



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

November 23, 1994

Contact Person  
Name Rhonda Weiss  
Telephone : (202) 205-5503

OSEP - 95-9

TO : Chief State School Officers  
FROM : Judith E. Heumann  
Assistant Secretary  
Office of Special Education and  
Rehabilitation Services

Thomas Hehir  
Director  
Office of Special Education  
Programs

SUBJECT: Questions and Answers on the Least Restrictive  
Environment Requirements of the Individuals with  
Disabilities Education Act

Introduction

The least restrictive environment (LRE) requirements of Part B of the Individuals with Disabilities Education Act (IDEA) have been included in the law in their present form since 1975. However, these requirements continue to generate complex and interesting questions from the field. In particular, questions have been raised about the relationship of IDEA'S LRE requirements to "inclusion." Consistent with our attempt to provide you and your staff with as much current information as possible and to ensure that the applicable requirements of IDEA that govern the education of students with disabilities are accurately understood and properly implemented, guidance on IDEA'S LRE requirements is being provided in a question and answer format. In most cases, this question and answer document consolidates the prior policy guidance that the Department has

400 MARYLAND AVE . S W WASHINGTON. DC 207.02

Our mission is to ensure equal access to education, and to promote educational excellence throughout the Nation.

Page 2 - Chief State School Officers

provided in this area. We encourage you to disseminate this document to a wide range of individuals and organizations throughout your State. Any further questions should be directed to the contact person named at the beginning of this document or to Dr. JoLeta Reynolds at (202) 205-5507.

We hope that the above questions and answers are of assistance to you and your staff as you carry out your responsibilities to ensure that disabled students are provided a free appropriate public education in the least restrictive environment.

Attachment

cc: State Directors of Special Education  
RSA Regional Commissioners  
Regional Resource Centers  
Federal Resource Center  
Special Interest Groups  
Parent Training Centers  
Independent Living Centers  
Protection and Advocacy Agencies

**QUESTIONS AND ANSWERS**

1. **What are the least restrictive Environment (LRE) requirements of Part B of IDEA?**

**ANSWER:**

In order to be eligible to receive funds under Part B of IDEA (IDEA), States must, among other conditions, assure that a free appropriate public education (FAPE) is made available to all children with specified disabilities in mandated age ranges. **The** term "FAPE" is defined as including, among other elements, special education and related services, provided **at** no cost to parents, in conformity with an individualized education program (IEP). The IEP, which contains the statement of the special education and related services to meet each disabled student's unique needs, forms the basis for the entitlement of each student with a disability to an individualized and appropriate education. IDEA further provides that States must have in place procedures assuring that, "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." This provision, which states IDEA'S strong preference for educating students with disabilities in regular classes with appropriate aids and supports, is found in the statute at 20 U.S.C. §1412(5)(B) and is implemented by the Department's regulations at 34 CFR §§300.550-300.556. Copies of the relevant statutory and regulatory provisions are attached to this question and answer document.

2. **Does IDEA define the term "inclusion?"**

**ANSWER;**

IDEA **does** not use the term "inclusion"; consequently, the Department of Education has not defined that term. However, IDEA does require school districts to place students in the LRE. LRE means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports, referred to as "supplementary aids and services," along with their nondisabled peers in the school they would attend if not disabled, unless a student's IEP requires some other arrangement. This requires an individualized inquiry into the unique educational needs of each disabled student in determining the possible range of aids and supports

that are needed to facilitate the student's placement in the regular educational environment before a more restrictive placement is considered.

In implementing IDEA'S LRE provisions, the regular classroom in the school the student would attend if not disabled is the first placement option considered for each disabled student before a more restrictive placement is considered. If the IEP of a student with a disability can be implemented satisfactorily with the provision of supplementary aids and services in the regular classroom in the school the student would attend if not disabled, that placement is the LRE placement for that student. However, if the student's IEP cannot be implemented satisfactorily in that environment, even with the provision of supplementary aids and services, the regular classroom in the school the student would attend if not disabled is not the LRE placement for that student.

3. How can IDEA requirements be implemented to ensure that consideration is given to whether a student with a disability can be educated in the regular educational environment with the use of supplementary aids and services before a more restrictive placement is considered?

ANSWER:

The relationship of IDEA'S LRE requirements to the IEP process is key, since under IDEA, the student's IEP forms the basis for the student's placement decision. IDEA requires that the IEP of each disabled student must contain, among other components, a "statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs." 34 CFR §300.346(a) (3). At the student's IEP meeting, the extent that the student will be able to participate in regular educational programs is one of the matters to be addressed by all of the participants on the student's IEP team before the student's IEP is finalized. In addressing this issue, the team must consider the range of supplementary aids and services, in light of the student's abilities and needs, that would facilitate the student's placement in the regular educational environment. As discussed in question 4 below, these supplementary aids and services must be described in the student's IEP. Appendix C to 34 CFR Part 300 (question 48).

4. Does IDEA define the term "supplementary aids and services?"

ANSWER;

No. However, in determining the educational placement for each disabled student, the first line of inquiry is whether the student's IEP can be implemented satisfactorily in the regular educational environment with the provision of supplementary aids and services. This requirement has been in effect since 1975 when the Education of the Handicapped Act (EHA), the predecessor to the IDEA, originally became law.

Consistent with this requirement, any modifications to the regular educational program, i.e., supplementary aids and services that the IEP team determines that the student needs to facilitate the student's placement in the regular educational environment must be described in the student's IEP and must be provided to the student. Appendix C to 34 CFR Part 300 (question 48). While determinations of what supplementary aids and services are appropriate for a particular student must be made on an individual basis, some supplementary aids and services that educators have used successfully include modifications to the regular class curriculum, assistance of an itinerant teacher with special education training, special education training for the regular teacher, use of computer-assisted devices, provision of notetakers, and use of a resource room, to mention a few.

5. How frequently must a disabled student's placement be reviewed under IDEA?

ANSWER;

Under IDEA, each disabled student's placement must be determined at least annually, must be based on the student's IEP, and must be in the school or facility as close as possible to the student's home. **Under** IDEA, each student's placement decision must be **made** by a group of persons, including persons knowledgeable about the student, the meaning of evaluation data, and the **placement** options. While the student's IEP forms the basis **for the** placement decision, a student's IEP cannot be revised **without** holding another IEP meeting, which the school district is responsible for convening. If either the student's parent or teacher or other service provider wishes to initiate review of the student's IEP at a point during the school year that does not correspond with the annual IEP review, that individual can request the school district to hold another IEP meeting. If the IEP is revised, following the meeting, the placement team would need to review the student's IEP to determine if a change in placement would be needed to reflect the revised IEP.

6. **If a determination is made that a student with a disability can be educated in regular classes with the provision of supplementary aids and services, can school districts refuse to implement the student's IEP in a specific class because of the unwillingness of a particular teacher to educate that student in his or her classroom or the teacher's assertion that he or she lacks adequate training to educate that student effectively?**

**ANSWER;**

Under IDEA, lack of adequate personnel or resources does not relieve school districts of their obligations to make FAPE available to each disabled student in the least restrictive educational setting in which his or her IEP can be implemented. Exclusion of a student from an appropriate placement based solely on the student's disability is prohibited by Section 504 of the Rehabilitation Act of 1973. However, placement in a particular regular class based on the qualifications of a particular teacher is permissible under both statutes. The public agency has an affirmative responsibility to ensure the supply of sufficient numbers of teachers who are qualified, with needed aids and supports, to provide services to students with disabilities in regular educational environments, and to provide necessary training and support services to students with disabilities. The Department encourages States and school districts to develop innovative approaches to address issues surrounding resource availability. Factors that could be examined include cooperative learning, teaching styles, physical arrangements of the classroom, curriculum modifications, peer mediated supports, and equipment, to mention a few.

7. **Once a determination is made that a disabled student cannot be educated satisfactorily in the regular educational environment, even with the provision of supplementary aids and services, what considerations govern placement?**

**ANSWER;**

IDEA does **not** require that every student with a disability be placed in the regular classroom regardless **of** individual abilities and needs. This recognition that regular class placement may not be appropriate for every disabled student is reflected in the requirement that school districts make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs **of** students with disabilities. This requirement for the continuum reinforces the importance of the individualized inquiry, not a "one size fits all" approach, in determining what placement is the LRE for each

student with a disability. The options on this continuum must include "the alternative placements listed in the definition of special education under §300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions)." 34 CFR §300.551(b)(1). These options must be available to the extent necessary to implement the IEP of each disabled student. The placement team must select the option on the continuum in which it determines that the student's IEP can be implemented. Any alternative placement selected for the student outside of the regular educational environment must maximize opportunities for the student to interact with nondisabled peers, to the extent appropriate to the needs of the student.

It also should be noted that under IDEA, parents must be given written prior notice that meets the requirements of §300.505 a reasonable time before a public agency implements a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Consistent with this notice requirement, parents of disabled students must be informed that the public agency is required to have a full continuum of placement options, as well as about the placement options that were actually considered and the reasons why those options were rejected. 34 CFR §§300.504-300.505; Notice of Policy Guidance on Deaf Students Education Services, published at 57 Fed. Reg. 49274 (Oct. 30, 1992).

- 8. What are the permissible factors that must be considered in determining what placement is appropriate for a student with a disability? Which factors, if any, may not be considered?**

ANSWER;

The overriding rule in placement is that each student's placement must be individually-determined based on the individual student's abilities and needs. As noted previously, it is the program of specialized instruction and related services contained in the student's IEP that forms the basis for the placement decision. In determining if a placement is appropriate under IDEA, the following factors are relevant:

the educational benefits available to the disabled student in a traditional classroom, supplemented with appropriate aids and services, in comparison to the educational benefits to the disabled student from a special education classroom;

the non-academic benefits to the disabled student from interacting with nondisabled students; and

the degree of disruption of the education of other students, resulting in the inability to meet the unique needs of the disabled student.

However, school districts may not make placements based solely on factors such as the following:

category of disability;  
severity of disability;  
configuration of delivery system,;  
availability of educational or related services;  
availability of space; or  
administrative convenience.

9. To what extent is it permissible under IDEA for school districts to consider the impact of a regular classroom placement on those students in the classroom who do not have a disability?

**ANSWER;**

IDEA regulations provide that in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs. If a student with a disability has behavioral problems that are so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the disabled student cannot be met in that environment. However, before making such a determination, school districts must ensure that consideration has been given to the full range of supplementary aids and services that could be provided to the student in the regular educational environment to accommodate the unique needs of the disabled student. **If** the placement team determines that even with the provision of supplementary aids and services, that student's **IEP** could not be implemented satisfactorily in the regular educational environment, that placement would not be the LRE placement for that student at that particular time, because her or his unique educational needs could not be met in that setting.

While IDEA regulations permit consideration of the effect of the placement of a disabled student in a regular classroom on other students in that classroom, selected findings from Federally-funded research projects indicate that:

- (1) achievement test performance among students who were classmates of students with significant disabilities were



equivalent or better than a comparison group (Salisbury, 1993); (2) students developed more positive attitudes towards peers with disabilities (CRI, 1992); and (3) self concept, social skills, and problem solving skills improved for all students in inclusive settings (Peck, Donaldson, & Pezzoli, 1990, Salisbury & Palombaro, 1993).

10. **Are there any resources that the Department is aware of that have proven helpful to educators and paraprofessionals in implementing inclusive educational programs?**

ANSWER;

The Department has supported a variety of professional development and training projects (e.g., preservice, inservice, school restructuring projects) that address the needs of students with disabilities in inclusive educational programs. In addition, the Department has financed Statewide Systems Change projects which support changing the setting for delivery of educational services from separate settings to general education settings in the school that the student would attend if not disabled. Numerous materials and products have been developed by these projects which have focused on strategies that support collaborative planning and problem solving, site based control, curriculum and technological adaptations and modifications, parent and family involvement, and the creative use of human and fiscal resources. These projects have underscored the importance

California Research Institute. (1992). Educational practices in integrated settings associated with positive student outcomes. Strategies on the Inclusion on the Integration of Students with Severe Disabilities. 3,(3), 7,10. San Francisco State University. San Francisco, California.

Peck C. A., Donaldson, J., & Pezzoli, M. (1990). Some benefits non-handicapped adolescents perceive for themselves from their social relationships with peers who have severe disabilities. Journal of the Association for Persons with Severe Handicaps, 15(4), 241-249.

Salisbury, C. L. (1993, November). Effects of inclusive schooling practices: Costs to kids and organizations. Presentation at the 1993 Conference of the Association for Persons with Severe Handicaps, Chicago, Illinois.

Salisbury, C. L., & Palombaro, M. M. (Eds.) (1993). "No problem." Working things out our way. State University of New York-Binghamton, Binghamton, New York.

Page 10 - Chief State School Officers

of timely access to resources (e.g., people, materials, information, technology) when they are needed.

Educators can obtain further information regarding these programs by contacting:

National Information Center for  
Children and Youth with Disabilities  
P.O. Box 1492  
Washington, D.C. 20013-1492  
Telephone: 1-800-695-0285  
(Deaf and hearing-impaired individuals may  
also call this number for TDD services)

Consortium on Inclusive Schooling Practices  
Allegheny Singer Research Institute  
320 E. North Avenue  
Pittsburgh, PA. 15212  
Telephone: (412) 359-1600  
(Deaf and hearing-impaired individuals may also  
call the Pennsylvania Relay Service number at  
1-(800)-654-5984)

California Research Institute  
on the Integration of Students with Severe  
Disabilities  
San Francisco State University  
1415 Tapia Drive  
San Francisco, California 94132  
Telephone: (415) 338-7847-48  
(Deaf and hearing-impaired individuals may also  
call the California Relay Service number at  
1- 800)-735-2922

educated with children who are non-disabled; and

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

(Authority: 20 U.S.C. 1412(5XB); 1414(a)(XIX)(C)(iv))

**§300.551 Continuum of alternative placements**

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

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under 5 300.17 (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.

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

**§ 300.552 Placement\*.**

Each public agency shall ensure that:

(a) The educational placement of each child with a disability—

(1) Is determined at least annually;

(2) Is based on his or her IEP; and

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

(b) The various alternative placements included at 5 300.551 are available to the extent necessary to implement the IEP for each child with a disability.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful

effect on the child or on the quality of services that he or she needs.

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

**NOTE:** Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of § 300.552, as well as the other requirements of §§ 300.550-300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in §§ 300.550-300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550-300.556 include—

(1) Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);

(2) Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and

(3) Locating classes for preschool children with disabilities in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of §§ 300.340-300.350 and §§ 300.550-300.556.

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 children with disabilities that 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 place-

ment would not be appropriate to his or her needs \* \* \*"

2. With respect to placing a child with a disability 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 subpart.

### § 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

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

**NOTE:** Section 300.553 is taken from a 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: "[This paragraph] specifies that handicapped children must also be provided nonacademic 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.)

### § 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that § 300.550 is effectively implemented.

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

**NOTE:** Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

**§ 300.555 Technical assistance and training activities.**

Each SEA shall carry out activities to ensure that teachers and administrators in all public agencies—

(a) Are fully informed about their responsibilities for implementing § 300.550; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

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

**§ 300.556 Monitoring activities.**

(a) The SEA shall carry out activities to ensure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550, the SEA shall—

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action.

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

**CONFIDENTIALITY OF INFORMATION**

**§ 300.560 Definitions.**

As used in §§ 300.560-300.576—

**Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

**Education records** means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

**Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information.

The information obtained under this part.

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

**§ 300.561 Notice to parents.**

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of § 300.128, including—

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

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

(Approved by the Office of Management and Budget under control number 1520-0030)

[57 FR 44798, Sept. 29, 1992, as amended at 58 FR 13528, Mar. 11, 1993]

**§ 300.562 Access rights.**

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regard-

the goal of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d) of this section, which it estimates that it will expend in accordance with the provisions of this section. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this subchapter, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies and intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.

Pub. L. 91-230, Title VI, Sec. 611, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 93-380, Title VI, Secs. 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, Secs. 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 96-270, Sec. 13, June 14, 1980; Pub. L. 98-199, Sec. 15, Dec. 2, 1983, 97 Stat. 1357; and by Pub. L. 99-457, Title II, Sec. 201, and Title IV, Secs. 403, 404, Oct. 8, 1986, 100 Stat. 1155 and 1173.

### Sec. 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to November 29, 1975, and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State 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, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 1417(c) of this title; and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 1414(a)(5) of this title.

(5) The State has established (A) procedural safeguards as required by section 1415 of this title, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular

educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided handicapped children in the State.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 1413 of this title.

Pub. L. 91-230, Title VI, Sec. 612, Apr. 13, 1970, 84 Stat. 178; amended by Pub. L. 92-318, Title IV, Sec. 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, Title VI Secs. 614(b), (f)(1), 615(a), Title VIII, Sec. 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub. L. 94-142, Secs. 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; and by Pub. L. 99-457, Title II, Sec. 203, Oct. 8, 1986, 100 Stat. 1158.

## Sec. 1413. State Plans

### Requisite features

(a) Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, a State plan at such

time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this subchapter, with particular attention given to the provisions of sections 1411(b), 1411(c), 1411(d), 1412(2) and 1412(3) of this title;

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 241c-1 of this title, section 844a(b)(8) of this title or its successor authority, and section 1262(a)(4)(B) of this title, under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) set forth, consistent with the purposes of this chapter, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the in-service training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

(B) that (i) handicapped children in private school and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this subchapter); no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the