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EDUCATION OF HANDICAPPED CHILDREN
(34 CODE OF FEDERAL REGULATIONS Part 300)

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Education of the Handicapped REGULATIONS
 ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN
 (34 Code of Federal REGULATIONS Part 300)

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL
 PROVISIONS REGULATIONS

Reg.. 300.1 Purpose.

The purpose of this part is.

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs.

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

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

(d) To assess and insure the effectiveness of efforts to educate those children

(20 USC 1401 Note)

Reg.. 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities* Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency

(See Regs 300.400-300.403)

(20 L'S'C [412(1), (6).. 1413(a), 1413(a)(4)(B))

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

Reg.. 300.3 REGULATIONS that apply to Assistance to States for Education of Handicapped Children.

(a) *REGULATIONS.* The following REGULATIONS apply to this program of Assistance to States for Education of Handicapped Children.

(2) The Education Division General Administrative REGULATION (Programs) and part 77 (Definitions).

(2) The REGULATIONS in this part 300.

(b) *How to use REGULATIONS: how to apply for funds.* The "Introduction to REGULATIONS of the Education Division" at the beginning of EDGAR includes general information to assist in—

(1) Using REGULATIONS that apply to Education Division programs; and

(2) Apply for assistance under an Education Division program.

(20 U.S.C. 1221e-3(a)(1))

[Amended in 45 Fed Reg.. 22531 (April 3, 1980)]

DEFINITIONS

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

- Consent (Section 300.500 of Subpart E)
- Destruction (Section 300.560 of Subpart E)
- Direct services (Section 300.370(b)(1) of Subpart C)
- Evaluation (Section 300.500 of Subpart E)
- First priority children (Section 300.320(a) of Subpart C)
- Independent educational evaluation (Section 300.503 of Subpart E)
- Individualized education program (Section 300.340 of Subpart C)
- Participating agency (Section 300.560 of Subpart E)
- Personally identifiable (Section 300.500 of Subpart E)
- Private school handicapped children (Section 300.450 of Subpart D)
- Public expense (Section 300.503 of Subpart E)
- Second priority children (Section 300.320(b) of Subpart C)
- Special definition of "State" (Section 300.700 of Subpart G)
- Support services (Section 300.370(b)(2) of Subpart C)

Reg.. 300.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named

CO U.S.C 1417(b))

Reg.. 300.7 Intermediate educational unit.

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

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis: and

(c) Provides special education and related services to handicapped children within that State.

(20 U.S.C. 1401 (22))

Reg.. 300.8 Local educational agency.

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

(20 U.S.C. 1401 (8))

[Amended in 45 Fed. Reg. 22531 (April 3. 1980)

Reg.. 300.9 Native language.

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

the term "native language", when used with reference to a person of limited English-speaking ability. means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child

(20 U.S.C. 880b 1(a)(2). 1401 (2))

Comment Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. The term is used in the prior notice and evaluation sections under Reg.. 300 505(b)(2) and Reg.. 300.532(a)(l) of Subpart E) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

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

Reg.. 300.10 Parent.

As used in this part. the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Reg.. 300.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415)

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

Reg.. 300.11 Public Agency.

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

(20 U.S.C. 1412(2)(B); 1412(6); (1413(a))

Reg.. 300.12 Qualified.

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

(2 0 U . S . C . 1417(b)

Reg.. 300.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

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

(!) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habitation of hearing;

examiners, psychometrists, or psychologists, depending upon State standards

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

Reg.. 300.14 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

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

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

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

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

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

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

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

(20 U.S.C. 1401(16))

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

(20 U.S.C. 1401(16))

Comment. (1) The definition of "special education" is a particularly important one under these REGULATIONS, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 300.5.) The definition of "related services" (section 300.13) also depends on this

definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

Subpart B--State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

Reg.. 300.110 Condition of assistance.

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

(20 U.S.C. 1232c(b), 1412, 1413))

Reg.. 300.111 Contents of plan.

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

(20 U.S.C. 1412, 1413, 1232c(b))

ANNUAL PROGRAM PLANS—CONTENTS

Reg.. 300.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timeliness under Reg.. 300.122.

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

(c) The information must show that the policy:

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

(2) Applies to all handicapped children;

(3) Implements the priorities established under Reg.. 300.127(a)(1) of this subpart; and

(4) Establishes timeliness for implementing the policy, in accordance with Reg.. 300.122.

(20 U.S.C. 1412(1), (2)(B), (6); 1413(a)(3))

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

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

(i) For each disability category (except for children aged birth through two), and

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

(20 U.S.C. 1412(2)(A))

Reg.. 300.126 Full educational opportunity goal-facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

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

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff

(3) The total number of personnel reported under paragraph (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education education

schools, hospital programs, occupational therapy facility, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

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

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))

Reg.. 300.127 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under Regs. 300.320-300.324 of Subpart C.

(2) The State priorities meet the timelines under Reg.. 300.122 of this subpart, and

(3) The State has made progress in meeting those timelines

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in Reg.. 300.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in Reg.. 300.124(e)(2) of this subpart.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being earned out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3))

regular education programs, consistent with Regs 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment

(20 U.S.C. 1412(5)(B))

Reg.. 300.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in Regs 300.530-300.534 of Subpart E are met.

(20 U.S.C. 1412(5)(C))

Reg.. 300.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in Reg. 300.600 of Subpart F are met

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph

(20 U.S.C. 1412(6))

Reg.. 300.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(20 U.S.C. 1412(6))

Reg.. 300.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7)(A))

Reg.. 300.138 other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title [V-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a)(2))

Reg.. 300.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under Regs 300.380-300.387 of Subpart C.

(20 U.S.C. 1413(a)(3))

Reg.. 300.140 Private schools.

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

(20 U.S.C. 1413(a)(4))

Reg.. 300.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act

(20 U.S.C. 1413(a)(5))

Reg.. 300.144 Hearing on application.

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

(20 U.S.C. 1413(a)(8))

Reg.. 300.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under Reg.. 300 184 for the education of each of its handicapped children This amount may not include capital outlay or debt service

(20 U.S.C. 1401(20); 1414(a)(1))

[Amended in 45 Fed Reg. 22531 (April 3, 1980).]

Comment. The excess COM requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount Excess costs are those costs of special education and related services which exceed the minimum amount Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs Part B funds can then be used to pay for these additional costs, subject to other requirements of part B (priorities. etc.). In the "Comment" under section 300.184. there is an example of how the minimum amount is computed

Reg.. 300.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under Reg.. 300.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965. and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

- (i) Programs for handicapped children.
- (ii) Programs to meet the special educational needs of educationally deprived children, and
- (iii) Programs of bilingual education for children with limited English-speaking ability

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under Reg. 300.183. This example follows the formula in Reg. 300 184. Under the statute and REGULATIONS, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools The computation for handicapped school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds.	\$2,750,000
(2) From State funds.	7,000,000'
(3) From Federal funds.	750,000
	10,500,000

Of this total, \$500,000 was for capital outlay and debt relating to the education of elementary school students. This can be subtracted from total expenditures:

\$10,500,000
—500,000

Total expenditures for elementary school students (less capital outlay and debt service) 10,000,000

b. Next, the local educational agency must subtract amounts spent for

- (1) Programs for handicapped children;
- (2) Programs to meet the special educational needs of educationally deprived children; and
- (3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over for the current school year

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	\$300,000
(2) From a special State program for educationally deprived children.	200,000
(3) From a grant under part B.	200,000
(4) From State funds for the education of handicapped children.	500,000
(5) From a locally-funded program for handicapped children.	250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000.

Total. 1,600,000

Reg.. 300.192 State regulation of consolidated applications.

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

(b) The State educational agency's REGULATIONS must

(1) Be consistent with Section 612(l)-(7) and Section 613(a) of the Act. and

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

(20 U.S.C. 1414(c)(2)(B))

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be earned out exclusively by the intermediate educational unit.

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

Reg.. 300.193 State educational agency approval; disapproval.

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under Regs. 300.506-300.513 of Subpart E which is adverse to the local educational agency involved in the decision

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

(Amended in 45 Fed Reg. 22531 (April 3, 1980))

Reg.. 300.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under Reg.. 300.180;

(3) Or both

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in Reg. 300.592.

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

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

Reg.. 300.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A))

Comment The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in Regs 300.560-300.576 of Subpart E.

Reg.. 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in Regs. 300.560-300.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B))

Reg.. 300.222 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C), (D))

Reg.. 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in Reg. 300.222.

(20 U.S.C. 1414(a)(1)(E))

Reg.. 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under Reg. 300.140

(20 U.S.C. 1414(a)(1)(C))

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

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

Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under Regs 300.320-300.324.

Reg.. 300.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. 1414(a)(5))

Reg.. 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of Regs. 300.500-300.514 of Subpart E

(20 U.S.C. 1414(a)(7))

Reg.. 300.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year

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

Reg.. 300.240 other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under Regs. 300.120-300.151.

(20 U.S.C. 1414(a)(6))

APPLICATION FROM SECRETARY OF INTERIOR

Reg.. 300.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of Section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with Reg. 300.601; and

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

(20 U.S.C. 1411(0))

Reg.. 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with Regs. 300.280-300.284.

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

Reg.. 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or \$350,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under Regs 300.320-300.324 of Subpart C.

(20 U.S.C. 1411(0))

[Amended in 51 Fed. Reg.. 19310 (May 28, 1986).]

Reg.. 300.263 Applicable REGULATIONS.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2))

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(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State

(20 U.S.C. 1412(2)(B); Sen. Rept No 94-168 p 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under Reg. 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under Reg. 300.321.

2. In order to be in compliance with Reg. 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Regs. 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under Reg. 300.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under Regs. 300.320-300.324.

Reg. 300.301 Free appropriate public education-- methods and payments.

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

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

(20 U.S.C. 1401(18); 1412(2)(B))

Reg. 300.302 Residential placement.

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

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

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

Reg. 300.303 Proper functioning of hearing aids.

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

(20 U.S.C. 1412(2)(B))

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No 95-381, p 67 (1977))

vice are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child

(House Report No. 94-33: p. 9 (1975))

PRIORITIES IN THE USE OF
PART B FUNDS

Reg... 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of Regs.. 300.321-300.324. the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under Reg... 300 300: and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children. within each disability. with the most severe handicaps who are receiving an inadequate education

(20 U.S.C. 1412(3))

Comment After September 1. 1978., there should be no second priority children, since States must insure, as a condition of receiving part B funds for fiscal year 1979. that all handicapped children will have available a free appropriate public education by that date

NOTE--The term "free appropriate public education." as defined in Reg.. 300 4 of Subpart A. means "special education and related services which are provided in conformity with an individualized education program

New "First priority children will continue to be found by the State after September 1, 1978 through on-going efforts to identify. locate, and evaluate all handicapped children.

Reg... 300.321 Priorities.

(a) Each State and local educational agency shall use funds provided under part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under Reg..' 300.620.

(20 U.S.C. 1411 (b)(1)(B).(b)(1)(B). (b)(2)(B).(c)(2)(A)(n))

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

(20 U.S.C. 1413(a)(3): Senate Report No. 94-168. p. 34(1975))

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children

After September 1. 1978. part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities:

(2) To provide free appropriate public education to newly identified first priority children.

(3) To meet the full educational opportunities goal required under 300 304. including employing additional personnel and providing in-service training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of part B

Reg... 300.322 First priority children—school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education

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

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

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

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

(20 U.S.C. 1411(b),(c))

Comment This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an in-service training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *other handicapped children* For a handicapped child who is not included under paragraph (b) of this section, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412(2)(B). (4), (6); 1414(a)(5))

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in Reg. 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in Reg. 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

Reg.. 300.344 Participants in meetings.

(at *General* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education

(2) The child's teacher

(3) One or both of the child's parents, subject to Reg. 300.345

(4) The child, where appropriate

(5) other individuals at the discretion of the parent or agency

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412(2)(B). (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

Reg.. 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency

Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

CO U.S.C. §412(2)(B): 1414(a)(5). (6). Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE
EDUCATIONAL AGENCY

Reg. 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year.

(1) Is entitled to less than \$7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of Regs. 300.220-300.240

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under Regs. 300.182-300.186 do not apply to the State educational agency.

(20 U.S.C. 1411(C)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b) and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive

Part B funds. If a local educational agency elects not to apply for its part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the REGULATIONS for section 504 of the Rehabilitation Act of 1973 (34 CFR part 104). It should be noted that the term "FAPE" has different meanings under part B and section 504. For example, under part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met. Those regulations state that implementation of an IEP, in accordance with part B, is one means of meeting the "FAPE" requirement.

Reg. 300.361 Nature and location of services.

The State educational agency may provide special education and related services under Reg. 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provision in Regs. 300.550-300.556 of Subpart E).

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

Reg. 300.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under Regs. 300.320-300.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under Regs. 300.380-300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2). (c)(2))

(3) Dissemination of significant information derived from educational research and demonstration, projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills).

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children:

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (0)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used, and (ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3))

Reg.. 300.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and in-service education needs:

(b) Describe the results of the needs assessment under Reg. 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas: and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(20 U.S.C. 1413(a)(3))

Reg.. 300.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and dis-

seminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3))

Reg.. 300.385 Adoption of educational practices.

(a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3))

Reg. 300.38" Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3))

Subpart D — Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

Reg.. 300.400 Applicability of Regs. 300.401-300.403.

Regs. 300.401-300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized educational program which meets the requirements under Regs. 300.340-300.345 of Subpart C; '

[The next page is 102:75A.]

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part), and

(b) Has all of the rights of a handicapped child who is served by a public agency>

(20 U.S.C. 1413(a)(4)(B))

Reg.. 300.402 Implementation by State educational agency.

In implementing Reg.. 300.401. the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires:

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B))

Reg.. 300.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500-300.514 of Subpart E.

(20 U.S.C. 1412(2)(B).1415)

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS Not PLACED OR REFERRED BY PUBLIC AGENCIES

Reg.. 300.450. Definition of "private school handicapped children."

As used in this part., "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Regs. 300.400-300.4C2.

(20 U.S.C. 1413(a)(4)(A))

(Amended in 45 Fed Reg 2531 (April 2. 1980 and in 49 Fed Reg. 48526 (December 12. 1984))

Reg.. 300.451 State educational agency responsibility.

The State educational agency shall insure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The other requirements in 34 CFR 76.651-76.663 EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))

[Amended in 45 Fed Reg. 22531 (April 3. 1980)]

Reg.. 300.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

[Amended in 45 Fed Reg. 22531 (April 3, 1980).]

PROCEDURES FOR BY-PASS

Reg.. 300.480 By-pass — General

(a) The Secretary implements a by-pass if a State educational agency is, and was on December 2, 1983, prohibited by law from providing for the participation of private school handicapped children in the program assisted or carried out under this part. as required by Section 613(a)(4)(A) of the Act and b> Regs. 300.451-300.452.

(b) The Secretary waives the requirement of Section 613(a)(4)(A) of the Act and of Regs. 300.451-300.452 if the Secretary implements a by-pass.

(20 U.S.C. 1413(d)(1))

[Added by 49 Fed. Reg. 48326 (December 12. 1984).]

Reg.. 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including State educational agency officials, in the affected State to consider matters such as--

(1) The prohibition imposed by State law which results in the need for a by-pass;

(2) The scope and nature of the services required by private school handicapped children in the State.and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school handicapped children receive services consistent with the requirements of Section 613(a)(4)(A) of the Act, Regs. 300.451-300.452. and 34 CFR 76.651-76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school handicapped children in the State in a manner consistent with the requirements of Section 613(a)(4)(A) of the Act and Regs. 300.451-300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year in which a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying--

(1) A per child amount, which may not exceed the amount per child provided by the Secretary under this part for all handicapped children in the State for the preceding fiscal year; by

the activity for which consent is sought, in his or her native language, or other mode of communication.

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

••Evaluation*• means procedures used in accordance with Regs. 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

•Personally identifiable means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415. 1417(c))

Reg.. 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of Regs. 300.500-300.514.

(20 U.S.C. 1415(a))

Reg.. 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in Regs. 300.562-300.569 an opportunity to inspect and review all education records with respect to;

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

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

Reg.. 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with Reg.. 300.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may inmate a hearing under Reg.. 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(3) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests/or evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as par. of a hearing, the cost of the evaluation must be at public expense.

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

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

Reg.. 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under Reg.. 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

Reg.. 300.507 Impartial hearing officer.

(a) A hearing may not be conducted

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1415(b)(2))

Reg.. 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

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

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d))

Reg.. 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under Reg. 300.510 or Reg. 300.511.

Reg. 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Reg.. 300.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under Reg.. 300.512.

(20 U.S.C. 1415(c), (d); H.Rep. No. 94-664. at p. 49 (1975))

Comment: 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Reg.. 300.508, relating to hearings, also apply.

Reg.. 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Reg. 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under Reg.. 300.510 has the right to bring a civil action under Section 615(e)(2) of the Act.

(20 U.S.C. 1415)

Reg.. 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used: and

(3) Are administered by trained personnel in conformance with the instructions provided by their producers;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure):

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

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

(20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision

Reg.. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recom-

mendations, physical condition, social or cultural background, and adaptive behavior:

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the valuation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Regs. 300.340-300.349 of Subpart C.

(20 U.S.C. I412(5)(C); 1414(a)(5))

Comment Paragraph(a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech

Reg.. 300.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with Regs. 300.340-300.349 of Subpart C. and

(b) That an evaluation of the child, based on procedures which meet the requirements under Reg.. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation

(20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

Reg.. 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B): 1414(a)(I)(C)(iv))

Reg.. 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under Reg.. 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement

(20 U.S.C. 1412(5)(B))

Reg.. 300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually.

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home.

(b) The various alternative placements included under Reg. 300.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B))

Comment. Reg.. 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement deci-

sions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: * * * 'it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need * * *.'

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subject.

Reg.. 300.553 Non-academic settings.

In providing or arranging for the provision of non-academic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in Reg.. 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with non-handicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.553 is taken from a new requirement in the final REGULATIONS for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 regulations includes [the following statement] ' [A new paragraph] specifies that handicapped children must also be provided non-academic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.' (34 CFR part 104 — Appendix. Paragraph 24.)

Reg.. 300.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Reg.. 300.568.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2)(D); 1417(c))

Reg.. 300.569. Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

OFFICE OF EDUCATION PROCEDURES

Reg.. 300.580 [Removed and reserved]

Reg.. 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the State educational agency written notice and an opportunity for a hearing.

(20 U.S.C. 1413(c))

[Added in 51 Fed. Reg.. 17905 (May 15, 1986)]

Reg.. 300.582 Content of notice.

(a) In the written notice, the Secretary —

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(c))

[Added in 51 Fed. Reg.. 17905 (May 15, 1986)]

Reg.. 300.583 Hearing Official or Panel.

(a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(20 U.S.C. 1413(c))

[Added in 51 Fed. Reg.. 17905 (May 15, 1986)]

Reg.. 300-584 Hearing procedures.

(a) As used in Regs. 300.581-300.586 the term "party" or "parties" means the following:

(1) A State educational agency that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case who has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a hearing Official or Panel, and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as —

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held;

(v) Setting dates for —

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(c) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See Reg. 300.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under Sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

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

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

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

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(cX3); 1413(a)(9)(B)

[Par. (g) amended in 51 Fed. Reg. 17905 (May 15, 1986).]

Subpart F—State Administration

STATE EDUCATIONAL AGENCY
RESPONSIBILITIES: GENERAL

Reg. 300.600 Responsibility for all educational programs.

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

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

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

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6))

Comment. The requirement in Reg. 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94-168, p. 24 (1975))

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

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and

procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under Section 618.

(20 U.S.C. 1413(a)(12))

Reg.. 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Reg.. 300.620

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Reg.. 300.620 for this purpose.

(20 U.S.C. 1413(a)(12))

**Subpart G—Allocation of Funds;
Reports**

ALLOCATIONS

Reg.. 300.700 Special definition of the term State.

For the purposes of Regs. 300.701, 300.702, and 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2))

Reg.. 300.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is

- (1) 1978 — 5 percent,
- (2) 1979 — 10 percent.

(3) 1980 — 20 percent,

(4) 1981—30 percent,

(5) 1982, and for each fiscal year after 1982, 40 percent.

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

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4))

Reg.. 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under Reg.. 300.701 of this subpart, the commissioner may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of number of all children aged five through 17 in the State;

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5))

[Subparagraph (a)(2) was deleted in 42 Fed Reg. 65083 (Dec. 29, 1977); however, subparagraph (a)(3) was not renumbered.]

Reg.. 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

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

(b) *Reporting dates for local educational agencies and reallocations.*

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have been made available to pay in full the total of the amount under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational

REPORTS

Reg.. 300.750 Annual report of children served — report requirement.

(a) The State educational agency shall report to the Commissioner no later than February 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services

(b) The State educational agency shall submit the report on forms provided by the Commissioner.

(20 U.S.C. 1411(a)(3))

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children

Reg.. 300.751 Annual report of children served — information required in the report.

(a) In its report, the State educational agency shall include a table which shows

(1) The number of handicapped children receiving special education and related services on December 1 of that school year.

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in Reg. 300.5 of Subpart A; and

(3) The number of those handicapped children aged three through twenty-one for each year of age (three, four, five, etc.) For fiscal year 1985, a State educational agency that does not currently collect information in this manner may report the number of those handicapped children within each of the following age groups:

- (i) Three through five.
- (ii) Six through eleven.
- (iii) Twelve through seventeen.
- (iv) Eighteen through twenty-one.

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1

to The State educational agency may not report a child under more than one disability category

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3), 1411(a)(5)(A)(ii). 1418(b))

(Amended in 49 Fed Reg. 48256 (December 12, 1984)]

Reg.. 300.752 Annual report of children served — certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3), 1417(b))

Reg.. 300.753 Annual report of children served — criteria for counting children.

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

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

(2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

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

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

(3) Are not provided with a related service that they need to assist them in benefiting from special education;

(4) Are counted by a State agency under Section 121 of the Elementary and Secondary Education Act of 1965, as amended, or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under Reg. 300.186(b) of Subpart B.

(20 U.S.C. 1411(a)(3), 1417(b))

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education — generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in Section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, (that where a handicapped child is