)

FACILITIES

The boards of education of any two or more school districts may subject to the approval of the superintendent of Public Instruction, enter into agreements for the joint or co-operative construction, acquisition, or improvement of any building, structure, or facility, including, without limitation, schools and classrooms for the purpose of Chapter 3323 of the Revised Code, and for the management, operation, occupancy, use, maintenance, or repair thereof, or for the joint or co-operative participation in programs, projects, activities, or services in connection with such buildings, structures, or facilities.

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OKLAHOMA

RIGHT TO AN EDUCATION

Constitution: "Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control . . ." (Art. I, Sec. 5, Okla. Const.)

Compulsory Attendance Law: A child subject to compulsory attendance requirements is excused from these provisions if he "is prevented by mental or physical disability as determined by the board of education by a certificate of the school physician or public health physician or if no such physician is available, a duly licensed and practicing physician. (Sec. 70-10 OS)

All children who are so deaf or so hard of hearing that they cannot participate in the regular public school program shall receive an appropriate education at state expense. All school districts are responsible for identifying such child between the ages of two and 21 at the earliest possible age under procedures prescribed by the State Board. Every parent or other person having custody of such a child must enroll the child at a school providing appropriate education. (*Enrolled House Bill 1777, 1970*)

Responsibilities: All school districts must provide special education for all handicapped and exceptional children defined by this Act. (Sec. 13-101 OS)

Policy: It is intended that the State of Oklahoma ensure that every student in the public schools has the opportunity to achieve his highest level of learning for the benefit of his future life in society. (Sec. 2, *Prescriptive Teaching Act of 1974*)

POPULATION

Definitions: "Exceptional children shall mean gifted, educable mentally handicapped, trainable mentally retarded, speech defective, emotionally disturbed or perceptually handicapped children, children with special health problems, children requiring the services of a visiting counselor, children with specific learning disabilities as a result of neurological impairment, multiple handicapped children, and other handicapped children of four years of age as of the first day of November of the school year. It also includes blind or partially blind children and deaf and hard of hearing children two years of age or older who are bona fide residents of this state, whose condition is such that it is impracticable or impossible for them to benefit from or participate in any classroom program of the public schools in the districts in which they reside and whose education requires a modification of the classroom program." (Sec. 13-101 OS)

Age of Eligibility: Partially blind, blind, deaf, and hard of hearing children may begin receiving services at age two. All others begin at age four. Special education services end at age 21 except in special cases where a physical condition prevents a child from completing his program by age 21. In that case, services may be extended until the child reaches age 25. (Sec. 13-105 OS)

Any resident between 21 and 26 years of age who has not completed twelfth grade has the same educational opportunities as children of legal school age (five to 21). (Sec. 5-132 OS)

IDENTIFICATION, EVALUATION, AND PLACEMENT

The State Board of Education operates psycho-educational evaluation and prescriptive teaching units. They are to insure proper evaluation and education of children recommended for placement in special education programs, prescriptive teaching programs and elementary guidance and counseling. The State Department coordinates existing programs with new ones so that these services are available in as many districts as possible. Eventually they will be available to all districts in the state. (Sec. 21-211 OS)

The State is also authorized to expand the services of the present units to ensure that a child with a particular learning difficulty or exceptionality will receive the proper diagnosis and prescription so that he may reach his maximum potential.

Appraisal in the Service Centers includes: (1) diagnosis and evaluation; (2) analysis of placement alternatives and recommendation for special class placement if needed; (3) individualized learning plans,

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including prescriptive teaching plans for teachers; (4) consultation for educators and parents. (Sec. 5, *Prescriptive Teaching Act of 1974*)

Screening does not include the use of projective psychological, personality or adjustment tests for collecting personal information.

Beginning in 1974, a screening program will be completed over a two year period for all students K-6. In 1974-75 screening will be administered to every K, first, second and third grade student. In 1975-76 students in K, five and six will be screened. In each subsequent school year, every K, first and second grade student in the state will be screened. (Sec. 2, *Prescriptive Teaching Act of 1974*)

No child whose parent or guardian has filed written objection with the local board of education will be screened. (Sec. 5, *Prescriptive Teaching Act of 1974*)

Results of student screening are confidential. Parents and educators will have access on written request. Results of screening or evaluation will not be made a part of the student's permanent in-school records. (Sec. 7, *Prescriptive Teaching Act of 1974*)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for establishing necessary rules and regulations, setting rates for reimbursement for physical and occupational therapists, teachers of homebound children, home-to-school telephone instruction, board and room for transferred handicapped children to attend a special class, travel for transporting handicapped and exceptional children within or without the district and also for teacher travel to provide these services to handicapped children in homebound, cooperative, or county programs. (Sec. 13-108 OS)

The State Board is also authorized to prescribe the qualifications for all persons teaching exceptional children; to define, classify, and determine the standards of eligibility for exceptional children for program participation; and to make any other necessary rules and regulations for the teaching of exceptional children. (Sec. 13-105 OS)

The Department of Mental Health has control of all state institutions for the care of the mentally ill. (*Title 43A, Sec. 11-11.1 OS*)

The Oklahoma Public Welfare Commission has jurisdiction over the State School for the Deaf and the State School for the Blind. (*Title 56, Sec. 320 OS*)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

The following amounts have been appropriated by the Legislature for the fiscal year ending June 30, 1975:

Homebound Children-\$350,000

New Special Education Classes-\$1,685,000

Elementary Counseling and Prescriptive Teaching-\$1,000,000 (Sec. 6. S.B. 434, 1974)

Of the funds allocated for new classes, \$50,000 will be made available for new or additional special classes for deaf or legally blind students. For new first year programs, \$10,000 will be provided, and in subsequent years the grant amount will be the same as for other special education programs. (Sec. 12, S.B. 434, 1974)

The State Board is authorized to fund all aspects of the education of school age children in the Children's Memorial Hospital. (Sec. 13, S.B. 434, 1974)

It is the intention of the Legislature that of the funds allocated for new classes, one million dollars shall be used for new or additional classes. A qualifying school district will be allocated \$5,000 per class. (Additional classes means the addition of new sections of classes currently in operation, even though they are in the same area of special education now operating in the schools.) (Sec. 17A, H.B. 434, 1974)

School districts whose funds were allocated under previous legislation are eligible for payment for classes started in 1969-70 through 1973-74 at the same rate that was approved for those years, if the programs are approved in 1974-75. Payments to these classes total \$685,000. (Sec. 17B, S.B. 434, 1974)

The one million dollars allocated for elementary counseling and prescriptive teaching will be used for the psycho-educational evaluation and prescriptive teaching units. (Sec. 20, S.B. 434, 1974) (See Identification, Evaluation and Placement)

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Attendance of children in special education classes will be included in the average daily attendance computation in the foundation appropriations programs for state aid. (Sec. 13-1 OS)

No funds received by a district for special education are considered part of the chargeable income of the district for state aid purposes. Also, none of the funds for special education may be paid to a school district for:

- (1) any teaching unit or class with less than eight educable mentally handicapped children;
- (2) any teaching unit for speech defective children with a number less than that specified by the State Board;
- (3) any teaching unit or class consisting of children who are both deaf and blind except for the program mentioned in "Services" which is a direct state program; or
- (4) any teaching unit or class organized with less than five of any other type of exceptional child. (Sec. 13-103 OS)

No district may receive funds for a teaching unit or class or for a psycho-educational evaluation and prescriptive teaching unit until it has been approved by the State Board.

Special education is now financed on a flat grant basis as follows: All federal funds used in the special education must be above the flat grants from state appropriations. Each new class started in 1971-72 and 1972-73 shall receive \$5000. Each class provided in 1973-74 shall receive \$4,500. (Sec. 18-109 OS)

If any school district shall fail, neglect or refuse, for any reason whatsoever, to provide special education for a handicapped child, certified as such by competent authorities and residing in such district, as directed in Section 13-1 of Title 70 of the Oklahoma Statutes, the following is hereby authorized: Such child shall be entitled upon petition by the child's parent or guardian, without consent or approval of the school district not providing special education, to transfer to any adjacent or nearby school district which will accept the handicapped child and provide the special education which such child is entitled to receive. The school district in which a child transferring under this section resides shall pay to the district receiving and educating such child, as tuition, a special education transfer fee as provided in paragraph 2 of this section, provided the average daily attendance or membership on October 1 of such child shall be credited to the home of such transferee. The transfer fee shall be the per capita cost of the receiving district for current expenditures for the special education of such handicapped exceptional child based upon the cost of teachers, equipment, material, and special costs associated with the special education class. It shall be the duty of the school district from which the child transfers to appropriate and pay the fee to the district which receives and educates the child. If a school district owing such fees shall fail, neglect, or refuse for any reason whatsoever to appropriate and pay the fees, then the school district entitled to receive them shall certify this to the Finance Division of the State Department of Education. Upon receipt of such certification, the Finance Division shall deduct the amount of the special education fee from any state foundation program or incentive aid otherwise due the sending district and transmit such amount to the receiving district. (Sec. 18-110, H.B. 1138, 1974)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

School districts may fulfill the mandatory requirement of this Act by: (1) joining in a cooperative program with another district or districts to provide special education; or (2) transferring certified handicapped or exceptional children into other school districts providing appropriate special education with the districts of residence paying tuition; or (3) joining in a cooperative program with a public or private facility to provide education for deaf and hard of hearing children. (Sec. 13-101 OS)

Two or more school districts may establish cooperative programs for exceptional children if such an arrangement is approved by the State Board.

County superintendents of schools may establish and maintain special education programs, with the approval of the State Board, and may expend county funds for this purpose. Any school district or districts located wholly or partially in the county may participate in the program and have the authority to contribute school district funds either directly or by reimbursement to the county participating in such a program. (Sec. 13-101 OS)

The State Board may make provisions for boarding exceptional children who must be transferred from their home school districts to school districts providing special education, but in no case may the reimbursement from other state funds for this purpose exceed \$450 per child per year. (Sec. 13-108 OS)

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SERVICES

The State Board has the authority to select school districts within the state to establish special programs for the partially sighted for the first through ninth grades. The selection of the districts, establishment of the programs, and determination of their eligibility will be in accordance with special education regulations and laws. State funds specifically appropriated for this program will be apportioned by the State Board among the school districts providing programs. The apportionment and distribution will be on a per student basis and in accordance with State Board rules and regulations. (*H.B. 1070, 1972*)

PRIVATE

Districts may contract with private schools in their districts to provide special education services for deaf or hard of hearing children. Districts receive no state aid for these programs. (Sec. 13-101 OS)

The State Board may provide for deaf-blind children in any public or private institution within or without the state. Reimbursement may not exceed \$5,000 yearly per child for this program. (Sec. 13-4 OS)

The state will fund 75% of the average approved cost of pupil transportation from 1974-77. (Sec. 13-103 OS)

Private and parochial schools may be accredited in the same way that public schools are. Teachers in such schools must be state-certified and the schools must comply with the standards set for public schools. (Sec. 10, SB. 542, 1974)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

OREGON**RIGHT TO AN EDUCATION**

Constitution: "The legislative assembly shall provide by law for the establishment of a uniform and general system of common schools." {Art. VIII, Sec. 3, Ore. Const.)}

Compulsory Attendance Law: When it is determined, according to criteria established by the State Board of Education, that a child is suffering from a physical or mental illness or disease of such severity as to make his presence in a school facility impossible or dangerous to his health or that of others, the public schools must provide that child either home, hospital, institutional or other regularly scheduled and suitable instruction meeting State Board standards unless the child is receiving suitable instruction in a state or regional facility or institution. (ORS 339.030[4])

Responsibilities: Any school district having 12 or more mentally retarded children who are eligible for special services for the mentally retarded shall establish such services. (ORS 343.441)

A district with 12 or more emotionally handicapped children eligible for services may apply for a special program. Any intermediate district or any combination of districts may operate a special program. (ORS 343.509)

With the superintendent's approval, any district with children under 21 requiring special education shall provide them with it, either in the district or through a contract with another district. Districts may also use the psychiatric services of public agencies. (ORS 343.221)

POPULATION

Definitions: " 'Handicapped children' includes all children under 21 years of age who require a special education in order to obtain the education of which they are capable, because they are blind, partially sighted, deaf, hard of hearing, speech defective, crippled or physically handicapped, have extreme learning problems, are handicapped by being unwed and pregnant or by being unwed mothers with children in their care, or emotionally maladjusted to the extent that they cannot make satisfactory progress in the regular school program." (ORS 343.212)

" 'Crippled or physically handicapped' means a disability which has been diagnosed as permanent or which is extended over a two month period." (ORS 343.212)

" 'Trainable mentally retarded' means a mentally retarded person who is incapable of meaningful achievement in traditional academic subjects but who is capable of profiting to a meaningful degree from instruction in self-care, social skills and simple job and vocational skills, but does not include mentally retarded children as defined in ORS 343.410." (ORS 343.760)

" 'Mentally retarded children' means children between the ages of six and 21 who, because of well established retarded intellectual development are incapable of receiving a common school education through regular classroom instruction but whose intellectual ability would indicate a possible scholastic attainment of third-grade level with the benefit of special instructional methods and who are competent in all aspects of the school environment except the academic." (ORS 343.410)

" 'Emotionally handicapped children' means those under 21 with a behavioral disorder so severe that the child is unable to participate in a regular education program. This includes children who are autistic, psychotic, neurologically or emotionally impaired, hyperactive, withdrawn and the child schizophrenic." (ORS 343.505)

Age of Eligibility: Special education services may be provided to educable mentally retarded children from six to 21. (ORS 343.410) All other handicapped children are eligible for services from birth to 21. (ORS 343.212)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Special Education Evaluation: To be eligible for special education a child must be certified by the superintendent of Public Instruction or an approved district program. Certification requires a statement by qualified educational and medical authorities that the child has the mental health and ability to benefit

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from special education, and must include a medical examination. The latter may be waived for children with speech defects or extreme learning problems. A medical or visual examination may be required of children who have not made satisfactory progress in special education programs. Mentally retarded children in a special instructional facility are eligible for special education if authorized by the superintendent. Physicians and ophthalmologists licensed in the state must give the appropriate examinations. (ORS 343.227)

An emotionally handicapped child is eligible for special placement if he is certified by medical and educational authorities. (ORS 343.515)

After consultation with parents and agencies serving the needs of handicapped children, school district administrators shall have control over placing eligible children in special programs. The child must be enrolled by his parents, if he is eligible. (ORS 343.075)

ADMINISTRATIVE RESPONSIBILITY

The Mental Health Division of the Oregon State Board of Control supervises the program for the trainable mentally retarded. It is responsible for:

(1) determining eligibility for participation; (2) qualifications for contracts; and (3) approving costs, including expenses for staff, equipment and supplies, transportation of children, and any other necessary costs. All determinations of the Division are final and are not subject to any administrative or judicial appeal. (ORS 430.810 and 820)

The superintendent is responsible for establishing criteria to guide the development and operation of special programs and may apply these criteria in certifying the programs for reimbursement. (ORS 343.045)

The superintendent will administer all programs of special education subject to the approval of the State Board. He will be responsible for establishing rules relative to the qualifications of teachers, supervisors, work experience coordinators, courses of study, methods of instruction, admission, diagnosis, and eligibility of pupils, size of special facilities, rooms, and equipment, supervision, territory to be served, and any other necessary rules. He may also use any funds appropriated for the program for pre-service and in-service education of teachers. (ORS 343.055)

The superintendent is responsible for employing personnel qualified by training and experience to supervise the types of services required by the special programs. Such personnel will assist school districts, county and regional facilities and hospitals in the organization and development of special programs and will have the general supervision of the programs to assist school districts in obtaining required services, equipment and materials, particularly where the number of children is too small to justify district purchase of equipment and materials. (ORS 343.065)

The age range and number of children placed in special programs for the emotionally handicapped will be in accordance with the rules and regulations and guidelines of the superintendent of teacher preparation and operation of special programs for emotionally handicapped children. (ORS 343.509 [3])

The schools for the deaf and blind are under the supervision of the superintendent of Public Instruction. (ORS 346.020)

PLANNING

Every school district, combination of districts or intermediate education district operating a special program for emotionally handicapped children must appoint a local advisory council consisting of at least five but not more than seven members, including two parents of emotionally handicapped children. The other members shall be educators and professional persons associated with the diagnosis and treatment of emotional problems. The advisory council shall select its own chairman and vice chairman and fix the duties of its officers. Local advisory councils will review all aspects of the special program and report to the local board(s) or to the intermediate education district. The local councils will also recommend to the superintendent appointments for the State Advisory Council for Emotionally Handicapped Children. (ORS 343.525)

A State Advisory Council for Emotionally Handicapped Children with nine members appointed by the state superintendent is established. The members must include one member or representative of the State Board, three parents of emotionally handicapped children, and educators and professional persons associated with the diagnosis and treatment of emotional problems. All members except the members of the State Board must be members of local advisory councils and representative of all geographic areas in the state. The superintendent shall consider recommendations of the local council when making appointments. The State Council will review all aspects of the statewide program for educating emotionally handicapped children and advise the superintendent and the State Board on these programs. (ORS 343.530)

FINANCE

Children enrolled in a program for the trainable mentally retarded are considered as enrolled in the schools of the district for financial aid. Districts participating in these programs or providing them through private contract will be reimbursed by the Mental Health Division for approved costs minus the district's per capita operating cost multiplied by the number of children participating in the classes. (ORS 430.780)

Districts providing programs for the mentally retarded and educable mentally retarded will be reimbursed at a fixed cost in any fiscal year. The amount of reimbursement to any claiming district for a special class in a special facility shall not exceed: (1) \$3,000 for each teacher's salary; (2) \$700 for transportation of children; and (3) \$300 for equipment or supplies, or the amount spent for special items, whichever is less.

In any fiscal year the amount of reimbursement to any claiming district for each full time supervisor's salary shall not exceed \$4,000 or 50% - whichever is less (ORS 343.470)

\$50,000 per year is appropriated for five classes for the emotionally handicapped, located in districts spread throughout the state. Costs for these classes is paid on an approved cost basis. A notarized claim must be submitted by October 1 of any year, and the excess costs of operation, administration and special instruction will be paid, and approved in advance. There is no pro rata reimbursement. The amount to be paid is determined by dividing the cost of the program by the ADM and reimbursing the district for the excess cost. (ORS 343.540)

Districts will be reimbursed for the operation and administration of special education programs in the following manner:

(1) A district must submit to the superintendent an estimate of the cost for providing special education for the following school year.

(2) A district which provides special education or expends more than the regular per capita cost on home or hospital instruction of crippled or physically handicapped children must file with the superintendent by October 1 following the close of the school year for which the reimbursement is claimed, and provide any other information required by the superintendent for reimbursement.

(3) If the superintendent approves the application for reimbursement, he will then reimburse the district in an amount not exceeding 1-1/2 times the per capita cost of instruction for other children of the district. In the case of home or hospital instruction, reimbursement will be made only for the costs which are in excess of the per capita cost of the district.

If available funds will not permit maximum reimbursement, all districts claiming over \$500 will receive a prorated reimbursement based upon the ratio that the total amount of funds available bears to the total amount of funds required for maximum reimbursement. (ORS 343.281)

Funds appropriated for special education will be used to: (1) reimburse districts for special education programs; (2) reimburse the State Board of Education and purchase special equipment and supplies to loan to school districts and county and regional programs which may be only those required by children needing special education; (3) to train teachers in special education; and (4) to pay any other expenses necessary for the proper administration and operation of special education programs. If federal funds are made available on a matching basis for special education, state funds may be used to match federal funds. (ORS 343.285)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Any district enrolling a child in a district other than that in which he would be regularly enrolled to obtain special education shall contribute to the district in which he is enrolled a sum equal to the cost of educating a child in the district in which he is enrolled. (ORS 343.277)

Districts may also cooperate with public agencies providing psychiatric services for children to establish clinical elementary and high school services for children who are maladjusted or have extreme learning difficulties.

If it is more economical to the school districts providing the classes, either singly or jointly on a contractual basis between school districts, the superintendent of public instruction may provide for regional facilities to instruct handicapped children. He will delegate full responsibility for the operation and administration of these facilities to the school district in which the facility is located. In this case the district will be reimbursed from the funds provided for the education of handicapped children for expenses incurred in the operation and administration of the center. He does not have to delegate the responsibility to the school district but may operate the facility and be responsible for the administration himself. (ORS 343.236)

Law Digest: Education of Handicapped Children

SERVICES

"'Special instructional facility' means: (1) the full-time program for eligible mentally retarded children, special classes in special schools, and includes supervisory personnel employed by the school district or county school superintendent, subject to the approval of the superintendent of Public Instruction to direct the program of special instruction; or (2) a full-time school program for eligible mentally retarded children which adequately provides for their education and which has been approved by the superintendent of Public Instruction." (ORS 343.410)

"'Special education' includes special instruction for handicapped children in or in addition to regular classes, special classes, special schools, special services, home instruction and hospital instruction."

"'Special services' includes transportation, reader service, special equipment, psychometric testing and such other materials and services as are approved by the superintendent of Public instruction." (ORS 343.212)

Programs for the trainable can be maintained in the following manner:

(1) contracts with school districts or intermediate education districts to provide classes for the trainable, if the school districts or intermediate education districts approve the contract, or if any school district within the intermediate education district contracts with the intermediate education district; (2) contracts with private agencies to provide classes; (3) contracts with public or private agencies to provide diagnostic and evaluation services necessary for the trainable; and (4) counseling services to parents or guardians of mentally retarded persons, or contracts with public or private agencies or persons who provide such services. (ORS 430.770 to 430.790)

Deaf students attending a university, college, or other suitable school are eligible for a state grant to help defray expenses. The applications for the grants must be approved by the Oregon State Board of Control and may not exceed \$500 in any one year. (ORS 346.070)

Blind students attending universities, colleges, or other suitable schools are eligible to apply to the Commission for the Blind for state aid providing readers and other expenses. A committee consisting of the superintendent of public instruction, the superintendent of the State School for the Blind and a representative of the Commission For the Blind will make the recommendation. Grants may not exceed \$500 a year. (ORS 346.060)

"'Special program' means a full-time school program in the public schools for eligible, emotionally handicapped children which adequately provides for their education and which has been approved by the superintendent of public instruction." (ORS 343.505 [2])

The superintendent in cooperation with hospital authorities shall establish classes and appoint teachers for children under 21 in the State Tuberculosis Hospital, the state hospitals for the mentally ill, the University of Oregon Medical Schools Hospital, Shriner's Hospital for Crippled Children, and Crippled Children's Hospital School in Eugene. He shall further assume the responsibility for observing and supervising the instruction, providing instructional supplies and paying teachers' salaries from state special educational funds. This responsibility may be delegated to the school district in which the hospital or institution is located or to an adjacent school district. If the school district assumes the responsibility it will be reimbursed from state funds. (ORS 343.261)

PRIVATE

Special funds appropriated to the State Board may be used by them to contract with and pay an educational institution within or without the state to educate educable children who are deaf, mute and blind. Funds such as these may also be used to purchase and prepare equipment and supplies to be loaned to school districts and county or regional programs which provide programs for the education of blind or partially seeing children in the public schools. (ORS 343.301)

See Services.

PERSONNEL

Scholarships may be awarded to provide assistance to qualified teachers wishing to obtain certification to teach the mentally retarded or special training to teach the emotionally handicapped. Each recipient will receive \$200 for living expenses and an amount for tuition fixed by the State Board of Higher Education. In order for an applicant to receive a scholarship, the following conditions must be met:

(1) The school board in the district where the teacher is employed or is to be employed for the succeeding school year agrees to pay the teacher \$200 to match the \$200 paid by the state as part of the scholarship;

(2) The teacher applying for the scholarship agrees in writing to complete the course and to teach in the school district that provides the matching funds for one year after receiving his teaching certificate to teach mentally retarded children.

Scholarships are renewed in the same manner as they are originally awarded. If a teacher fails to complete the course or to teach in the public schools in the state after receipt of the award, he must remit to the state the funds received. If he teaches in a district other than the one which granted him the matching funds, he must reimburse the district, but not the state. (ORS 343.552)

The Superintendent, in cooperation with the State Board of Higher Education may establish in State Board approved teacher preparation institutions, centers to assist in the preparation of special education teachers and to provide evaluative, consultative, and instructional services for physically and emotionally handicapped children. Funds appropriated for the education of physically and emotionally handicapped children may be used to help defray such costs. {ORS 343.271}

Funds appropriated by the State Board may be used to provide and pay for special training of teachers of blind or partially seeing children in the public schools. (ORS 343.301)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**PENNSYLVANIA****RIGHT TO AN EDUCATION**

Constitution: "The general assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." (Art. 3, Sec. 14, Pa. Const.)

Compulsory Attendance Law: All children between the ages of eight and 17 are required to attend a day school teaching in English the subjects and activities described by State Board standards. A parent, guardian, or other person having control of any child of compulsory school age who is deaf, hearing impaired, blind or visually impaired, or crippled and because of his handicap cannot be educated in the public schools of his district of residence, shall allow the child to be sent to a school with proper provisions for the education of such handicapped children or shall provide for the child's education by a legally certified private tutor. (Sec. 1327 and 1328 Pa. School Code)

The board of school directors of any district may, with evidence of any licensed practitioner of the healing arts or any other satisfactory evidence which shows that any child has been prevented from attending school or from studying because of a mental or physical handicap, excuse the child from attending school. No action of the board of school directors is final until approval is given by the Department of Education. (Sec. 1329 Pa. School Code)

The provisions of this Act do not apply to a child who has been examined by an approved mental clinic or by a person certificated as a public school psychologist or psychological examiner and found unable to profit further from public school attendance and who has been reported to the board of school directors and excused in accordance with the State Board regulations. (Sec. 1330 Pa. School Code)

Responsibilities: "Except as herein otherwise provided, it shall be the duty of the board of school directors of every school district to provide and maintain or to jointly provide and maintain with neighboring districts special classes or schools in accordance with the approved plan." (Sec. 1372, Pa. School Code) See Planning

If an approved plan demonstrates that it is unfeasible to form a special class in any district to provide for a child in any of the public schools of the district, the board of school directors in the district will secure proper education and training outside the public schools, in a special institution, or provide for teaching the child in the home. (Sec. 1372 Pa. School Code)

Mentally retarded children in residential mental retardation facilities licensed by the Department of Public Welfare and in residence for interim care placement must receive a public school program of education. (Op. Att'y. Gen., August 6, 1973)

(1) Public policy of this Commonwealth is that any child living within the State is entitled to attend the public schools (Sec. 1306 Pa. School Code)

(2) A child is resident of the district in which the parents or guardian resides. (Sec. 1302 Pa. School Code)

(3) Non-resident children are entitled to attend the public schools, with or without tuition, as that board may determine.

(4) The school district of a child's residence is liable for tuition payment to the district which educates the child. (Sec. 1307, 1308 Pa. School Code)

(5) The Commonwealth pays tuition for Pennsylvania children whose district of residence cannot be determined.

(6) Tuition for non-Pennsylvanians is to be paid by the institution, which should seek re-payment from parents or guardian. (Sec. 1308 Pa. School Code)

(7) Under PARC, parents who waive right to the free public program of education must bear the tuition expense. (Op. Att'y. Gen., October 11, 1973)

In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, (PARC), the Pennsylvania A.R.C. and 14 mentally retarded children were the plaintiffs representing all others similarly situated. The defendants were the state secretaries of Education and Public Welfare, the State Board of Education, and 13 school districts representing all of the state's districts. Suit questioned public policy in law which postponed or denied public education to mentally retarded children. Education is defined as a continuous process by which individuals learn to adjust to their environment; and by this definition, all

children can learn. Free access to public education opportunities for mentally retarded children was sought. The case was filed in 1971 and in June of that year, a stipulation stated that due process procedures, notice and hearing must accompany any change in educational status of a mentally retarded child. In October, an injunction provided that no mentally retarded child could be denied an education. All named plaintiffs were to be placed in special education programs by October, 1971, and all mentally retarded children in the state were to be placed in special programs by September, 1972. Also, any districts providing preschool education to children must also provide the same to the mentally retarded. The decrees were finalized by the court May 5, 1972, and two masters were appointed to oversee the orders, (*lawsuit*)

POPULATION

Definitions: "The term "exceptional children" shall mean children of school age who deviate from the average in physical, mental, emotional, or special characteristics to such an extent that they require special education facilities or services, and shall include all children in detention homes." (Sec. 1371 Pa. School Code)

Age of Eligibility: Children are eligible for special education beginning at the age of five years and seven months prior to September 1. The board of school directors may admit beginners less than five years and seven months old. Boards of school directors may refuse to accept or retain children who have not yet attained a mental age of five years. (Sec. 1304 Pa. School Code)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: Children of school age will have, according to the regulations of the Advisory Health Board, a vision test by a school nurse, medical technician, or teacher; a hearing test by a school nurse or a medical technician; height and weight measurements by a school nurse or teacher; a test for tuberculosis under medical supervision; and any other tests the Advisory Health Board feels are important to protection of the health of the child. The vision test must be given at least annually and the other tests at any intervals established by the Advisory Health Board. (Sec. 1402 Pa. School Code)

Special Education Evaluation: District superintendents are responsible for reporting to the proper intermediate unit by October 15 of each year and thereafter cases of exceptional children which arise within their districts.

Any children so reported will be examined by a person certified by the Department of Education as a public school psychologist and any other experts required by the child's handicap and condition. Reports shall be made to the proper intermediate unit of all exceptional children and of district children enrolled in special classes. (Sec. 1371 Pa. School Code)

The State Board shall establish standards for a temporary or permanent exclusion from the public schools of children found to be both uneducable and untrainable. Any child determined to be uneducable and untrainable by a person certificated as a public school psychologist may be reported by the board of school directors to the Secretary of Education. If approved by him, the child will be certified to the Department of Public Welfare as an uneducable and untrainable child. If the child is thus certified, the public schools are relieved of the obligation of providing education or training to the child. The Department of Public Welfare may then arrange for the care, training, and supervision of the child in a manner "not inconsistent with the laws governing mentally defective individuals." (Sec. 1375 Pa. School Code)

The county medical director of the Department of Health reports to the medical examiner of any school district the case of a deaf or hearing impaired child under six years of age who is not receiving adequate care and treatment because the parent or guardian is financially unable to provide it. The examiner will provide for the care and treatment of the child at the expense of the school district or the state. Care and treatment may be administered by the medical examiner or by some doctor of medicine chosen by him. (Sec. 1378 Pa. School Code)

When notified by the Department of Health of a case of a deaf or hearing impaired child under six years of age the Secretary of Education may, if it seems desirable, notify the parent or guardian of the location of any special schools and the nearest public school having special classes for the hard of hearing, including information concerning the advantages offered to the child by the school or classes and the manner by which expenses will be provided. (Sec. 1379 Pa. School Code)

Several Attorney General Opinions were issued after the PARC lawsuit, regarding its implementation. Summaries of these opinions follow.

Law Digest: Education of Handicapped Children

On June 18, 1971, the U.S. District Court for the Eastern District of Pennsylvania entered an order requiring notice to the parents or guardian and an opportunity to be heard prior to any change in the educational assignment of any child believed to be retarded.

When a child's admission to regular class is postponed, the alternative placement must be reevaluated every two years.

Homebound instruction is the least preferable of the educational programs administered by the Department of Education. A child shall not be assigned to it unless it is the program most suited to his needs, and it should be reevaluated every three months.

A mentally retarded student may be expelled for disciplinary reasons outlined in Sec. 1318 of the School Code. To do so, the district must obtain prior approval of the Division Chief, Division of Special Education and a hearing must be held regarding this interim change in placement. (*Op. Att'y. Gen., No. 35, 1973*)

ADMINISTRATIVE RESPONSIBILITY

The organization of special classes and any other arrangements for special education are under the direction of the Secretary of Education. (*Sec. 1372 Pa. School Code*)

The State Board of Education is responsible for adopting and prescribing standards and regulations for educating and training exceptional children either singly or jointly by school districts or intermediate units. The Department of Education is responsible for determining what intermediate units will be joined to provide education and training for exceptional children. Standards and regulations will recognize factors such as numbers of exceptional children, types of handicaps, facilities, transportation, adequacy of existing provisions for exceptional children, and availability of school plant facilities. (*Sec. 1372 Pa. School Code*)

The Department of Education has jurisdiction over organizing and supervising schools and classes according to the rules and regulations established for the conduct of schools and classes of the public school system in any institution wholly or partly supported by the state which are not supervised by public school authorities. Schools and classes in any institution completely supported by the state will be financed by the department having jurisdiction and control of the institution. Teachers of a school or of a class organized and supervised by the Department of Education in an institution wholly or partly state supported teachers in the Pennsylvania State Oral School for the Deaf teachers in the Thaddeus Stevens Trade School, and teachers in the Scotland School for Children enjoy the same privileges including tenure rights and are subject to the same laws as teachers in the public schools. (*Sec. 1926 Pa. School Code*)

PLANNING

In 1970 intermediate units, either cooperatively with others or with school districts, were to have prepared and submitted to the Secretary of Education for approval or disapproval, plans for the proper education and training of all exceptional children. These plans are subject to revision, when conditions warrant, with the approval of the Secretary. (*Sec. 1372 Pa. School Code*)

FINANCE

Annually, before July 1, every school district or joint board of school directors planning to conduct classes or schools for exceptional children shall submit, for prior review and approval, to establish the amount on which reimbursement will be paid by the Department of Education, an estimate of the cost of such classes or schools for the ensuing year, and for transportation of students. (*Sec. 2509 Pa. School Code*)

Districts maintaining special classes in the public schools or special public schools or providing special education services in any other manner shall receive state reimbursement as long as the class, schools, or special education services are approved by the Department of Education regarding the location, constitution, and size of classes; conditions of admission and discharge of pupils; equipment, courses of study, method of instruction, and qualification of teachers. By November 1 of each year, the secretary of the board of school directors in each district providing special education must make any reports required by the Department of Education regarding special education programs for the current school year. (*Sec. 1373 Pa. School Code*)

Every school district, regardless of classification, shall be paid by the Commonwealth an amount determined by multiplying the average daily membership (ADM) and costs for exceptional children, (1) at

the elementary level by an amount determined by subtracting the 'instruction cost per elementary pupil,' as defined in Sec. 2561 of this Act, from the 'instruction cost per special class pupil,' as hereinafter defined for the preceding school term or from the 'instruction cost per special class elementary pupil' as approved for reimbursement by the Department of Education and the budget for classes or schools for exceptional children for the school year in which the classes operated, whichever is the lesser, (2) at the secondary level by the amount determined by subtracting the 'instruction cost per high school pupil,' as defined in Sec. 2561 of this Act, from the 'instruction cost per special class pupil,' as hereinafter defined, for the preceding school term, or from the 'instruction costs per special class secondary pupil' as approved for reimbursement by the Department of Education and the budget for classes or schools for exceptional children for the school year in which the classes operated, whichever is the lesser.

To find the 'instruction cost per special class pupil' add(1) salaries of directors and supervisors of special education, public school psychologists, counselors, principals of special schools and assistants, teachers of special classes for exceptional children, clerks and assistants employed in the district's program for special education, (2) district's contribution to the retirement fund of the directors and supervisors of special education, public school psychologists, principals of special schools and assistants, teachers of special classes for exceptional children, clerks and assistants employed in the district's program for special education, (3) the cost of textbooks and supplies of the second class used in the district's special education classes or schools, (4) the cost of a telephonic system which enables handicapped children to remain in their homes and still participate in classroom activities. Divide the (1), (2), (3) and (4) or that part thereof which is approved by the Department of Education for reimbursement by the total number of pupils, including those pupils who have available for use telephonic system equipment whereby they may remain at home and still participate in classroom activities, and ADM in the district's approved special classes for exceptional children. The quotient thus obtained shall be the 'instruction cost per special class pupil.'

The ADM of speech correction classes is calculated by multiplying the average number of pupils in speech correction classes per week by the number of periods per week speech correction is provided for individual pupils by the number of minutes per period in the speech correction class. The product is divided by the total number of minutes spent in all classes weekly by the average pupil. The quotient obtained is the ADM of pupils in speech correction classes. (*Sec. 2509 Pa. School Code*)

For the school term 1972-73 and every year thereafter, payments shall be made in two equal installments with adjustments to be made during the next school year. The August 1 and January 1 installments shall be the sum of the ADA in courses for exceptional children multiplied by the excess cost of the per pupil expenditure of exceptional children as opposed to the per pupil expenditure for other students.

Any adjustments to be made during the ensuing school year shall be determined by subtracting the payments made during the preceding year from the actual amount which would have been paid if calculated during the years 1954-55 through 1971-72. If the amount is positive it shall be paid promptly to the district; if negative, it will be withheld from moneys due the district. (*Sec. 2509, Pa. School Code amended 1972*)

For each child enrolled in a special class or school operated by an intermediate unit, the child's district of residence shall pay the Commonwealth an amount equal to the tuition charge per elementary or secondary pupil, based upon the costs of the preceding school term. Transportation costs shall be paid in a similar manner. (*Sec. 2509.1, Pa. School Code, amended 1970*)

Every school district shall be reimbursed for the instruction of homebound children an amount determined by multiplying minimum hourly rate for such instruction by the districts aid ratio. (*Sec. 2501.1 Pa. School Code*)

All districts providing education for homebound children receive from the state an amount determined by multiplying the mandated minimum hourly rate for instructing homebound children by the district aid ratio. (*Sec. 2051.1 Pa. School Code*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Intermediate units shall provide, maintain, administer, supervise, and operate any additional classes or schools necessary or otherwise provide for the proper education and training of all exceptional children not enrolled in classes or schools maintained and operated by school districts or for whom other provisions are not made. (*Sec. 1372 Pa. School Code*)

If the Secretary of Education feels that the provisions of this Act have not been complied with or the needs of exceptional children are not being adequately served, the Department of Education is authorized to supervise and operate classes in schools for the education and training of exceptional children.

Law Digest: Education of Handicapped Children

Eligibility for enrollment is determined by standards of the State Board. For all children enrolled in a special class or school operated by the Department of Education, the school district of residence will pay the state a sum equal to the tuition charge per elementary pupil or the tuition charge per high school pupil, as determined for the schools operated by the district or by a joint board of which the district is a member, based upon the cost of the preceding school term plus a sum equal to ten percent of the tuition charges. If a district has not established a tuition rate, the Secretary of Education will fix the rate. To facilitate payment, the Secretary will withhold from any monies due the district out of the state appropriation the amounts owed by the school district to the state. All withheld amounts are specifically appropriated to the Department of Education to maintain and administer centers and classes for exceptional children. (Sec. **1372 Pa. School Code**)

The ADM of pupils enrolled in classes or schools for exceptional children operated by an intermediate unit or by the Department of Education are credited to the school district of residence for determining the district's teaching units used in calculating the district's reimbursement fractions or weighted ADM used in calculating the district's aid ratio and determining payments to the district on account of instruction. (Sec. **1372 Pa. School Code**)

All school districts in the state are assigned to an intermediate unit and are entitled to receive services provided by these units. (Sec. **901-A Pa. School Code**)

SERVICES

The Department of Education will prescribe regulations for the provision of homebound instruction which shall be provided to all children confined in detention homes regardless of whether or not they are exceptional. (Sec. **1372 Pa. School Code**)

Districts will be reimbursed for the cost of readers, helpers, aids, guides, appliances, special school books, supplies and devices for children between the ages of six and 21 who are blind, partially sighted, hard of hearing, or afflicted with cerebral palsy, enrolled with the approval of the Department of Education in any of the public schools of the state, in an amount equal to the cost of these services and equipment multiplied by the district's aid ratio. The total expenditure by the state may not exceed 75 percent of the sum which would have been expended for the tuition and maintenance of the child in a residential school for the blind, partially sighted, deaf, hard of hearing, or those afflicted with cerebral palsy. Services of the readers, helpers, and guides may be contracted and paid for by school districts regardless of the age of the person giving the assistance and the employment of the person by the district as a teacher or otherwise and of the time and place where the services are rendered. (Sec. **1373.1 Pa. School Code**)

Exceptional children enrolled in special classes approved by the Department of Education or enrolled in a regular class with approved special education services may be furnished free transportation by the school district. If it is unfeasible to provide transportation, the board of school directors may, in lieu of transportation, pay for suitable board and lodging for a child. If transportation and board or lodging are not furnished for any exceptional child who because of this is unable to attend a class or center for which he is qualified, the intermediate unit will then provide the necessary transportation. (Sec. **1374 Pa. School Code**)

The Department of Education is responsible for educating blind children under the age of eight whenever the parents may be unable properly to educate them. The Department, with the written consent of the parents, or nearest relative if there are no parents, or the local authorities of the proper institution if there are no parents or relatives, may contract with any non-sectarian institution established for the education of the blind where any child, at a cost not exceeding \$3.00 per day paid by the state, may be educated until he reaches the age of eight. This education may be continued beyond the age of eight if for physical, mental, or other proper reasons the child is in need of special care for a longer period. The contract may be canceled or the child removed at any time by the Department of Education. (Sec. **1380 Pa. School Code**)

Up to \$500 yearly may be provided to blind or deaf students enrolled in any university, college, conservatory of music, normal, professional, or vocational school approved by the Department of Education. (Sec. **1381 Pa. School Code**)

Pursuant to rules and regulations established by the secretary, each intermediate unit shall provide auxiliary services to all children grades kindergarten through 12, in nonpublic schools within the area served by the intermediate unit. These services, which include guidance, counseling and testing services; psychological services; services for exceptional children; remedial and therapeutic services; speech and hearing services; services for the improvement of the educationally disadvantaged; and other services which are provided for public school children of the Commonwealth are to be provided to the children in their respective schools. (Sec. **922-A Pa. School Code**)

PRIVATE

If a resident child of Pennsylvania between the ages of six and 21 who is blind or deaf or afflicted with cerebral palsy and/or brain damage and/or muscular dystrophy is enrolled with the approval of the Department of Education as a pupil in any of the approved schools or institutions for the children with those handicaps, the school district of residence shall pay 25% of the cost of the child's tuition and maintenance and the Commonwealth shall pay 75% as determined by the Department. If the child's specific Pennsylvania residence cannot be determined, the Commonwealth shall pay all of the cost of the child's tuition and maintenance. In no event shall the total cost of tuition and maintenance for residential students exceed \$5,500 per year; for tuition of deaf or blind day students, \$4,125 per year, and for tuition of cerebral palsied and/or brain damaged and/or muscular dystrophied day students, \$3,500 per year.

If a socially and emotionally disturbed child between the ages of six and 21 is enrolled in a school with the approval of the Department of Education, the school district of residence will pay 25 percent of the cost of tuition and the state will pay 75 percent of the cost of tuition up to \$3,300 yearly. The maximum amount of tuition payable is subject to review at least once every two years for adjustment purposes.

The district's share of costs under these sections is withheld by the state secretary from any state aid due to the district. To enable the Department to determine from time to time the amounts due to the schools, the schools will forward to the Department periodically statements setting forth the names, ages, and residences of all pupils enrolled specifying the school district liable for part of the per capita cost of and maintenance of the pupil and any other required information. (Sec. 1377, Pa. School Code)

(1) Mandates of PARC require that the Department of Public Welfare no longer secure education for interim care children from schools which do not adhere to the regulations for special education of the State Board of Education.

(2) A private school approved by the Department of Education for the education of the mentally retarded provides a program which satisfies the requirements of the PARC case. (*Op. Att'y. Gen., August 6, 1973*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**RHODE ISLAND****RIGHT TO AN EDUCATION**

Constitution: "The diffusion of knowledge, as well as of virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the General Assembly to promote public schools and to adopt all means which they deem necessary and proper to secure to the people the advantages and opportunities of education." (Art. 12, Sec. 1, R.I. Const.)

Compulsory Attendance Law: Children between the ages of seven and 16 must attend the public schools in the state unless the person having control of the child presents a certificate, made under the direction of the school committee of the city or town where he resides, showing the child's physical or mental condition was such as to render his attendance at school inexpedient or impracticable. (Sec. 16-19-1 R.I. Acts)

All parents or guardians of deaf children between the ages of seven and 18 must have the child attend the School for the Deaf for the period of time or for prescribed courses in each individual case as deemed expedient. A \$20 fine may be levied against anyone not fulfilling this provision, but if a person so charged proves to the satisfaction of the Board that the child has received or is receiving under private or other instruction a suitable education, then the penalty will not be incurred. No child will be removed from his parents or guardians to a school except as a day student unless it is determined that the parent or guardian is an improper person to have custody. (Sec. 16-26-8 R.I. Acts)

Responsibilities: In any city or town in which there is a handicapped child, as defined by regulations of the State Board of Education, the school committee of the district must provide the special educational services that will best meet the needs of the child as recommended and approved by the State Board. (Sec. 16-24-1 R.I. Acts)

POPULATION

Definitions: A handicapped child is defined as "a child within the age range as designated by the regulations of the State Board of Education, who is either mentally retarded or physically or emotionally handicapped to such an extent that normal educational growth and development is prevented." In establishing criteria to determine who is to be included in the category of the exceptional child, the State Board must include all persons from the age of three to 21 who are mentally retarded and/or multi-handicapped. (Sec. 16-24-1 R.I. Acts)

Emotionally disturbed child means, "any person under the age of 21 years who has been diagnosed and judged by the examining physician to be in need of psychiatric care and treatment." (Sec. 40-7-4 R.I. Acts)

Age of Eligibility: Exceptional children may receive services between the ages of three and 21. (Sec. 16-24-2 R.I. Acts)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: School committees of every city and town will annually ascertain under regulations prescribed by the State Board, in cooperation with the directors of Health and Social Welfare, the number of children within their districts of school age who are physically, emotionally, or mentally handicapped. (Sec. 16-24-3 R.I. Acts)

Screening: All superintendents will have an examination of the sight and hearing of all children within their districts at least once a year by teachers or school physicians. The records of the examinations must be maintained and parents notified of defects. Examinations of legs and pedal extremities must be made by physicians or school nurses to determine whether the children have infantile paralysis. (Sec. 182 R.I. Acts)

ADMINISTRATIVE RESPONSIBILITY

It is the responsibility of the State Board to establish regulations including: (1) criteria to determine who is to be included in the category of exceptional children encompassing all persons who are between the ages of three and 21 who are mentally retarded and/or multi-handicapped. The State Board is required to consider all persons who are mentally retarded, not just the educable and trainable; (2) criteria for establishment and/or reimbursement of special facilities such as public school classes, hospital schools, etc., for each category of exceptionality; (3) methods of reimbursement; (4) teacher training recommendations and minimum teacher qualifications; (5) transportation and (6) any other regulations that may be necessary to implement the special education program. (Sec. 16-24-2 R.I. Acts)

The State Board is responsible for supervision, administration, and control of the Rhode Island School for the Deaf. (Sec. 16-26-2 R.I. Acts)

An advisory council appointed by the governor will advise the Board concerning the Rhode Island School for the Deaf but has no administrative powers or duties. (Sec. 16-26-3 R.I. Acts)

The Department of Mental Health, Retardation and Hospitals has supervision and control of the State Hospital for the Mentally III, and the Ladd School for the Mentally Retarded. (Sec. 23-43-11 R.I. Acts)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

"The state shall reimburse each city and town in the manner prescribed by the regulations of the State Board of Education." (Sec. 16-24-6 R.I. Acts)

In providing transportation, home teaching, and/or tuition for mentally retarded minors, cities or towns will be reimbursed by the state in an amount not exceeding one-half the cost if the programs have been approved by the State Board. No costs incurred under this section will be considered in determining any other state aid to the city or town. (Sec. 16-24-12 R.I. Acts)

One million dollars is appropriated annually for educational programs for the handicapped on the basis of the ratio of handicapped children in each district to the state total of such children. The Department has the power to require that programs be administered and supervised by local districts in the manner that the Department deems to be the most feasible, both educationally and economically. (Ch. 160, Sec. 5, *Public Laws of 1967*)

Each community shall contribute to the Department, in accordance with regulations promulgated by the director, the average per pupil cost for education as its share of costs for the educational services furnished to emotionally disturbed children, in programs other than those regular classes of special education programs under the jurisdiction of the Board of Regents for Education.

Parents of children in the program, depending upon their resources, will be obligated to participate in the cost of the care and treatment of their children in accordance with regulations promulgated by the director. (Sec. 1-7-7and8 R.I. Acts)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Regional school districts may be formed to provide a variety of educational services depending upon the agreement of the participating districts. Among the services that may be provided by such districts are: education for the handicapped, school health services, guidance services, general supervisory services for all schools in the area or in some specialized field such as vocational education, and any other educational services pertinent to the needs of the regional district. (Sec. 16-3-3 R.I. Acts)

Whenever possible, two or more districts or towns may organize to provide educational services for those children needing special care and individual instruction. (Sec. 16-24-5 R.I. Acts)

The classes for the mentally retarded defined in Sections 16-24-8 and 16-24-9 will be established in all state institutions or state schools for the mentally retarded subject to the regulations of the State Board of Education. (Sec. 16-24-13 R.I. Acts)

A city or town with too few handicapped children of any one type to justify establishing a special class may contract with another city or town to provide education for such children. Communities may utilize pre-school programs offered by other communities, the state, or other agencies whose pre-school programs are approved by the commissioner of Education. (Sec. 16-3-3 R.I. Acts)

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SERVICES

School committees of all cities and towns must provide for the transportation to and from school either within the school district or in another school district of the state for all handicapped children. (Sec. **16-24-4 R.I. Acts**)

In cities or towns where there are ten or more retarded children who may be expected to profit from special education facilities designed to make them economically useful and socially adjusted, special classes must be established to provide instruction adapted to the mental attainments of children from their fifth birthday and when they have reached the mental age of three until the end of the term in which they become 21.

Also, all cities and towns in which there are ten or more mentally retarded children who cannot profit from ordinary classroom instruction and who do not qualify under the above section but who may be expected to benefit from special education facilities in their homes and within a sheltered environment, must establish the necessary classes to provide instruction adapted to the mental attainment of such children from their fifth birthday and upon attaining the mental age of two until the end of the term during which they become 21.

If a city or town contains less than eight of the mentally retarded minors described above, it may contract with another city or town for the provision of education of such children or may establish a special class, with the consent of the Board of Education. If the city or town does not establish a class or contract with another city or town, then it will contract with a suitable day school for instruction adapted to the mental attainments of these children, provided that the day schools are subject to the regulations and supervision of the State Board. (Sec. **16-24-8, 16-24-9, and 16-24-10 R.I. Acts**)

Transportation will be provided to all mentally retarded pupils attending special classes or special day schools. Also, for the purposes of furnishing transportation and of providing incidental expenses for the education of mentally retarded children until age 18, a center approved by the assistant director of Health and Mental Retardation will be decreed to be a school for this chapter. (Sec. **16-24-11 and 16-24-16 R.I. Acts**)

Services for emotionally disturbed children are provided by the Department of Mental Health, Retardation, and Hospitals. This Department is charged with the responsibility of promoting specialized services for the care and treatment of emotionally disturbed children, cooperating with public and private agencies, and taking initiative in all areas involving the interest of these children where adequate legal provisions have not yet been made. (Sec. **40.1-7-2and 3 R.I. Acts**)

In this section, care and treatment means "medical and psychiatric care, medical attention, and nursing and medications as well as food, clothing, and maintenance, psychological and social work and recreational services and those educational services furnished to a child other than those regular or special education programs under the jurisdiction of the Board of Regents for Education."

Under the direction of the State Director of Mental Health, Retardation, and Hospitals, the Department has the responsibility for developing public policy and programs related to the needs of emotionally disturbed children. In order to fulfill this responsibility among other things, it should: (1) plan and diversify a comprehensive network of programs and services to meet the needs of emotionally disturbed children, including, but not limited to, preventive case finding, diagnostic treatment, and rehabilitative or after-care services; (2) provide the overall management and supervision of state programs for such children; (3) promote the development of programs for preventing and controlling emotional and behavioral disorders in children; (4) coordinate the efforts of several state departments and agencies that care for the treatment of such children, and cooperate with private agencies who serve these children; (5) promote the development of new resources for program implementation for emotionally disturbed children, and (6) provide research and analysis for evaluation and services. (Sec. **40.1-7-4 R.I. Acts**)

The governor, upon the recommendation of the Department of Education and upon the application by the parent or guardian, may appoint "any deaf, blind, imbecile, or emotionally handicapped child, who is a fit subject for education as a state beneficiary at any suitable institution or school now established or which may be established within or without the state for a period not exceeding ten years." He may extend the time limit upon the recommendation of the Department of Education and may revoke the appointment at any time for cause. (Sec. **16-25-1 R.I. Acts**)

The Department of Education may provide suitable care, maintenance, and instruction for babies and children under school age who are blind in any case where the parent or parents of such child may be unable to properly care for or maintain the child. (Sec. **16-25-4 R.I. Acts**)

The Department of Education may provide readers for blind students attending any institution of higher education. The General Assembly shall annually appropriate the necessary sums to carry out this program. (Sec. **16-25-7 R.I. Acts**)

PRIVATE

Private schools may apply for approval of their program in the same manner as public schools. (Sec. 16-24-2 R.I. Acts) See Services.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children

SOUTH CAROLINA

RIGHT TO AN EDUCATION

Constitution: "The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years. . ." (Art. XI, Sec. 5, S.C. Const.)

Compulsory Attendance Law: A child between the ages of seven and 16 is exempted from the compulsory attendance requirement if he: (1) obtains a certificate from a psychologist who is certified by the State Department of Education or from a licensed physician stating that he is unable to attend school because of a physical or mental disability, and there are no suitable or special classes available for the child in his district of residence; or (2) was ten years of age or older and had been out of school for three years or more when the law was enacted; again, providing there were no special classes in the school district for him to attend. (Sec. 21-757.2S.C. Stats.)

Policy: The General Assembly finds it necessary and proper to provide an appropriate education for all handicapped children and youth in the public schools who are eligible for enrollment therein. (Sec. 1, Act 977, 1972)

The State Board of Education may promulgate such rules and regulations, not inconsistent with law, as it shall deem necessary and proper for the effective administration of programs for the education of handicapped children. (Sec. 3, Act 977, 1972)

Responsibilities: The State Board of Education shall establish a program of specialized education for all handicapped children in the state. . . (Sec. 2, Act 977, 1972)

The General Assembly finds that appropriate education can be best accomplished for handicapped children through implementation of an intensive five-year plan to expand and improve existing programs. The purpose of this Act is to provide for the mandatory establishment of educational and training services and facilities for handicapped children in the public schools between the ages designated in Section 21-752 of the 1962 Code who cannot be adequately trained without special educational facilities and services. (Sec. 21-295.10 S.C. Code and Sec. 1 Act 977, 1972)

The Attorney General was asked whether Act No. 977 of 1972, entitled "An Act to Establish a Mandatory Program for Education of Handicapped Children in Public Schools" really mandated the establishment and maintenance of programs for the handicapped by local school systems. His opinion was that it did. In addition, the Attorney General said that not only does this Act mandate it, but probably the State and Federal Constitution does also. He cited the *Mills v. District of Columbia Board of Education* suit as evidence of this.

A question was also asked regarding the date on which the Act must be implemented. According to the Act, the local school districts had one year to draw up a plan to be approved by the State Board of Education. Theoretically, then, if a plan was never approved, the district would not have to provide education. The Attorney General again said that, based on State laws and the Federal Constitution, local districts must with "all due speed" implement programs. School districts may contract with other school districts to provide special education for their handicapped students. However, a local school system may not contract with a non-public agency unless it is also considered a school district. (Op. Atty Gen., July 17, 1973 and December 20, 1972)

POPULATION

Definitions " 'Handicapped children' shall mean those who deviate from the normal either psychologically or physiologically to such an extent that special classes, special facilities or special services are needed for their maximum development, including educable mentally handicapped, trainable mentally handicapped, emotionally handicapped, hearing handicapped, visually handicapped, orthopedically handicapped, speech handicapped, and those handicapped by learning disabilities as defined in Sec. 3 Act 977, 1972 and Sec. 21-295.12 S. C. Code."

(1) "Special education program means educational services carried on through special schools, special classes and special instruction.

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(2) "Educable mentally handicapped pupils means pupils of legal school age whose intellectual limitations require special classes or specialized education instruction to make them economically useful and socially adjusted.

(3) "Trainable mentally handicapped pupils means pupils of legal school age whose mental capacity is below that of those considered educable, yet who may profit by a special type of training to the extent that they may become more nearly self-sufficient and less burdensome to others.

(4) "Emotionally handicapped pupils means pupils of legal school age with demonstrably adequate intellectual potential, who because of emotional, motivational, or social disturbance require special classes or specialized education instruction suited to their needs.

(5) "Hearing handicapped pupils means pupils of age four or older who are certified by a licensed specialist that their hearing deficit requires special classes or specialized education instruction suited to their needs.

(6) "Orthopedically handicapped pupils means pupils of legal school age who have an impairment which interferes with the normal functions of the bones, joints, or muscles to such an extent and degree as to require the school to provide special facilities and instructional programs.

(7) "Visually handicapped pupils means pupils of legal school age who either have no vision or whose visual limitations after correction result in educational handicaps unless special provisions are made.

(8) "Learning disabilities pupils means pupils who exhibit a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc. They do not include learning problems which are due primarily to visual, hearing, or motor handicaps, to mental retardation, emotional disturbances or to environmental disadvantage.

(9) "Physically handicapped children means children of sound mind and of legal school age who suffer from any disability making it impracticable or impossible for them to benefit from or participate in the normal classroom program of the public schools." {Sec. 21-295 S. C. Code (1-9), 1972 Revisions}

Age of Eligibility: Children are eligible for services from age six to 21 except for children with hearing impairments who are eligible at age four. (Sec. 21-752 S. C. Code)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: County superintendents of education shall make an annual survey to determine the number of physically and mentally handicapped children in the respective counties and school districts and shall report the results to the state superintendent. (Sec. 21-295.5, S. C. Code)

Screening: The County Department of Health is responsible for examining school children of preschool age for physical handicaps that might interfere with their physical and mental development. The Department notifies parents of any handicaps and encourages correction of remediable defects. (Sec. 32-169(5) S. C. Code)

Pupil personnel records shall be maintained in such a manner as to clearly indicate the screening, evaluating, and placement processes employed to assign the pupil to a program for handicapped pupils. Records shall reflect a history of the educational training and services provided and the children participating in the program. (Act No. 977, Section 5)

Special Education Evaluation: Local school authorities, with the assistance of the State Department, are responsible for determining, by tests and special examinations, eligibility for special education. No handicapped child is considered eligible without a certified diagnosis by appropriate professional authorities who are acceptable to the State Department. The Department is also responsible for establishing rules and regulations for screening, classifying and determining, through use of standardized tests and necessary psychological and medical services, eligibility for special education services. (Sec. 21-295.5 and Sec. 21-295.7 S. C. Code)

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ADMINISTRATIVE RESPONSIBILITY

The State Board shall establish a program of specialized education for all handicapped children utilizing the personnel and facilities of and administered by the State Department under the direction of the state superintendent and shall prescribe standards and approve the procedures under which facilities are furnished and services provided. The Board shall establish screening, evaluation, and placement procedures for handicapped students who will participate in programs and shall determine certification requirements for teachers, minimum room size standards, and standards for other equipment and materials used in the programs. The Board may promulgate such rules and regulations as it deems necessary and are not inconsistent with law. (Sec. 2, Act 977, 1972)

The Department of Education is responsible for supervising the special education program. In addition, the Department is directed to expand its services, through the Division of Instruction, to include a more extensive program of special education for physically and educable mentally handicapped children. The Department should also employ, if necessary, personnel with suitable professional qualifications to develop and supervise the special education program, under the direction of the State Superintendent. Salaries will be paid from the appropriation to the State Department for the hearing and speech program. (Sec. 21-295.1 and 21-295.2 S.C. Stats.)

The State Department of Mental Retardation is responsible for administering the South Carolina Retarded Children's Rehabilitation Center. (Sec. 32-927.12 S.C. Code)

The State School for the Deaf and Blind is administered by a Board of Commissioners with the state superintendent of Education and the superintendent of the school serving as ex-officio members. The superintendent, elected by the Board of Commissioners, shall be the immediate executive head of the institutions. (Sec. 22-451 and 22-456 S.C. Code)

PLANNING

All school districts must conduct a survey of the educational needs of all handicapped children within their jurisdictions and devise an educational plan for handicapped children. This plan must provide instruction through the use of resource rooms, crisis, itinerant, and diagnostic-prescriptive teachers, self-contained classes or other models approved by the State Department, and must be presented to the Department for approval within one year after the effective date of this Act. An annual report must be made by each district to the Department to indicate the extent to which the plan has been implemented and to report additional planning. (Sec. 4, Act 977, 1972)

The board of trustees of all school districts, upon approval of their plan, must establish and operate programs insuring an appropriate education for each handicapped child within their district and must maintain adequate records of the training and services provided and the children participating in the program. When a school district cannot satisfy these requirements because there is an insufficient number of resident handicapped children, the district may contract with other districts within the state or with school systems or institutions outside South Carolina maintaining approved special educational facilities. The sending district must document this lack of numbers and receive prior approval from the State Department. It may contract and pay the receiving district or institution the per capita costs of instruction, special equipment, and special services not reimbursed to the receiving district by state, federal, or other monies plus the cost of transportation and of maintenance if the nonresident child must reside away from home. The district entering into the nonresident contract arrangements approved by the State Department is reimbursed by the Department for tuition fees, transportation, and books not exceeding the per pupil cost of educating a handicapped child of identical age in the public schools. Special arrangements for multiple handicapped children for whom special appropriations are provided because of the severity of their handicaps may be made with the Department. District and state educational agencies are required to cooperate with other agencies in the state, both public and private, interested in working toward the education, training, and alleviation of the handicaps of handicapped children. All such agencies are authorized to accept gifts or donations from private agencies. (Sec. 6, Act 977, 1972)

The Attorney General was asked to clarify what a school district could do if it had too few handicapped students to be required to establish programs under the mandatory bill cited above. It was the opinion of the Attorney General "that a local school district can contract with another school district if the special program for its handicapped school children is to be provided within South Carolina; if the special education program is to be provided outside South Carolina, a local school district may contract with a school system or with an approved institution, public or private." (Op. Atty. Gen., October 23, 1973)

FINANCE

The General Assembly will appropriate funds with initial funding for planning and organizing. Costs of all programs for handicapped children shall be shared with the school districts on the same basis that education costs are currently provided for such children attending the public schools. These provisions are supplementary to all existing programs for the education of handicapped children. (Sec. 7, Act 977, 1972)

Districts will be reimbursed in the following manner for the provision of special education services: state aid will be allowed for one speech clinician for each 75 speech handicapped children (these children may also be counted for state aid in a regular class) or one clinician per 1500 students in areas where severe speech problems require more intensive therapy; special education state aid for the hearing handicapped is granted for each teacher with a minimum ADA of six in a self-contained class or 12 enrolled in a regular class; programs for children with learning disabilities are reimbursed for each teacher with a minimum ADA of 10 in a self-contained class or each teacher serving a minimum ADA of 26 enrolled in a regular class. . . State aid for the emotionally handicapped is granted for each teacher with a minimum ADA of eight in a self-contained class or 26 enrolled in a regular class; State aid for the visually handicapped is granted for each teacher with a minimum ADA of six in a self-contained class or 12 enrolled in a regular class; State aid for the orthopedically handicapped is granted for each teacher with a minimum ADA of eight in a self-contained class or 16 enrolled in a regular class; State aid for the educable mentally handicapped is granted for each teacher with a minimum ADA of ten enrolled in a self-contained class or 26 enrolled in a regular class; State aid for the trainable mentally handicapped is granted for each teacher with a minimum ADA of eight; if a teacher serves more than one type of handicapped child, aid is granted on the basis of the handicapping condition affecting the majority of pupils served by that specialist; if a teacher has less than the required ADA in enrollment, a proportionate part of the salary will be allowed; if there are handicapped children unable to assemble in school, even with the help of transportation, instruction may be provided for them in their homes or in hospitals or in sanatoria. Children so instructed are counted under the provision of this article. If a child is permanently disabled, \$600 per year will be allowed for classroom-to-home video or audio service. The State Board is responsible for determining the number of hours acceptable in home instruction. (Sec. 21-295.3, S. C. Code)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

See Planning.

SERVICES

"'Special education services' shall mean, but not be limited to, special classes, special housing, homebound instruction, special rental facilities, braillists and typists for visually handicapped children, transportation, maintenance, instructional materials, therapy, professional consultant services, psychological services, itinerant services and resource services." (Sec. 3, Act 977, 1972)

"'Special education program' means education carried on through special schools, special classes, and special instruction." (Sec. 21-295 S.C. Code)

Because it is state policy to provide, whenever feasible, the resources, assistance, coordination, and support necessary to enable the handicapped person to receive an education within the confines of his home and community, individuals previously placed in residential treatment centers should be considered whenever possible as recipients of these services and programs which will offer new resources for their care and training at home. The governing agencies of the residential programs are encouraged to investigate available resources and if appropriate, work closely with the family guardian and other responsible agents to effect meaningful return of institutionalized persons to the more normal environment of home and community. However, responsible persons in agencies administering residential programs are directed not to view this Act as cause for the indiscriminate return home of current institutionalized residents. (Sec. 7A, Act 977, 1972)

Prior to the return home of any persons from a residential center, advance written consent of the parent, guardian, or other responsible party must be given. If the parent, guardian, or other responsible party opposes the recommendation of the agency administering the residential program to return the individual home, the agency, based upon professional judgment, may place the individual in another nonresidential program such as a foster home, community residence, half-way residence, or other similar service designed to promote the growth and development of the handicapped. (Sec. 7, Act 977, 1972)

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The Attorney General was asked to determine the responsibility a school district has for the transportation of handicapped children under the 1972 mandatory special education bill (see Right to Education). According to the Attorney General, it is clearly the responsibility of the local school system to provide the transportation. (It should be noted that school systems receive special reimbursement for such transportation.) If modifications need to be made in the school buses to provide the transportation, this also is the responsibility of the local school system. (*Op. Att'y. Gen., October 12, 1973*)

Special education teachers must have a valid certificate issued by the State Department of Education and any special qualifications it may require, or a comparable certificate in special education. (Sec. 21-295.4 S.C. Code)

"The State Public Library Association may provide library services to students in residential schools for the handicapped including the mentally retarded, hard of hearing, deaf, or other health impaired persons, who by reason thereof require special education." (Sec. 42-203 S.C. Code)

The Commission for the Blind may employ itinerant teachers to assist teachers in public and private schools responsible for visually handicapped students. The itinerant teachers provide, in addition to aid in teaching methods, instructional materials for the visually handicapped. The State Department of Education reports those public schools having visually handicapped students to the Commission. All principals or heads of private schools have the same responsibility of reporting information. (Sec. 71-296 S.C. Code)

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

SOUTH DAKOTA**RIGHT TO AN EDUCATION**

Constitution: "The stability of a republican form of government depending upon the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education." (Art. VIII, Sec. 1, S.D. Const.)

Compulsory Attendance Law: A child may be excused from school attendance if his physical or mental condition renders attendance at school unsafe, impracticable, or harmful either to the child or to others. The existence of the condition must be evidenced by the certificate of a reputable physician, dentist, or any other person who may lawfully treat sickness or disease under the state laws, or by a certificate of a psychologist employed by the State Commission for the Mentally Retarded. (SDCL 13-27-4)

Children may be excused from school attendance if, as declared by a reputable physician, they are mentally or physically defective and cannot receive proper instruction in the common schools. If this is so, suitable provision must be made for their instruction or training by private instructors or institutions adapted to such children. If a blind, deaf, or mentally retarded child is not given such instruction, it is the duty of the truancy officer to institute county court action to commit the child to a state institution maintained for the particular type of disability, unless the child is excused from attendance by the superintendent of the appropriate institution. (SDCL 13-27-5)

The county auditor of schools also has the power to excuse a child from school if the child, as determined by a reputable physician, is mentally or physically defective and cannot receive proper instruction in the schools. Suitable provision shall then be made for the instruction or training of the child by a private instructor or an institution adapted to the instruction of such children. (SDCL 15.3030)

Whenever it becomes known to a superintendent of a school district that any deaf or blind child, residing within the district and entitled to school admission, is being deprived of his education by the refusal or neglect of his parent, guardian, or custodian to provide the child with means of acquiring the education, it is the duty of the superintendent to notify and require the person having control of the child to send him to the proper state school. If within ten days after the notice the person continues to refuse or neglects this responsibility, the superintendent shall make a complaint to the county judge. The complaint shall note the age and place of residence of the child and shall state that he is being deprived of an education by refusal or neglect of his parent, guardian, or custodian. (SDCL 13-27-24)

The judge is then required to order the person having charge of the child to make an appearance within the court, and he may summon and examine any witness as to the facts. (SDCL 13-27-25)

If sufficient evidence establishes the fact that the persons having control of the child have been neglectful, the judge may order them to send the child to the appropriate school. If they still refuse, they are then in contempt. (SDCL 13-27-26 to 13-27-28)

Responsibilities: "The superintendent with the advice of the Division of Special Education shall have the authority to assign children to a vendor for purposes of special education as provided in this Act. Such assignments must indicate the beginning date for, and the nature of, the specific service to be provided. When a child has been so assigned, the school district wherein such child has school residence shall be responsible for the costs of such special education to the extent hereinafter provided." (SDCL 13-37-14)

Governing boards of school districts are responsible for providing an appropriate program for all of their exceptional children. Placement in a jointly operated program will fulfill this requirement. Placement of a child with the approval of the Department into an appropriate program in cases where it is unreasonable for the district to provide the program shall also fulfill this requirement. (SDCL 13-37-14.1)

POPULATION

Definitions: "'Exceptional children' means all children under the age of 21 years who are residents of the State of South Dakota and, because of their physical or mental condition, are not adequately provided for through the usual facilities and services of public schools." (SDCL 13-37-1)

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Age of Eligibility: Exceptional children are eligible for services from birth through age 21.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The school census shall show the date and place of birth, age as of October 31, actual residence of the child on April 1, the name of the parent or guardian, and will show if the child has any impairment of hearing, sight, speech, or other physical handicap and will indicate if the child is qualified for special education instruction due to a mental handicap or emotional disturbance. The form shall be filed with the county auditor. Certified copies of all census data will be sent to the Division of Pupil Personnel Services. (SDCL 13-22-4)

The State Commission of Mental Retardation is responsible for maintaining a continual consus of the mentally retarded in the state. All boards of education, school principals, superintendents of schools, hospitals, penal and charitable institutions, county welfare directors, public health officers and public officers, boards, or commissions within the state are required, upon demand, to give to the Commission or its agents necessary access to all records regarding all children who are under their control and believed to be mentally retarded. (SDCL 27-15-5)

County subcommisions shall have access to any case under investigation; all county superintendents, city school superintendents, school principals and teachers are required to furnish such records upon the demand of the subcommission. (SDCL 27-15-8)

The presidents of school boards are required to send to the superintendent of the State School for the Deaf the names of all school age deaf children (and to the State School for the Blind the names of all school age blind children) whenever it is brought to their attention that such children are living within their district. State schools are responsible for taking any necessary action to provide deaf and blind children with the advantages of proper education. (SDCL 13-27-10)

The school census shall identify all children over age six with impaired hearing, sight, or any other physical handicap. This should be filed with the county superintendent of schools on or before the first Monday in May. A copy should also be retained in the office of the specific school district involved. (SDCL 13-22-4)

All school boards shall annually report to the district superintendent who, in turn, reports to the Division of Child Welfare, the number, name, and age of all the children who are three or more years retarded. (SDCL 27-15-9)

Screening: County boards of health may require that the county nurse examine the eyes, ears, nose, throat, and teeth of all pupils enrolled in the county public schools. The county nurse will then confidentially report to the Board of Health any cases which, in her opinion, are cases of tuberculosis, infantile paralysis, diphteria, small pox, scarlet fever, measles, chicken pox or any other contagious, communicable, or other disease disclosed in the examinations. (SDCL 34-4-8)

Special Education Evaluation: Before a child may enroll in a special education program, the nature of his handicap must be evidenced by a certificate of a qualified person or physician (as defined by the State Board of Education) and by information furnished to the Division of Pupil Personnel Services. After one year and every year thereafter, the Division must determine whether an exceptional child is capable of profiting by further specialized instruction. Children will be eligible for services only as long as progress is determined to exist. (SDCL 13-37-5.1)

No state appropriations or other funds available to the Division of Pupil Personnel may be used for out-of-state placement of emotionally disturbed children who are assigned there for purposes other than education. Children in need of out-of-state placement for treatment of an emotional disturbance shall be referred by the Division to the State Commission on Mental Health and Mental Retardation for assignment, care, and treatment. (SDCL 27-3-25)

ADMINISTRATIVE RESPONSIBILITY

The superintendent is authorized and directed to implement a special education program for the state under the supervision of the Division of Pupil Personnel Services and to prepare the rules and regulations for the consideration of the State Board. (SDCL 13-37-14)

A five-member board of regents appointed by the governor is responsible for administration of the School for the Deaf and the School for the Blind. (*Art. XIV, Sec. 3, S.D. Const.*)

The Department of Public Instruction, through all its related divisions, shall authorize its services to be available to the State Commission for the Mentally Retarded and the county subcommissions and to the Redfield State Hospital and School in order to assist these agencies in educating and training mentally retarded persons (eligible for Department of Public Instruction services) so that they might become engaged in remunerative occupations. (*SDCL 13-37-23*)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

Costs for administration of special education programs, individual auxiliary services, and state aid for special education are treated as separate programs and must be specifically delineated at the Department's request. The superintendent, with the advice of the Division, has the authority to assign children to vendors, (a vendor is defined as "a school district, individual or private, non-profit institution which furnishes facilities or services, or both, for the special education of exceptional children.") To obtain special education services after a child has been assigned, the school district of residence is responsible for the cost of special education, which will be determined as follows:

(1) The cost of special education incurred by a school district will be determined by dividing the total salaries of special education personnel by 80 percent.

(2) The cost of special education as determined in (1) will be paid to districts from monies provided by the Legislature. Since appropriations are variable, a ratio for reimbursement is determined by dividing the total state cost by the legislative appropriation.

(3) Costs of special education not covered by the appropriation are the responsibility of the resident school district. The district's share will be raised through the tax levy.

(4) The superintendent is directed to establish rates for auxiliary services provided on an individual case basis. In the case of exceptional children assigned by the state, the cost of auxiliary services after deducting state aid will be paid from the special education fund of the district of residence.

(5) Tuition for exceptional children assigned by the Division to attend a private school or institution will be at the legal rate of tuition (\$7.12 per day) provided by state law for secondary schools regardless of the child's classification. The tuition will be paid from the special education fund in the child's district of residence.

(6) The cost of maintenance, including board and room, may be provided by the district in lieu of transportation and may not exceed \$5 per day per child. This is also to be paid from the district special education fund.

(7) Costs for basic extra and necessary transportation will be determined and authorized by the district of residence. Extra necessary transportation costs for exceptional children which include transportation allowing children to attend school and participate in auxiliary services to which they have been assigned will be the responsibility of the school district.

(8) If transportation is not provided by the school district of residence, reimbursement at the rate of eight cents per mile not to exceed \$1400 per fiscal year will be granted to the district of residence which will pay costs out of its special education fund.

(9) Payments received by a school district for special education must be credited to the special education fund of the school district. (*SDCL 13-37-8*)

The governing boards of all school districts, with the assistance of their own administrative personnel and the Division, must by July 10 of each year estimate the number of resident exceptional children who are expected to participate in special education programs during the current school year. The anticipated cost of providing such services must then be estimated. The governing board of the school district must then include in the current district tax levy a special levy (in addition to all other levies) not exceeding two mills on the dollar. This levy will be applied to all the taxable property in the district. These revenues constitute a district's special education fund for the payment of the special education cost for all exceptional children residing within the district. All districts, even though not operating a special education program, must make the initial levy in order to insure the payment of claims due to the assignment of exceptional children.

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Within one year after the close of the school year, all vendors entitled to reimbursement must file with the governing board of each district an itemized, verified claim for each student. Claims may be filed at the end of each semester. Each claim must be audited and approved, on the basis of legal assignments from the superintendent, prior to payment from the school district's special education fund to those who furnished facilities and services for the special education of exceptional children. (SDCL 13-37-15)

A revolving fund for payments is established in the office of the state treasurer by the superintendent to facilitate payments to vendors providing services on a monthly basis. This revolving fund is established with funds transferred from monies appropriated by the Legislature to take care of the state's share of the costs of the total special education program. The fund will be maintained through reimbursement from school districts for their obligations and from other involved agencies for their share of the cost. The amount to be transferred to the revolving fund will be based on the estimated number of cases served during the fiscal year. (SDCL 13-37-2)

If a child under the care and custody of the Public Welfare Department residing in an institution is assigned by the state superintendent to a special education facility or service, the state will be responsible for auxiliary services, maintenance charges, and transportation costs. The state will bear the same charges for children in foster homes who are assigned to private, nonprofit institutions for educational purposes. (Chap. 138, 1971)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

"School districts may contract with each other to share the services of a superintendent of schools, a business administrator, supervisors, specialists, teachers, and any other employees." (SDCL 13-15-1.1) See Finance.

SERVICES

"'Special education' means classroom services and auxiliary services provided exceptional children pursuant to the provisions of this Act and shall include school instruction conforming as nearly as possible to the established state course of study under duly qualified special education teachers or other necessary services, or both, to the extent that an exceptional child is capable of profiting from special education." (SDCL 13-37-2)

"'Classroom services' means instruction provided exceptional children by qualified teachers, instructional materials and equipment needed for special education purposes, and necessary classroom supervision assistance."

"'Auxiliary services' means diagnosis, therapy, vocational counseling, vocational rehabilitation and training, homebound instruction, and such other necessary services other than classroom which might be approved by the State Board of Education." (SDCL 13-3-1-3.1)

Exceptional children receiving care in state institutions are excluded from the benefits of the special education provisions. No special education funds may be spent for children in any state-owned institution within or without the state of South Dakota except for services not provided by the state. (SDCL 13-37-6)

Visually handicapped residents eligible for entrance to any of the educational institutions under the supervision of the State Board of Regents are permitted to pursue any course of study offered by these institutions without payment of tuition, library fees, registration fees, or any other fees students are required to pay directly, until an equivalent of 225 semester hours of credit has been earned. Visually handicapped persons are those who cannot, even with the use of corrective glasses, see adequately to perform ordinary activities for which eyesight is essential. Before any person is eligible for these benefits, the South Dakota Services to the Visually Handicapped must notify, in writing, the registrar of the educational institution that, based upon the medical information filed with the State Service, the applicant is visually impaired to the extent specified in the law. (SDCL 35-55-11)

The Attorney General was asked to define "school instruction" as it is used in SDCL 13-27-2 and SDCL 13-37-5.1. "'School instruction' as used in the above statutes means instruction that is comparable to the type of instruction that takes place in a regular school classroom for regular school students."

"Specialized instruction" as used in the above statutes "means the type of instruction that does not take place in a regular classroom, but is confined to instruction dealing specifically with exceptional children." (Op. Att'y. Gen., April 5, 1973)

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No specific definition can be given to an "appropriate educational program" referred to in SDCL 13-37-14.1. The superintendent of public instruction has the power to adopt rules and regulations and a definition could be developed with the approval of the State Board of Education. Until such a definition is developed, however, an "appropriate educational program" is for the local school boards to determine. (*Op. Att'y Gen., June 11, 1973*)

PRIVATE

Private, nonprofit institutions providing services to exceptional children may recover, on a monthly basis, approved costs from the special education funds of the school districts. Vendors will be paid monthly from the state revolving fund. (See Finance.) This fund will be reimbursed monthly from school district special education funds upon presentation of vouchers to the superintendent of schools for its share of such expenditures. (*SDCL 13-37-16.1*)

School districts are authorized to enter into contracts with non-profit private schools or institutions to provide special education services for children with learning disabilities. The schools or educational services must be approved by the State Board for assignment of these children, on an individual basis, by the Department of Public Instruction. The instructors of these schools must also meet the certification requirements of the State Board. (*SDCL 13-15-1.2*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**TENNESSEE****RIGHT TO AN EDUCATION**

Constitution: "Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science." [Art. XI, Sec. 12, Tenn. Const.]

Compulsory Attendance Law: Children between the ages of seven and 16 are required to attend the public schools during the school year. Children physically and mentally incapable of performing school duties may be exempted from attendance with the county, city, or special school district board of education as the sole judge. A licensed physician must certify the disability. (Sec. 49-1710 Tenn. Code Annotated)

Compulsory school attendance is required of all blind children between the ages of seven and 16, but this section does not apply to blind children who are also mentally or physically defective and incapable of benefiting from school attendance. Compulsory attendance requirements do not apply to any child who has graduated from the elementary school of the Tennessee School for the Blind before reaching the age of 16. (Sec. 49-1730 TCA)

Policy: "It is the policy of this state to provide, and to require school districts to provide, as part of free public education, special education services sufficient to meet the needs and maximize the capabilities of handicapped children. The timely implementation of this policy to the end that all handicapped children actually receive the special education services necessary to their proper development is declared to be an integral part of the policy of this state. This section applies to all handicapped children regardless of the schools, institutions, or programs by which such children are served." (Sec. 1, Chap. 839, 1972)

Responsibilities: The State Board and every local district should strive to provide appropriate educational services for handicapped children at the earliest possible date. However, special education services shall be provided for all handicapped children by the 1974 school year and all plans, both state and local, must be constructed to accomplish this. An incremental program approved by the State Board and accomplished in no more than three phases must be prepared by local school boards within 60 days of the approval of this act. (Sec. 5C, Chap. 839, 1972) (See Rainey lawsuit below)

The State Board of Education shall provide or cause to be provided by school districts, all regular and special education, corrective and supporting services needed by handicapped children so that they receive the benefits of a free public education appropriate to their needs. The commissioner of education has the jurisdiction to organize and supervise schools and classes according to the regulations and standards established for the conduct of public schools and classes in all institutions wholly or partly supported by the state but not supervised by public school authorities. The Department of Education shall finance schools and classes in wholly owned state institutions. (Sec. 2, Chap. 839, 1972)

Nothing in this special education law may be construed to limit any right which any child, his parent, or guardian has to enforce the provision of any regular or special educational service. Neither shall the time phases allowed school districts to submit plans or proceed with implementation of special education programs be taken as authorizing any delay in the provision of education or related services to which a child is entitled. (Sec. 8A, Chap. 839, 1972)

Rainey v. Tennessee Department of Education is a class action lawsuit filed in November, 1973, which alleged certain delays in the implementation of Chapter 839, the mandatory education law. A consent agreement was signed by both parties on July 25, 1974, agreeing that the 1974 implementation date could not realistically be met. The agreement stipulates that all children with verified handicaps must be served appropriately in school by September, 1974; by September, 1975, all children with handicaps must receive appropriate services.

* Chap. 839, P.A. 1972 was codified by Tenn. Code Commission. Specific cites are not available, but Chap. 839 is now Sec. 49-2901 - 49-2959 TCA.

POPULATION

Definitions: " 'Handicapped child' means handicapped children and youth between the ages of four and 21 years inclusive who have been certified under regulations of the State Board of Education by a specialist as being unsuited for enrollment in regular classes of the public schools or who are unable to be educated or trained adequately in such regular programs without the provision of special classes, instruction, facilities or related services, or a combination thereof. The term includes the educable, trainable and profoundly retarded; the speech and/or language impaired; the deaf and hearing impaired; the blind and visually limited; the physically handicapped and/or other health impaired including homebound, hospitalized and pregnant; the learning disabled including perceptually handicapped, emotionally conflicted, functionally retarded, and socially maladjusted; the multiple handicapped; and the intellectually gifted; and any other child whose needs and abilities cannot be served in a regular classroom setting." (Sec. **49-2914-A**, TCA)

Age of Eligibility: Children between the ages of four and 21 are eligible for special education services. (Sec.3A,S.B. 72)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The Department of Education must furnish to the Department of Public Health a list obtained from the school census of all physically handicapped or crippled children of school age or younger. For the listing of each child below school age, the sum of 10 cents will be allowed to the enumerator. It is the duty of the county boards of education and of the city boards and the cities maintaining separate school systems to enumerate all physically handicapped and crippled children of school age or younger residing within their jurisdiction and to furnish to the Department of Education a list of such persons. (Sec. 53-1908 TCA) See Planning.

Screening: All school districts must test and examine each child attending the public and private schools within its boundaries to determine whether the child is handicapped. The tests and examinations must be administered on a regular basis according to State Department rules and regulations. Schools as used in this section include kindergarten through grade 12. (Sec. 6A, Chap. 839, 1972)

This testing requirement does not apply to children attending private school who are not state residents. If the state or a school district has an agreement with another state or school district requiring these tests and examinations, the school district must administer them and report the results to the school district of the child's residence. (Sec. 6B, Chap. 839, 1972)

All school districts are required to make and keep a current list of all handicapped children tested and examined found to be handicapped and of all resident children receiving home, hospital, institutional, or other special education services not in regular programs. (Sec. 6C, Chap. 839, 1972)

Evaluation and Placement: To the maximum extent possible, handicapped children must be educated with children without handicaps and attend regular classes. Impediments to learning and normal functioning of handicapped children in the regular school environment should be overcome by providing special aids and services rather than by separate schooling. Special classes, separate schooling, or any other removal of children from a regular educational environment should occur only when the extent of severity of the handicap is such that education in regular classes, even with supplementary aids and services, cannot be satisfactorily accomplished. (Sec. 2B, Chap. 839, 1972)

A child or his parent or guardian may obtain a review of an action or omission by state or local authorities on the grounds that the child has been or is about to be:

- (1) denied entrance or continuance in a program of special education appropriate to his condition and needs;
- (2) placed in a special education program inappropriate to his condition and needs;
- (3) denied educational services because no suitable program exists;
- (4) provided special education or other education in insufficient quantity to satisfy legal requirements;
- (5) provided special education or other education by units of government or in situations not having the primary responsibility for providing the services in question; or
- (6) assigned to a program of special education when he is not handicapped.

The parent or guardian of a child placed or denied placement in a special education program must be promptly notified by registered, certified mail with return receipt requested of the following:

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- (1) the placement, denial, impending placement, or denial of the child;
- (2) a statement informing the parent or guardian that he has a right to a review of the determination, and procedure for obtaining the review must be included; and
- (3) the information that a hearing may be held upon a written request no less than 15 days nor more than 30 days from the day on which the notice was received must also be enclosed.

No change in the program assignment or status of a handicapped child may be made during the period granted the parent or guardian to request a hearing, i.e., not less than 14 days, without the written consent of the parent or guardian. If the health or safety of the child or of other persons is endangered by the delaying of the change, the change may be made sooner but without prejudicing any rights of the child and his parent or guardian. The parent or guardian has access to any reports, records, clinical evaluation(s), or other materials on which the determination to be reviewed was based and which could reasonably have a bearing on the correctness of the determination. At the hearing the child, his parent, or guardian is entitled to examine witnesses, introduce evidence, appear in person, and be represented by counsel. A full record of the hearing must be made including a transcript if requested by the parent or guardian. If the parent or guardian believes a diagnosis or evaluation as shown in available records is in error, he may request an independent examination or evaluation of the child and has the right to secure it. The report is then presented in evidence at the hearing. If the parent or guardian is unable to afford an independent examination or evaluation, it is provided at state expense.

The State Board shall periodically amend rules and regulations for conducting hearings. Among other things the rules and regulations must require that: (1) the hearing officer or board be composed of person(s) other than those who participated in the initial action and who were responsible for the determination in question; (2) specify the qualifications of the hearing officer(s); (3) and provide that the hearing officer or board has the authority to affirm, reverse, or modify the action previously taken and to order the taking of appropriate action. The rules and regulations shall also govern proceedings whether held by the State Board or by a county, city, or special school district board of education. The determination of a hearing officer or board is subject to judicial review in the manner provided for a state or local agency. If a determination is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the chancery or circuit court. Such action shall not prevent any administrative or judicial proceeding by or at the insistence of the State Department to secure compliance or otherwise secure proper administration of laws and regulations relating to the provision of regular or special education. These remedies are in addition to any other remedies which a child, his parent, or guardian may have. (Sec. 8A, *Chap. 839, 1972*)

Children physically and mentally incapable of performing school duties may be exempted from attendance with the county, city, or special school district board of education as the sole judge. A licensed physician must certify the disability.

ADMINISTRATIVE RESPONSIBILITY

A Division for the Education of the Handicapped in the State Department of Education headed by an assistant commissioner qualified by education, training and experience to direct the state programs relating to the education of the handicapped is established. The Division will assume the duties and responsibilities currently the function of the Area in Special Education of the State Department of Education as well as those duties and responsibilities described in this Act. The commissioner is responsible for appointing the assistant commissioner to head the Division. The Advisory Council for the Education of the Handicapped (see Planning) may recommend qualified persons for this position. (Sec. 4A, *Chap. 839, 1972*)

If the State Department finds that a school district fails to provide necessary education to all eligible handicapped children, the State Department may withhold all or a portion of the state aid for the regular public schools. This denial of aid may continue until the failure to provide special education is remedied. Whether or not the State Department withholds such aid, it may provide the education services directly. Before withholding aid the State Department must conduct a public hearing on due notice and on record establishing the failure of the school district to provide special education of both adequate quantity and quality.

Services provided directly by the state may include:

- (1) the hiring, employing and directing of special education teachers and other necessary personnel;
- (2) incorporating of the personnel into the affected school system;
- (3) procuring and employing any necessary supplies, equipment, materials and facilities;
- (4) the furnishing of necessary administrative supervision and services to make the program effective;

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(5) direct supervision of state institutions or facilities of special education, but no child may be removed from the school district in which he is entitled to receive special education without the consent of his parent or guardian; and

(6) any other matters incidental to the implementation of the program. (*Sec. 8C, Chap. 839, 1972*)

Any costs incurred by the State Department in providing direct services because of local district failure to provide services are assessed against the school district. If the school district resists paying within a specified period, the State Department may make the payment and reimburse itself by appropriate judicial proceedings against the school district. During any time the State Department is providing special education services directly, it must have as its purpose to assist the school district to assume or reassume its full responsibilities. However, no state aid shall be given to a school district during, or for any period when, the provision of special education on its account is being administered directly by the state. The State Department of Education shall return responsibility to the school district as soon as it finds it is willing and able to fulfill its legal responsibilities. (*Sec. 8C, Chap. 839, 1972*)

The Tennessee School for the Blind and the Tennessee School for the Deaf are under the supervision of the State Board of Education. (*Sec. 4-310 TCA*)

PLANNING

The commissioner, acting through the Division for the Education of the Handicapped, is responsible for making and keeping current a plan to implement this Act. The plan must include provisions for:

(1) a census of all handicapped children showing both the total number of children and their geographic distribution;

(2) diagnosis and screening of handicapped children;

(3) an inventory of the personnel and facilities available to provide instruction and services for handicapped children;

(4) an analysis of the present distribution of the responsibility for special education between state and local systems and general units of local government together with any recommendations for changes in the distribution and responsibility;

(5) identification of the criteria for determining how handicapped children are to be educated;

(6) standards for the education of all categories of handicapped children in regular schools or school districts and in state institutions including methods of assuring that the education afforded the handicapped will be nearly equivalent to that afforded to nonhandicapped children and will take into account the special needs of the handicapped;

(7) a program for the preparation, recruitment, and inservice training of personnel in special education and allied fields, including appropriate participation by institutions of higher learning, state and local agencies, and any other public and private entities with relevant expertise;

(8) programs to develop, acquire, construct, and maintain facilities;

(9) a full description of the state plan providing special education to all handicapped children including each of the matters listed here and any other necessary or appropriate matters; and

(10) any necessary additional matters including recommendations for amendments of laws, changes in administrative practices and patterns of organization, and changes in levels and patterns of financial support.

This plan was to have been presented to the governor and the General Assembly and made available for public distribution no later than October 2, 1972.

Any amendments or revisions after the first submission must be submitted to the governor, General Assembly, and public at least 90 days prior to the convening of the regular session of the Assembly. All plans submitted after the initial submission must detail progress made in fulfilling the plan and in implementing the policy of this Act.

By July 1 annually each school district must report to the commissioner and the State Board the extent to which it is providing special education for handicapped children. The report must detail the means by which the school district or political subdivision proposes to secure full compliance with state policy including:

(1) statement of the extent to which the district is directly providing necessary education and services;

(2) a precise statement of the extent to which the district is directly providing necessary education and services;

(3) an identification and description of the means the school district or political subdivision will employ to meet state standards for all special education not provided directly by the state.

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In addition to the annual report, the school district must submit any supplemental reports required by the commissioner and State Department to keep the plan current. The State Department will prescribe the due dates, the forms, and any other necessary matters relating to these reports.

Handicapped children receiving special education in state facilities continue to be the planning responsibility of the school district of residence. The school district must keep records for each child including the nature and degree of his handicap and the way in which his educational needs are being met.

The first phase of the plan which was to have begun within 60 days of the approval of this Act is a census of persons who if thereafter certified by a specialist would probably qualify as exceptional children. The census must show the name, age, sex, and type of exceptionality of each child. All the data descriptive of an individual person must be maintained in strict confidence. Individual data will not be made available to anyone except the survey takers in connection with those individuals reported by them, the appropriate superintendent and his staff, the appropriate school principal, and any other person designated in regulations and under conditions adopted by the State Board. The first phase also includes a survey of existing programs, services, and facilities together with a study of current national trends in providing services for exceptional children. The study includes not only appropriate instructional services, such as instructional resource and tutorial programs, but also physical facilities including portable classrooms necessary for exceptional children.

The second phase of the plan could begin as early as 60 days after approval of the plan by the State Department and could operate in conjunction with the census and surveys. This is a program of training professional and paraprofessional personnel. It is to begin within six months after the approval of the Act. This phase provides for the initial training and the retraining of selected professional and paraprofessional personnel (teacher aides), in accordance with the need for such personnel as revealed in the census, taking into account the personnel already available. The training programs should not be limited to new teacher recruits but should also include experienced special education teachers in a well planned sequential training program emphasizing a teacher as an educational diagnostician and a planner and utilizing teacher aides to assist in the implementation of the program. As much as possible training programs should be in-house, using qualified local school district staff as well as university personnel.

"The teacher training program should demonstrate a philosophy in a school environment and atmosphere, minimizing labeling and emphasizing the child as a part of rather than apart from."

The third phase of the implemental plan is the establishment of special education classes and services to those handicapped children and youth residing within the school district and/or system. The local school system and/or district will make provisions enabling continuous progress so that a full program of special education services will be provided for all handicapped children and youth by the beginning of the 1974-75 school year. (Sec. 5, Chap. 839, 1972) (See Responsibilities)

Within 60 days of the effective date of this Act all school boards must prepare and adopt an incremental plan for the implementation of appropriate instruction and special education services including a procedure for certifying exceptional children by specialists. The plan is then submitted to the State Board. The plan is binding upon the local school board and must be adhered to unless subsequent modifications are approved by the State Board. If the State Board disapproves a plan, representatives of the State Board must consult with and advise the local board in an effort to formulate a plan which can be approved. If no plan is agreed upon, the State Board within 30 days must provide a plan unless the school board within 30 days thereafter files suit in the circuit court of Davidson County in equity to restrain the enforcement of the plan on the ground that it is arbitrary, impracticable, detrimental to the education of exceptional children, or invalid. Only the specified court has the jurisdiction in these suits and all suits will be given a preferred setting. (Sec. 5C, Chap. 839, 1972)

All state and local plans must take into account the advantages and disadvantages in providing special education to particular kinds of handicapped children through cooperative undertakings with other jurisdictions. The state or a school district may enter into agreements with other school districts or states to provide special education, but a child receiving special education outside the district of his residence continues to be the responsibility of the school district and does not relieve the school district of compliance with the requirements of this Act. Agreements may include furnishing of educational and related services, payment of reasonable costs, making of capital contributions toward the construction and renovation of joint or common facilities or facilities regularly available by one party jurisdiction, and the furnishing of or responsibility for transportation, lodging, food, and related living costs.

Any child and his family given educational or related services continues to have all civil and other rights he would have if receiving educational or related services within the subdivision of the school district where he would normally attend public school. No agreement made on this section is valid unless containing such a provision. (Sec. 5D, Chap. 839, 1972)

FINANCE

An amount equal to the expenditure for nonhandicapped children must be expended for each handicapped child by local government and school districts. Necessary funds for supplementary aids and services are the ultimate responsibility of the state but, to the maximum extent possible, shall be administered through local school districts. (*Sec. 2D, Chap. 839, 1972*)

State aid is determined and paid in accordance with this section and the rules and regulations of the State Board. Financial aid shall be paid to any public school district or any other entity entitled by the laws of the state to receive school aid for each of the following program elements:

(1) the education of handicapped children in regular school programs;

(2) the education of handicapped children in special classes, schools, and programs designed to meet their special needs and the furnishing of corrective or remedial services designed to eliminate or ameliorate physical, mental, emotional, or learning disabilities or handicaps; and

(3) the furnishing of transportation. (*Sec. 11B, Chap. 839, 1972*)

For state aid purposes, handicapped children will be counted in the same manner as other children. In addition to regular state aid, any school district or special services association maintaining an approved program of education for handicapped children is entitled to receive reimbursement from the state for the excess cost of individuals in the program above the cost of the pupils in the regular curriculum determined in the following manner:

(1) All districts must keep an accurate, detailed, and separate account of all monies paid out for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and must annually report indicating the excess cost for elementary or high school pupils for the school year over the last ascertained average cost for the instruction of regular children in the elementary or secondary public schools.

(2) Each special education services association must keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each type of classes in schools for the instruction and care of pupils attending them and for the cost of their transportation and must annually report the excess cost for elementary or secondary public schools of the school districts served by the special education services association for a like period of attendance.

(3) In addition to any state aid for the transportation of children to and from school or other transportation in connection with school related activities, the State Department upon a properly substantiated claim shall pay 100% of the cost of special buses and other special equipment actually employed in transporting handicapped children. (*Sec. 11C, Chap. 839, 1972*)

If any of the educational or other services under this section are provided partly by one school district or other entitled entity and partly by another such district or entity and if there is no valid contract or agreement by which one of the districts or entities is the proper claimant for all of the aid in question, each district and entity is entitled to claim and receive a proportionate share of state aid in accordance with its actual assumption of costs. The State Department shall provide for the calculation and apportionment of state aid in such cases. (*Sec. 11D, Chap. 839, 1972*)

State minimum foundation aid includes the following areas: administration and supervision, teacher salaries, travel for itinerant personnel, maintenance and operating costs, regular transportation, plus three special appropriations for textbooks, capital outlay, and leave for teachers. (*Chap. 43, Public Acts 1971*)

The State Commissioner of Education may distribute to a county, city, or special school district minimum school program "excess cost" funds not exceeding \$5 per day or \$1,000 per year for each multiply handicapped child. If there are no facilities within the state to provide for such children, and if the district of residence supplements the state funds in an amount necessary to provide appropriate educational services and facilities, these children may be sent to out of state facilities. The maximum amount of \$1,000 per year covers a 200-day school year. For any lesser number of days reimbursement will be reduced proportionately. (*Sec. 4, Chap. 839, 1972*)

Payments provided by any contract with the State Department must be sufficient to cover the costs of any equipment and an equitable share of the operating costs in connection with any inservice training given to persons from other states. Contracts may be entered into only if the use made or to be made of the unit by another state is in excess of 10% of the use made by this state in schools and school systems, institutions, organizations, or persons in this state. Required payment from another state must include an equitable contribution for overhead and capital costs as well as operating costs, the cost of equipment, materials, supplies and devices. (*Sec. 61, Chap. 839, 1972*)

The commissioner or his representative may contract for supplies, equipment, materials, devices, and personnel training useful in teaching handicapped children. The commissioner may pay costs out of

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available funds. If another state, public agency, or private nonprofit agency establishes and maintains a substantial specialized program for the development, production, and procurement and distribution of special equipment, materials, devices and supplies, or for the training of personnel useful in the teaching of handicapped children, and if the contract or contracts entered into by the commissioner assure the state of substantial profits on a continuing basis, consideration paid by the commissioner or his designated representative may be calculated to include overhead and capital costs as well as operational costs and the cost of any articles or services furnished or to be furnished. (Sec. 6E, Chap. 839, 1972)

Any articles or services secured by the commissioner under a contract may be made available to any school system, special school, or other person and entity entitled to participate in or receive the benefits from special services for the handicapped. The ultimate apportionment and bearing of costs among the states, subdivisions, and other persons or entities must be in accordance with the law. (Sec. 6F, Chap. 839, 1972)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

A school district may independently provide education, corrective and supporting services for handicapped children, or may fulfill all or part of its obligation to provide special education services by participation in a special education services association. School districts must provide special education or related services not provided by the association on an individual basis or in any other approved manner. A services association must provide services for the entire area included within the school districts participating in it. The association may be established by resolution of each of the governing boards of the participating districts.

The governing board of the special education services association consists of representatives of participating districts. Unless otherwise noted in the written agreement establishing the association, each participating district has one representative, elected from its own members by the respective governing boards of the school districts. Each representative has one vote.

Special education services associations have the power to:

- (1) establish and operate programs and classes;
- (2) acquire, construct, maintain, and operate facilities to provide education and corrective and supporting services for handicapped children;
- (3) arrange with participating districts to provide necessary special education services;
- (4) employ special education teachers and other appropriate personnel;
- (5) acquire, hold, and convey real and personal property;
- (6) provide any required transportation;
- (7) participate and make its employees eligible to participate in any retirement or group insurance system or any other program of employee benefits on the same basis as other school districts and their employees; and
- (8) conduct any other activities necessary and incidental to carrying out the foregoing powers or any other powers conferred upon the associations elsewhere in the laws of the state. Services associations may operate special education centers to provide diagnostic, therapeutic, corrective, or other services on a more comprehensive, expert, economic, and efficient basis than a single school district. These services may be provided in regular schools utilizing center equipment and personnel when necessary in its own facilities.

These centers may also contain classrooms and/or other educational facilities and equipment to supplement instruction and other services for handicapped children in regular schools and may provide separate instruction to children whose degree or kind of handicap makes it impractical or inappropriate for them to participate in classes with normal children. These centers may include dormitories or related services and facilities for handicapped children unable to commute daily for education and related services. No facilities may be constructed unless the services association receives a permit from the Division for Education of the Handicapped. The permit may contain any conditions the Division feels necessary to assure conformity with state policy. Permits are issued only if the Division is satisfied that all efforts have been made to accommodate the education and related services in a regular school building or on regular school premises and that separate facilities are necessary.

Services associations must provide all education and corrective and supporting services for all handicapped children and residents except for those special education and corrective and supporting services provided directly by the state or by individual school districts as provided in the written agreement. A services association may make arrangements with private schools, institutions, and agencies for services to handicapped children if it is unable to provide appropriate services with its own facilities and personnel or

the facilities and personnel of its member district. Home or hospital instruction and corrective and supporting services are provided only if the nature and severity of the handicap make such provision in the regular schools or in any other facility of the services association, the state, or a suitable private facility impractical.

A services association in the process of formation must submit to the State Board the interschool district agreement under which it proposes to function. This may be submitted either prior to or subsequent to the adoption of the agreement and resolution. A special services association may receive state aid if the State Board determines that:

- (1) the association complies with the special education provisions or if the association is not yet in operation, that it will have the resources and authority to comply; and
- (2) the geographic area served or to be served by the association is not so located or of such a configuration to exclude one or more of the school districts from effective participation in the services association or from forming a viable association of their own.

Any district may apply for and receive the status of a special education services association by submitting to the State Board an appropriate resolution of its governing board requesting this status. No association shall be approved by the State Board unless it finds that the school district maintains a full complement of special education facilities and programs and complies with all provisions of this Act. (Sec. 4, *Chap. 839, 1972*)

All services associations other than those composed of a single school district must function pursuant to an inter-school district agreement. The agreement may be incorporated in the resolution or other action forming the association or may be a separate document. It must be adopted by either an affirmative vote of each governing board of the participating school districts or by affirmative vote of electors in each district. The agreement must contain:

- (1) identification of the participating school districts;
- (2) an enumeration or precise delineation of the services to be provided;
- (3) provisions describing the internal management and control of the association;
- (4) provisions defining the relationship between participating school districts and the association in regard to responsibilities for the regular education of handicapped children and special education and corrective and supporting services for these children;
- (5) provisions denoting the financial responsibilities of all participating school districts or formulas, procedures, or other methods for the calculation of the district's financial responsibilities;
- (6) minimum duration of the agreement;
- (7) provisions for the disposition of association property if the agreement is dissolved;
- (8) financial settlement, if any, with a withdrawing school district; and
- (9) any other necessary or appropriate provisions. (Sec. 4J, *Chap. 839, 1972*)

The agreement must be submitted to the State Board and the attorney general prior to its becoming effective and must be approved by both units. If the State Board and attorney general do not respond to a submitted agreement within 90 days, approval is assumed. The State Board is required to approve any agreement unless it finds that the provisions do not agree with the provisions and policy set forth in this Act or if it finds that the agreement does not contain sufficient evidence that the services association will have the means of providing the facilities, personnel, and services to fulfill its obligations. The attorney general shall approve an agreement unless he finds it to be in improper form or if one or more of its provisions is contrary to law. (Sec. 4J, *Chap. 839, 1972*)

School districts wishing to withdraw from the services association or from any part of the association must obtain the approval of the director of the Division for the Education of the Handicapped. The director may grant approval only after conferring with the district and assessing that the withdrawal is in the interest of handicapped children in the association and school district. The withdrawal is effective only if the school board has the approval of the director to establish a comparable program. The withdrawal is not effective until the end of the next full school year. The withdrawing district is liable for its proportionate share of operating costs until its withdrawal becomes effective and will continue to be liable for its share of debts incurred while it was a participant and receives no share in the assets. (Sec. 4L, *Chap. 839, 1972*)

An association may be dissolved by its governing board but the dissolution cannot take place until the end of the school year in which action is taken. All assets and liabilities are distributed to all entities participating in the association. (Sec. 4L, *Chap. 839, 1972*)

The State Board of Education is responsible for assisting two or more county, city, or special school district boards of education in establishing classes through a cooperative contract in districts having

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insufficient numbers of students to warrant the establishment of such classes singly. Each special education services association must keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each type of classes in schools for the instruction and care of pupils attending them and for the cost of their transportation and must annually report the excess cost for elementary or secondary public schools of the school districts served by the special education services association for a like period of attendance.

A special education services association has the power to receive, administer and expend appropriated funds and proceeds of any school bond issue or other bonds intended wholly or partly for its benefit, and to apply for, accept and utilize grants, gifts, or any other assistance. (Sec. 4, *Chap. 839, 1972*)

An individual school district may qualify for the purpose of state aid as a special education services association if it provides a full complement of education and corrective and supporting services exclusive of services provided directly by the state for all handicapped children within its boundaries. The State Board of Education is responsible for determining whether the applicable school district meets the requirements of a services association. (Sec. 4H, *Chap. 839, 1972*)

SERVICES

"'Special education services' means classroom, home, hospital, instructional and administrative services needed to meet the needs of handicapped children; transportation of such handicapped children who are unable to use public transportation; corrective and supporting services including diagnostic and evaluation services, social services, physical and occupational therapy, job placement, orientation and mobility training, braille, typists, and readers for the blind, specified materials and equipment and other such services as approved by the Division of Education for the handicapped and authorized by the State Board of Education; and other services that may be approved by the State Board of Education to assist handicapped children in taking advantage of or responding to educational programs and opportunities." (Sec. 3B, *Chap. 839, 1972*)

In the Division for the Education of the Handicapped a special education materials and training unit must be established to assist in the education of handicapped persons. The unit in addition to any other functions may:

- (1) develop, test, demonstrate, maintain, purchase or otherwise acquire, store, and produce, if not reasonably obtainable from commercial sources, and make available equipment, materials, and special supplies and devices particularly useful in connection with the education of handicapped persons;
- (2) study, develop, and disseminate information concerning techniques for teaching handicapped persons;
- (3) collect, evaluate, and disseminate research data and any other information related to special equipment, materials, supplies, devices, techniques, and training;
- (4) provide instruction in the operation or use of equipment, materials, supplies, and devices;
- (5) provide inservice training for teachers of handicapped persons and other persons requiring special skills; or
- (6) accept, administer, and utilize federal aid and any other grants, gifts, donations or funds, equipment, materials, supplies, facilities, and services. (Sec. 6B, *Chap. 839, 1972*)

The unit may also furnish, lend, or otherwise make available its equipment, materials, supplies, and devices to:

- (1) public school systems, private nonprofit schools, special schools and institutions for handicapped children, and public and private nonprofit institutions of higher learning;
- (2) public and private nonprofit institutions and organizations operating recognized programs of vocational rehabilitation;
- (3) preschool public and private nonprofit programs for education of handicapped children; and
- (4) handicapped persons on an individual basis if the unit has an established loan service.

The unit makes equipment and materials available only by written applications made in a prescribed form and manner. The application must be approved and materials furnished only if the unit is satisfied that the applicant has a need for them and is capable of putting them to an appropriate use. The application shall contain information concerning the number of handicapped children for whom the applicant is providing instruction or in the case of a new institution or program, the number expected to be served, the type or types of handicaps, and any other required information. (Sec. 6C, *Chap. 839, 1972*)

Except as noted below, the unit will provide materials only to schools and school systems, institutions, organizations, and persons within Tennessee. Because of the specialized character and function of the unit, its support and utilization on a multistate or regional basis may promote efficiency and economy and may make it possible for more persons in need of special education to receive it. It is therefore state policy to encourage multistate and regional cooperation. The State Department may contract with other states or appropriate educational agencies to have the unit furnish services, equipment, materials, supplies, or devices. The contracts may provide for the carrying out of any one or more of the unit's functions. Unless the activities covered by the contract are financed entirely by the other state or states including the maintenance of a separate staff or the pro rata contributions to the salaries and other compensations of staff, no school or school system, institution, organization, or person may be furnished with equipment who would be ineligible recipients under Tennessee laws. Contracts must provide for: (1) their duration; (2) appropriate consideration and payment; (3) the nature and extent of the equipment, to be furnished and received; (4) the performance of inspections and examinations and the making of reports, the evaluation of these reports, and the granting or denial of benefits on the basis of these reports; and (5) any other necessary and appropriate matters. (*Sec. 7D, Chapter 839, 1972*)

The unit has the authority to inspect the facilities of any applicant to be a recipient of its services. They may inspect any pertinent records to determine facts relative to the administration of this Act. The unit and its authorized representatives must have access to the premises and to any pertinent records of the applicant or recipient at all reasonable times. The unit may require reports from any recipient institution or program detailing uses made of equipment, materials, supplies and devices and of the workability or beneficial effects obtained from them. The commissioner, with the approval of the governor, may provide for the consolidation of inspections, examination of records, and reporting. (*Sec. 7G, Chap. 839, 1972*)

Unless performed by the special education services association, each school district or state institution must establish and maintain a special education resources center to procure, maintain, service, and distribute special education equipment, supplies, and materials to all schools and eligible persons in the district. Special education resources centers may establish and operate or cooperate with others in establishing and operating programs of inservice training similar to those authorized for the state unit. These centers may cooperate and borrow or otherwise obtain from the state unit, regional instructional materials centers, federal and other governmental agencies and appropriate private agencies any equipment, supplies, and materials and distribute and collect these from schools. The Division for the Education of the Handicapped is responsible for promoting the efficient and expert use of special education aids and for developing, revising, and keeping in force regulations and guidelines for the operation of centers and their relationship to schools or other recipients. The state unit shall assist the centers in their program of training, equipment servicing, distribution, and general administration. The state unit should also encourage special education services associations to maintain centers on behalf of their participating districts except in those instances where an individual school district is qualified as a special education services association. (*Sec. 7H, Chap. 839, 1972*)

The Department of Education has the authority to cooperate with other school authorities in providing special schools and special classes in public elementary and high schools, private schools, hospitals and convalescent institutions, and home and bedside instruction, and transportation to and from school for physically handicapped, visually handicapped, or crippled children. (*Sec. 53-1909, TCA*)

There are scholarship funds established for the deaf and the blind to enable them to attend institutions of higher education. The funds are under the administration of the State Board of Education. (*Sec. 49-3014 and 49-3111, TCA*)

PRIVATE

Local governments and school districts are not relieved of their responsibility to provide free public education to handicapped children by the availability of private schools and services. If such schools and services are utilized it continues to be a public responsibility to assure that handicapped children receive an appropriate quantity and quality of instructional and related services and that all their other rights are protected. (*Sec. 2E, Chap. 839, 1972*)

PERSONNEL

The Division for the Education of the Handicapped may make traineeship or fellowship grants to professional personnel desiring to work in programs for the education of handicapped children for either

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part-time or full-time study to qualify for professional requirements of the State Board. To qualify for a traineeship persons must have earned at least 60 semester hours of college credit and for a fellowship be graduates of a recognized college or university. The grants may be in amounts of not more than \$2,000 per academic year for traineeships; and not more than \$2,500 for fellowships, with allowance of \$750 per year per local dependent. An additional sum annually for each grantee may be allowed to any approved institution of higher education in the state for the actual cost of instruction as certified by the institution. Part-time students and summer session students may be awarded grants on a pro rata basis. The Division is responsible for the administration of this program and will maintain related records of each person approved for training.

Training grants may be given to personnel approved for participation as paraprofessionals in the exceptional child program. Persons receiving grants must meet State Board professional and performance standards. The State Board is responsible for administering this program working with school boards to meet the needs of a particular school district and/or system. These grants are limited to personnel contracted to work in the exceptional child program or those individuals agreeing to work in the state with exceptional children after completing their training for a period of time specified by the State Board. Individuals participating in this program must sign a commitment satisfactory to the State Board stating that they will take an appropriate job within the state upon completing their training. These commitments are binding on those who sign them and receive scholarships. The State Board may waive them in the event of extreme and unforeseen hardship. (*Sec. 9D, Chap. 893, 1972*)

The State Board is authorized to develop a plan with local boards to provide for funding arrangements to support the training of paraprofessional personnel as well as other arrangements necessary to operate the training program. (*Sec. 9D, Chap. 893, 1972*)

FACILITIES

"'Special education facility' means a school or any portion thereof, remedial or supplemental facility or any other building or structure intended for use in meeting educational, corrective, or related needs of handicapped children." (*Sec. 3D, 893, 1972*)

Physical specifications of schools, classrooms, and other facilities likely to be used by handicapped children must be related to their special physical, educational, and psychological needs. School districts, special education services associations, agencies of the state and its subdivisions, or any private persons constructing, renovating, or repairing facilities wholly or partially using public funds must plan, design, locate, construct, equip, and maintain these facilities with regard to the special capabilities and requirements of the handicapped children to be accommodated in them whether or not these facilities are expressly intended or likely to be used by handicapped children. (*Sec. 2C, Chap. 893, 1972*)

All school districts constructing, renovating, remodeling, expanding, or modifying school buildings or other structures must plan, design, construct, and equip all buildings in a manner and with such materials that will facilitate their use by all handicapped children who may reasonably be expected to enter and use them. This subsection must be interpreted and administered in light of state policy to educate and provide services for handicapped children in, or in close proximity to, regular schools as much as possible. No school or school-related construction, renovation, remodeling, expansion, or modification is eligible for state aid unless the State Department finds that it conforms with this section. (*Sec. 10A, Chap. 893, 1972*)

Plans and specifications for all special education facilities must be prepared in two parts to include: (1) a statement of the educational and related objectives and functions to be served and the uses to be made of the facility; and (2) the architectural plans and specifications.

The plans must be submitted to the State Department for approval, a prerequisite to awarding any construction contract except for contracts for development of required plans and specifications. Approval may be given only if the Division for the Education of the Handicapped determines that the architectural plans and specifications properly implement the stated educational and related objectives and functions and, further, if the State Department determines that the architectural plans and specifications provide for design, materials, and equipment appropriate to serve the stated objectives and functions. If the plans and specifications are for a building or other structure not including a special education facility, approval by the Division of Education for the Handicapped shall be a certification that the submitting authorities have other adequate facilities to meet the needs of handicapped children. (*Sec. 10B, Chap. 893, 1972*)

No facility to which this subsection applies shall be accepted by any agency of this state or any school district unless it conforms to plans and specifications. Subsequent to approval of plans and specifications they may be amended by showing that the stated educational and related objectives and functions have

been replaced by other suitable objectives and functions, and that the architectural plans and specifications have been modified to conform to the new objectives and functions or that the proposed amendment of architectural plans and specifications will not impair the suitability of the facility for the previously stated objectives. Amendments must be submitted and approved in the same manner as original submissions. Any entity eligible for state aid may qualify only on submission and approval of plans and specifications. (Sec. 10B, *Chap. 893, 1972*)

The rules and regulations of the State Board shall include procedures for submission and review of plans and specifications and may include requirements for additional information to be furnished by the school district, special education services association, or entities constructing or proposing to construct special education facilities. The manual is to be incorporated in the rules and regulations issued pursuant to this section and no approval or acceptance of the facility is lawful unless they comply with the standards contained in that manual. (Sec. 10C, *Chap. 893, 1972*)

The manual is developed, amended, and revised with regard to the standards applicable to the construction of special education facilities issued by recognized professional organizations. Public and private builders and operators of special education facilities may consult with the commissioner or his designated agent concerning any matter related to the administration of this section or any special education facility proposed to be constructed or operated by them. But no such consultation and no representation made shall be construed as an approval of plans or specifications. (Sec. 10C, *Chap. 893, 1972*)

A special education fund in the state treasury is established. The State Department budget must contain an amount sufficient to establish the fund. Grants will be made from the fund to school districts, special education services associations, and other appropriate entities to:

- (1) secure technical assistance for planning, design, acquisition, and construction of facilities or equipment; and
- (2) supplement available but inadequate funds for planning, design, acquisition, or construction of facilities or equipment. (Sec. 10D, *Chap. 893, 1972*)

In applying for grants, a school district, services association, or other entity must demonstrate that it proposes to use the aid for an identified purpose of the state plan or for a purpose selected by the Division for Education of the Handicapped as one currently to receive concentrated efforts at improvement. These grants shall be in addition to regular or special aid otherwise available from the state for educational purposes. (Sec. WD, *Chap. 893, 1972*)

The State Department may apply for, administer, receive, and expend any federal aid for which the state is eligible to administer this Act. If the aid is available for a multistate or regional program in which the state participates, the State Department may apply for and devote all or a portion of the federal aid to a multistate or regional program. (Sec. WE, *Chap. 893, 1972*)

Law Digest: Education of Handicapped Children**TEXAS****RIGHT TO AN EDUCATION**

Constitution: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." (*Art. VII, Sec. 1, Tex. Const.*)

Children whose physical or mental condition renders attendance inadvisable in a regular or special class supported by state funds are exempted from the compulsory attendance requirements. The evidence of this condition must be supported by a certificate of a physician specifying the condition and covering the period of attendance. (*TEC Sec. 21.003*)

Policy: "It is the intention of this Act to provide for a comprehensive special education program for exceptional children in Texas." (*TEC Sec. 16.11*)

Responsibilities: When the parents in any school district, of the required number of any type of exceptional children, or types which may be taught together, petition the governing board of that district for a special class, it shall be the duty of such board to request the Commissioner of Education to cooperate in the establishment of such class or classes. (*TEC Sec. 16.16(e) 1970*)

There being no restriction or limitation in the statutes as to children eligible for free public school attendance where a bona fide residence has been established, a school district, therefore, has the responsibility to educate, free of tuition, children living within the district of residence and enrolled in a private school for exceptional children when it is determined that enhancement of the children's progress will result from public school attendance.

POPULATION

Definitions: " 'Exceptional children' means children between the ages of three and 21, inclusive, with educational handicaps (physical, retarded, emotionally disturbed, and/or children with language and/or learning disabilities) as hereinafter more specifically defined; autistic children; and children leaving and not attending public school for a time because of pregnancy — which disabilities render regular service in classes in public school inconsistent with their educational needs.

" 'Physically handicapped children' means children of educable mind whose bodily functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

" 'Mentally retarded children' means children whose mental capacity is such that they cannot be adequately educated in regular classes of public schools without the provision of special services.

" 'Emotionally disturbed children' means children whose emotional condition is medically or psychologically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

" 'Language and/or learning disabled children' means children who are so deficient in the acquisition of language and/or learning skills including, but not limited to, the ability to reason, think, read, write, spell, or to make mathematical calculations, as identified by educational and/or psychological and/or medical diagnosis, that they must be provided special services for educational progress. The term 'language and/or learning disabled children' shall also apply to children diagnosed as having specific developmental dyslexia." (*TEC Sec. 16.16*)

Age of Eligibility: Children are eligible for special education services between ages three and 21. (*TEC Sec. 16.16*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Before being assigned to a special education class, a child will be given individual verbal and non-verbal intelligence tests in the language in which he is most fluent. No assignment will be made on the basis of tests administered in a language other than the child's primary language. (*TEC Sec. 21.911*)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education is responsible for establishing the rules and regulations for special education classes. (*TEC Sec. 16.16*)

Texas state schools for the mentally retarded are under the direction of the Department of Mental Health and Mental Retardation. (*HB3, 1959 Legislature*)

The Texas State School for the Cerebral Palsied is under the direction of the University of Texas Medical School at Galveston and is subject to the rules and regulations of the board of regents of the University. (*TEC Sec. 74.051*)

The Central Education Agency has exclusive jurisdiction over the state schools for the deaf and the Wind. (*TEC Sec. 11.03 and 11.06*)

The Agency shall apportion the state into not more than eight nor less than five areas, each furnishing a regional day school program for the deaf. Costs of their operation shall be borne by the state and paid from the Foundation School Program Fund. (*TEC Sec. 11.10*)

Responsibilities of the Texas Coordinating Commission for State Health and Welfare Services include:

- (1) studying diagnostic services, care and training, educational, and rehabilitational programs for the handicapped;
- (2) studying and determining the need for changes in the laws that apply to the care, education, training, and rehabilitation of the handicapped. (*VAC S4447C*)

PLANNING

There are no current statutes relating to the handicapped in this area.

FINANCE

Under rules, regulations and/or formulas adopted by the State Board of Education, exceptional children teacher units, in addition to other professional and paraprofessional units, will be allotted to any eligible school district. Exceptional children teacher units for pupils who are severely physically handicapped or mentally retarded will be allocated from a formula different from other types of units. The minimum salary for psychologists and other pupil evaluation specialists used in computing salary allotments will be established by the state commissioner of education. Qualifications and minimum salary levels of paraprofessional personnel for salary allotment purposes will be established by the state commissioner. A quantitative basis for the allotment of all special education unit personnel will be established by the state commissioner under rules of the State Board of Education.

Any school district, at its own expense, may employ special education personnel in excess of its state allotment and may supplement the minimum salary allotment by the state. Districts are further authorized, at local expense, to pay for all or part of further or continuing training or education of their special education personnel. Special education unit personnel may be employed and/or utilized on a full-time, part-time, or consultative basis. Personnel may be allotted by the state commissioner pursuant to cooperative district agreements to serve two or more districts.

Each school district operating an approved program will be allotted a special service allowance. This allotment is determined by the state commissioner and is for pupil evaluation, special seats, books, instructional media, and other supplies required for quality instruction.

Each school operating an approved program will be allotted a transportation allowance for transporting children in special education who are unable to attend the program unless such special transportation is provided. The annual transportation allotment will be \$150 per exceptional child receiving such transportation. Allocated transportation funds may be used only for transportation purposes for children enrolled in a program of special education or who are eligible for such enrollment.

The minimum monthly base pay and increments for teaching experience for an exceptional child or a special service teacher conducting a 9-, 10-, 11, or 12-month special education program shall be the same as that of a classroom teacher provided in the Foundation Program Act, if the special education teachers have the qualifications required by the state commissioner of education. The annual salary of special education teachers will be the monthly base pay plus increments multiplied by 9, 10, 11, or 12. Minimum monthly

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base pay in increments for teaching experience for special education counselors and supervisors engaged in 9-, 10-, 11-, or 12-month special education programs approved by the commissioner is the same as that of a counselor or supervisor in the Foundation Program Act if they have approved qualifications. (*TEC Sec. 16.16*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Two or more school districts may jointly operate special education programs. Any school district may contract, where feasible, with any other school district for all or part of the program under the rules and regulations established by the state commissioner of education. (*VACS 2922-13*)

The State Education Agency may establish countywide special day schools for deaf children in any county with a population above 300,000. The schools are administered through a centrally located school district in each of the counties. The supervising school district will provide the appropriate physical facilities, buildings, equipment, supplies, materials, and transportation for all eligible children. (*TEC, Sec. 11.10*)

SERVICES

"'Special services' required for a program for exceptional children means special teaching in the public school curriculum within or without the regular classroom; corrective teaching, such as Spreading, speech correction, sight conservation, corrective health habits; transportation; special seats; books, instructional media and supplies; professional counseling with students and parents; and supervision of professional services and pupil evaluation services that establish teaching techniques for children with language and/or learning disabilities." (*TEC, Sec. 16.16*)

Professional personnel for the operation and maintenance of special education programs shall include teachers of exceptional children, special education supervisors, special education counselors, special service teachers such as itinerant teachers for the homebound and visiting teachers whose duties may or may not be performed on the campus of any school, and psychologists and other pupil evaluation specialists. Paraprofessional personnel include persons engaged as teacher aides, who may or may not hold a teaching certificate. (*TEC Sec. 16.16*)

Deaf or blind persons may receive tuition exemptions at any wholly or partly state supported institution of higher education in the state. (*TEC 11.27*)

The State Board of Mental Health and Mental Retardation may maintain diagnostic centers in its own institutions or may approve, as diagnostic centers, facilities run by public and private agencies. A diagnosis from an approved center will be equal to a diagnosis from any of the Board's centers. The services of the centers are on an ability-to-pay basis. After completion of the diagnosis the Board may, among other things, inform the parents or guardian of a school age child that the child should be placed in a special education class in the public schools. School age persons on furlough from the state institutions for the mentally retarded are eligible for public school special education classes if they can profit from the instruction. (*VACS 3871B*)

To provide for the continuance of additional programs for the instruction and training of handicapped persons between the ages of six and 21, independent rehabilitation districts are eligible and shall be allotted administrative units, special service personnel, exceptional child teacher units, vocational units, and other special education personnel in the same manner as independent school districts through the Foundation Program of the Central Education Agency. This became effective for the scholastic year beginning September 1, 1971. The general counsel of the Education Divisions for Policy and Procedures of the U.S. Department of Health, Education, and Welfare has ruled that without this amendment independent rehabilitation districts are not free public schools for the purposes of direct allocation of Title I ESEA funds. (*TEC, Sec. 11.26*)

A six-member state commission for the deaf is appointed by the governor with the advice and consent of the Senate. Two members must be deaf and all members must be outstanding citizens of Texas. The commission shall appoint a qualified person to serve as executive director. To be qualified to serve in this position a person should preferably be deaf or hard of hearing. The commission is responsible for rendering all services to the deaf except those which are by law the responsibility of the welfare, education or other state agencies. The commission shall also conduct a census of deaf persons and keep a card registry. The commission shall serve as the agency for the collection of information concerning the deaf in a manner related to the dispensing of information to interested persons. (*Chapter 640, Acts of 1971*)

A state program shall be established by the Central Education Agency for the education of deaf adults. The purpose of the program is to provide primary and secondary educational opportunities to adults whose hearing loss is severe enough to prevent use of the spoken method of communication; that is, if his handicap has not interfered with the retention of the level of educational advancement otherwise potentially feasible. The programs shall operate in the following manner:

(1) Criteria and standards for determining the degree of hearing loss which will make a person eligible for education must be developed.

(2) Criteria and standards for determining teacher qualifications, curriculum, equipment and classroom facilities which must be provided by the school district to qualify for state aid must also be developed.

(3) The Agency must publish and distribute the rules under which school districts may apply or qualify for and receive state assistance.

(4) To establish an educational program for deaf adults qualifying for state assistance, a district must comply with the Central Education Agency rules and standards and must have at least ten eligible deaf enrollees.

(5) Subject to appropriations from the General Fund, the available school fund, the Minimum Foundation and other available funds, the Central Education Agency shall allocate to each qualifying district \$250 for each student enrolled per year in the district program for deaf adults. (*TEC Sec. 11.16*)

Boards of trustees of school districts in counties with a population between 650,000 and 750,000 may expend local funds for evaluating, counseling and/or treating emotionally disturbed children. The services may be provided by employees of the school district or through contracting with non-profit corporations. (*VACS 2827D*)

PRIVATE

Under regulations of the State Board, districts may contract with nonprofit, public or private community mental health and/or retardation centers or any other approved nonprofit organization, institution or agency to provide services for exceptional children. (*TEC Sec. 16.16*)

Approved non-public schools for exceptional children are categorized as either mental health and/or mental retardation facilities.

Mental health and/or mental retardation facilities include institutions, programs, or centers under the jurisdiction (direct or indirect) of the Texas Department of Mental Health and Mental Retardation. (*Article 5547-201, Senate Bill 465, 61st Legislature*)

PERSONNEL

Persons who are at least 18 years of age and who have completed a four year course of study in an accredited college, professional or technical school or an approved teacher training center and who graduate with a degree including ten semester hours of education with not less than five hours of principles and methods of teaching the type of handicapped child they are being certified to teach, are granted a permanent first class certificate to teach the deaf and blind.

Teachers with five years of successful teaching experience of any particular type of handicapped children prior to 1935 are granted a permanent first class teacher's certificate entitling them to teach that type of handicapped child or that industrial or special subject in the School for the Deaf or School for the Blind. (*TEC Sec. 11.03 and 11.06*)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**UTAH****RIGHT TO AN EDUCATION**

Constitution: "The Legislature shall provide for the establishment and maintenance of a uniform system of public schools which shall be open to all children of the state, and be free from sectarian control." (Art. X.Sec. 1, *Utah Const.*)

Compulsory Attendance Law: All children between the ages of six and 18 must attend public or regular private school during the established school year unless the child is of such physical or mental condition, as certified by competent physicians, to render attendance inexpedient or impractical. (Sec. 53-24-1 UCA)

Children holding valid exemption certificates issued by a local school superintendent are exempt from attending any school. The certificate exemption ceases to be valid at the end of the school year in which it is issued. The child may obtain this certificate of exemption only after an evaluation conducted by a team established for that purpose by the district board of education, and may only be issued if the team determines that the handicapped child is unstable to the extent he constitutes a potential hazard to the safety of himself or to others. A majority of the members of the team shall not be employees of the school district and must include at least three persons, including a Division of Health Evaluation Services representative, a qualified person designated by the local superintendent, and a person skilled in the area of the handicap of the child being evaluated. A certificate of exemption is subject to review by a three-member panel appointed by the State Director of Special Education upon the filing of a written protest by a parent or guardian within 30 days after the certificate is issued. (UCA 53-18-6)

All parents, guardians, or other persons having control of any deaf or blind child between the ages of six and 18 who is unable to be educated in a public school because of his handicap, must send the child to the School for the Deaf or the School for the Blind at least nine months of the year. In cases where it appears to the satisfaction of the Board that the child is taught at home by a competent teacher with the same curriculum and for the same length of time as children are required by law to be taught at the state school, the child has already acquired proficiency in the curriculum of the state school, or the child is in a physical or mental condition (certified by a competent physician) that renders such attendance inexpedient or impractical, the child is exempted from the requirements. (UCA 64-3-20)

Responsibilities: The State Board of Education shall provide proper education and training for all handicapped children unless a child has a valid certificate of exemption. (Sec. 53-18-2 UCA)

If it is not possible to provide special education for handicapped children in the public schools of the district, or in conjunction with another district, the board of education of the district shall secure this education and training outside of the public schools or provide for the teaching of handicapped children in their homes. (Sec. 53-18-2)

In *Wolf v. State Legislature of Utah*, plaintiffs were two trainable mentally retarded children and the state Legislature is the defendant. It was alleged that children were not being provided with a suitable education and this was sought by the suit. A court ruling on January 8, 1969, guaranteed the right to an education at public expense to all children in the state. (Court Case)

POPULATION

Definitions: The State Board of Education shall establish definitions and guidelines for determining which children are in the various classifications of handicapped as well as gifted children and shall assist districts in determining the services that should be provided in each category.

Age of Eligibility: Children may receive services from age five to 21. Local districts may provide programs out of their own funds to children below five and above 21. (Sec. 53-18-1 UCA)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: In accordance with the rules of the Superintendent, the clerk of the board of education, school enumerators and attendance officers in every district are responsible for securing information and reporting

to the State Superintendent of Public Instruction by November 15 of each year and, thereafter as cases arise, every handicapped child within the school district of preschool age, school age and post school age who, because of apparent physical or mental condition, is not being properly educated and trained. As soon thereafter as possible, the child will be examined by a person certified by the district superintendent or the State Board, such as a public school psychologist or psychological examiner. A report will be made to the superintendent concerning the child's special educational and training needs. These children and all persons presently being educated and trained in existing "day care centers for the handicapped" are referred to as handicapped children. (Sec. 53-18-1 UCA)

Screening: The State Division of Health will provide the diagnostic and evaluation services typically not provided in school districts to determine appropriate methods of assisting handicapped children and preparing them for adequate placement and adjustment. (Sec. 53-18-7 UCA)

ADMINISTRATIVE RESPONSIBILITY

The State Superintendent of Public Instruction will oversee the organization of special programs and any other arrangements for special education and will be responsible for enforcing the provisions of the Special Education Act. (Sec. 53-18-4 UCA)

The state director, appointed by the State Board, should be a specially qualified and experienced director responsible for coordinating all state programs for handicapped children of preschool or school age. He shall be responsible for the general supervision of all programs for the handicapped in the various school districts and all public agencies and institutions concerned with the training of the handicapped. The director will encourage and assist in organizing programs for handicapped children under the immediate administration of district boards of education or of existing state educational institutions. The director will work in cooperation with private agencies concerned with the training of handicapped children. (Sec. 53-18-2 UCA)

The state director will submit plans to the State Board for establishing and maintaining supervision for the proper education and training of all handicapped children. It shall be the duty of the board of education of all school districts to provide and maintain the funds of the district or jointly maintain with neighboring districts from the funds of each of the school districts an appropriate program of special education instruction and facilities and related services for all handicapped children. The State Board will adopt standards and regulations relating to the diagnosis and evaluation of handicapped children, special instruction, classes, services and other appropriate guidelines to be followed by local school districts. (Sec. 53-18-2 UCA)

The Utah School for the Deaf and the Utah School for the Blind are under the administration of the State Board of Education. (Secs. 64-3-4, 64-3-9 UCA)

The Division of Welfare maintains a school department for instruction and training of mentally retarded persons who are of school age and capable of benefiting by school instruction and a custodial department for the care and custody of the mentally retarded beyond school age who are not capable of benefiting. (Sec. 64-8-5 UCA)

The State Board of Education must provide proper care and training for all handicapped children in the state, except those who have been issued valid certificates of exemption. (See Identification, Evaluation, and Placement) (HB No. 105, 1969)

PLANNING

An advisory committee appointed by the governor consisting of one representative each from the State Board of Education, State Division of Health, State Division of Welfare, a state institution of higher learning for teacher training, the state senate, and state house, as well as three citizen members of a national or state association interested in the handicapped will study the needs and recommend programs for handicapped children to the State Board, State Division of Health, and State Division of Welfare. (Sec. 53-18-8 UCA)

FINANCE

School districts maintaining special classes in public schools or special public schools providing special education for handicapped children shall receive state reimbursement from the State Board of Education as

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long as the classes or the special education services are approved by the State Board regarding location, membership and size of classes, conditions of admission and discharge of pupils, equipment, courses of study, methods of instruction, and qualifications of personnel. The cost of the education and training of handicapped children below age five and above 21 will be paid from fees and contributions of parents, guardians, or friends of the children served. School districts may receive contributions of money, property, and services. A growth factor of not more than five percent for each fiscal year after 1970 for supporting programs for the education and training of handicapped children was created.

The state shall contribute to each district toward the cost of the basic state-supported school program in such district that portion which exceeds the proceeds of a minimum basic tax levy of 28 mills imposed by the district. (Sec. 53-7-18)

The State Board may, upon application by a district board of education by June 1, allow additional distribution units for programs for the handicapped. These include programs conducted by a local school district in the Utah State Training School, Utah State Hospital, and Utah State Industrial School. The State Board will limit additional units to not more than 91 over the previous year's actual statewide total and only upon the demonstration of need of programs for children with exceptional physical or mental handicaps may these be distributed. Units allocated to state institutions may be utilized to finance educational programs during the summer months at the rate of one-third unit for each unit allocated for programs during the regular school year. (Sec. 53-7-21 UCA)

The amount of money for each additional weighted pupil unit is determined by means of a formula which differs according to the types of handicaps of the children served. No school district shall receive less than 76% (amount allowed for direct costs of educational programs) of its total funds allocated for handicapped children for the 1972-73 fiscal year.

In order that funds will be used most appropriately, the State Board of Education shall set standards and guidelines including the roles and functions of those employed in pupil personnel services.

To avoid penalizing a district financially through consolidation of its special schools, additional units may be allowed a district each year, not to exceed two years, equal to the difference between what the district receives for a consolidated school and what it would have received for the small schools had they not been consolidated. Money allocated to districts under this program may be used for maintenance and operation of school programs or for construction or remodeling or furnishing of school buildings, at the discretion of the local board of education, upon approval by the State Board of Education. (Sec. 53-7-21 UCA)

The state aid allocation for transportation is increased according to a formula for school districts transporting handicapped children. The formula varies according to the type of handicaps of the children served. (Sec. 53-7-18.1 UCA)

Additional amounts have been allocated for experimental programs and for the construction of instructional media centers. (Sec. 53-7-18 UCA)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

The State Board of Education may use part of the money allocated for the training and education of handicapped children in day care centers to pay the cost incurred by the State Superintendent's Office for supervision and administration. (Op. Atty. Gen., May 5, 1969)

SERVICES

All personnel teaching the handicapped will either be certified teachers or have met existing qualifications as instructional assistants, as established by the State Board. Persons qualified by the Division of Welfare for instruction and training in day care centers for the handicapped are given five years (from 1969) in order to qualify under State Board of Education Regulations. (Sec. 15-18-2 UCA)

PRIVATE

Each school district is responsible for providing an education for all children, ages five to 21, residing within the district.

If it is not possible to provide special education for handicapped children in the public school in the district, or in conjunction with another school district, the board of education of the district shall, except as herein otherwise provided, secure such education and training outside of the public schools of the district or provide for teaching the handicapped children in their homes in accordance with rules and regulations prescribed by the State Board of Education. (Sec. 53-18-2 UCA)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

All buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal or other public funds must conform to standards for the removal of architectural barriers to the aged and handicapped.

Remodeling or alteration of any existing building or facility as described above must adhere to these standards and specifications. If 50% or more of the space of the building or facility is being remodeled, the entire building or facility must be brought into compliance with the standards and specifications provided. (Sec. 26-27-1 UCA)

Law Digest: Education of Handicapped Children**VERMONT****RIGHT TO AN EDUCATION**

Constitution: ". . . . a competent number of schools ought to be maintained in each town, for the convenient instruction of youth; and one or more grammar schools to be incorporated and properly supported, in each county or state" (Ch. 2, Sec. 64, Vt. Const.)

Compulsory Attendance Law: All persons having control of a child between the ages of seven and 16 must have the child attend the public schools continuously for the full number of days for which the school is held, unless the child is physically or mentally unable to attend or is otherwise being furnished with an equivalent education. (16 VSA Sec. 1121)

If a person having control of the child notifies the district superintendent of schools that the child is physically or mentally unable to attend school, and the superintendent has reason to believe that this is untrue, he shall investigate and request the town health officer or a competent physician to examine the child. If there is a medical inspector in the district in which a child's school is located, the superintendent will request the inspector to examine the child. The officer, physician, or inspector will examine the child and make a report of his condition to the superintendent. The superintendent shall, if the child is found mentally or physically unable to attend school, notify the teacher of the school and the truant officer of the town of the fact. The expense of the examination will be paid from the school funds out of the school district or the town district. (16 VSA Sec. 1124)

Policy: "It is hereby declared to be the policy of the state to provide equal educational opportunities for all children in Vermont. The purpose of this Chapter is to enable the State Department of Education to provide the special educational facilities and instruction which are necessary to meet the needs of handicapped children." (16 VSA Sec. 2941)

Responsibilities: Within the limits of available funds and personnel the commissioner shall provide for essential early education and special education of handicapped children in designated schools and public programs. He may provide private programs for those children and for the temporarily and permanently homebound or hospitalized who cannot advantageously or safely be educated in regular schools if a private institution will best serve their interests. (16 VSA Sec. 2944)

The school district shall enroll all eligible pupils who are severely handicapped. (16 VSA Sec. 2944)

POPULATION

Definitions: " 'Handicapped child' means any child inhabitant of the state under 21 years of age, whose educational needs cannot be adequately provided for through the usual facilities and services through the public schools, school districts, or state institutions because of physical or mental deviations of such child." (16 VSA Sec. 2943)

Age of Eligibility: Children are eligible for special services from birth through age 21.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Evaluation and Placement: If a parent or guardian of a handicapped child alleges that his child is not receiving the services to which he is entitled or has been improperly classified as a handicapped child and is thus prejudiced in the character and quantity of educational or related services, he may petition the State Board for correction of the alleged erroneous action or any other appropriate remedial action. If the State Board finds the allegation has merit, it shall issue an order directing the district or the commissioner or both to take necessary action.

The State Board is responsible for adopting rules and regulations to implement this Chapter, including admission standards, requirements for programs and continued placement of children in these programs. (16 VSA Sec. 2944)

Any school district may singly or jointly, by contract, establish a professional team to evaluate handicapped children. The team may consist of a school psychologist and any other necessary persons with pertinent and professionally qualified skills considered appropriate by the district superintendent. (16 VSA Sec. 2954)

Any district either singly or jointly with another district may establish a professional team to diagnose and educate children of adequate mental ability having a learning disability of a perceptual, conceptual, or coordinative nature or related behavior problems. The team may consist of a school psychologist and any other person with pertinent and professionally qualified skills as the district superintendent considers appropriate. (16 VSA Sec. 2944a)

ADMINISTRATIVE RESPONSIBILITY

The commissioner of education shall be the "commissioner of education for handicapped children" and will supervise, direct, and manage the program for the education of the handicapped and have charge of their instruction and may accept gifts and other donations to carry out the state special education programs. (16 VSA Sec. 2943)

The State Board of Education shall employ a qualified director to direct a Division of Special Education and provide any necessary professional assistance. The director serves as the secretary of the advisory council. See Planning. (16 VSA Sec. 2946)

The director executes the policies and regulations for the education of handicapped children with the advice of the advisory council in accordance with the rules and regulations of the State Board. He shall also recommend standards and provisions for the approval of special school facilities, equipment, and certification of teachers of handicapped children to the State Board of Education. (16 VSA Sec. 2947)

The educational programs in the state schools for the emotionally disturbed and the mentally retarded are administered by the Department of Mental Health.

PLANNING

An advisory council is established consisting of the commissioner, the director of special education, and other representatives from the Department and agencies dealing with children having special problems, and parents of these children.

The commissioner shall determine the size of the council and the period of service for members, and serves as chairman of the council. The council must meet at least annually at the call of the chairman and any other times at his call. (16 VSA Sec. 2945)

The council may recommend general state policy for special education and will work to insure a cooperative special education program coordinating all available services. The council must cooperate with private agencies soliciting their advice in establishing special education program policy. (16 VSA Sec. 2947)

Every two years the commissioner shall report to the General Assembly regarding the education of handicapped children. The report must include a current census by school district, the extent to which the needs of handicapped children are being met, recommendations to fulfill the unmet needs of handicapped children, and an account of expenditures for special education.

FINANCE

The state basically has two funding formulas. (For state aid purposes, handicapped children will be counted in the same manner as nonhandicapped children.) (16 VSA Sec. 2948)

In Formula 1, the commissioner, subject to the provisions of 16 VSA Sec. 2944c may award a school district in addition to the state aid described above insofar as the cost of special education exceeds the average per pupil expenditure of the school district, a supplemental grant of 75 percent of the actual salaries and wages of special education personnel. No claims exceeding the school district's actual cost will be paid. If two or more districts employ special education personnel and there is no valid contract or agreement making one of the districts the claimant for all of the aid, each district is entitled to claim a proportionate share according to its actual assumption of salaries and wages of personnel. The commissioner will provide for the apportionment of funds in these cases.

The costs of "essential early education" provided by a school district or child care agency and approved by the commissioner will be paid by the commissioner for the reasonable costs of actual salaries and wages of teaching personnel for the initial three years of a newly established program. After the three year period, the commissioner will pay 75 percent of the actual costs of salaries and wages of teaching personnel.

In Formula 2, the commissioner shall provide for essential early education and for special education in designated schools. He may provide for private instruction of such children, or for those who are homebound or hospitalized and who cannot advantageously or safely be educated in regular classes. The

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cost shall be paid by the State Board of Education. The child's district of residence will reimburse the state for expenses incurred, but the amount is not to exceed the average per pupil cost in the district for the preceding school year. This is accomplished either by establishing a budget for the program or paying a tuition rate. In either event the state pays 100% of allowable costs and the child's district of residence returns the average per pupil cost of that district at the end of the school year. (16 VSA Sec. 2944)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

If a handicapped child is not receiving the educational opportunities to which this law entitles him, the local superintendent must request the state superintendent to provide educational opportunities provided under this law.

With the attorney general's approval, the State Board may enter into reciprocal agreement with boards of education in other states to share expenses in securing services of a specialist or other persons skilled in the education of handicapped children.

It is the responsibility of each district or districts participating by joint agreements to hold parent conferences in compliance with Department of Education regulations. Further, approved reports shall be sent to parents and to the Division of Special Education and Pupil Personnel Services in February and June in the form approved by the Division.

A district providing either a total or partial special education program for a nonresident handicapped child must claim from the school district of residence the actual costs not covered under state aid.

Districts providing services to handicapped children who are wards of a state agency will claim from the appropriate agency the costs of special education above that reimbursed by state special education aid.

It is the responsibility of each sending district to see that suitable transportation is supplied for each child needing such transportation. Need must be determined by the Division of Special Education and Pupil Personnel Services.

If a handicapped child is receiving education or special education in a school operated by a state agency, the agency is the school district of residence for the child. All conditions of this Chapter applying to school districts shall apply to the agency. The Department of Education is excluded from this provision. (16 VSA Sec. 2948)

When a program is provided by the commissioner, costs will initially be paid by the State Board, but the district of residence shall reimburse the state for all expenses not exceeding the average per pupil cost in the district for the preceding school year. For children receiving less than a full year of special education, the reimbursement is the average per pupil cost divided by the number of weeks in the school year and multiplied by the number of weeks during which the child was receiving special education. The amount due the state may be withheld from the state aid due the district in December. The expense of a child who is a ward of a state agency will be paid by the agency an amount not exceeding the average per pupil cost for the preceding school year. (16 VSA Sec. 2944)

SERVICES

"'Special education,' [is] the provision of facilities, instruction, supervision, and other educational services needed by and not otherwise provided for such children in the public schools and state institutions."

"'Essential early education,' [is] the education of handicapped children prior to legal school age for the early acquisition of fundamental skills." (16 VSA Sec. 2942)

Through a separate appropriation, the Department shall diagnose and educate children with adequate mental ability who have learning disabilities of a perceptual, conceptual, or coordinative nature or related behavioral problems. (16 VSA Sec. 2953)

Necessary transportation costs for attendance at special day or residential centers up to \$100 per child per school year will be reimbursed. (16 VSA Sec. 2951)

PRIVATE

The commissioner may obtain services for handicapped children in private facilities. (16 VSA Sec. 2944)
See Administrative Structure and Organization.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

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FACILITIES

Union, town, and incorporated school districts as well as districts or supervisory units in joint contract may receive state aid for construction, alteration, or addition of classroom space from appropriated funds. If the State Board of Education finds evidence of a need for classroom construction and if the project meets criteria established by the Board (such as type, quality, size and use of the facility; an estimated cost suitable for the proposed curriculum effectively serving the largest number of handicapped children in the area as specified by the State Board), it may pay 75 percent of the cost of construction, alteration, or addition. If at any time the need to use these classrooms for special education ceases, the State Board of Education may give permission to the school board to use them as they find desirable.

Any school owned and operated by a town, incorporated or union high school district, or by a nonprofit corporation organized under state law for educational purposes, designated by the commissioner to provide instruction for retarded children, is eligible for state aid for construction, additions, or alterations to buildings.

If the State Board finds that there is an urgent need for the proposed building, addition, or alteration and the proposed types, kind, quality, size and estimated costs are suitable for the proposed curriculum and will serve the greatest number of retarded children, it may award up to 30 percent of the cost. To qualify for such aid, the State Board shall require the district or corporation to enter into a contract with the state under required terms and conditions, which may include provisions for reversion. (76* VSA Sec. 3457)

Statute 18, VSA 1305(a) prohibits the construction of any building by the state, a county or municipality which is not accessible and usable by the physically handicapped. This statute would also include "relocatable classrooms" (trailer type, portable classrooms). The statute does not expressly require the availability of a paraplegic toilet in the unit; it is up to the local boards of education to decide the "practicability" of the installation. However, "the fact that a school may not presently have a paraplegic student is not justification for not installing any facility which is otherwise practicable for relocatable classrooms or any other buildings."

The State Board of Education enforces Statute 18 VSA 1305(a) with respect to school buildings. (*Op. Att'y. Gen., October 13, 1970*)

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VIRGINIA

RIGHT TO AN EDUCATION

Constitution: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."

The General Assembly must approve standards of quality established by the State Board, and, once approved, must provide for the cost of maintaining the program. (*Art. XIII, Sec. 129, Va. Const.*)

Compulsory Attendance Law: Every parent, guardian, or other person having control or charge of any child between the ages of six and 17 shall send the child or children to a public, private, denominational, or parochial school or have the child taught in a home by a tutor with qualifications prescribed by the State Board and approved by the division superintendent. Children will attend the school during the period of each year the public schools are in session. (*Sec. 22-275.3 Code of Va.*)

Children physically or mentally incapacitated for school work or those children suffering from contagious or infectious diseases while suffering the disease are exempt from the compulsory attendance provisions. A certificate from a reputable practicing physician made in accordance with the rules and regulations of the State Board of Education is the determination for physical incapacity or disease, and mental incapacity is determined by mental tests prescribed by the State Board of Education. (*Sec 22-275.3 Code of Va.*)

Every blind or partially blind and every deaf child between the ages of seven and 16 will attend a school for the blind, school for the deaf, or public school class where special methods, special equipment, and instruction are provided for the blind or deaf for nine months during the school year unless it is shown that the child is elsewhere receiving equivalent instruction or a program of studies approved by the state board of Education. No child is exempted from the compulsory attendance requirement unless the superintendent or principal of any school for the blind or some public school or schools for the deaf or persons duly authorized by the superintendent or principals excuse cases of necessary absence among enrolled pupils. The provisions of this section shall not apply to a child whose physical or mental condition would render his instruction impractical. (*Sec. 22-275.5 Code of Va.*)

A child enrolled prior to his seventeenth birthday will continue in such placement until his twentieth birthday.

Responsibility: The Board of Education shall prepare and place in operation a program of special education designed to educate and train physically handicapped, emotionally disturbed, learning disabled, speech impaired, hearing impaired, visually handicapped, multiple handicapped and mentally retarded individuals, between the ages of two and 21 and may place in operation such programs for handicapped persons of other ages. In developing such a program the State Board will assist and cooperate with local school boards in the several school divisions, the Commission for the Visually Handicapped and the Virginia Council for the Deaf. (*Sec. 22-10.3 Code of Va.*)

State institutions, boards and agencies having children in residence or custody have the responsibility of providing education and training to the children in their custody at least comparable to that which would be provided to such children in the public school system. The institutions, boards and agencies may provide an education and training either directly with their own facilities and personnel in cooperation with the State Board of Education or under contract with a school district or any other public or private nonsectarian school, agency, or institution. (*Sec. 22-9.1:04 Code of Va.*)

The Virginia Commission for the Visually Handicapped shall prepare and place in operation a program of special education services to meet the educational needs of visually impaired children between the ages of two and 21 and may prepare and place in operation programs for any individuals of other ages. In developing the program, the Commission must cooperate with local school boards. When visually impaired children are enrolled in county or city school divisions, the local school authorities cooperating with the Commission shall establish and maintain special programs for their education in the public schools. All such programs are operated jointly by the local board and Commission. (*Sec. 22-10.7 Code of Va.*)

POPULATION

Definitions: " 'Handicapped children' includes those who are physically handicapped, emotionally disturbed, mentally retarded, learning disabled, speech impaired, visually or hearing impaired, multiple handicapped or otherwise handicapped as defined by the Board of Education." (Sec. 22-10.3 Code of Va.)

Age of Eligibility: Handicapped children shall receive services from age two to 21 and may at other ages. (Sec. 22-10.4 and 10.7 Code of Va.)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The Department of Health shall report to the Department of Education or any local school division the identity of and any pertinent information about children with health problems or handicaps which would affect their school career and need for special education. This law does not prohibit any licensed physician from communicating the identity of any person under age 21 having a physical or mental handicap to appropriate agencies or any of its political subdivisions and other information regarding the person and condition which may be helpful to the agency to plan or conduct services for handicapped persons. (Sec. 32-11.1 and 54.276.11, Code of Va.)

Every three years a census of all persons between the ages of six and 20 will be taken by the superintendent of public instruction. Persons of school age in orphanages and eleemosynary institutions or living in any federal military or naval reservation or other federal property are included for the county or city within which the property is located. Persons of school age confined in mental institutions, state or federal industrial schools, or prisons are included in the county or city that is the legal residence of the parents or guardians of the child or children. (Sec. 22-223 Code of Va.)

Concurrently with the census described above, a separate census will be taken of deaf and blind persons between the ages of seven and 20 residing within the county or city and giving the sex, age, and residence of all children. A copy will be returned to the division superintendent. The division superintendent will consolidate the reports and transmit them to the superintendents of the schools for the deaf and the blind and the Virginia Commission for the Visually Handicapped. (Sec. 22-228 Code of Va.)

Screening: Governing bodies of all school districts may provide health and visual examinations to school children including those in special facilities for handicapped children. They may employ school nurses, physicians, therapists, and speech therapists for special classes for handicapped children. (Sec. 22-241 Code of Va.)

Principals or teachers in school districts whose governing board has ordered it shall annually test the sight and hearing of all pupils under their charge keeping a record of the examination. If a child is found to have any defect of vision or hearing or disease of the eyes or ears, the principal or teacher shall notify the parent or guardian in writing. Copies of the report will be retained for the use of the superintendent of Public Instruction. (Sec. 22-248 Code of Va.)

Prior to entrance in a public kindergarten or any public school program, all children must have a comprehensive physical examination according to standards of the State Department of Health. The examination must be conducted by a qualified, licensed physician who will report the conclusions and summarize any abnormal physical findings and/or any conditions that would identify the child as handicapped. A copy must be presented to the school on the child's behalf and placed in his health record folder and will be available for review by any employee or official of the State Department of Health or any health department at the request of the employee or official. The health departments of all counties and cities will conduct these examinations for medically indigent children without charge upon request of a parent or guardian. This section does not apply to any child admitted to a public school before July 1, 1972. (Sec. 22-220.1, Code of Va.)

ADMINISTRATIVE RESPONSIBILITY

The State Board of Education shall adopt rules and regulations necessary to secure adequate education for handicapped individuals. When developing this program the Board must cooperate with the Commission for the Visually Handicapped which operates programs for the blind and partially blind jointly with the public schools. (Sec. 22-10.4, 22-10.7 and 22-10.12 Code of Va.)

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The Board of Education prescribes standards for the education and training provided by a state board, agency or institution. If a child in the custody of any state agency is handicapped, and the agency contracts with a private facility to provide special education, the agency may proceed as a guardian. (Sec. 22-9.1:04 Code of Va.)

PLANNING

An Overall Advisory Council on Needs of Handicapped Children and Adults consisting of 19 members appointed in the following manner: two members from the Senate, three from the House of Delegates; one each from the Department of Education, Department of Health, Department of Mental Health and Mental Retardation, Commission for the Visually Handicapped, Health Sciences Division of Virginia Commonwealth University, Medical College of the University of Virginia, Department of Welfare and Institutions, Department of Vocational Rehabilitation, the Virginia Council for the Deaf and five members-at-large appointed by the governor shall continuously study the handicapping problems of children and the various phases of programs for handicapped persons. They will recommend to the agencies represented on the Council the Council's recommendations. They also shall make and submit to the governor any reports and recommendations he deems necessary. (Sec. 22-10.13 Code of Va.)

Each school division must develop a plan for the proper training and education of all handicapped children in accordance with State Board rules and regulations and must submit an annual report indicating the extent to which the plan has been implemented and a plan for the following year. (Sec. 22-10.5 Code of Va.)

Plans of each local school division, each state board, agency or institution must be approved by the State Board of Education. (Sec. 22-9.1:04 and 22-10.5 Code of Va.)

FINANCE

The Board shall supply from funds provided by law assistance to local school divisions providing approved special education and related services for handicapped children. The Board must adopt rules and regulations governing the expenditure of these funds. Nothing in this law shall be construed to impose a restriction or prohibition on the use of any federal, state or local funds made available under any federal, state or local appropriation or grant. (Sec. 22-10.5 and 22-10.8 & 9 Code of Va.)

An amount not exceeding one-half of the annual salary of each physical director, physical therapist, occupational therapist, speech therapist or attendant will be paid by the State Board to the employing local school authorities. An amount not exceeding one-half the salary of each nurse or physician will be paid by the State Board of Health to the local school authorities. (Sec. 22-242 Code of Va.)

The Board of Education is authorized to reimburse each local school board operating a pre-school special education program for handicapped children aged two through four, 60% of its costs but not to exceed \$1000 per pupil from state funds appropriated for this purpose. (Sec. 22-10.8c, Code of Va.)

See Private.

SERVICES

"**Special Education**" means classroom, home, hospital, institutional or other instruction to meet the needs of handicapped children, transportation and corrective and supporting services required to assist handicapped children in taking advantage of, or responding to, educational programs and opportunities commensurate with their abilities. (Sec. 22-10.3, Code of Va.)

All children attending special education programs are entitled to transportation to and from class at public expense. The school board may, in lieu thereof, allot funds to assist in paying the cost of the means of transportation. The cost cannot exceed an amount approved by the State Board taking into consideration the cost of transporting pupils in the public schools. Forty percent of the cost will be paid by the school district in which the child resides, and 60% by the state subject to available funds. (Sec. 22-10.1 Code of Va.)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

A local school board may provide special education for handicapped children either directly with its own facilities and personnel or under contract with another school division(s), or any other public or private nonsectarian school, agency or institution approved by the Board of Education. (Sec. 22-10.6, Code of Va.)

Any school district may enter into an agreement with another school district or combination thereof to pay the tuition costs of special education for handicapped children and the State Board of Education may reimburse local school boards up to 60% of the tuition in an amount not to exceed \$750 per pupil. (Sec. 22-10.8(b) *Code of Va.*)

The State Board may reimburse local district boards in operating a preschool special education program for handicapped children ages two through four 60% of the cost from the state funds which shall be appropriated for this purpose. (Sec. 22-10.8(c) *Code of Va.*)

PRIVATE

"'School for the handicapped,' is a privately owned and operated school, industrial institution or educational organization, no matter how titled, maintained to conduct classes for the purpose of offering instruction for a consideration, profit or tuition to deaf, blind, mentally retarded, visually, physically or emotionally handicapped or disturbed persons." (Sec. 22-330.17, *Code of Va.*)

It is unlawful for any school for the handicapped to be operated without having applied for and having been issued a certificate of approval by the Board. Any school is qualified to receive such a certificate when it has complied with the standards and rules and regulations of the Board, has paid the fee prescribed for the certificate, has been inspected by the State Department of Education, and has filed a report with the Board. Certificates are not transferable and must be prominently displayed on the premise of the school in a place open for inspection by any interested persons during regular school hours. (Sec. 22-330.21, *Code of Va.*)

Any agent or solicitor representing any school for the handicapped, whether the school is located in the state or outside the state, must apply for a permit to the Board in writing upon prescribed forms. Each application shall state the name of the school which the applicant will represent, shall be verified under oath by him and shall be accompanied by the recommendation of three reputable persons in this state certifying that the applicant is truthful, honest and in good reputation and recommending that a permit as an agent or solicitor be granted to the applicant. The fee for the original permit is \$5.00. A separate permit shall be obtained for each school represented by agents representing more than one school. No permit is required of an owner of a school or of any person soliciting students other than that of the admission office of the school. Upon approval of an application for a permit the Board will prepare and deliver to each agent a card which will include among other things the name and address and a picture of the agent, the name of the employing school, and will certify that the person whose name appears on the card is an authorized agent of the school. The year for which the permit is issued will also be permanently displayed upon the card. Any agent or solicitor wishing to continue annually must renew his permit and pay a renewal fee of \$1.00 by January 31st of each year. Permits not renewed on or before the 31st of January will automatically expire. (Sec. 22-330.33, *Code of Va.*)

If any school district does not provide classes for special instruction for the education of handicapped children and if such instruction is unavailable in the state schools or institutions and the parent pays to send the child to a private non-sectarian school approved by the State Board, the school district will reimburse the parents or guardians of the child for each school year three-fourths the cost of instruction cost not exceeding \$1250 per year, when enrolled in a special nonresidential school and three-quarters the cost in a special residential school not exceeding \$5,000 with 60% of the payment reimbursed to the local board from state funds. However, it is provided further that if the state funds are not available, local school boards shall reimburse the parents for tuition costs in an amount equal to the actual cost of operation per pupil in an average daily attendance for the school year immediately preceding, and the school board will be entitled to count such pupils in average daily attendance and receive reimbursement in the same manner as if the child were attending the public schools. (Sec. 22-10.8 *Code of Va.*)

PERSONNEL

Traineeships shall be awarded to persons interested in working in programs for the education of handicapped children for either part time or full time study in programs designed to qualify them as special education personnel in the public schools. Applicants must be college graduates.

The State Board will make the awards, and the number of awards during one year shall depend on the amount appropriated by the General Assembly for this purpose. The amount of each traineeship is \$450 for a minimum of six semester hours of course work in areas relating to special education to be taken during a single semester or summer session. (Sec. 23-38.10.1 *Code of Va.*)

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FACILITIES

The Board of Education shall prescribe such standards as may be necessary for the design, construction, and alterations of public school buildings constructed in whole or in part or altered by the use of public funds as may be necessary to insure that physically handicapped persons will have ready access to such buildings. (*Sec. 21-109.03 Code of Va.*)

WASHINGTON

RIGHT TO AN EDUCATION

Constitution: "It is the paramount duty of the State to make ample provisions for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex." (*Art. IX, Sec. 1, Wash. Const.*)

"The Legislature shall provide for a general and uniform system of public schools . . . and such . . . normal and technical schools as may hereafter be established." (*Art. III, Sec. 22, Wash. Const.*)

Compulsory Attendance Laws: All children between the ages of eight and 15, and any child between 15 and 16 years of age not regularly and lawfully engaged in a useful and remunerative occupation must attend the public schools or a private school of the district in which he resides during the school year. The superintendent of schools of the district in which the child resides, if there is a superintendent, and in all other cases the county superintendent, may excuse the child from attendance because the child is physically or mentally unable to attend school. (*RCW 28.27.010*)

It is the duty of the parents or guardians of all blind or deaf children to send them to the proper institution. The county superintendent may take all necessary action to enforce this provision. If it is evident that the child is being adequately educated at home or in some suitable institution other than the state schools, the superintendent takes no action other than to make a record of the fact and take any steps necessary to satisfy himself that the child will continue to receive a proper education. (*RCW 72.40.080*)

Policy: The Legislature intends to ensure that all handicapped children as defined in *RCW 28A.13.010* shall have the opportunity for an appropriate education at public expense guaranteed to them by the Constitution of this state. (*RCW 28A. 13.005*)

Responsibilities: The superintendent of Public Instruction shall require that all school districts in the state ensure appropriate educational opportunities for all handicapped children of common school age. An appropriate education is defined as "an education directed to the needs, abilities, and limitations of handicapped children." (*RCW 28A.13.010*);

In order to comply with the provisions of this Act, the board of directors of each school district shall cooperate with the superintendent and the administrative officer of the Division for Handicapped Children, shall provide an appropriate educational opportunity, and give any other necessary and appropriate aid and special attention to handicapped children in regular or special facilities. (*RCW 28A.13.030*)

The superintendent of Public Instruction is authorized to establish sanctions to be applied to any school district failing to comply with the law. Sanctions shall include withdrawing state aid to a district until compliance is assured. (*RCW 28A. 13.080*)

If a handicapped child has been denied an opportunity for an educational program by a local district superintendent or for any other reason under the provisions of *RCW 28A.27.010*, there shall be an affirmative showing by the superintendent in writing directed to the parents or guardian of such a child within ten days of such decision that: (1) no agency or other school district with whom the district may contract under Section 4 of this amendatory act can accommodate such child; and (2) such child will not benefit from an alternative educational opportunity, as permitted under *RCW 28A.13.040*. There shall be a right of appeal by the parent or guardian of such child to the superintendent of Public Instruction pursuant to procedures established by him and in accordance with *RCW 28A.13.070*. (*RCW 28A. 13.060*)

POPULATION

Definitions: "Handicapped children are those children in or out of school who are temporarily or permanently retarded in normal educational processes by reason of physical or mental handicap, or by reason of emotional maladjustment or by reason of other handicap, and those children who have specific learning and language disabilities resulting from perceptual-motor handicaps, learning problems, and visual and auditory perception and integration." (*RCW 28A. 13.010*)

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Age of Eligibility: Children are eligible for services from ages six to 21. School districts and the state can extend their program for special education aid and training to handicapped children of preschool age. If they do so they will be entitled to regular apportionments from state and county school funds and any allocations from the state excess cost funds available for these special services. (RCW 28A. 13.050)

The state institutions for the deaf and blind will be free to deaf or blind children between the ages of six and 21. Children under age six otherwise qualified to be admitted to the institution may be admitted if, at the discretion of the superintendent, they are proper subjects for education and training. Students over age 21 may be retained in the institution, if at the discretion of the superintendent and faculty, they are proper subjects to receive further training given at the institution. (RCW 72.40.040)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The director of the Department of Health, through the state registrar of vital statistics, will establish and maintain a registry for handicapped children. (RCW 70.58.310)

If the attending physician discovers that a newborn child has a congenital defect or a physician discovers upon treating a child under age 14 that the child has a partial or complete disability or condition leading to such a disability, he will report the fact to the local registrar of vital statistics on a form provided by the director of Health. No report will be required if the disabling condition has been previously reported or the condition is not one required to be reported to the director of Health. The congenital defects will be reported at the same time as the birth certificate is required to be filed. (RCW 70.58.320)

The director of Health and any local health officer are authorized to cooperate with and promote the aid of any health nurse in Public Welfare or other private groups or organizations and with any state agency or political subdivision, to furnish the statistical data necessary to compile a registry for handicapped children. The director or any local health officer may accept contributions or gifts in cash or otherwise from any person, group, or governmental agency to establish a registry for handicapped children. (RCW 70.58.340)

Clerks of all school districts, when making annual reports, will report to the superintendent of schools in their respective counties the names of all deaf, mute, or blind youth residing within their districts who are between the ages of six and 21 years. (RCW 72.40.060)

The superintendent of the county will then report to the county commissioners concerning such children and send a copy of the report to the County School for the Blind or the School for the Deaf, as the case may be. (RCW 72.40.070)

Screening: Tests will be administered each year by teachers, health officials, medical directors, or other competent persons. Tests may be administered by the superintendent, principals, or teachers of the schools. Districts of more than 25,000 children may conduct testing every two years. (RCW 28.31.030)

Through rules and regulations the superintendent will establish, for the purpose of excess cost funding, functional definitions of the various types of handicapping conditions, and the eligibility criteria of programs for the handicapped. (RCW 28A. 13.010)

ADMINISTRATIVE RESPONSIBILITY

Within the office of the superintendent of Public Instruction there is established a Division of Special Education for Handicapped Children known as "the Division for Handicapped Children." (RCW 28A.13.010)

An administrative officer of the Division for Handicapped Children will be appointed by the superintendent. Under the direction of the superintendent, the administrative officer shall coordinate and supervise the special education program in all school districts of the state. He will cooperate with intermediate school districts, superintendents and local school district superintendents, and any other interested school officials, to make sure that all school districts provide appropriate educational opportunities for all handicapped children. He will further cooperate with the state secretary of Social and Health Services and with county and regional offices on cases needing medical examinations or other attention. (RCW28A. 13.020)

Through the Division of Special Education, the superintendent of Public Instruction has the duty and authority to: (1) assist school districts to form total school programs to meet needs of handicapped children; (2) develop interdistrict cooperation programs; (3) provide information, upon request, as to programs for the handicapped within the state to parents or guardian; (4) upon request, assist parents or guardian of any handicapped child in the placement of a child who is eligible for but not receiving special

education aid; (5) approve school district and agency programs eligible for special excess cost financial aid to handicapped children; (6) upon appeal by a parent or guardian of a handicapped child not receiving an educational program, judge whether the decision of the local school district superintendent to exclude the child was justified. If the superintendent decides otherwise he will apply sanctions including withholding any portion of the state aid to the district until compliance is assured; and (7) establish necessary rules and regulations to implement educational opportunities for all handicapped children who are not institutionalized. (RCW 28A. 13.070)

The superintendents of the individual residential schools for the mentally retarded are responsible for overall supervision of the program, but in establishing educational programs at the institutions they will be assisted by the Department of Public Instruction in all feasible ways (including financial) so that educational programs maintained within the institutions will be comparable to programs for children with similar aptitudes in local school districts. If requested by local districts and if resources are available, the superintendents of the individual residential schools for the mentally retarded may provide clinical counseling and evaluation services to assist local districts lacking the professional resources to determine the needs of exceptional children. (RCW 72.33.050)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

At each regular session of the Legislature, the superintendent of Public Instruction shall submit a programmed budget request for programs for the handicapped. Local school districts operating programs will receive reimbursement on an excess cost basis from legislative appropriations and will take into account funds received from the state through RCW 28A.41.130, RCW 28A.41.140, and any other state and local funds. (*Ch. 66, Laws 1971, 1st Ex. Session*)

In order to equalize educational opportunity, the superintendent of Public Instruction will establish, every two years, a weighted schedule of costs for educational programs subject to the action of the Legislature. Among the areas included in the weighted costs are costs incurred and appropriated to operate an approved program for handicapped children. (RCW 28A.41.140)

Any district providing services to children at home or in other approved places for those children unable to attend school, is granted the regular apportionment of state and county school funds and any allocations available from the state excess funds for these special services. If a handicapped child attends the special education program operated by a school district other than his district of residence, the regular apportionment is granted to the receiving school district, and the receiving school district is reimbursed by the district in which the child resides for the entire approved excess cost not reimbursed by the regular apportionment in accordance with the rules and regulations of the superintendent. (RCW 28A. 13.040)

The cost of room and board in facilities approved by the Department of Social and Health Services is provided by that Department for those handicapped children eligible for aid under the programs of the Department. The cost of approved room and board for those children not eligible but in need of this service shall be provided, but no school district is financially responsible for special aid programs for students attending residential schools operated by the Department of Social and Health Services. However, no provisions of the Act shall "preclude the extension by the superintendent of Public Instruction of special educational opportunities to handicapped children and residential schools approved by the Department of Social and Health Services." (RCW 28A. 13.030)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

In order to provide appropriate educational opportunities for handicapped children, the board of directors of each school district may contract for special education services with other agencies or shall participate in an intermediate arrangement. (RCW 28A. 13.030)

Boards of directors of the school districts are authorized to contract with agencies approved by the State Board in order to provide services for all handicapped children. Approval standards for these agencies shall substantially conform to the standards for special education programs of the common schools. (RCW 28A. 13.045)

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SERVICES

School districts, either separately or jointly with the approval of the superintendent, have the authority to: (1) establish, operate, support, and/or contract for residential schools and/or homes approved by the Department of Social and Health Services; and (2) give aid and special attention to handicapped children. With the approval of the administrative officer of the Division for Handicapped Children, school districts may pay for the operation of these residential schools out of their general fund budget. (*RCW28A. 13.030*)

A child unable to attend school but eligible for special excess costs aid and programs for the handicapped shall be given special education services at home or any other place determined by the board of directors of the school district in which the child resides. (*RCW 28A.13.040*)

Transportation or other arrangements may be authorized. No district is required to transport any handicapped child living within two miles of the school the child is attending. All handicapped children who are not ambulatory or capable of protecting their own welfare while traveling to and from school or the agency providing the special educational services are provided with transportation at school district or districts' expense. (*RCW 28A.24.100*)

No child may be removed from the jurisdiction of the juvenile court for training or education under the special education law without the approval of the superior court of the county. (*RCW28A. 13.010*)

School districts may lease school buses to nonprofit organizations to transport handicapped children to and from the site of beneficial activities. If commercial bus transportation is not reasonably available for these purposes, leases may be authorized by the special education directors of school districts, if they do not conflict with regular school purposes. Special education directors may establish the criteria for the bus use and lease including minimum cost and driver requirements. (*RCW 28A.24.100*)

All boards of directors of school districts, in addition to providing free instruction and speech reading for hearing handicapped children, shall make arrangements for similar instruction to learning handicapped adults if, in their judgment, this instruction is in the best interests of the school district and the adults concerned. (*Sec. 28A.58.107 RCW*)

Blind students, eligible for admission to an institution of higher learning within the state and who are unable to finance this education, may be allocated funds not exceeding \$200 per quarter, or as much as may be necessary (in the opinion of the State Board) to provide books, readers, recordings, recorders, or other means of reproducing and imparting ideas. If the institution notifies the State Board that it will waive tuition and laboratory fees for such a blind student, the allocation will be made out of monies in the general fund not otherwise appropriated. No blind student shall be charged any tuition or laboratory fees while attending any state institution. (*RCW 28.76.120 to 28.76.140*)

A children's center for research and training in mental retardation is established at the University of Washington under the administration of the board of regents of the University and a non-salaried advisory committee. The committee shall consist of the dean of the school of medicine, the directors of the State Departments of Health, Institutions, and Public Assistance, the superintendent of Public Instruction, the assistant superintendent in charge of the State Division of Vocation Rehabilitation, and three other members approved by the president of the University of Washington. (*RCW 28.77.430and 28.77.432*)

The center has the following objectives: (1) provision of clinical and laboratory facilities for research in the causes, diagnosis, prevention, and treatment of mental retardation and other handicapping conditions in children; (2) development of improved professional and in-service training programs in the various disciplines concerned with handicapped children, and (3) provision of diagnostic and consultative services to various state programs to the extent compatible with the primary research and teaching objectives of the center. (*RCW 28.77.434*)

PRIVATE

Every school district is authorized to contract with agencies approved by the State Board of Education for operating handicapped programs. Approval standards for such agencies shall conform substantially with those promulgated for approval of special education aid programs in the common schools. (*RCW 28A.13.045*)

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**WEST VIRGINIA****RIGHT TO AN EDUCATION**

Constitution: "The Legislature shall provide, by general law, for a thorough and efficient system of free schools." (Art XII, Sec. 1, W.Va. Const.)

Compulsory Attendance Law: Children may be excused from compulsory attendance requirements if they are physically or mentally incapacitated for school attendance and the performance of school work. In all cases of prolonged absence from school through incapacity of the child to attend, the written statement

No educationally exceptional child is excused or excluded from attending school without written approval of the county superintendent. (Sec. 18-20-4 WVCA)

All persons having control of a mentally normal minor over age six who has impaired vision or hearing to the extent that he cannot benefit by public school instruction are required to send the child to a West Virginia school for the deaf or the blind. The child must attend school for at least 36 weeks each year until he has completed the course of instruction or has been discharged from the school by the superintendent.

Exemptions are granted from this section if the child is receiving instruction from a private tutor, instruction at another approved school, or is physically incapacitated for such work. (Sec. 18-8-10 WVCA)

Responsibilities: County boards of education shall establish and maintain special education programs including but not limited to special schools, classes, regular classroom programs, home-teaching or visiting-teacher services, for all exceptional children as the State Board shall approve. They were to have accomplished this not later than the school year beginning July 1, 1974. The State Board of Education shall adopt rules and regulations to carry out this program. (Sec. 18-20-1, WVCA)

POPULATION

Definitions: Exceptional children are those (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics or both to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to be educated in accordance with their capacities, limitations and needs. (Sec. 18-20-1, WVCA)

Age of Eligibility: Services are mandated for all children between five and 23 years of age and may begin at age three. (Sec. 18-20-1, WVCA)

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: A school census of mentally and physically handicapped persons of all ages may be made as directed by a county board of education.

The state superintendent of schools shall have the authority to require a statewide enumeration by the counties at such times as he may direct.

Each county superintendent of schools shall establish and administer through the office of the county director of school attendance a system of cumulative census records which may be prescribed by the state superintendent of schools. (Sec. 18A-5-6, WVCA)

Evaluation and Placement: Prior to enrolling in a special education program, each child must be examined by an appropriate medical specialist, psychologist or educational specialist, who shall report to the county school superintendent his recommendations for eligibility and placement, indicate the nature and extent of disability, and advise as to necessary treatment and prosthesis for alleviating the disability. No educationally exceptional child shall be excused or excluded from school except with the written approval of the county superintendent. (Sec. 18-20-4 WVCA)

ADMINISTRATIVE RESPONSIBILITY

The state superintendent shall have power to organize, promote and administer the special education program under his present organization and be responsible for:

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(1) stimulating and assisting county boards of education in establishing, organizing and maintaining special education programs;

(2) cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating, and rehabilitating exceptional children and coordinating services of such agencies;

(3) preparing necessary rules, regulations, and formulae for distribution of funds; reporting forms and procedures necessary to define minimum standards in providing suitable educational facilities for exceptional children; and insuring employment, certification, and approval of qualified teachers and therapists subject to regulations of the State Board;

(4) receiving applications, reports, and claims for reimbursement from county boards and auditing the claims and preparing reimbursement vouchers; and

(5) performing such other duties and assuming such other responsibilities in connection with this program as may be needed. (Sec. 18-20-5 WVCA)

The schools for the deaf and blind are under the control, supervision, and management of the State Board of Education which employs the superintendent, principal, teachers, and any other necessary personnel. (Sec. 18-17-1 WVCA)

PLANNING

There shall be an Advisory Council for the Education of Exceptional Children which shall advise and consult with the State Board of Education on pertinent matters. The Council shall be composed of nine members appointed by the state superintendent. Four of these members must be parents of children receiving special education services in the public schools. The council shall:

(1) consult with the State Board of Education concerning rules and regulations;

(2) consider and advise the State Board and superintendent concerning any problems presented to the council;

(3) conduct public meetings at such times and places as it considers appropriate;

(4) periodically review the state plan for special programs and make any recommendations it may have concerning changes it considers proper. (Sec. 18-20-6 WVCA)

FINANCE

Any county board of education may establish and maintain any special schools, classes, home teaching, or visiting teacher services out of local funds. (Sec. 19-05 WVCA)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Counties not providing or maintaining special schools, classes, or home or visiting teacher services may provide for their resident exceptional children by contracting with other counties which maintain programs. The sending county will pay the receiving county the per capita cost of instruction, special equipment, and special services not reimbursed to the receiving county by state funds, plus the cost of transportation, board, and lodging, if necessary. (Sec. 19-05 WVCA)

Counties may provide for their resident exceptional children by contracting with other counties which maintain programs. Fiscal matters will follow policies approved by the State Board of Education. (Sec. 18-20-2 WVCA)

Counties may establish and maintain special education programs out of funds available from local revenue. (Sec. 18-20-5 WVCA)

SERVICES

The board of education in each county is responsible for providing suitable educational facilities, special equipment, and necessary special services including finding and enumerating all exceptional children, diagnosis by appropriate specialists, special teaching by qualified and specially trained teachers, transportation, lunches, and remedial therapeutic services. Counties may provide services by contracting with other counties or with other education agencies. (Sec. 18-20-2 WVCA)

Special education programs include, but are not limited to, special schools, classes, regular class programs, home-teaching or visiting-teacher services. (Sec. 18-20-1 WVCA)

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PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

WISCONSIN**RIGHT TO AN EDUCATION**

Constitution: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and 20 years; and no sectarian instruction shall be allowed therein." (*Art. I, Sec. 3, Wis. Const.*)

Compulsory Attendance Law: Children between the ages of seven and 16 are subject to compulsory attendance laws of the state.

In cities containing Vocational Technical Institutes the compulsory age at upper level is 18. (*Sec. 40.7 WSA*)

Physically handicapped children eligible for attendance at a special class or special school are also subject to the compulsory attendance requirements. (*Sec. 115.79 WSA*)

Children with exceptional needs may satisfy the compulsory attendance laws by attendance at special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or private special education service. (*Sec. 115.82 WSA*)

If it appears, by affidavit to any county judge, that a blind or deaf child between the ages six and 21 is being deprived of a suitable education because of the failure of the person having the care and custody of the child, the judge will order the person to bring the child to him. If the allegations of the affidavit are denied, witnesses will be subpoenaed, and he will hear testimony. If the allegations are admitted or established, the judge may order the child sent to the School for the Visually Handicapped or for the Deaf or to some class or other school for instruction, but the order cannot make a direct charge for the class or school against any county. (*Sec. 115.54 WSA*)

Policy: "It is the policy of this state to provide, as an integral part of free public education, special education sufficient to meet the needs and maximize the capabilities of all children with exceptional educational needs. Furthermore, it is the policy of this state to ensure that each child who has exceptional education needs is provided with the opportunity to receive a special education at public expense suited to his individual needs. To obtain this end, the legislature recognizes the necessity for a flexible program of special education and for frequent re-evaluation of the needs, capabilities and progress of a child with exceptional educational needs." (*Sec. 1, Chap. 89, Laws of 1973*)

The provisions relating to compulsory school attendance apply during the school term to children with exceptional educational needs and may be satisfied by attendance at special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility, or private special education service. (*Sec. 115.82 WSA*)

Responsibilities: The Legislature recognizes that it is the responsibility of the school district in which a child with exceptional needs resides to ensure that the child is able to receive an education at public expense which is tailored to his needs and capabilities. Special assistance, services, classes or centers shall be provided whenever necessary.

Preference is to be given, whenever appropriate, to education of the child in classes along with children who do not have exceptional educational needs. Where it is not desirable to educate the child who has exceptional needs with children who do not have such needs, the child shall be provided with whatever special education is appropriate. (*Sec. 115.377(1) WSA*)

The Legislature recognizes that it is frequently in the best interest of a child with exceptional educational needs to be educated in an environment as similar as possible to the educational environment surrounding his siblings and neighbors who do not have such needs. (*Sec. 115.87 WSA*)

POPULATION

Definitions: "Child with exceptional educational needs" means any child who has a mental, physical, emotional or learning disability which, if the full potential of the child is to be attained, requires

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educational services to the child to supplement or replace regular education. Children with the following conditions, in addition to children with such other conditions as the state superintendent determines, may require educational services to supplement or replace regular education: (a) physical, crippling or orthopedic disability; (b) mental retardation or other developmental disability; (c) hearing impairment; (d) visual disability; (e) speech or language disability; (f) emotional disturbance; (g) learning disability; (h) pregnancy; or (i) any combination of conditions named by the state superintendent or enumerated above. (Sec. 115.76(3) WSA)

Age of Eligibility: Handicapped children may receive special services from birth through age 21. Services are mandatory for children age three through 20. (Sec. 115.85L(1A))

IDENTIFICATION, EVALUATION, AND PLACEMENT

Screening: Pursuant to any standards adopted by the state superintendent under Sec. 115.78(6), the school district shall screen each child when the child first enrolls in a public school in the school district in order to determine if the child has exceptional educational needs. (Sec. 115.80(2) WSA)

A parent, physician, nurse, social worker or administrator of a social agency who has reasonable cause to believe that a child brought to him for services has exceptional educational needs shall report the case of any such child and any other information required to the school board of the district in which the child resides or to the Division for Handicapped Children, except as provided below.

A person required to be certified or licensed under Sec. 115.28(7) employed by the school district in which a child attends public school and who has reasonable cause to believe a child has exceptional educational needs shall report such child and any other information required to the school board.

Before any report is made, the person making the report shall inform the child's parent that the report will be made. (Sec. 115.80(1) WSA)

Evaluation and Placement: A multidisciplinary team shall be appointed by the school board and composed of two or more persons skilled in assessing exceptional educational needs and in programming for children with exceptional educational needs. The state superintendent shall determine the method of appointing members to the team and may require that there be additional members. The number and specialities of additional members may depend on the exceptional educational needs which the particular child is believed to have.

The multidisciplinary team shall, with written parental approval, examine any child over age three referred to it as a result of the school district screening or by an individual.

The multidisciplinary team shall consult with the child's parent prior to recommending a child for a special education program. The team shall recommend a child to the school board for special education if it deems it in the best interests of the child, except that a pregnant girl shall be recommended for special education only if she has not graduated is under the age of 21, from high school, and if she and her parent consent that she be recommended for special education. If the multidisciplinary team recommends a child for special education it shall also recommend to the school board an educational program fitted to the individual child's needs. If the educational program recommends instruction at the home, residence or other location of the child, there shall be a physician's statement in writing that the child is unable to attend school. (Sec. 115.80(3) WSA)

Annually, the school district shall require a report, on forms prepared by the Department, from the teachers of each child who has attained the age of three years and who is receiving special education under Sec. 115.85 or in a state or county residential facility supervised under Sec. 115.77(3)(d). The report shall state the teacher's assessment of the child's progress in the past year and the teacher's recommendation for further education of the child. (Sec. 115.80(4) WSA)

Each child who has attained the age of three years and who is receiving special education under Sec. 115.85(2) or in a state or county residential facility supervised under Sec. 115.77(3)(d) shall be re-examined by a multidisciplinary team at least once every three years. (Sec. 115.80(5) WSA)

A child's parent may appeal to the school board a decision relating to special education for the child if:

- (1) Appeal is filed within four months after the school district clerk has mailed the notice of placement.
- (2) Appeal is filed within four months after the school district clerk has mailed the notice of removal.
- (3) The parent believes the local school board has placed the child in a special education program which does not satisfactorily serve the child's needs.
- (4) The child has not been placed in a special education program and the parent believes that such placement would benefit the child.

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No more than one appeal under three and no more than one appeal under four may be initiated in any school year.

Upon receipt of a recommendation for special education from a multidisciplinary team under Sec. 115.80, the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the recommendation and a brief statement of the reasons for the recommendation.

When a decision is made under Sec. 115.85(2) to place a child in a special education program, the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

Whenever a decision is made by a school board to remove a child with exceptional educational needs from an educational program in which such child is currently enrolled, the clerk of the school district in which the child resides shall mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

The notice of placement or program change shall state that a hearing before the school board or a person appointed by it may be had if requested in accordance with procedures established by the Department and set forth in the notice.

A change in the program or status of a child with exceptional educational needs shall not be made within the period afforded the parent to request a hearing nor, if such hearing is requested, before the school board issues a decision, unless a program change is made with the written consent of the parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, by order of the school board hearing the case, but without prejudice to any rights that the child or parent may have.

All pupil records shall be confidential, except in the following cases:

- (1)A pupil, or the parent/guardian of a minor pupil shall be provided with a copy of the pupil's progress records on request.
- (2)The pupil or parent shall have a qualified person explain behavioral records, and shall be provided with the records on request.
- (3)A judge in a Wisconsin state court or a federal court shall have the progress records of any pupil who is the subject of a court hearing, if he requests them.
- (4)Licensed school personnel may have access to pupil records, if the pupil or parent gives permission.
- (5)Records shall be provided to a court in response to subpoena for inspection only for use in impeachment of any witness who has testified in the action. The court may turn them over to parties in the action if the records would be relevant to a witness's credibility or competence.
- (6)The school board may provide the Department or any public officer with any information required under Chs. 115 to 121. (Sec. 118.125 WSA)

School boards shall adopt rules specifying the content of pupil records and the time during which they may be maintained. Records may not be maintained for any more than a year after the pupil's graduation or last attendance, unless the pupil requests that they be maintained, and then they need not be maintained for more than five years. (Sec. 118.125 WSA)

A parent shall have access to any reports, records, clinical evaluations or other materials upon which a decision relating to the child's educational program was wholly or partially based, or which could reasonably have a bearing on the correctness of the decision. At any hearing held under this section, the parent may determine whether the hearing shall be public or private, examine and cross-examine witnesses, introduce evidence, appear in person, and be represented by an advocate. The school board shall keep a full record of the hearing. A detailed summary is given to the parent if requested.

If a child's parent believes the diagnosis or evaluation of the child as shown in the records made available to him is in error, he may obtain an independent examination and evaluation of the child and have the report presented as evidence in the hearing. If the parent is financially unable to afford an independent examination or evaluation, the school district shall reimburse the parent for the reasonable expenses of the examination or evaluation.

The school board shall hold a hearing within 60 days of appeal and shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of the close of the hearing. If no decision is made by the school board within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

Within 30 days after the decision of the school board, the parent may appeal the decision to the state superintendent, who shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of appeal. If he makes no decision within the 30-day period

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following the close of the hearing, the original decision shall be deemed affirmed. Within 30 days after the superintendent's decision, the parent may appeal it to the Circuit or County Court of the child's district of residence. (Sec. 115.81 WSA)

ADMINISTRATIVE RESPONSIBILITY

The state superintendent is responsible for establishing requirements for the courses, qualifications of teachers, coordinators, social workers, and school psychologists, and the plan for organizing and maintaining special schools, classes, centers, and other services. (Sec. 115.80 WSA)

The Division for Handicapped Children is subject to the direction of the state superintendent. The administrator of the Division, appointed by the state superintendent, has the status of assistant superintendent. The administrator is responsible for services for children with exceptional needs and for the School for the Deaf and the School for the Visually Handicapped. He is also responsible for appointing qualified personnel to perform the duties of the Division and for auditing expenditures for services for handicapped children. He is responsible for the elementary and high school education of physically handicapped children under age 21 and for supervision of special education facilities provided the mentally handicapped through day classes. Federal aid for special programs for handicapped children will be given to the Division for carrying out plans approved by the federal agencies supervising such aid. (Sec. 115.77 WSA)

The Department of Health and Social Services is responsible for programs in state institutions for the mentally retarded and emotionally disturbed.

A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county handicapped children's education board may:

- (1) subject to approval by the Division, establish, maintain, expand, reduce, or discontinue a special education program, including special physical or occupational therapy services, for children with exceptional needs;
- (2) employ, for a special education program, either full or part-time certified teachers, certified coordinators of special education, certified school social workers, certified school psychologists, paraprofessionals, and certified consulting teachers to work with any teacher of regular education programs who has a child with exceptional educational needs in a class, and any other personnel approved by the Department; and
- (3) provide in-service training for any teacher who has a child with exceptional educational needs in a class, and any other services approved by the Department. (Sec. 115.83 WSA)

Each school district shall ensure that appropriate special education programs are available to children with exceptional educational needs who have attained the age of three years and who reside in the school district. A school district may provide special education for preschool children under the age of three years, and instruction for their parents. Such special education shall be subject to the approval of and shall comply with requirements established by the State Superintendent.

The School Board shall submit to the Division any information it requires concerning special education in state or county facilities supervised by the Division under Sec. 115.77(3)(d) and shall advise the superintendent of each such facility. (Sec. 115.85 WSA)

The Board shall appoint an advisory committee whose membership includes school district administrators representative of the area the Board serves. Upon authorization of the county board, application for the establishment of a program or any part thereof shall be made by the Board to the Division. The application shall state whether the program or part will be available in the county at large or only to certain school districts.

The Board shall have charge of all matters pertaining to the organization, equipment, operation and maintenance of such programs and may do all things necessary to perform its functions, including, without restriction because of enumeration, the authority to erect buildings subject to county board approval and employ teachers and other personnel. The Board shall prepare an annual budget which shall be subject to approval of the county board under Sec. 65.90 and shall include, without limitation because of enumeration, funds for the hiring of staff, the purchase of materials, supplies and equipment, and the operation and maintenance of buildings or classrooms. (Sec. 115.86 WSA)

PLANNING

There is created in the Department of Public Instruction a Council on Special Education consisting of 15 members appointed by the state superintendent for three-year terms. No more than seven members of the Council may be persons who do not have children with exceptional educational needs and who are representatives of the state school districts, county handicapped children's education boards, or cooperative educational services agencies. At least five members of the Council shall be parents or guardians of a child with exceptional educational needs, at least one member of the Council shall be a school board member, at least one member shall be a certified teacher of regular education, and at least one member shall be a certified teacher of special education. (Sec. 115.77(4) WSA)

The state superintendent shall consult with the Council on Special Education concerning:

- (1)all proposed Department or Division policies and rules relating to the education of children with exceptional educational needs;
- (2)new special education programs, expansions, reductions or terminations of existing special education programs under Sec. 115.77(4)(b) and (c);
- (3)the state plan required under Sec. 115.78;
- (4)any other matters upon which the state superintendent wishes the Council's opinion.

The Council may report biennially to the Legislature on the progress made by special education programs and planning in the state and any other information it deems desirable; and, the Council shall have access to reports and statistics kept by the Department relating to matters concerning children with exceptional educational needs. (Sec. 115.79, WSA)

The state superintendent shall annually issue and make public a state plan for the education of children with exceptional educational needs. The state plan shall include:

- (1)the number and geographic distribution of all children who reside in the state and who have exceptional educational needs;
- (2)a listing of all public and private special education programs available in the state, the number of children attending each special education program pursuant to Sec. 115.85(2) or supervised under Sec. 115.77(3)(d) and the state aid given to each program attended or supervised;
- (3)a statement of the personnel and facilities available through public and private special education programs to provide instruction and other services for children with exceptional educational needs;
- (4)an analysis of the present distribution of responsibility for special education among the state, school districts and other governmental units;
- (5)identification of the specific goals of each type of special education program in which children are enrolled pursuant to Sec. 115.85(2) or provided by a state or county facility supervised under Sec. 115.77(3)(d);
- (6)standards for the screening, identification and educational program for children with exceptional educational needs;
- (7)a five-year projection of the special education needs of children who reside in the state;
- (8)recommendations for changes in the law and administrative procedures to meet the special education needs stated in the plan. (Sec. 115.78, WSA)

Annually, on or before August 15, each school board shall report to the Department such information as it requires, including the following:

- (1)the total number of children who reside in the district and who have been placed in special education programs under Sec. 115.85(2), the exceptional educational needs of each such child, and the school attended or special education received by each such child. The report shall also specify the number of children with exceptional educational needs who are known to the school district and who are under the age of three years and the exceptional educational needs of each such child.
- (2)a description of the screening process for exceptional education needs provided under Sec. 115.80(2) to each child who enters public school in the district.
- (3)a description of the special education programs in which children who reside in the district have been placed, the number of persons attending each, and the qualifications of the staff of each such special education program.
- (4)an evaluation, in terms of the goals identified under Sec. 115.78(5), of the progress made by each special education program in which children who reside in the district are placed.
- (5)an evaluation of the progress made by each child who resides in a facility operated by the state or a county and who has attained the age of three years and whose parent resides in the district and a statement of the expected duration of the child's stay in such facility.

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(6)plans for new, expanded, or reduced public school special education programs or for discontinuation of any such program or part of such program. (Sec. 115.85, Sec. 3 WSA)

Of the members first appointed to the Council on Special Education under Sec. 15.377(4) of the statutes as created by this Act, five shall be appointed for terms of one year, five for terms of two years, and five for terms of three years. Successors shall be appointed in accordance with Sec. 15.377(4) of the statutes.

FINANCE

Any school board, board of control, or county handicapped children's education board maintaining an educational program for the handicapped must annually report to the state superintendent and, at any other times as he directs, the information he requires. It must include the number of children instructed or provided service, their residence, and the period of time each was instructed or otherwise served. Each board will annually submit to the state superintendent an itemized account of all receipts and disbursements for special education. (Sec. 115.80 WSA)

If after receipt of the reports from the administering units, the state superintendent is satisfied that the special school, class, center, or other service maintained during the preceding year had been in accordance with law, he shall certify to the Department of Administration that each receive a sum equal to 70 percent of the amount expended during the preceding year for salaries of the qualified personnel, transportation, board and lodging of resident children, special books and equipment, and other expenses approved by the state superintendent. Board or lodging and transportation between the boarding home and school provided to non-resident handicapped children is reimbursed 100 percent.

The Department of Administration shall pay such amounts to the county, agency and school district from the appropriation under Sec. 20.255(1)(d). The amount of aid paid to any county, agency or school district under this subsection shall be reduced by any amounts received by them under sub. (7) for the same school year.

Salaries of coordinators of special education, school social workers, or school psychologists who have not attained the senior level shall not be reimbursable under this subsection. Salaries of senior level psychologists and school social workers shall be reimbursed at 33-1/3% without regard to whether they are employed in a program for handicapped children. Salaries of senior level school psychologists and school social workers shall be reimbursed at 50% if the school psychologist or social worker spends at least 50% of his time as a part of a multidisciplinary team under Sec. 115.80(3), or working directly with or on behalf of a child who has been placed in a special education program under Sec. 115.85(2). Such salaries shall be reimbursed at 70% if the school psychologist or social worker spends all of his time as a part of a multidisciplinary team under Sec. 115.80(3) or working directly with or on behalf of a child who has been placed in a special education program under Sec. 115.85(2). The school district, county handicapped children's education board, or cooperative educational service agency shall include in the report under Sec. 115.84 any information required by the state superintendent relating to use of a school psychologist or school social worker. (Sec. 115.88 WSA)

If upon receipt of the report under Sec. 115.84 the superintendent is satisfied that the transportation of children with exceptional educational needs has been maintained during the preceding year in accordance with the law, he shall certify to the Department of Administration in favor of each county, cooperative educational service agency, or school district transporting such pupils 70% of the difference between the amount expended for such transportation and the amount of aid specified in Sec. 121.58(2) or (4), whichever is applicable. The Department of Administration shall pay such amounts to the county, agency or school district from the appropriation under Sec. 20.255(1)(d). This subsection applies to any child attending regular classes who requires special or additional transportation. This subsection shall not apply to any child with exceptional educational needs attending regular or special classes who does not require any special or additional transportation.

There shall be paid the amount expended for board and lodging and transportation between the boarding home and the special education program of nonresident children under Sec. 115.85(2) in the special education program. The Department shall certify the full amount to the Department of Administration which shall pay such amount from the appropriation under Sec. 20.255(1)(d) to the school district, cooperative educational service agency, county handicapped children's education board, state agency of another state or private, nonsectarian special education service which operates the special education program while providing board, lodging and transportation. (Sec. 115.88 WSA)

From the appropriation under Sec. 20.255(1)(d) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts for providing special education outside the school district of employment. (Sec. 115.88 WSA)

Any school district, board of control of a cooperative educational service agency, or county handicapped children's education board whose application under Sec. 115.77(4) to establish or expand a special education program has been authorized may request, and upon a determination of need by the superintendent, shall receive in advance, for the first year of operation: (a) for a new program, 75% of the estimated amount of aid which will be paid under sub. (1) for the first year, and (b), for an expanded program, 75% of the difference between the estimated amount of aid which will be paid under sub. (1) for the first year and the amount of aid which the program received for the previous year under sub. (1). (Sec. 115.88 WSA)

If after a public hearing in the school district, the superintendent finds that a school district has not provided programs for children with exceptional educational needs as required by Sec. 115.85(1) and (2), he shall make findings to that effect, including a finding that the school district has denied equal educational opportunities to children with exceptional educational needs.

After the superintendent has found that a school district has denied equal educational opportunities to children with exceptional educational needs, he may make recommendations to the school district to remedy the denial and may require the school district to submit a remedial plan incorporating such recommendations. If after consultation with the school board, the superintendent finds that the plan has not incorporated his recommendations, or that its implementation has been inadequate to remedy the denial of equal educational opportunities, he shall request the Attorney General to proceed against the school district for injunctive or other appropriate relief. Until July 1, 1976, the superintendent may annually waive the application to any school district of such provisions of this subchapter as he deems necessary, except that application of Sec. 115.88 may not be waived. (Sec. 115.89 WSA)

If, upon receipt of the report under Sec. 115.80(3), the superintendent is satisfied that any children enrolled and participating in a special education program provided by a county handicapped children's education board under this subchapter and not counted as pupils enrolled under Sec. 121.05 are receiving the substantial equivalent of an elementary or high school education from those services, he shall certify to the Department of Administration from the appropriation under Sec. 20.255(1)(f) in favor of the county handicapped children's education board providing those services \$88 per pupil enrolled. Enrollment for aid purposes shall be determined in accordance with Sec. 121.05.. (Sec. 121.135 WSA)

State aid shall be paid to each school district or county handicapped children's education board operating summer classes, providing that annually on or before October 1, the school district clerk or chairman of the county handicapped children's education board shall file with the Department a report stating the number of pupils enrolled in summer classes. In computing the number of pupils enrolled in summer classes, the total number of accredited classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days in which enrolled, shall be divided by 720. The quotient represents the proportion of pupil enrollment for which the school district or county handicapped children's education board shall be paid state aid.

For the purpose of computing state aid, the total number of pupils enrolled in summer classes determined under par. (b) shall be added to the number of pupils enrolled in the school district as reported under Sec. 121.05 or 115.84 where applicable, or enrolled in a program operated by a county handicapped children's education board as reported under Sec. 115.84. For nonresident high school pupils in summer classes, school districts shall be paid the amounts set forth in Sec. 121.09(3), 121.10(3), 121.12(3), and 121.13(3). For nonresident students who are receiving the substantial equivalent of a high school education, the county handicapped children's education board shall be paid the amounts set forth in Sec. 121.135. (Sec. 121.135 WSA)

If a county maintains an institution in which children are received for care, and if it maintains the educational facilities required to be provided by a common school district, the county shall be paid state aid under Sec. 115.88 and 121.08 to 121.13. and the facilities shall be under the supervision of the Department and the school district in which the institution is located. (Sec. 121.16 WSA)

Every school board shall provide transportation for children with exceptional educational needs, as defined in Sec. 115.76(3), to any public or private elementary or high school, to the Wisconsin School for the Visually Handicapped or the School for the Deaf, or to any special educational program sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Sec. 121.53 shall apply to transportation provided under this subsection. (Sec. 121.54 WSA)

A school board, a county handicapped children's education board, or a cooperative educational service agency may provide transportation regardless of distance for children with exceptional educational needs

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who attend a summer special education program under Sec. 115.83(4), if a request for such transportation is approved by the superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this paragraph. (Sec. 121.54 WSA)

State aid for approved transportation under Sec. 121.54(3) shall be paid on the same basis as it is paid for transportation of children who do not have exceptional educational needs, except that it shall be paid for such approved transportation of less than two miles at the rate of \$24 per school year per pupil. Such state aid shall be supplemented by the state under Sec. 115.88 in an amount not to exceed the full cost. (Sec. 121.58 WSA)

A school district which provides board and lodging or housing under Sec. 121.57(2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than \$6 per week of five days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For children with exceptional educational needs, such state aid shall be supplemented by the aid under Sec. 115.88 in an amount not to exceed the full cost of such board and lodging.

The state pays the tuition for handicapped children, including the mentally retarded, emotionally disturbed, and epileptic who are placed in foster homes while attending the public schools of the state. (Sec. 121.79 WSA)

If a handicapped child residing in a district maintaining a special school, class, or center for children with his handicap attends a special school, class, or center in another district, tuition will be charged to his parent or guardian unless the superintendent and the school district administrator have approved the transfer. If they approve the transfer in order to serve the best interest of the child, tuition will be paid by the school district of residence. (Sec. 115.82 WSA)

One-half of the cost of home instruction for physically or mentally handicapped children will be paid by the school district of the child's residence if the district initiates the program, or one-half by the county and one-half by the state if the county initiates the program. The maximum state payment may not exceed \$300 per school year. Children requiring instruction under this section are considered as being in attendance in the school district of their enrollment. (Sec. 115.84 WSA)

Non-resident children admitted into a program conducted by a handicapped children's board or an orthopedic school in any school district will be charged tuition. Tuition for a non-resident handicapped child is determined on the basis of costs, state aids, and number of children in each part of the program for the preceding year by adding together the total cost of reported items, the actual cost of operation and maintenance not reported, subtracting federal, state, and county aid and dividing this amount by the number of children in an average daily membership.

In counties having a population of less than 500,000, when a handicapped child resides in a school district not maintaining an appropriate special school, class, or center and the county maintains no appropriate program, the county will be charged tuition when the child attends a special school, class, or center in another school district or county. Before August 1 of each year, the school district clerk and the secretary of the county handicapped children's education board must file with the clerk of the county of residence a claim for tuition.

The claim must contain the name, age, date of entrance, number of weeks of attendance during the preceding year of each child, the amount of tuition to which the school district or board lays claim for each child, and the total amount of tuition due the school district or board from the county. County clerks shall examine the claims for the purpose of determining their accuracy and legality and may call upon school, county, or local officials to supply data to verify claims.

After examining the claims, the county clerk notifies the school district clerk or secretary of the board of the result of his examination. If corrections are necessary, the county clerk notifies the school district clerk or secretary of the board who meets with the county clerk (at the expense of the school district or board) to make corrections.

The county clerk "shall apportion the amount of claims for each type of handicap, on the basis of the ratio of the equalized valuation of that portion of each municipality within the county that lies outside the territory served by all programs for children with that handicap that are operated by school districts or, pursuant to Sec. 115.81, to the total equalized valuation of all the territory in the county that lies outside the territory served by all programs for children with that handicap operated by school districts or under Sec. 115.81 and shall certify that amount to clerks of such municipalities."

Each municipal clerk, upon receiving certification from the county clerk, shall then spread the amounts upon the tax rolls for collection. When taxes are collected, amounts must be paid by the county treasurer to the treasurer of each school district or handicapped children's education board.

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In counties having a population in excess of 500,000, the school district of residence will pay tuition charges for handicapped children as described previously. Before August 1 of each year, the school district "must file with the clerk of the school district of residence of each non-resident child residing in school districts that are wholly or partially in counties having the population of 500,000 or more a sworn statement of claims against the school district of residence." A claim must contain the name, age, date of entrance and number of weeks of attendance during the preceding school year, the amount of tuition to which the school district lays claim, and the total amount of tuition due the school district of attendance from the school district of residence. After verification, the clerk of the school district of residence reimburses the treasurer for the claim of the school district in the same manner as other claims are paid.

Any two or more school districts in counties with a population of 500,000 or more, with written agreement of their school boards, may admit residents of other school districts to any phase of the program for handicapped children and waive all claims for tuition. (Sec. 117.82 WSA)

If a physically handicapped child receives services in a school district other than his district of residence, the Division is responsible for making or approving arrangements for transportation to and from his home and the special class, or on school days for board, lodging, and transportation to and from his boarding home to his special class. (Sec. 115.77 WSA)

The appropriation under Sec. 20.255(1)(a) of the statutes, as affected by the Laws of 1973, is increased by \$10,400 for fiscal year 1974-75 to provide an additional staff position in the State Aids and Finance Division of the Department of Public Instruction, and by \$700 for fiscal year 1974-75 for expenses of the Council on Special Education. The appropriation is increased by \$247,100 for fiscal year 1974-75 to fund homebound instruction under this Act, by \$174,900 to provide funds for general aids for county programs at \$172,900 in 1974-75 and summer program aids at \$2,000, and by \$1,500 to fund driver's education aids under this Act.

If the 1973-75 Biennial Budget Act contains any provisions in conflict with the Provisions of this Act, the provisions of this Act shall supersede the conflicting provisions of the Budget Act.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

County boards may operate programs for handicapped children for all school districts in the county. They may provide for one or more special schools, classes, treatment or instructional centers, or other services for one or more types of handicapped children. School districts are included in the county program only to the extent approved by formal action of their own school board. If the county board establishes such a program, it then creates a board to be known as the "Handicapped Children's Education Board."

This board, consisting of three or five persons as determined by the county board is elected by the county board or appointed by the chairman, according to the rules of the county board. Members should be elected from the parts of the county participating in the program and be representative of the area the board serves. School board members, county board members, and other electors may serve on the board. Annually, one member is selected as chairman and one member as secretary. The county treasurer serves as board treasurer, although he is not a board member. An advisory committee, composed of school board administrators representative of the area served, will be appointed. The board must apply to the state superintendent to establish programs, and must state whether the program will be available in the county at large or only to certain school districts. All matters pertaining to the organization, equipment, operation, and maintenance of programs for the handicapped are the responsibility of the board. The board may do all things necessary to perform its functions without restrictions due to enumeration, including erecting buildings (subject to county board approval) and employing teachers and other personnel.

The county board may assign, by resolution, the functions of the handicapped children's education board to a cooperative educational services agency operating within the county. However, if the board continues to exist, it has authority to contract with the agency board of control or school board of any district in the county for professional and administrative services. (Sec. 115.86 WSA)

A school board of any district included on the board may withdraw from participation in any part of the program, with the approval of the superintendent after he has conferred with the board and is satisfied that the withdrawal is in the interest of the county program and the affected school district. The withdrawal will be effective only if the school board has the approval of the superintendent to establish a comparable part of the program. The effective date of withdrawal must be at the end of the next full school term. Withdrawing districts receive no share of the assets. Any program established under this section may be dissolved by the county board, but dissolution may not take place until the end of the school term in which the action was taken. After dissolution, assets and liabilities are distributed to all units which participated in the program. (Sec. 115.86 WSA)

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The board may promulgate a plan for the transportation, at county expense, of children who are participating in special education programs under this section, special education programs operated at day care centers, or special education programs operated by a private organization within whose attendance area the child resides and which is situated not more than five miles beyond the boundaries of the area the board serves, as measured along the usually traveled route. (Sec. 115.86(8) WSA)

Handicapped children, including pre-schoolers, residing in a school district may be admitted to special programs available in any other school district, according to standards of eligibility determined by the Division and according to available facilities. (Sec. 115.82 WSA)

SERVICES

A special education program may consist of such special education programs for children as to allow them to attend regular education programs, one or more special schools or pre-schools, special sections within a school or pre-school, special instruction centers, special instruction at the home or residence of the child, or at any other location or any other special education program approved by the superintendent.

A special education program may be supplemented by family guidance or counseling services to train other members of the child's family to assist in the child's education. It may be for the school term, may include a summer program, or may be for the school year.

The courses, qualifications of teachers, coordinators, social workers and school psychologists, and plan of organizing and maintaining special education programs and other services shall comply with requirements established by the superintendent. (Sec. 115.83 WSA)

In maintaining educational services for handicapped children, districts and the handicapped children's education board may employ qualified teachers, fulltime senior coordinators of special education, senior school social workers and psychologists and may provide special physical and occupational therapy services for handicapped children. The special education program may consist of one or more special schools, classes, treatment or instruction centers, or other services for one or more types of handicapped children, including special classes in instruction centers for mentally handicapped children having an IQ between 35 and 50. A "part of a program" is that portion of a program in which a particular child participates. (Sec. 115.80 WSA)

School districts operating special programs for handicapped children may provide instruction or treatment for pre-school handicapped children and instruction for their parents. The State School for the Deaf may provide instruction for pre-school deaf children and their parents; and the School for the Visually Handicapped, for pre-school visually handicapped children and their parents. Instruction for pre-school children and their parents is subject to the approval of the superintendent and must comply with his regulations. (Sec. 115.82 WSA)

Physically handicapped children unable to attend school, according to medical recommendations, may receive education through home instruction, extension courses, or any other suitable means provided by any school district or county handicapped children's education board on both the elementary and high school levels.

All sanatoria or convalescent homes providing care for children between the ages of five and 18 must provide instruction for those children physically able to receive it. Work satisfactorily completed will be granted credit by school authorities. Teachers regularly employed for home, sanatoria, or convalescent home instruction outside of regular school hours are paid for this work in addition to their regular salary. These teachers must be legally qualified to teach in the state. Before August 1 of each year, every school district or county handicapped children's education board operating programs under this section must report to the Division any information it requires regarding teachers and children involved in the programs.

Every school board must provide transportation for handicapped children to any elementary or high school or the School for the Visually Handicapped or the School for the Deaf, regardless of the distance, if the request for the transportation is approved by the superintendent. Approval is based on whether the child can walk to school in safety and comfort. (Sec. 121.54 WSA)

The superintendent may apply to the Regents of the University of Wisconsin for admission to the Wisconsin General Hospital for any pupil in the state schools. A physician's report must accompany the application. Net cost of the hospital treatment will be at the rate charged the counties for county patients. One-half is chargeable to the appropriation for operating the school and one-half to the state. Payment for transportation to and from the hospital may be authorized. Superintendents should arrange visits by members of the staff to the school, to other public schools, and to families of blind or deaf children whenever it appears to them that these visits would be an advantage to the children. (Sec. 117.53 WSA)

Superintendents of the schools for the Deaf and Blind may arrange for vocational, trade, or academic training for any pupil qualified to take such training in a state, public, or vocational school, or a private business establishment in Jamesville or Delavan. Public schools and the vocational school are paid their regular tuition rate for full-time attendance and a prorated rate for part-time attendance. (Sec. 115.53 WSA)

Deaf-blind children unable to receive instruction in a special class may be provided an education by the superintendent outside the state or in a special class within the state, if there is a sufficient number of deaf-blind children to warrant the establishment of a class.

Approximately \$3,000 should be annually set aside from the appropriations made to the State School for the Deaf and the State School for the Blind to help defray the cost of readers for blind or deaf pupils between the ages of 16 and 21 enrolled in public high schools or vocational, technical, and adult education schools in the state. No pupil shall receive aid exceeding \$125 per year nor shall it be granted to any student unless the Director of the Bureau for Handicapped Children and the superintendent of the School for the Visually Handicapped or the School for the Deaf agree that it is best for the student to attend the vocational or high school. (Sec. 115.53 WSA)

The Wisconsin School for the Deaf is a boarding school under the direct supervision of a superintendent who is responsible to the director of the Department of Public Instruction.

The school may provide instruction for pre-school deaf children and their parents, and it shall be subject to the approval of, and shall comply with requirements established by, the Department. (Sec. 115.52(7) WSA)

Aid to attend college or university to a deaf person may not exceed \$500 in any one year. (Sec. 115.57 WSA)

PRIVATE

The Legislature recognizes that it is the right of every parent to provide for his child an education of the parent's choice at his own expense. (Sec. 15.377(1) WSA)

If no public agency in this state operates an appropriate program, the child shall be placed, with the approval of the superintendent, in an appropriate public program in another state.

To provide a special education program which is appropriate to the child's needs, the school board may, upon approval of the state superintendent, and if no equivalent public program is locally available, contract with a private special education service whose governing board, faculty, student body, and teachings are not chosen or determined by any religious organization or for any sectarian purpose.

The school board may place a child with special educational needs in a special education program at home, residence or other location only if there is a physician's statement in writing that the child is unable to attend school, as required under Sec. 115.80(3). (Sec. 115.83 WSA)

PERSONNEL

The Division shall develop a program for the preparation, recruitment and in-service training of personnel in special education and related fields, including participation as appropriate by institutions of higher education, state and local agencies and other public and private agencies. A plan for the development of this program, including statements of duties and responsibilities of personnel to be trained, was to be made not later than July 1, 1974, and implemented by July 1, 1976. (Sec. 115.77 WSA)

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**WYOMING****RIGHT TO AN EDUCATION**

Constitution: "The right of the citizens to opportunities for education should have practical recognition. The Legislature shall suitably encourage means and agencies calculated to advance science and liberal arts." (*Art I, Sec. 23, Wyo. Const.*)

Compulsory Attendance Law: Except as otherwise provided by law, the public schools of each district shall be equally free and accessible to all children between six and 21 years of age. Districts shall operate schools and classes for at least 175 days each year. (*Sec. 57 Wyo. Ed. Code*)

The board of trustees of any district may exclude a child from public school for any reason indicated in the statutes. A child may be suspended for up to ten days. In every case of suspension or expulsion, oral notice must be given immediately, if possible, and written notice to the parents or guardian within 24 hours.

A child may not be suspended for more than ten days without a hearing, if he requests it.

The board's decision is considered final and may be appealed to the district court of the county, pursuant to provisions of the Wyoming Administrative Procedure Act. The court may stay the decision pending appeal. (*Sec. 61 Wyo. Ed. Code*)

Any behavior which the local board of trustees judges to be detrimental to the welfare, safety or morals of other pupils is grounds for suspension or expulsion.

If the board of trustees of any district believes that, based on a physician's certificate, a child's mental or physical disability would not allow him to reasonably benefit from the programs available, or if his attendance would jeopardize the health and welfare of other pupils, he may be denied admission. The board must, however make suitable provisions for the child's education. (*Sec. 231 Wyo. Ed. Code*)

The parents or guardian of all children between seven and 16 must send the child to school for the entire time that the schools are in session in their district. Children may be exempted if the board believes their attendance in school would be harmful to themselves or others, if compulsory attendance might work undue hardship, or if the child has been legally excluded from the regular schools pursuant to Sec. 62. (*Sec. 48 Wyo. Ed. Code*)

The primary responsibility for the enforcement of this article shall be that of the board of trustees of the school district, who will appoint an attendance officer to carry out the provisions of this article. (*Sec. 49 Wyo. Ed. Code*)

Responsibilities: All school districts having any school age handicapped children shall, subject to the rules and regulations of the State Board, provide for appropriate education and training as well as necessary related services for such children. A district which is unable to provide the necessary and appropriate services shall contract with another school district or agency to obtain them. If programs and services cannot reasonably be provided by the district or by inter-district contracts, the State Board is responsible for assisting local boards of trustees to arrange for the appropriate educational programs and services inside or outside of the state, subject to the rules and regulations of the State Board. (*Sec. 286 Wyo. Ed. Code*)

POPULATION

Definitions: "Each and every child of school age in the state of Wyoming having a mental, physical or psychological handicap or social maladjustment which impairs learning, shall be entitled to and shall receive a free and appropriate education in accordance with his capabilities." (*Sec. 284 Wyo. Ed. Code*)

Age of Eligibility: Children of legal school age (six to 21) are eligible for special education services. (*Sec. 284 Wyo. Ed. Code*)

IDENTIFICATION, EVALUATION, AND PLACEMENT

All school districts, subject to the rules and regulations of the State Board, are responsible for providing the appropriate diagnosis and evaluation of handicapped children. (*Sec. 286 Wyo. Ed. Code*)

ADMINISTRATIVE RESPONSIBILITY

The State Board, jointly with the boards of trustees of all school districts, is responsible for educating all handicapped children. The State Board will adopt rules and regulations to assure that each child receives a free and appropriate education in accordance with his capabilities. (*Sec. 285 Wyo. Ed. Code*)

The State Board of Education is responsible for maintaining and operating the State School for the Deaf. From funds appropriated for that purpose, the Board shall provide adequate staff equipment and supplies for the operation of the school and may accept gifts or grants or aid from any person. (*Sec. 287 and 288 Wyo. Ed. Code*)

The State Board will have the general supervision of the deaf and blind and all other persons with a physical disability which prevents reading in the normal manner. If funds are available, the Board may provide or have provided education and other services necessary to aid these persons to help themselves to become and to remain useful citizens of the community. In addition, the Board may hire personnel and purchase necessary books, equipment, and supplies. (*Sec. 289 Wyo. Ed. Code*)

The Board of Charities and Reform is responsible for the general supervision and control of all state schools for the mentally retarded and mentally ill. Deaf and blind children who are not otherwise adequately provided for are also under the jurisdiction of this Board. (*Sec. 9-173 Wyo. Stats.*)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

In allotting classroom units for exceptional or handicapped children, the superintendent will allot one full unit, or a proportional fraction, for each ten pupils identified as educable retarded and for pupils evaluated or diagnosed as having physical, psychological, or social disabilities which impair learning. One full unit, or a proportional fraction, will be allotted for each eight trainable retarded children. Allotments will only be made if a certified teacher qualified to teach pupils having the specific disabilities listed above is in charge of the unit. These pupils may not be included in any other classroom unit determination. (*Sec. 231 Wyo. Ed. Code*)

In addition to other public school aid, unified school districts will receive state aid using a formula. The assessed valuation per classroom unit in the district will be subtracted from the state average. The difference will be multiplied by the number of classroom units within the district, by seven mills, and by a sum approved by the State Board of Education.

School districts also receive reimbursement from the state for a total not exceeding \$75 per month per child for transportation and maintenance. A greater minimum may be approved for an isolated elementary or high school child, if it would be more economical to provide transportation than establish a school.

If there are insufficient funds to provide the supplementary aids, the funds will be allotted proportionately to all school districts which are eligible for supplementary aid.

An amount will be included in the Foundation Program for the education of children having mental, physical, or psychological handicaps or social maladjustment which impairs learning if they attend school in another district or state. The amount included in the Foundation Program support for children receiving services in their own district will be the amount expended in the previous school year. State reimbursement for children receiving services in a district other than their district of residence will be in the amount expended in the previous school year by the district for tuition and maintenance. No reimbursement will be made duplicating any other category. (*Sec. 21.1-232 Wyo. Stats.*)

Districts are required to make an annual computation of the sum of local resources including 75 percent of the amount of tuition paid to the district during the previous school year, but no district shall include in its annual computation any tuition paid to the district during the previous school year by another district for the education of pupils with mental or physical handicaps. (*Sec. 233 Wyo. Ed. Code*)

Amounts expended by the district for the evaluation of exceptional child programs funded under the Foundation Program will be reimbursed 100%. Reimbursement shall be the larger of \$400, or 5% of the total cost of the district's programs for handicapped children.

A district paying tuition for a pupil may pay all or part of the child's board and room if he is placed in or out of the district. (*Sec. 21.1-70 Wyo. Stats.*)

Law Digest: Education of Handicapped Children

"Only under the following circumstances may state money be made available to districts for personnel working with handicapped children: personnel must actually work directly with children to be eligible for reimbursement under the School Foundation Program. No reimbursement can be made for therapy not required as part of the child's educational program; A salary cannot be claimed more than once." (*Op. Atty. Gen., May 27, 1970*)

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

School districts and community college districts, or any combination of them, may cooperate to provide educational services including, but not limited to vocational, technical, and adult education and services for exceptional children. Whenever two or more boards of trustees desire to establish a board of cooperative services, the president of each board calls a meeting of all interested boards. At the meeting, if a majority of the members vote in favor, they may enter into an agreement to form a Board of Cooperative Services. This agreement will specify, among other things, the length of term of the agreement, the rights, responsibilities, and obligations of each participating district or community college district, the type of services to be rendered, the procedure for the establishment of additional services, and the procedure for the inclusion of additional districts. The agreement will also provide for the amendment and dissolution of the agreement, but no amendment or dissolution will be effective without the consent of each district. All agreements must be submitted to the State Board for approval. At a meeting of all participating boards of trustees, they may elect, by secret ballot, a Board of Cooperative Educational Services composed of not less than five and no more than nine members. If there are more than nine districts participating, each participating district or community college district shall have one member. Each participating board of trustees, regardless of its number of members, shall be entitled to cast five votes in the selection of members for the Cooperative Board. Then each board of trustees, according to the agreement, will have at least one member on the Board. The term of office will be concurrent with the terms of office on their individual boards. Officers will be elected. Meetings of the Board of Cooperative Services will be called, held, and conducted as provided by law for the meeting of boards of trustees of school districts. Costs of facilities, equipment, and services provided under the direction of the Board will be financed by the participating school districts and community college districts on the basis agreed upon by the boards. (*Ch. 105, Session Laws of 1969*) See Finance regarding tuition arrangements.

Boards of Cooperative Educational Services established by the 1969 law are empowered to contract with other agencies for educational and related services. (*Ch. 204, 1971 Amendment*)

SERVICES

Special services include appropriate diagnosis, evaluation, education or training, and necessary related services. (*Sec. 286, Ch. 15, Session Laws of 1969*)

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

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DISTRICT OF COLUMBIA

RIGHT TO AN EDUCATION

Compulsory Attendance Law: All children between the ages of seven and 16 are subject to the compulsory education requirements. (Sec. 31-201 Rev. Stats)

The District of Columbia Board of Education may issue a certificate excusing a child from attendance if the child is found mentally or physically unable to profit from attendance in school, upon examination ordered by the Board. If the examination shows that the child may benefit from specialized instruction adapted to his needs, he shall attend if such instruction is available. (Sec. 31-203 Rev. Stats.)

Responsibilities: Education for all handicapped children and due process procedures were mandated by the decision in *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.C. 1972). In this lawsuit, the plaintiffs included seven handicapped children and the class similarly situated. The District of Columbia Board of Education, the Department of Human Resources and the mayor were the defendants. It was alleged that children were denied educational opportunities and that exclusion procedures violated due process requirements of the 5th amendment. It was also alleged that the Board of Education had an opportunity to provide appropriate services but had not done so. Appropriate educational opportunities for plaintiffs and guarantee of their rights were sought. On December 20, 1971, the court ordered the placement of plaintiffs by January 3, 1972, and the identification of all handicapped children. Defendants claimed insufficient funds, but the court declared that was no excuse for noncompliance and individual program plans were required within 20 days. The court retains jurisdiction.

POPULATION

Statutes contain no specific provision for the handicapped in this area.

IDENTIFICATION, EVALUATION, AND PLACEMENT

Census: The Commissioner of Education is directed to ascertain the number of blind and deaf children resident in schools in the District of Columbia over the age of six and under age 18. (Sec. 31-208 Rev. Stats.)

ADMINISTRATIVE RESPONSIBILITY

Special education in the District of Columbia is under the supervision of the Board of Education. (*Public Law 254, Organic Law of 1906*, Sec. 2)

PLANNING

Statutes contain no specific provisions for the handicapped in this area.

FINANCE

Statutes contain no specific provisions for the handicapped in this area.

ADMINISTRATIVE STRUCTURE AND ORGANIZATION

Statutes contain no specific provisions for the handicapped in this area.

SERVICES

Statutes contain no specific provisions for the handicapped in this area.

PRIVATE

Statutes contain no specific provisions for the handicapped in this area.

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PERSONNEL

Statutes contain no specific provisions for the handicapped in this area.

FACILITIES

Statutes contain no specific provisions for the handicapped in this area.

Law Digest: Education of Handicapped Children**FEDERAL LAWS**

TITLE VI, ELEMENTARY AND SECONDARY EDUCATION ACT AMENDMENTS OF 1969 (P.L. 91-230) (as amended by P.L. 93-380, the Education Amendments of 1974)

V—General Provisions: Handicapped children are defined as "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services." (Sec. 602)

Children with specific learning disabilities are defined as "those children 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 handicaps, or mental retardation, of emotional disturbance, or of environmental disadvantage." (Sec. 602)

A bureau for the education and training of the handicapped is established in the U.S. Office Education, "which shall be the principal agency in the Office of Education for administering and carrying out programs and projects related to the education and training of the handicapped." (Sec. 603)

The Commissioner of Education is directed to establish within the U.S. Office of Education a National Advisory Committee on Handicapped Children. The 15-member committee shall review the administration and operation of programs authorized by the Education of the Handicapped Act and other programs within the Office of Education related to handicapped children. At least eight members of the committee shall be involved in the education and training of the handicapped. In addition, the committee makes recommendations for the improvement of programs for handicapped children. Each year the committee shall report its recommendations to the Commissioner. This report shall be routed to the Secretary of the Department of Health, Education, and Welfare, who will transmit the report, including his recommendations, to the Congress. (Sec. 604)

The Commissioner of Education is empowered to determine if any program authorized pursuant to this Title will be improved by permitting the funds authorized for such program to be used for the acquisition of necessary equipment and facilities. If, within 20 years after the completion of any construction for which funds under this Title have been paid and the facility ceases to be used for the purposes for which it was constructed, the U.S. government may recover, at current market value, the proportion of its original investment in the construction. (Sec. 605)

Part B—Assistance to States for Education of Handicapped Children: This part provides grants to aid states in the initiation, expansion, and improvement of programs at preschool, elementary, and secondary levels. Up to three percent of the amount appropriated each year for payments to the states may be allotted by the Commissioner of Education to the outlying areas and the Bureau of Indian Affairs schools. Allotments to the states are based on the number of children ages three to 21 in the state. A minimum allotment of \$300,000 is provided to each state (615(a)(1) and 615(d) of P.L. 93-380.)

For fiscal 1975 only, P.L. 93-380 changed the funding formula to an entitlement based upon the number of all children within each state aged three to 21 multiplied by \$8.75, subject to ratable reductions if appropriations do not equal full entitlements.

Each state establishes its own procedure for approval of project applications based upon state and federal regulations. In order to receive funds, each state must submit a state plan. The state plan for each fiscal year must meet

(1) Assurance must be given that funds will be expended only for the initiation, expansion, or improvement of programs and projects of sufficient size, scope, and quality to meet the needs of handicapped children. Indication of state involvement in the administration of the projects and procedures for planning at the state and local levels must be given. Planning and administration funds must not exceed \$200,000.

(2) A proportionate number of children in private elementary and secondary schools must participate in programs.

(3) Responsibility for the control of funds must lie with a public agency.

(4) Funds under this section should increase or supplement state, local, and private funds rather than replace such funds.

(5) Annual evaluations of programs should be conducted to insure that the educational needs of handicapped children are being met.

(6) No funds may be used for children eligible for assistance under P.L. 89-313.

(7) Dissemination of significant information derived from projects should be provided.

K (8) All education programs for the handicapped in the state must be properly coordinated by those responsible for special education in the state education agency. (Sec. 613)

P.L. 93-380, the Education Amendments of 1974, mandates further state plan requirements as an addition to those just specified.

New state plan requirements effective fiscal 1975:

(1)(*Full Services Goal & Priority to Unserved*) Under new paragraph (12) of Section 613(a), the Part B State plan must "(A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education". (614(d))

(2)(*Evaluation-Placement Safeguards*). Under new paragraph (13) of (613(a), the Part B State plan must "provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children." These include, but are not limited to the following:

(a) (*Due Process Guarantees*) —(i) prior notice to parents or guardians when a change in the child's placement is proposed; (ii) opportunity for parents or guardians to obtain an impartial due process hearing, examine all relevant records, and obtain an independent evaluation of the child; (iii) protection of the child's rights when his parents or guardians are not known, available, or he is a State ward; and (iv) provision to insure that the due process decisions in (ii) are binding on all parties.

(b) (*"Least Restrictive"*) —Procedures to insure that, to the maximum extent appropriate, handicapped children are educated with children who are not handicapped and that their removal from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

(c) (*Non-Discriminatory Testing & Evaluation*) —Procedures to insure that testing materials and procedures used for classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. (614(d))

New state plan requirements effective fiscal 1976:

Under a new section 613(b), (P.L. 93-380), any state which desires to receive grants for any fiscal year beginning after June 30, 1975, must submit within one year following enactment of P.L. 93-380 (therefore, by August 21, 1975) an amendment to the Part B state plan. The amendment must set forth policies and procedures to assure the following:

1. (*Child Identification*) - - that all children in the State who are handicapped and in need of special educational and related services are identified, located and evaluated, including a practical method of determining which children are currently served and which are not currently served;
2. (*Confidentiality*) - - that policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of the above child data.
3. (*Full Services Goal*) - - that there is established (i) a goal of providing full educational opportunities to all handicapped children; (ii) a detailed time-table for accomplishing such a goal; and (iii) a description of the kind and number of facilities, personnel and services necessary throughout the State to meet such a goal; and
- *- 4. (*Public Notice*) • - that the State plan amendment under 613(b), will be available to parents and the general public at least 30 days prior to its submission to the U.S. Office of Education. (615(e)(1))

Part C—Centers and Service to Meet Special Needs of the Handicapped: The Commissioner of Education is authorized to make grants establishing regional resource centers to develop and apply models of appraising the special education needs of handicapped children and to serve as a resource agencies, and institutions. Centers also develop educational programs to meet the special education needs of the handicapped. Consultative services may be provided and include, when appropriate, consultation with parents or teachers of handicapped children. Periodic reexamination and re-evaluation of special education programs and other technical services are also functions of the centers. (Sec. 621)

Provision is made for the establishment of model centers for deaf-blind children. These centers are designed to develop and provide, as early as feasible in life, the specialized comprehensive, professional,

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and other services, methods, and aids found to be the most effective with deaf-blind children to enable them to develop to their full potential for adjustment to the world around them. These services may include: (1) diagnostic and evaluative services; (2) programs for adjustment, orientation, and education including all necessary professional services, and (3) consultative services for parents and teachers to enable them to understand and deal with the special problems of deaf-blind children.

Transportation may be provided to non-resident students and to parents needing access to the center.

Public or non-profit agencies, organizations, and institutions may apply for contracts to establish such centers. (Sec. 622)

The Commissioner of Education is authorized to establish experimental early childhood education programs for the handicapped. Programs approved by the Commissioner must show promise of promoting a comprehensive and strengthened approach to the special problems of these children. Programs are to be distributed geographically and between urban and rural areas. Programs offered under this section should be designed to facilitate intellectual, emotional, physical, mental, social, and language development, encourage parent participation, and acquaint the community with the problems and potentialities of young, handicapped children.

Provision must be made for coordination of these programs with any similar activities in the schools of the communities served. The federal payment cannot exceed 90 percent of the cost of development, operation or evaluation of early childhood programs. (Sec. 623)

The Commissioner of Education is authorized to provide, as part of any grant or contract under Part C or as a separate contract or grant to an agency, organization, or institution operating a center or providing services which fulfill the purposes of Part C, all or part of the cost of such activities as:

- (1) Research on meeting the full range of special education needs of handicapped children.
- (2) Developing or demonstrating new or improved methods contributing to the adjustment and of such children.
- (3) Training professional and allied personnel engaged in such programs. Payment of stipends for trainees as well as travel and expense allowances for the trainee and his dependents are allowed.
- (4) Dissemination of materials and information about effective practices.

The Commissioner is directed to conduct or contract for the conducting of evaluation of such program. (Sec. 624)

The Commissioner of Education is directed to conduct, either directly or by contract with independent organizations, a thorough and continuing evaluation of the effectiveness of each program assisted under Part C. (Sec. 625)

Part D—Training Personnel for the Education of the Handicapped: A training program for personnel for education of the handicapped is authorized. The Commissioner of Education may make grants to institutions of higher education and other appropriate nonprofit institutions to aid in the following:

(1) providing training of professional personnel to conduct training of teachers and other specialists in fields related to the education of the handicapped;

✓ (2) providing training for personnel presently engaged or preparing to engage in employment as teachers of the handicapped, supervisors of such teachers, other personnel providing services for the education of handicapped children, or researchers in the fields related to such education; and

▲ (3) establishing and maintaining scholarships with stipends and allowances determined by the Commissioner for training personnel in the categories listed above. (Sec. 631)

↗ The Commissioner may make grants to state educational agencies to assist them in establishing and maintaining, directly or through grants to higher education institutions, programs for training teachers of the handicapped or supervisors of such teachers. These grants shall also be available to assist the institutions in meeting costs of training. (Sec. 632)

Grants may be made to public or non-profit private agencies, organizations, or institutions for projects to encourage students and professional personnel to work in the education of the handicapped by developing and distributing innovative materials to assist in recruitment or by publicizing available financial aid. Grants may also be made to disseminate information about available services for the handicapped and to provide referral services for parents, teachers, and other interested persons. (Sec. 633)

The Commissioner of Education is authorized to make grants to institutions of higher education, to provide training for personnel in physical education and recreation for the handicapped. The Commissioner is also authorized to make grants related to research or teaching in fields related to the physical education and recreation of the handicapped. (Sec. 634)

Yearly reports to the Commissioner are required of all recipients of training grants. *Sec. 635)

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✓ **Part E—Research in the Education of the Handicapped:** Grants for research and demonstration purposes may be made to state or local education agencies, institutions of higher education, and other public or nonprofit private education or research agencies or organizations. (Sec. 641)

These agencies are also eligible for grants and contracts for research and demonstration projects in physical education and recreation for handicapped children. (Sec. 642)

Panels of experts appointed by the Commissioner are required to advise him before making any grant under Part E of Title VI. (Sec. 643)

✓ **Part F—Instructional Media for the Handicapped:** The purpose is to provide captioned films for the deaf in both cultural and educational areas and the educational advancement of the handicapped through research, production, and distribution of educational media. The training of persons in the use of educational media for the instruction of the handicapped is also authorized. (Sec. 651)

The Commissioner is directed to establish a loan service of captioned films and educational media for the handicapped. Distribution of captioned films and other media and equipment may be done through state schools for the handicapped and other such agencies, which are determined to be appropriate local or regional distribution centers. (Sec. 652)

The Secretary of Health, Education, and Welfare is authorized to enter into agreement with an institution of higher education for the establishment and maintenance of a National Center on Educational Media and Materials for the Handicapped. The Center will provide a comprehensive program to facilitate the use of new educational technology including the design, development, and adaptation of instructional materials. The contract with the institution shall authorize the center, subject to the approval of the secretary, to contract with public and private agencies and organizations for demonstration projects and provide for an annual report of the activities of the Center to the U.S. Congress.

The secretary, in considering applications, shall give preference to institutions which demonstrate the necessary capabilities for the development and evaluation of educational media for the handicapped and meet the educational technology needs of the Model Secondary School for the Deaf established under P.L. 89-694. (Sec. 653)

Part G—Special Program for Children with Specific Learning Disabilities: A program is authorized supporting research training, and model centers to meet the needs of children with specific learning disabilities as defined in Part A, Section 602.

The Commissioner may make grants to or contracts with institutions of higher education, state and local education agencies, and other non-profit agencies and organizations to carry out the following program:

- ✓ (1) research and related activities, surveys, and demonstrations;
- ✓ (2) professional training for teachers of children with learning disabilities and supervisors and teachers of such personnel;
- ✓ (3) establishing and operating model centers to provide educational evaluation to identify children with learning disabilities;
- ✓ (4) developing and conducting model programs and assisting education agencies, organizations, and institutions in making model programs available.

Special consideration will be given to applications proposing innovative and creative approaches to meeting the educational needs of learning disabled children and those which emphasize prevention and early identification. The grants and contracts for the training of personnel should be distributed equitably on a geographic basis, and there should be, if possible, at least one model center in each state. (Sec. 661)

THE REHABILITATION ACT OF 1973 (P.L. 93-112)

This Act supersedes all of the Vocational Rehabilitation Act amendments dating back to P.L. 66-236. The Act establishes the statutory basis for the Rehabilitation Services Administration, and authorizes programs to:

- (1) develop and implement comprehensive and continuing State plans for meeting the current and future needs for providing vocational rehabilitation services to handicapped individuals and to provide such services for the benefit of such individuals, serving first those with the most severe handicaps, so that they may prepare for and engage in gainful employment;
- (2) evaluate the rehabilitation potential of handicapped individuals;
- (3) conduct a study to develop methods of providing rehabilitation services to meet the current and future needs of handicapped individuals for whom a vocational goal is not possible or feasible so that they may improve their ability to live with greater independence and self-sufficiency;

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- (4)assist in the construction and improvement of rehabilitation facilities;
- (5)develop new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and develop new and innovative methods of providing rehabilitation services to handicapped individuals through research, special projects, and demonstrations;
- (6)initiate and expand services to groups of handicapped individuals (including those who are homebound or institutionalized) who have been underserved in the past;
- (7)conduct various studies and experiments to focus on long neglected problem areas;
- (8)promote and expand employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment;
- (9)establish client assistance pilot projects;
- (10)provide assistance for the purpose of increasing the number of rehabilitation personnel and increasing their skills through training; and
- (1)devaluate existing approaches to architectural and transportation barriers confronting handicapped individuals, develop new such approaches, enforce statutory and regulatory standards and requirements regarding barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals.

In provision of vocational rehabilitation services under Title I, an individualized written rehabilitation program is required in the case of each handicapped individual, to be developed jointly by the rehabilitation counselor and the handicapped individual, or his parent or guardian if appropriate. Such a written program shall set forth the terms and conditions as well as the rights and remedies under which goods and services will be provided to the individual (Section 102).

Such written rehabilitation program shall be reviewed on an annual basis, at which time the individual will be given the opportunity to review and jointly redevelop the terms of the program.

- * If evaluation of rehabilitation potential determines that the individual is not capable of achieving a vocational goal, such decision shall be reviewed annually.

Severe handicap is defined as "the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe." (Section 7)

Provides in Part D of Title I for a study of need for services by individuals for whom a vocational goal is not feasible, but who can through provision of services, be assisted in living more normally in family and community.

Title II of the Act gives identity and emphasis to the research, demonstration, and training activities which were first authorized under the VR Act in 1954.

The Secretary, through the Commissioner, and in cooperation with other programs in DHEW, is authorized to make grants to and make contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the costs of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational and comprehensive rehabilitation services to handicapped individuals, especially those with the most severe handicaps, under this Act.

The Rehabilitation Act of 1973 provides several other changes from the earlier Act:

- * A new federal mortgage insurance program to assist in the construction of rehabilitation facilities with a limitation of \$200 million on the value of insured mortgages.
- * Establishment of an architectural and transportation barriers compliance board to enforce existing federal statutory requirements concerning access to public buildings and transportation for the handicapped.
- * Requirement that state rehabilitation agencies seek funds from other existing federal assistance programs before any rehabilitation funds may be used for higher education purposes.
- * Requirement that an annual report on the program be submitted to the President and the Congress. The report should specifically distinguish among rehabilitation case closures attributable to physical restoration, placement in competitive employment, extended or terminal employment in a sheltered workshop or rehabilitation facility, employment as a homemaker or unpaid family worker, and provision of other services.

- * Requirement that the Secretary of HEW establish within his office a clearinghouse on information concerning programs for handicapped individuals. This office shall also be responsible for submitting a long range projection for the provision of comprehensive services to handicapped individuals and shall assist in meeting the goals and priorities set in the projected plan.
- * Establishment of a federal interagency committee on handicapped employees to facilitate employment and advancement in federal government jobs for handicapped individuals.
- * Prohibition of discrimination in any program or activity receiving federal financial assistance solely by reason of handicap.
- * Establishment of demonstration projects for client assistance to provide counselors to inform and advise clients of available benefits under the Act.

THE ECONOMIC OPPORTUNITY ACT AMENDMENTS OF 1972 (P.L. 92-424)

The Secretary of Health, Education, and Welfare is ordered to establish policies and procedures designed to assure that not less than ten percent of the total number of enrollment opportunities in the Nation in the Headstart program shall be available for handicapped children and that services shall be provided to meet their special needs. Effective July 1, 1975, a ten percent mandate must be in effect in each of the states.

The definition of handicapped children under this new preschool mandate is the same as that definition appearing in Section 602 of the Elementary and Secondary Education Act of 1965, as amended: "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services."

The Secretary is further ordered to implement his responsibilities under this mandate in such manner as not to exclude from any Headstart project any child who was participating in the program during the fiscal year ending June 30, 1972.

Within six months after the date of enactment of this Act, and at least annually thereafter, the Secretary is ordered to report to the Congress on the status of handicapped children in Headstart programs, including the number of children being served, their handicapped conditions, and the services being provided such children.

TITLE I, ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (P.L. 89-10)

In recognition of the special educational needs of children of low income families and the impact that concentrations of low income families have on the ability of local educational agencies to support educational programs, the Title provides financial assistance to local educational agencies for the education of children of low income families. The improvement of educational programs in low income areas by various means, including preschool programs, is declared as policy. (Sec. 101)

Grants to expand and improve educational programs for children in institutions for the delinquent or neglected are made to state agencies and local educational agencies operating or supporting such institutions. Eligible institutions submit proposals in cooperation with state and local agencies such as health, welfare, education, or corrections agencies to the state educational agencies. The allocations for this program are formula based. (Sec. 103)

P.L. 89-313 amended this Title to provide grants to state agencies directly responsible for providing free public education for handicapped children. Students in state operated and supported institutions for the handicapped qualify for aid under the provisions set forth in this Title.

"In the case of a State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), the maximum basic grant which that agency shall be eligible to receive under this part for any fiscal year shall be an amount equal to the Federal percentage of the average per pupil expenditure in that State or, if greater, in the United States multiplied by the number of such children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by that State agency, in the most recent fiscal year for which satisfactory data are available. Such State agency shall use payments under this part only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of such children." (Sec. 103)

Payment to the states for handicapped children in state supported schools and institutions shall be the maximum grant as determined by the formula regardless of sums appropriated. (Sec. 108)

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P.L. 93-380, the Education Amendments of 1974, further amends this Title in the following way (Section 121):

"(c) A State agency shall use the payments made under this section only for programs and projects (including the acquisition of equipment and, when necessary, the construction of school facilities) which are designed to meet the special educational needs of such children, and the State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

"(d) In the case where such a child leaves an educational program for handicapped children operated or supported by the state agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1): he continues to receive an appropriately designed educational program; and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in subsection (c)."

TITLE III, ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, (P.L. 89-10) (As amended by P.L. 93-380)

The Commissioner of Education is directed to "carry out a program for making grants for supplementary educational centers and assist in the provision of vitally needed educational services not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school educational programs to serve as models for regular school programs." (Sec. 301)

Funds appropriated pursuant to Section 301 may be used for the following purposes:

- (1) Planning which leads to the development of programs or projects designed to provide supplementary educational activities and services including pilot projects designed to test the effectiveness of plans.
- (2) The establishment or expansion of exemplary and innovative educational programs including special programs for handicapped children.
- (3) The establishment, maintenance, operation, and expansion of programs, including the lease or construction of necessary facilities and acquisition of equipment designed to enrich the programs of local elementary and secondary schools.

Supplementary educational services and activities is defined in the law to specifically include the following:

"(A) Comprehensive guidance and counseling, remedial instruction, and school health, physical education, recreation, psychological, social work, and other services designed to enable and encourage persons to enter, remain in, or re-enter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session.

"(B) Comprehensive academic services and, where appropriate, vocational guidance and counseling for continuing adult education.

"(C) Specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age.

"(D) Making available modern educational equipment and specially qualified personnel, including artists and musicians, on a temporary basis for the benefit of children in public and other nonprofit schools, organizations, and institutions.

"(E) Developing, producing, and transmitting radio and television programs for classroom and other educational use.

"(F) In the case of any local educational agency which is making a reasonable tax effort but which is nevertheless unable to meet critical educational needs (including preschool education), because some or all of its schools are seriously overcrowded, obsolete, or unsafe, initiating and carrying out programs or projects designed to meet those needs, particularly those which will result in more effective use of existing facilities.

"(G) Providing special educational and related services for persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including where appropriate, the provision of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, bilingual education methods, and visiting teachers' programs.

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"(H) Encouraging community involvement in educational programs.

"(I) Other specially designed educational programs or projects which meet the purposes of this Title." (Sec. 303)

The states are required to establish an advisory council which shall include persons representative of "areas of professional competence dealing with children needing special education", set dates by which local education agencies must submit applications, and submit a state plan to the commissioner of Education. (Sec. 305)

"Not less than 15 per centum of the amount which such state receives to carry out the plan in such fiscal year shall be used for special programs or projects for the education of handicapped children." (Sec. 305)

The President is directed to appoint a National Advisory Council on Supplementary Centers and Services to review the administration of, general regulations for, and operation of this Title, and to evaluate programs carried out under this Title. Composition of the Council shall include "at least one person who has professional competence in the education of handicapped children". (Sec. 309)

P.L. 93-380, Part C—Educational Innovation and Support, Section 431, permits the states, with certain restrictions, to consolidate Title III (innovation portion only) with Title V of ESEA (strengthening state departments of education) and Title VIII of ESEA (dropout prevention and school health and nutrition programs).

The states must expend monies under this consolidation (with a state plan approved by the Commissioner) for the following broad purposes:

(1) for supplementary educational centers and services to stimulate and assist in the provision of vitally needed educational services (including preschool education, special education, compensatory education, vocational education, education of gifted and talented children, and dual enrollment programs) not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school programs (including the remodeling, lease, or construction of necessary facilities) to serve as models for regular school programs;

(2) for the support of demonstration projects by local educational agencies or private educational organizations designed to improve nutrition and health services in public and private elementary and secondary schools serving areas with high concentrations of children from low-income families and such projects may include payment of the cost of (A) coordinating nutrition and health service resources in the areas to be served by a project, (B) providing supplemental health, mental health, nutritional and food services to children from low-income families when the resources for such services available to the applicant from other sources are inadequate to meet the needs of such children, (C) nutrition and health programs designed to train professional and other school personnel to provide nutrition and health services in a manner which meets the needs of children from low-income families for such services, and (D) the evaluation of projects assisted with respect to their effectiveness in improving school nutrition and health services for such children;

(3) for strengthening the leadership resources of State and local educational agencies, and for assisting those agencies in the establishment and improvement of programs to identify and meet educational needs of States and of local school districts; and

(4) for making arrangements with local educational agencies for the carrying out by such agencies in schools which (A) are located in urban or rural areas, (B) have a high percentage of children from low-income families, and (C) have a high percentage of such children who do not complete their secondary school education, of demonstration projects involving the use of innovative methods, systems, materials, or programs, which show promise of reducing the number of such children who do not complete their secondary school education.

The 15 percentum set aside in Title III is extended to the entire consolidation (Section 403(a)(8)(B): "that not less than 15 per centum of the amount received pursuant to section 401 (b) (the consolidation) in any fiscal year ... shall be used for special programs or projects for the education of children with specific learning disabilities and handicapped children,"

GALLAUDET COLLEGE (P.L. 83-420)

The Act changes the name of the Columbia Institution for the Instruction of the Deaf and Dumb and Blind, Incorporated, to Gallaudet College, located in Washington, D.C. It is a private, non-profit educational institution providing an undergraduate and graduate program for the deaf, a preparatory school for deaf students, a graduate school program in the field of deafness, and adult education for deaf persons. (Sec. 2) It operates the Kendall School for Deaf Children, a preschool program for very young deaf children, and programs in research on deafness.

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The Act defines the corporate powers of Gallaudet College and provides for its organization and administration. (Sec. 6) Gallaudet College "shall be under the direction and control of a Board of Directors, composed of thirteen members." (Sec. 5)

The Act authorizes the appropriation of such sums "as the Congress may determine necessary for the administration, operation, maintenance, and improvement of Gallaudet College, including sums necessary for student aid and research, for the acquisition of property, both real and personal, and for the construction of buildings, and other facilities for the use of said corporation." (Sec. 8)

MODEL SECONDARY SCHOOL FOR THE DEAF ACT (P.L. 89-694)

The Secretary of the Department of Health, Education, and Welfare is authorized to enter into an agreement with Gallaudet College to establish the Model Secondary School for the Deaf, serving primarily the residents of the District of Columbia and nearby states. The high school will provide a model for the development of similar programs across the country in formulating new educational methods, technology, and curriculums.

The Department of Health, Education, and Welfare agreement with Gallaudet shall: (1) provide for utilization of the National Advisory Committee on Education of the Deaf to advise Gallaudet on the establishment and operation of the model secondary school; (2) provide an annual report to the HEW Secretary; (3) provide excellence in architectural design in construction of any facilities along with innovative auditory and visual devices. (Sec. 4)

Such sums necessary for the establishment and operation, including construction and equipment, of a model secondary school "are authorized to be appropriated for each fiscal year." (Sec. 2)

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF ACT OF 1965 (P.L. 89-36)

The Act authorizes the construction and operation of a residential facility for post secondary technical training and education for persons who are deaf in order to prepare them for successful employment. (Sec. 2) Preference will be given to the institute being located in a large metropolitan area having a wide variety of representative industries available for training experience (Sec. 5). The institute will be affiliated with a major university for the administration of its program. (Sec. 4) The governing body of the institution is required to make an annual report to the Secretary. (Sec. 5) (The National Technical Institute for the Deaf is located at Rochester Institute of Technology in Rochester, N.Y.)

VOCATIONAL EDUCATION AMENDMENTS OF 1968 (P.L. 90-576)

Title I—Vocational Education: The Vocational Education Act provides that ten percent of funds for vocational education must be spent for the handicapped. (Sec. 122) This program is designed to provide an effective vocational education program for the handicapped and to develop new programs relating to the vocational education needs of the handicapped. A National Advisory Council on Vocational Education is created and must have one member of the Council "experienced in the education and training of handicapped persons." State advisory councils on vocational education are also required to have a member "having special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons." Members are to be appointed by the elected state boards of education or by the governor. (Sec. 104)

The vocational education program operates through an approved state plan with 50 percent matching state funds. (Sec. 103)

Vocational education is defined in the following manner:

"The term 'vocational education' means vocational or technical training or retraining which is given in schools or classes (including field or laboratory work and remedial or related academic and technical instruction incident thereto) under public supervision and control or under contract with a State board or local educational agency and is conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations which the Commissioner determines, and specifies by regulation, to be generally considered professional or which requires a baccalaureate or higher degree; and such term includes vocational guidance and counseling (individually or through group instruction) in connection with such training or for the purpose of

facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; the training of persons engaged as, or preparing to become, teachers in a vocational education program or preparing such teachers to meet special education needs of handicapped students; teachers, supervisors, or directors of such teachers while in such a training program; travel of students and vocational education personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. (Sec. 108)

HIGHER EDUCATION AMENDMENTS OF 1972 (P.L. 92-328)

The Commissioner of Education may make grants and contracts with institutions of higher education, including institutions with vocational and career educational programs, or a combination of such institutions, public and private organizations and agencies including professional and scholarly associations and, in exceptional cases, secondary schools and secondary vocational schools, to plan, develop and carry out services to assist youths from low income families with academic potential but who may lack adequate secondary school preparation or who may be physically handicapped to enter, continue, or resume postsecondary education. These programs include "Talent Search" to:

- (1) identify qualified persons of financial or cultural need who have exceptional potential for secondary training and encourage them to complete secondary school and undertake such postsecondary training;
- (2) publicize existing student financial aid; and
- (3) encourage secondary or postsecondary dropouts of demonstrative aptitude to re-enter educational programs.

Also included is "Upward Bound" designed to generate skills and motivation necessary for postsecondary educational success. Participants in Upward Bound participate on a substantially full-time basis during all or part of the program.

"Special Services for Disadvantaged Students" provides remedial and other special services for students with academic potential enrolled in or accepted for enrollment at the institution which is the beneficiary of the grant or contract and who because of a deprived educational, cultural, or economic background, or a physical handicap needs these services to enable them to begin, continue or resume post-secondary education.

Up to 75 percent of the costs of establishing and maintaining Educational Opportunity Centers are provided to serve areas with major concentrations of low income populations by providing in cooperation with other applicable programs and services:

- (1) information regarding financial and academic assistance;
- (2) assistance to persons applying to postsecondary institutions, including preparing necessary applications; and
- (3) counseling and tutorial services and any other necessary services to persons attending such institutions.

These centers will also serve as recruiting and counseling pools to coordinate resources and staff efforts of higher education and other postsecondary institutions in admitting educationally disadvantaged persons.

Persons participating on a substantially full-time basis participating in any of the above programs may receive a stipend of up to \$30 monthly. (Sec. 417B)

Loans are provided to college and university students. Full forgiveness is authorized on loans made to students who later teach handicapped children "in a public or other nonprofit elementary or secondary school system." The rate of forgiveness is 15 percent for the first or second year of such service, 20 percent for the third or fourth year, and 30 percent for the fifth year. (Sec. 465)

Title V—Education Professions Development: The Act establishes a National Advisory Council (Sec. 502) and empowers the Commissioner of Education to make grants to or contract with state or local organizations to attract qualified persons into the field of education. (Sec. 504)

Fellowships leading to advanced degrees are authorized for teachers and related education personnel including persons in "child development and special education for handicapped children." (Sec. 521)

The Commissioner is authorized to make grants to institutions of higher education, state educational agencies, and local educational agencies to conduct programs or projects including the following activities:

- (1) programs or projects to train or retrain teachers, or supervisors or trainers of teachers, in any subject generally taught in the schools;

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- (2) programs or projects to train or retrain other educational personnel in such fields as guidelines and counseling (including occupations! counseling), school social work, child psychology, remedial speech and reading, child development, and educational media (including educational or instructional television or radio);
- (3) programs or projects to train teacher aides and other non-professional educational personnel;
- (4) programs or projects to provide training and preparation for persons participating in educational programs for children of preschool age;
- (5) programs or projects to prepare teachers and other educational personnel to meet the special needs of the socially, culturally, and economically disadvantaged;
- (6) programs or projects to prepare teachers and other educational personnel to meet the special needs of exceptionally gifted students;
- (7) programs or projects to train or retrain persons engaging in programs of special education for the handicapped;
- (8) programs or projects to train or retrain persons engaging in special educational programs for children of limited English-speaking ability;
- (9) programs or projects to provide inservice and other training and preparation for school administrators, and
- (10) programs or projects to prepare artists, craftsmen, scientists, artisans, or persons from other professions or vocations, or homemakers to teach or otherwise assist in programs or projects of education on a long-term, short-term, or part time basis. (Sec. 531)

Authorized grants or contracts may be used to pay the cost of short- or long-term institutes and other pre-service and in-service training programs designed to improve the qualifications of persons entering or re-entering elementary and secondary education or post-secondary vocational education. (Sec. 531)

Any state desiring to receive grants is required to submit a state plan through its educational agency. (Sec. 520)

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS (SAFA OR "IMPACT AID") P.L. 81-874 (AS AMENDED BY P.L. 93-380)

This is a longstanding federal education component, first authorized by the Eighty-First Congress. SAFA provides aid for the maintenance and operation of any of the Nation's school districts which have received the impact of the presence of federal installations. The original purpose was to reduce the inequities to local school districts brought about by the presence of federal lands which are tax-exempt coupled with that district's responsibility of providing an education to the dependents of federal employees, whether the dependents themselves live on federal property or whether their parents are simply in the federal employ, civilian and military.

In what is undoubtedly the closest approximation to general aid to education on the part of the federal government, payments are based on local education costs coupled with the number of federal dependents residing in a given local school district. Payments are made directly to the local school districts and may be expended for a relatively wide range of educational purposes.

Public Law 93-380 provides (Section 305(d)(0) that, for the purpose of computing the amount to which a local educational system is entitled for any fiscal year under the impact aid program, the Commissioner shall count as one-and-one-half any child who is handicapped if that child is the dependent of a member of the U.S. Armed Services. Such child shall be counted only when the recipient local educational agency is in fact providing a program designed to meet the special educational and related needs of such child. Handicapped children are defined in the same manner as defined by Section 602(1) of P.L. 91-230, and children with specific learning disabilities are also eligible as defined by Section 602(15) of the same P.L. 91-230.

P.L. 93-380 more specifically provides that programs provided by local education agencies for eligible children must be of sufficient size, scope, and quality as to give reasonable promise of substantial progress toward meeting the special educational needs of such children. The determination of size, scope, and quality is based upon the individual state's standards for certification of such programs, and each state must in fact certify the particular programs.

ADULT EDUCATION (P.L. 91-230, TITLE III, AS AMENDED BY P.L. 93-380, TITLE VI, PART A, SECTION 603)

The Adult Education Act of 1966 was created to establish and expand programs of adult public education aimed at encouraging adults to complete their education through the secondary level. The Act is

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more specifically aimed at helping adults prepare for more profitable employment and for more responsible citizenship. Due to constrained appropriations since the passage of the Act, funds have been focused on providing adult basic education programs for those who have not achieved the level of an eighth grade education. Grants are made to the states on the basis of an approved state plan.

Public Law 93-380 (Title VI, Part A, Section 603) amended the Adult Education Act in such manner as to provide that not more than 20 percent of the funds under the Act can be applied to educational programs for institutionalized persons. The legislative history accompanying this amendment defines "institutionalized adults" as "... those adults incarcerated in Federal, State and local penal institutions and those adults residing in Federal, State and local institutions for the mentally and physically handicapped."

DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION AMENDMENTS OF 1970 (P.L. 91-517)

The Act amends the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164) to assist the states in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the states in the provision of such services in accordance with such plan, and to assist in the construction of facilities to provide the services necessary to carry out such plans.

Title I, Services and Facilities for the Mentally Retarded and Persons with other Developmental Disabilities: Defines such disabilities as those attributable to mental retardation, cerebral palsy, epilepsy, or another neurological handicapping condition of an individual to which the following criteria apply: (1) the disability originates before such individual attains age 18; (2) the disability can be expected to continue indefinitely, and (3) the disability constitutes a substantial handicap to the individual.

The term "services" means specialized services or special adaptions of generic services directed toward the alleviation of a developmental disability and includes "diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training education, sheltered employment, recreation, counseling of the individual with such a disability, and with his family protective and other socio-legal services, information and referral services, follow-along services and transportation services." (Sec. 140)

The following grants are authorized:

"(1) Grants to assist the states in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities.

"(2) Grants to assist public or non-profit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities including facilities for any purpose stated in this section.

"(3) Grants for provision of service to persons with developmental disabilities including costs of operation, staffing and maintenance of facilities for persons with developmental disabilities.

"(4) Grants for state or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities.

"(5) Grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto.

"(6) Grants for developing or demonstrating new or improved techniques for the provision of services for persons with developmental disabilities." (Sec. 130)

A national advisory council is created to advise the Secretary of Health, Education, and Welfare and to evaluate the effectiveness of programs. Membership of the council will consist of 20 leaders in the fields of service to the mentally retarded and other developmentally disabled persons. (Sec. 133)

The formula grant program of the Act operates through two main mechanisms at the state level: (1) The State Planning and Advisory Council, and (2) designated state agencies.

Membership on the state advisory councils is to include representatives of each of the principal state agencies, local agencies, and nongovernmental organizations and groups concerned with services for the developmentally disabled.

At least nine specific programs must be taken into account: vocational rehabilitation, public assistance, social services, crippled children's services, education for the handicapped, medical assistance, maternal and child health, comprehensive health planning, and mental health. Provision in the state plan must include special financial and technical assistance for areas of urban and rural facility for persons with developmental disabilities. (Sec. 134)

Title II, Amendments to Part B of the Mental Retardation Facilities Construction Acts: A program is provided for federal support of inter-disciplinary training in institutions of higher learning as well as for the

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construction of facilities to house these programs. Grants may be made to assist university affiliated facilities in the construction of special facilities capable of demonstrating exemplary care treatment, education, and rehabilitation of the developmentally disabled. These grants may cover the costs of administering and operating demonstration facilities and interdisciplinary training programs for personnel with developmental disabilities. (Sec. 122) Priority consideration will be given to projects involving junior colleges in training programs. (Sec. 203)

Project grants to the states are authorized to assist in the construction of public or non-profit facilities to provide a wide array of services to the developmentally disabled. (Sec. 201)

TITLE V, SOCIAL SECURITY ACT OF 1935 AS AMENDED

This Title authorizes project grants and formula grants to the states to support such programs as maternal and child health services, crippled children's services, maternity and infant care projects, internal and child health research, and personnel training in maternal and child health.

The Title authorizes a program of formula grants to the states for services reducing infant mortality and improving the health of mothers and children. Geographical areas suffering severely from economic distress are to be given special consideration in the funding of programs. Some funds are used by the states to conduct special clinics for mentally retarded children and to provide diagnostic, counseling, treatment, and follow-up services. (Sec. 503)

A program of formula grants is also authorized to provide financial support to states, especially in areas suffering from economic distress, for medical and related services to crippled children and children suffering from conditions that lead to crippling. (Sec. 504)

The Title authorizes a program of project grants to help reduce the incidence of handicapping conditions associated with childbearing and to help reduce infant and maternal mortality. Grants are made to identify high-risk patients early in pregnancy and make available a broad spectrum of diagnostic and specialist consultation services including hospitalization during the prenatal period, labor, and delivery, and provision of intensive medical and nursing care for prematurely born and other high risk infants. Health and dental care projects for children and youth are also supported, particularly in areas where low income families are concentrated. (Sec. 508)

The Title authorizes a program of project grants to train personnel for health care and related services for mothers and children, particularly mentally retarded children and children with multiple handicaps, (Sec. 511) and a program of project grants authorized to support research projects relating to maternal and child health services or crippled children's services showing promise of substantial contribution to the advancement of such services. (Sec. 512)

The most recent amendments are contained in P.L. 92-603, the Social Security-Welfare Amendments of 1973.

AN ACT TO PROMOTE THE EDUCATION OF THE BLIND (1879)

The Act creates the American Printing House for the Blind, a non-profit institute located in Lexington, Ky., which supplies educational materials and tangible apparatus to blind and multi-handicapped children and adults.

The Act establishes a perpetual fund, the interest of which the Secretary of Health, Education, and Welfare is authorized to pay to the trustees of the Printing House on a semi-annual basis. (Sec. 2) The appropriation shall be expended by the trustees each year "in manufacturing and furnishing books and other materials specially adapted for the instruction of the blind." These materials "shall each year be distributed among all the public institutions in the states, territories, and possessions of the United States, the Commonwealth of Puerto Rico and the District of Columbia, in which blind pupils are educated." (Sec. 3)

The superintendent of each public institution for the education of the blind (or his designee) and the chief state school officer shall serve as ex-officio members of the board of trustees of the American Printing House for the Blind. (Sec. 3) The trustees are required to make an annual report to the Secretary of the Treasury. (Sec. 4)

ELIMINATION OF ARCHITECTURAL BARRIERS TO THE PHYSICALLY HANDICAPPED IN CERTAIN FEDERALLY FINANCED BUILDINGS (P.L. 90-480)

The purpose of this Act is to insure that certain buildings financed with federal funds are designed and constructed so as to be accessible to the physically handicapped. The term "building" as defined in the Act refers to any building or facility intended for public use, other than a privately owned residential structure or buildings on a military installation designed and constructed for able-bodied military personnel. (Sec. 1) Appropriate standards of design and construction will be developed by the Secretary of Health, Education, and Welfare in consultation with the administrator of General Services Administration, the Secretary of Housing and Urban Development, the Secretary of Defense. (Sec. 2-4) Every federally financed building designed, constructed, or altered after the effective date of standards issued under this Act must be in compliance with these standards. (Sec. 5)

The Administrator of General Services, Secretary of Defense, and Secretary of Housing and Urban Development are empowered to "waive any such standards on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned." Administrators and Secretaries are required to conduct "such surveys and investigations as they deem necessary to insure compliance with such standards." (Sec. 6)

EDUCATION OF THE GIFTED AND TALENTED (P.L. 93-380, Title IV, Section 404)

The Act provides for the establishment of: (1) an administrative unit in OE to coordinate the programs and activities for gifted and talented children provided for in the Act; and (2) a national clearinghouse to collect and disseminate information relative to the education of gifted and talented children. In addition, the Commissioner is authorized to transfer funds to NIE to conduct research relating to the education of gifted and talented children.

The Act provides for grants to SEAs and LEAs for the development, operation and improvement of programs and projects designed to meet the special educational needs of gifted and talented children at the preschool, elementary and secondary levels. Funds may be used for the acquisition of instructional equipment, for training programs and for model programs and projects. Funding of \$12,250,000 is authorized for these programs, for each year through fiscal 1978.