OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

80-024696

HEARINGS
BEFORE THE
SUBCOMMITTEE ON THE HANDICAPPED
OF THE
COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
SECOND SESSION
ON
OVERSIGHT ON PUBLIC LAW 94-142, EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

JULY 29 AND 31, AND SEPTEMBER 10, 1980

PART 2

Printed for the use of the
Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
68-332 O
WASHINGTON : 1980

06-B7131

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OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

TUESDAY, JULY 29, 1980

U.S. Senate,
Subcommittee on the Handicapped,
Committee on Labor and Human Resources,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 4232, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph and Stafford.

Senator **Randolph**. A pleasant good morning to all who are present for this hearing.

We ask the witnesses who are to counsel with us to come to the testimony table.

We hope to have members of our subcommittee present for the hearing. Our schedule in the Senate is difficult with the nuclear waste legislation in the Senate under discussion and with important votes scheduled. That measure is under the jurisdiction of the Energy and Natural Resources Committee as well as the Committee on Environment and Public Works, with an added interest expressed, more by way of amendment than jurisdiction, by the Governmental Affairs Committee. It is a very complex bill, and it is very crucial that members give close attention to amendments that are pending.

So we will have some difficulty today, because members of our subcommittee are necessarily going to have to be on the Senate floor.

General Montague, even before my statement, will you introduce those who are sitting at the table with you?

General **Montague**. Yes, Mr. Chairman.

I have brought with me Bill Bagshaw, who is a student; Miss Nancy Moultrie, who is from the city of Alexandria, Recreation for Special Needs Office; and on my right, Mr. Peter Wheeler, from the Special Olympics Office. They are simply backups, and then I will introduce Bill at the end of my testimony.

Senator **Randolph**. Thank you very much, General Montague.

We are particularly gratified that this morning we can welcome those who come from our neighbor country to the north.

I would like to ask those Canadians who are here from the Parliament and with the group to stand so that we may all applaud you. [Applause.]

I have been to Canada recently in connection with the Parliamentary Conference between Canadians and Americans, which was helpful, as these conferences always give us an opportunity to exchange our thinking and to hopefully cooperate in many programs and projects on a broad scale between our two nations.

I particularly recall last year when I was at Campobello Island, which is the international peace park, as you well know, between Canada and our own country. We were having there a Peace and Human Rights Conference in the structures that are still standing of the Franklin Roosevelt family.

My many, many visits to Canada have always been not only interesting and pleasant, but very, very informative. I correspond with a Dr. McBride, who sends me his newest poems. He writes poetry, as well as taking care of the medical needs of people on Campobello Island.

This is the 13th in a series of oversight hearings on the implementation of Public Law 94-142, the Education for All Handicapped Children Act, which we began 1 year ago, in July of 1979. During these hearings to date we have heard over 100 witnesses and have received written testimony from many more who share our commitment to the goals contained in Public Law 94-142.

These hearings were organized so that the subcommittee could hear first from parents and teachers of handicapped children and from handicapped students themselves, as well as local, county, and State administrators. It was our hope that having heard from these groups who must work on a day-to-day basis to implement this important legislation we would know more about the problems and difficulties they are experiencing with implementing this law; this data could then be brought before not only this subcommittee but before the administration and national advocacy groups in hopes that by working together we can help them find alternatives or solutions to their problems.

We are pleased that all of the national organizations, with the exception of one, who were invited to appear are here today. It is our hope that you have had an opportunity to review the testimony presented to date, and we welcome your comments and recommendations at this time.

Our first witness this morning is Gen. Robert M. Montague from the Joseph P. Kennedy, Jr. Foundation.

You have introduced those men and women with you, so General, we ask that you proceed.

We want the full value of your statement, but if your statement is running 30 or 40 minutes, we ask you to summarize it. Your full statement will be included in the published record, but you might touch on those points that you feel need special attention. I believe we have even said we hoped you could do it in 5 minutes' so the 5-minute rule is in effect.

STATEMENT OF GENERAL ROBERT M. MONTAGUE, JR., EXECUTIVE DIRECTOR, THE JOSEPH P. KENNEDY, JR. FOUNDATION AND SPECIAL OLYMPICS, INC., ACCOMPANIED BY BILL BAGSHAW, STUDENT; NANCY MOULTRIE, CITY OF ALEXANDRIA, RECREATION FOR SPECIAL NEEDS OFFICE; AND PETER WHEELER, SPECIAL OLYMPICS OFFICE

General MONTAGUE. I think we can do that, Mr. Chairman. I am very pleased that I have been invited to testify on the physical education aspects of Public Law 94-142. This subcommittee has been a major force in improving and expanding physical education as one component of full education for handicapped children.

At the urging of the Kennedy Foundation and many other organizations and individuals, the subcommittee saw that physical education for all handicapped children was mandated by Public Law 94-142.

As I will report in a minute, that congressional mandate is not being carried out effectively and properly, in our opinion.

First, let me quickly establish the credentials of the two organizations of which I am pleased and honored to be a part, the Kennedy Foundation and Special Olympics.

In the early 1960's, complementing President John F. Kennedy's emphasis on physical fitness of all Americans, and especially children, the Kennedy Foundation, whose efforts concentrate on helping mentally retarded individuals, focused a great deal of its attention on physical fitness and physical education of mentally retarded children. The foundation learned through its research and research and study by others that appropriate physical education benefited the physical growth, self-concept and even intellectual development of mentally retarded and other handicapped children.

The foundation also discovered that pitifully few handicapped children were receiving adequate physical education in schools.

The Kennedy Foundation responded to this unfortunate and unfair condition, by creating in 1968 Special Olympics—a program offering year-round physical fitness and sports training and athletic competition to mentally retarded children and adults as well.

Through Special Olympics, the foundation wanted to do more than provide opportunities to participate in physical fitness and sports training; it hoped to educate the public about mental retardation and to get public support for programs and legislation such as the Education for All Handicapped Children Act.

We believe that we have been quite successful. For example, the success of Special Olympics is shown by the following: There are now more than 1 million participants; 97 percent of the counties of the United States have special olympics programs; more than 20,000 Special Olympics events take place each year; over 350,000 volunteers supply the manpower; public awareness is very high; public acceptance is remarkable. Partly because of Special Olympics' active promotion of physical education and advocating its necessity, physical education was made a mandated service in Public Law 94-142.

Thank you, Mr. Chairman, for your personal support of the Special Olympics in West Virginia.

Because of our minute-by-minute involvement with the extensive special olympics programs reaching practically every school district in the United States, we are acutely aware of the continuing inadequacy of physical education being provided mentally retarded and other handicapped children. This is directly contrary to the stated wishes of Congress.

Congress indicated its interest in physical education of handicapped children when in Public Law 94-142 it highlighted physical education in defining special education as: "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.

Unfortunately, not a great deal is happening in schools across the United States. Physical education for handicapped individuals is being left out of school programs nationwide. In November 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all directors of special education in State departments of education. This survey revealed:

A majority of States have no policies or standards to assure that physical education is considered in the process of placing or referring handicapped children.

A majority of States have no policies or standards to assure that physical education needs of handicapped children are properly assessed through testing procedures.

In November 1979, the Kennedy Foundation sought to document the situation that I have just described, regarding the provision of instruction in physical education in public schools. We conducted a systematic telephone survey of all directors of special education in State departments of education. This survey revealed what I have shown on this chart.

It shows, Mr. Chairman, that in the States, physical education is not included in the placement/referral process of handicapped students in 62 percent of the States.

The physical education needs of handicapped children were not being assessed through testing in 71 percent of the cases. Criteria were not established for determining when adapted physical education was needed in 81 percent of the cases. Physical education was included in the individual education programs for handicapped children in about 75 percent of the cases; that was very good.

Adapted physical education personnel are not being certified in 90 percent of the States. Now, in the United States, certification is a State and local function, and not a Federal function.

Now, we found that in 64 percent of the cases, there was no physical educator on the committee which this committee established in each State, the comprehensive system on personnel development committee; so we did not have any physical educators guiding the planning and implementation of the law in the States.

The States, in 73 percent of the cases were monitoring physical education; this is, of course, a good result.

So I think those results are fairly dramatic, Mr. Chairman.

Senator RANDOLPH. Yes. We will ask that the chart be a part of our hearing record.

General MONTAGUE. We do have that with the testimony.

Now, I contend that the survey supports my statement that physical education for handicapped individuals is being left out of school programs nationwide.

We recommend that: One, Congress reemphasize its mandate regarding physical education; two, that the Department of Education insure that State department directors of special education make an increased effort to carry out the letter and spirit of the law; that the Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children, and finally, that the Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

Before I leave, I would like to introduce, Mr. Chairman, Bill Bagshaw, a 17-year-old handicapped student from Alexandria Developmental Center, who will describe what physical education and sports training and competition gained through the Special Olympics has meant to him.

Mr. BAGSHAW. Good morning, Mr. Chairman.

I have been in the Special Olympics for 8 years. I have learned to throw a softball, to jump, to run fast, and to bowl. This year, I was in the standing long jump; I jumped 1 meter, 60 centimeters. I ran the 50-meter dash at 11.2 seconds. I went to the bowling tournament. My bowling average is 89.

I have gone to the Virginia State Special Olympics 2 years in a row. This year, I won two bronze medals. I went to Special Olympics training camp. I learned to hit the tennis ball with a tennis racquet.

I like Special Olympics. I like bowling very much. I feel good. When I win, I can show people how good I am in sports.

Senator RANDOLPH. Thank you very much, Bill. I think you are wearing a medal or two, aren't you?

Mr. BAGSHAW. Yes.

Senator RANDOLPH. That is good. What do you roll, duckpins or tenpins?

Mr. BAGSHAW. Tenpins.

Senator RANDOLPH. You know, in my days of bowling, it was more duckpins than tenpins, but you never see duckpins around anymore. I do not know the reason. I guess people are stronger now and can handle that tenpin. You can be a little more accurate sometimes in duckpins.

Mr. BAGSHAW. Yes.

Senator RANDOLPH. We are happy to have you.

General MONTAGUE. Thank you, Mr. Chairman.

Senator RANDOLPH. Now, we will give you some questions in writing. Your responses will be made a part of the record.

[The prepared statement of General Montague and the chart and questions with responses follow:]

TESTIMONY OF

ROBERT M. MONTAGUE, JR., BRIG. GEN. USA (RET.)

EXECUTIVE DIRECTOR

THE JOSEPH P. KENNEDY, JR. FOUNDATION

AND

SPECIAL OLYMPICS, INC.

BEFORE

THE SUBCOMMITTEE ON THE HANDICAPPED

OF

THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE

WITH RESPECT TO OVERSIGHT HEARINGS ON

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Mr. Chairman and members of the Subcommitee, I am pleased that I have been invited to testify on the physical education aspects of PL 94-142, the Education for All Handicapped Children Act.

This Subcommittee has been a major force in improving and expanding physical education, as one component of full education, for handicapped children. At the urging of the Joseph P. Kennedy, Jr. Foundation and many other organizations and individuals, the Subcommittee saw that physical education for all handicapped children was mandated by PL 94-142.

As I will report in a moment, that Congressional mandate is not being carried out effectively and properly.

But first, let me establish the credentials of the two organizations of which I am pleased and honored to be a part--the Joseph P. Kennedy, Jr. Foundation and Special Olympics, Inc.

In the early 1960's, complementing President John F. Kennedy's emphasis on physical fitness of all Americans, and especially children, the Kennedy Foundation, whose efforts concentrate on helping mentally retarded individuals, focused a great deal of its attention on physical fitness and physical education of mentally retarded children. The Foundation learned through its research and research and study by others that appropriate physical education benefitted the physical growth, self-concept and even intellectual development of mentally retarded and other handicapped children. The Foundation also discovered that pitifully few handicapped children were receiving adequate physical education in schools.

The Kennedy Foundation responded to this unfortunate and unfair condition, by creating in 1968 Special Olympics--a program offering year-round physical fitness and sports training and athletic competition to mentally retarded children and adults as well. Through Special Olympics, the Foundation wanted to do more than provide opportunities to participate in physical fitness and sports training; it hoped to educate the public about mental retardation and to get public support for programs and legislation such as the Education for All Handicapped Act. We believe that we have been quite successful.

For example, the success of Special Olympics is shown by the following:

- There are now more than 1 million participants.
- 97% of counties of U.S. have Special Olympics programs.
- More than 20,000 Special Olympics events take place each year.
- Over 350,000 volunteers supply the manpower.
- Public awareness is very high; public acceptance is remarkable.
- Partly because of Special Olympics' active promotion of physical education and advocating its necessity, physical education was made a mandated service in PL 94-142.

Because of our minute-by-minute involvement with the extensive Special Olympics programs reaching practically every school district in the U.S., we are acutely aware of the continuing inadequacy of physical education being provided mentally retarded and other handicapped children. This is directly contrary to the stated wishes of Congress.

Congress indicated its interest in physical education of handicapped children when in PL 94-142 it highlighted physical education in defining special education as:

> "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.

Unfortunately, not a great deal is happening in schools across the U.S. Physical education for handicapped individuals is being left out of school programs nationwide. In November, 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all Directors of Special Education in State Departments of Education. This survey revealed:

- A majority of states have no policies or standards to assure that physical education is considered in the process of placing or referring handicapped children.
- A majority of states have no policies or standards to assure that physical education needs of handicapped children are properly assessed through testing procedures.

- A great majority of states have no criteria for determining if a handicapped student needs adapted physical education.
- A majority of states do have policies or standards to assure that physical education is included on handicapped students IEP's, although the responses to the first 3 questions indicate no policy for determining a handicapped child's physical education needs.
- A great majority of state have no certification requirements in adapted physical education.
- A majority of states have no physical educator represented on the state's Comprehensive System of Personnel Development (CSPD) Committee.
- Although a majority of states say that they monitor physical education, the responses to the previous questions leave much speculation as to what they in fact do monitor.

Note: Chart attached showing detailed results of the survey.

I contend that the survey supports my statement that physical education for handicapped individuals is being left out of school programs nationwide.

Since the survey results show, as of November, that Congress' mandate regarding the inclusion of physical education in the overall education of handicapped children is not being followed, we recommend that:

- Congress reemphasize its mandate regarding physical education.
- The Department of Education insure that State Department Directors of Special Education make an increased effort to carry out the letter and spirit of the law.
- The Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children.
- The Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

Thank you for inviting me.

I would like to introduce Bill Bagshaw, a 17-year old handicapped student from Alexandria Developmental Center who will describe what physical fitness and sports training and competition, gained through Special Olympics, has meant to him.

ABSTRACT

Congress indicated its interest in physical education of handicapped children when in PL 94-142 it highlighted physical education in defining special education as:

> "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.

Unfortunately, not a great deal is happening in schools across the U.S. Physical education for handicapped individuals is being left out of school programs nationwide. In November, 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all Directors of Special Education in State Departments of Education. (Please see attached chart.)

Since the survey results show, as of November, that Congress' mandate regarding the inclusion of physical education in the overall education of handicapped children is not being followed, we recommend that:

- Congress reemphasize its mandate regarding physical education.
- The Department of Education insure that State Department Directors of Special Education make an increased effort to carry out the letter and spirit of the law.
- The Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children.
- The Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

ATTACHMENT

PL 94-142 TELEPHONE SURVEY RESULTS

THIS CHART REPRESENTS CURRENT POLICIES OR STANDARDS REGARDING PHYSICAL EDUCATION AND THE HANDICAPPED AMONG ALL STATES.

QUESTION	YES	NO
IS PHYSICAL EDUCATION INCLUDED IN PLACEMENT/REFERRAL PROCESS?	37%	62%
ARE PHYSICAL EDUCATION NEEDS OF HANDICAPPED CHILDREN ASSESSED THROUGH TESTING?	26%	71%
ARE CRITERIA ESTABLISHED FOR DETERMINING WHEN ADAPTED PHYSICAL EDUCATION IS NEEDED?	18%	81%
IS PHYSICAL EDUCATION INCLUDED ON IEP'S?	75%	24%
ARE ADAPTED PHYSICAL EDUCATION PERSONNEL CERTIFIED?	9%	90%
IS A PHYSICAL EDUCATOR REPRESENTED ON CSPD COMMITTEE?	28%	64%
DO YOU MONITOR PHYSICAL EDUCATION?	73%	24%

All percentages do not total 100% since some states did not respond to all items.

AUG 25 1980

SPECIAL OLYMPICS, INC.
International and National Headquarters
1701 K St. N.W., Suite 203, Washington, D.C. 20006 (202) 331-1346

August 21, 1980

8-25-80
Subcommittee on
The Handicapped

The Honorable Jennings Randolph
Chairman
Subcommittee on the Handicapped
United States Senate
Committee on Labor and Human Resources
Washington, D.C. 20510

Dear Senator Randolph:

Thank you for inviting me to testify during the oversight hearings on Public Law 94-142, a most significant law affecting the lives of millions of handicapped children and their families and friends.

I am pleased to provide the attached brief responses to your questions. The Kennedy Foundation and Special Olympics, Inc. are prepared to assist you and the Committee in improving implementation of Public Law 94-142.

Sincerely,

Robert M. Montague, Jr.

Robert M. Montague, Jr.
Executive Direction

RMM/klc
Encl.

SPECIAL OLYMPICS, INC.
Eunice Kennedy Shriver, President
Robert M. Montague, Brig. Gen. U.S.A. (Ret.), Executive Director
Thomas B. Songster, Phd. Director of Sports and Recreation
Stanley Startzell, Director of Coaching and Training

Created and sponsored by The Joseph P. Kennedy Jr. Foundation

Question

1. What criteria would you suggest be developed to help implement physical education for handicapped children?

Response

To cause states, school districts and schools to provide mandated and necessary physical education to handicapped children will require, in my opinion, a long-term and intense effort by the Department of Education. First, the Department should reiterate the requirement for physical education to be part of each handicapped child's IEP. This necessitates that the Department stress that physical education be considered during the referral process and that physical education needs to be a specific part of any assessment. Second, the Department, in its contacts with the states, should provide information and assistance regarding adapted physical education curricula and stress the great need for inservice training of physical educators and teachers. Third, the Department should require the states to monitor and report on the extent to which handicapped children are receiving appropriate physical education.

Question

2. Would you please comment on the availability and appropriateness of physical education for handicapped youth at the secondary education level?

Response

The testimony I presented lumped primary and secondary education together. Hence, I cannot respond specifically to the question of availability of physical education at the secondary education level. However, based on our experience in Special Olympics, it appears that the physical education for handicapped students in secondary schools is even less available than for handicapped students in primary schools. Yet, physical educators point out that for handicapped children, whose maturation is usually slower than for normal children, physical education is especially important to those of secondary school age.

Senator **RANDOLPH**. Are there any other comments? Yes, Mr. Wheeler?

Mr. **WHEELER**. Yes, Mr. Chairman. On the survey, I think it is important to point out that these were State policies. Many States did not have any State policies concerning the referral and screening process. The same is true with the assessment process. But the States did say that physical education was included in the IEP. If the States have no screening, referral, or assessment process, how could they determine the physical education needs of the child to be written in the IEP?

There is another questionable response concerning monitoring. Although 75 percent of the States were monitoring the physical education, the responses to the previous questions left much speculation as to what in fact to monitor. I think these points needed to be clarified and are found in the testimony.

Senator **RANDOLPH**. We will bring these needs to the attention of Dr. Martin, of the Department of Education. Thank you very much.

We thank the entire group for your appearance.

Now, will the panel members—four in number, I believe—come to the witness table: Mrs. Weber, Mr. Akerley, Mrs. Crawford, and Ms. Mendelsohn.

Mr. Akerley, would you begin for the panelists, or however you would desire?

STATEMENTS OF EDWARD M. AKERLEY, REPRESENTING THE NATIONAL SOCIETY FOR AUTISTIC CHILDREN, ACCOMPANIED BY MARY S. AKERLEY, MRS. DORIS WEBER, PARENT, NATIONAL GOVERNMENT ACTIVITIES COMMITTEE, KANSAS CITY, MO., REPRESENTING UNITED CEREBRAL PALSY, ACCOMPANIED BY KATHY ROY, ASSISTANT DIRECTOR, UCPA GOVERNMENTAL ACTIVITIES OFFICE; DOROTHY CRAWFORD, BOARD OF DIRECTORS, SCOTTSDALE, ARIZ., REPRESENTING ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES; AND JACQUELINE Z. MENDELSOHN, SILVER SPRING, MD., REPRESENTING INTERNATIONAL ASSOCIATION OF PARENTS OF THE DEAF, A PANEL

Mrs. AKERLEY. Thank you, Mr. Chairman.

I am not our witness today—this is a very proud moment for me—our son is. But I would like to introduce him if I may, because I think some knowledge of his background will make his testimony more meaningful for you.

Senator RANDOLPH. Just to interrupt, we are delighted that you are here, and if you will take over at this moment, then we will move into the testimony. Thank you.

Mrs. AKERLEY. Thank you.

Until Ed was 3, his only mode of communication was screaming. Until he was 5, he fled in wordless, uncomprehending terror from such gentle things as raindrops and small animals. He did not play with toys like other children until he was 7. His behavior in public was unpredictable and frequently embarrassing.

In short, in less enlightened times, he would most likely have to have been institutionalized.

He has had a lot of help—medical, social, educational. And my husband and I believe the last was the most significant. His first 7 years of school were in private, segregated, special education programs, but all publicly-funded, because we live in Maryland, and we had a law that mandated comprehensive services even before 94-142. I believe that kind of intensive help was essential, just as is now the opportunity for him to be in a less restrictive and more normal setting: a program for students with learning disabilities in our neighborhood public school.

The decision to move to public school was his own, and he was right. His courage and his persistence, even when things did not go smoothly, tell us something about the importance of letting people take risks in order to grow.

His statement is reproduced, exactly as he wrote it, in our written testimony, and we request that the whole document be made part of the record. You will see that the child who once could not hold a pencil now writes very legibly; who once would not put two words together intelligibly now produces pages of coherent narrative; and who once could not bear unfamiliar surroundings has taught himself to use public transportation. In fact, when we leave here today, I will go to my office, and he will take Metro home on his own.

We are really pleased to have this opportunity today to present to you one of the young people whom you and this legislation have helped so much, my son Edward.

Mr. **Akerley.** Mr. Chairman, my name is Ed Akerley. I am 15 years old. I live in Silver Spring, Md. I have autism.

I went to Hillcrest when I was 3. Sometimes, I used to run away after eating lunch. Sometimes, I got into serious trouble for that. Also, I used to beat up the kids over there, which was bad, and when I did a bad thing again, sometimes Mr. Stoddard, my teacher, pinned me to the floor. I screamed and cried while being pinned. I did not like being pinned at all.

Once, when I had art, I ran off. When I came back, the teacher said, "Do not leave the art room." Much later, I was still there, and someone said, "Why are you still sitting in the art room?"

Then, I switched to Christ Child School. First, I was in group 1, then in group 4, where Tammy was in my class. Sometimes, I had Tammy chasing me around the playground, which was having fun. Sometimes, we went on some field trips. One day, we went to Washington, D.C., and I went to the top of the Washington Monument with my class.

One day, I wanted to go to public school to be with normal kids and do what the normal ones did. Then I told Mom I wanted to walk or ride a bus to school and not in our car anymore.

I had a talk with my teacher, John Marston, about going to a new school to be with normal kids. Marty, my other teacher, heard about it, too. When John had a talk with the principal, Burt Lones, about me leaving Christ Child, Burt wanted me to come back after summer vacation, so I had to go back to Christ Child for a while, for Burt to see if I was ready. Then, by close to Christmas, I was a new boy at Dennis Avenue School. At first, I went to Christ Child in the afternoon. Later, I stayed the full day. My teacher was Mrs. Siegel. A boy named Eric had so much trouble learning when he was mad, sometimes it cracked me up, making me laugh. I tried not to laugh and tried to be more normal, even if it was a joke about Eric. Then, next year, I was in Mrs. Kugler's class. At the beginning of the year, Jean Edeson teased me, which I did not like. Chris and Jerome were in my class. Nathaniel was there in the beginning only because he was having trouble being good. So it was lots of fun in the class. Our teacher gave us Winnie the Pooh coloring books. They were more like fun. I did work first, then when it was finished, I colored Winnie the Pooh. It was my favorite, because I was young.

I took Hot Wheel cars to school to play when work was done. Sometimes, I even used to read Curious George books to Chris. Sometimes, they picked on me a little bit.

Then, when there were not enough students, I had to switch to Forest Grove School, so I worked hard the next year. Miss Burroughs was my teacher. I was teased before then they acted nice to me. I was in the Halloween parade, and I dressed up like a girl. So I liked the kids at school.

Sometimes, I had speech. I liked that, too. By the end of September, I went to Marlu Ridge with the sixth graders and the kids from Four Corners School. I had a good time except for being teased by some kids, which I did not like. Maybe they thought they were more important.

I knew a girl named Michelle Osborn. She had long hair; that is why I thought she was good looking.

Next year, I stayed there for one more year. Sometimes, that last year at school, I got picked on again, so when Mom heard of it, she said, "Do you want to go back to private school?" I said, "No. Maybe the kids do that to make themselves feel more important." So I worked hard every day.

One day, Mom took me to two junior high schools, Eastern and Key. Then, when school was out, I picked Eastern because I thought it would be the best. So in the summer, I had orientation for 4 days at the new school. I liked it a lot, because it has nice special eds.

When I was in seventh grade, I had trouble with geography, because it was a little bit hard. I got a failure notice that I did poorly. I had to study more.

After having art with Mr. Fierstein, I went to Home Ec. In the sewing class, there was too much confusion. I was being teased by two boys, hitting me on the head with pencils. So Mr. Hedderman finally pulled me out of there, and I went back to having art with Mr. Fierstein. Back in the art class, there was no teasing. After art, I again went back to sewing. Then there was no teasing. A girl in my sewing class was nice to me by helping me thread the machine and do my sewing. Her name is Terri Gala.

Those two boys that caused the trouble should have got pulled out of there. Their names are Kevin and Timmy. I was not bad, they were. I should have stayed in that class. I was not trying to cause trouble in sewing.

Mostly in my work, I did pretty good, which Mr. Hedderman said. This year, I finished eighth grade. I have music first period; and second, I work on two pages in phonics and some days, language. At third, I have gym; at fourth, I have science, about land animals. Then I have lunch. After lunch, I have math. After math, I have reading. After reading, I have geography. After geography, I went home when the bell rang. I still ride the bus to school.

Senator RANDOLPH. Thank you very much, Edward. This is very much a human document to me, and I am intensely interested in what you were saying. If I might say, I taught speech for many, many years, and I found that you were able, in the reading of your testimony, to give the appropriate inflection and emphasis. Whether you realized you were doing it or not, you were bringing out the points in a way that the listener could understand.

This will, of course, be made part of the record, and we will ask questions in writing for your response.

Will that be agreeable?

Mr. AKERLEY. I guess so.

Mr. RANDOLPH. We will try it, then.

[The joint prepared statement of Mr. and Mrs. Akerley and the question and response follows:]

STATEMENT
OF
THE NATIONAL SOCIETY FOR AUTISTIC CHILDREN
ON
PUBLIC LAW 94-142

SUBMITTED TO
THE SUBCOMMITTEE ON HANDICAPPED
COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE
JULY 29, 1980

Witness:

Edward M. Akerley
10609 Glenwild Road
Silver Spring, Maryland 20901

Accompanied by:

Mary S. Akerley

SUMMARY

The statement of the National Society for Autistic Children is addressed to two problems in the implementation of P.L 94-142:

1) Placement There is evidence that children are being placed in classes according to their diagnostic labels rather than according to individual evaluations of learning strengths and deficits and specific educational needs. This appears to be the result of misunderstanding of the law and its requirements, administrative inertia, and lack of resources.

2) Mainstreaming This concept is misapplied and misunderstood. Moreover, regular education teachers are not being given sufficient preparation for accommodating students with disabilities. Finally, the preferences of the students themselves are not being given sufficient weight when placement decisions are made.

NSAC's recommendations are addressed entirely to modifications in implementation. No changes in the law itself are suggested. The Society's points are illustrated by its witness's first-person account of his own experiences, first in segregated special settings, then in special classes in neighborhood public schools.

ABOUT SCHOOL

I went to Hillcrest when I was three. Sometimes, I used to run away after eating lunch, Sometimes I got into Serious trouble for that. also, I used to beet up the kids over there which was bad, when I did a bad thing again, Sometimes, Mr. Stoddard pinned me to the floor, I screamed & cried when being pinned I did not like being pinned at all, I had art before, then once I ran off then came back, Then the teacher said do not leave the art room, then I waited later I was still there Someone said Why are you sitting in the art room? Afer I Was at Hillcrest, then I switched to Christ Child. I was in group I, then after a few days I went into group 4 When Tommy was in my Class, [illegible] I was on the playground with my Class, Sometimes, I had Tommy chasing Me around the play-ground which I was having fun being Chased. Sometimes we went on some field trips to Washington, one day when we were there I went to to the top of the Washington Monument with my class on the last day Michelle and Tom had to [illegible]. Then John & Susan were My teachers, After Susan, I had Marty for a Teacher. One day I wanted to go to a public School to be with Normal Kids & do what the Normal ones did. Then I told [illegible] I wanted to [illegible]

Before I switched to a public School, Sometimes I had Therapy, with Mrs. West then Mrs. Gerstein I had a talk with John Marston about going to a new School to be with normal Kids. Marty has heard about it too. When I was still at Christ Child after recess I watch the Electric Company. When John had a talk with Birt Lones about Me Leaving Christ Child, Birt wanted me to come back after a Summer Vacation. So I had to go back to Christ Child for a while for Birt to see if I was ready then by Close to Christmas I was a new boy at Denni Avenue School, On some days when I was at Dennis Avenue for half, I went to Christ Child for the Afternoon. Sometimes I stayed a full day. Mrs. Siegel was my teacher. A boy named Eric Who had so much trouble learning when he was mad, Sometimes it cracked me up of Making Me laugh. I tried not to laugh and tried to be more normal even if it was a joke about Eric. Then next year I was in Mrs. Kugler Class. At the beginning of the year Jean Edeson teased me which I did not like. Chris and Jerome were in my Class. Nathaniel was in my the beginning only because he was having trouble being good. So it Was lot's of fun in the class, So our teacher gave us Winnie the Pooh Coloring books, they were more like fun. I did work first then when it was finished I colored in my Winnie the Pooh Book, Winnie the Pooh was My favorite one because I was young. So I Made up about Pooh in a race car I took Some hot Wheels cars to school before to play when Work Was done. Some times then I even used to read Cirious George to Chris then. Sometime they picked on Me a little bit.

Then when there were not enough Students. So we had Switched to Forest Grove. So I worked hard the next year. Miss Burroughs was my teacher. I was teased before then they acted nice to me. Then at school at Holloween parade I was dressed up like a girl wearing lipstick and one of my sisters dresses. So I liked the kids at School. later before Christmas My teacher got Married to a man named Mr. Shamp So then My teacher had her last name changed to Shamp. And Sometimes I had Speech before so I liked it. By the end of September I went to Mar lu ridge with the six grader with Four Corners School Kids too. I had a good time except being teased by some kids which I did not like Maybe that they thought they were more impirtant. I new a girl named Michellie Osborn. She had long hair thats why I through She was good looking. Next year I stayed there for one more year. Sometimes that lest year at School I got picked on again, so when mom heard of it, She said do you want to go back to a private School? I said no. Maybe the Kids made themselves feel more important. So I worked hard every day. One day mom took me to two Junior High Schools. Then She TOOK Me to Eastern Then she took me to Key. Then When before Sc[illegible], I picked Eastern because I thought it will be the best. So in Summer I had Orientation for four days at the New School. I like it a lot because it has nice Special-Eds. When I was in Seventh grade I had trouble with Geograph

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have Science about Land Animals. Then I have lunch.
After lunch I have math. After math I have readi-
ng. After reading I have Geography. After Geography
I go home When the bell rings. I ride a bus to
School now I still.

Mr. Chairman and Members of the Subcommittee:

My name is Mary Akerley. I am a past president of the National Society for Autistic Children and have served as the staff director of the Society's National Affairs Department. Our witness today is my son, whose remarks will illustrate how P.L. 94-142 can work it if is sensitively implemented.

I am introducing him because I think some knowledge of his background will make his testimony more meaningful for you. Until he was three, his only mode of communication was screaming; until he was five, he fled in wordless, uncomprehending terror from such gentle things as raindrops and small animals; he did not play with toys like other children until he was seven; his behavior in public was unpredictable and frequently embarrassing - in short, in less enlightened times, he would most likely have had to be institutionalized. He has had lots of help - medical, social, educational; my husband and I believe the last was the most significant. His first seven years of school were in private programs, all publicly funded. (Maryland had comprehensive services even before the passage of P.L. 94-142.) I believe this kind of intensive help was absolutely essential, just as is the opportunity for him now to be in a less restrictive setting: a program for students with learning disabilities in our neighborhood public school.

The decision to move to public school was his, and he was right. His courage and persistence, even when things did not go smoothly, tell us something about the importance of letting people take risks in order to grow. His statement is reproduced exactly as he wrote it in our written testimony, which we request be made part of the record. You will see that the child who once couldn't hold a pencil now writes very legibly, who once couldn't put two words together intelligibly now produces pages of coherent narrative, who once could not bear unfamiliar surroundings has taught himself to use public transportation.

We are pleased to have this opportunity today to present to you one of the young people whom you have helped so much. Ed Akerley's story is the strongest statement we can make in support of P.L. 94-142. It is a good law; it is not always well implemented. Our formal statement will focus on two areas where, at least for youngsters with autism, most problems seem to occur.

PLACEMENT In spite of the law's clear statement that placement is to be based on the child's IEP, there is heavy reliance on diagnostic labels rather than on individual needs. This is particularly damaging for students with autism because of the still prevalent misconception that autism is an emotional disorder. The problem is compounded when a state or school district relies on canned programming for the sake of expediency. It is easier to place a child into an already existing program, based on a diagnostic label, than it is to program for him individually. The results for autistic children are often disastrous - and completely contrary to the intent of the law.

Most classes for children with emotional handicaps are based on the belief that the students are normal learners whose psychological, usually environmentally induced, problems interfere with their behavior to such an extent that real learning cannot occur. The usual intervention is therefore primarily psychiatric in orientation: psychotherapy, a supportive millieu, an often permissive approach to "acting out." Not only are such techniques totally ineffective for the autistic child, but they can be actually harmful.

Autism could be regarded, at least for educational purposes, as the direct opposite of emotional disturbance. Autistic children cannot learn in any normal fashion; and it is this inability to learn which causes their deviant behavior, not the other way around. Consequently, they require a program which utilizes specialized educational strategies (such as task analysis) in a highly structured setting. The psychotherapeutic approach has been proven ineffective by several studies; the reason has become increasingly obvious as medical research has identified several areas of neurological dysfunction underlying the disorder. However, the National Society for Autistic Children files contain ample evidence that students with autism are being placed in classes for emotionally handicapped students. Although the parents appeal such decisions, they are not always successful; school authorities cite the regulation and past practice, outdated though that may be. Even when it becomes obvious that the placement is actually harming the child, the authorities do not relent; instead they find ways to punish the parents for being troublesome.

Joseph, 11 and severely autistic, lives with his parents in a southern Virginia city, where he has attended several day programs. The most successful was one designed for mentally retarded children (i.e., the accommodation was to learning rather than psychiatric problems). The time did come when the teacher felt that in order to keep Joseph in her class, she would need additional help. Joseph was evaluated and the recommended placement was a special program for autistic children based on the old psychiatric model, the only such one was residential, and some distance from the family home. Nevertheless, the parents consented to a trial placement. Joseph regressed and the parents took him home. They were told that the only possible day placement was a class for emotionally handicapped children; once again they were willing to try. And once again Joseph regressed. But this time was worse; there were personality changes as well. The once docile, happy child had become hostile and aggressive. When Joseph's mother visited the classroom everything seemed fine (she could only visit on a prearranged basis), but finally a teacher's aide gave her the clue she needed: Joseph was routinely chained to a chair. Mrs. S. quite rightly felt her son would be better off with no program and decided to keep him at home. The state promptly charged her with violating the law. It insisted Joseph needed residential care; she maintained he did not, only an appropriate day program. The battle dragged on for over a year. The family finally won but only after hiring a lawyer and forcing the former Bureau of Education for the Handicapped (BEH), now the Office of Special Education, to investigate. Huge sums of money and nearly three years of a human life have been wasted in the process, where, ironically, the family was asking for a program (the MR class with an additional teacher or aide) which cost far less than either of the two totally inappropriate ones the state attempted to force on them.

Three years ago, Andrew, then six, was making good progress in a special public program in Michigan. It was designed for autistic children and included such appropriate related services as speech therapy. Last year the therapy was dropped when the therapist became ill; the school system refused to replace her, and Andrew's parents were forced to provide this service themselves at considerable personal expense. At the end of the school year the officials decided to discontinue the autistic program entirely and place Andrew in a traditional E.I. (Emotionally Impaired) classroom. The parents immediately requested a hearing and were finally forced to hire an attorney to overcome the school's delaying tactics. When a decision was finally handed down six months later in favor of Andrew's earlier type program, it and the results of a recent evaluation were ignored. Instead Andrew was given a "trial placement" in the E.I. class. He began showing medical symptoms of stress; he stopped eating and developed a heart murmur. Faced with a program that was not only educationally inappropriate but actually life-threatening, Andrew's parents kept him home. The school system has consistently thwarted their attempts to obtain due process but has sued them for truancy!

The Office of Special Education has recognized this problem and is planning to move autism out of the "Seriously Emtionally Disturbed" category in the regulations. We believe this will help tremendously, in that it will remove formal justification for such placements. However, what we have just described is symptomatic of the larger problem of placing children solely on the basis of diagnostic labels. We suspect that this happens because of misunderstandings, inertia and budgetary difficulties at the implementation level. For example, last December the Office of Special Education issued a memo of clarification on the regulations: the categorization of children by handicap was solely for the purposes of the required child count and was not to be used for programming. We published this information in our national newsletter. This was apparently the only source of that information to some public school professionals; we received inquiries from staff persons in two states because they could not get information from their education officials.

Clearly, funding is another major impediment to full and proper implementation. The promise of federal assistance to meet individual needs has been only partially kept. It is, therefore, somewhat unfair to criticize states and LEAs for only partial performance. For example, states were lead to believe that they would receive approximately $3 billion in federal assistance in 1982 for the state grant component of 94-142. It is a disappointment that the Administration's request for FY 1982 is only $922 million, and that past Congressional appropriations have fallen far short of the authorized amount.

MAINSTREAMING This term has become a sort of verbal Rubicon, separating good guys from bad. Of course, which is which depends entirely on individual bias; because mainstreaming per se is neither a panacea nor a lethal weapon.

We listened attentively to witnesses at the Senate Oversight Hearings last summer. Their conflicting views on mainstreaming, as parents and as teachers, indicated that both the concept itself and its application under P.L. 94-142 are still misunderstood. Ed Akerley's statement does highlight the mainstreaming dilemma and also suggests a solution, one which is actually written into the law but not always enforced.

P.L. 94-142 requires that the parents and, where appropriate, the handicapped student participate in the formulating of the IEP. One of the decisions which has to be made is that of placement. And here it is very, very important that the student's preferences be taken into account.

When Ed indicated he had enough of private school, that he wanted to be with normal children, the learned professionals in the Montgomery County School System went into a state close to panic. Everything from the larger classes to riding the school bus was going to be "traumatic." If he and his parents insisted on a public school placement it would have to be in an EH Classroom with psychotherapy - on the outside and naturally, at the family's expense. Fortunately, the family had identified an LD Class in a nearby school with a vacancy and a willingness to try. The school system compromised with "half-hearted" mainstreaming: gradual introduction to public school. So, for nearly four months, Ed Akerley had to go to two schools every day, the worst possible arrangement for a child whose educational handicap demands consistency in management. Nonetheless, as you saw today, he has survived - "thrived" might be a better word. Now "mainstreamed," he has told you of his problems - nearly all social - and of his still strong preference, in spite of them, for the most normal environment. He, more than any of the "decision-makers" in his world, knows the reality of public and private school and which is now best for him. There are other Eds who are not listened to; they are ignored and their parents' "participation" in the IEP is limited to signing an already completed form. If professional pre-set opinions on who can and cannot be mainstreamed are allowed to prevail, we may as well drop the "I" from IEP. If students and their families are listened to and their recommendations followed, there will, of course, be mistakes made; just as there are when "experts" make all the decisions. But they will be normal errors based on normal desires to grow, with the risk-taking that requires, not artificial traps based on someone else's limited expectations for another human being.

We must also deal with teachers' fears that they cannot handle handicapped children in their classrooms. Some of that fear is legitimate; the one great flaw in P.L. 94-142 is its lack of provision for training of <u>regular</u> classroom teachers and of support personnel. Even when a teacher is willing to try, he/she must be taught what to expect, what are realistic goals. One young teacher, after completing her first year with an autistic child in her classroom, and doing a very good job, had to be consoled by the student's mother when she indicated she felt she had failed because the child still wasn't behaving or learning normally.

One of the Senate witnesses described her deaf child's public school experience as "the most restrictive environment possible." In his "deaf school" all the children signed and his world, although silent, was essentially normal. In "normal" school he was isolated by his deafness. Does this mean he should not have been mainstreamed? Or does it mean the school personnel and his classmates should have been taught to sign? This was how placement of a deaf girl was managed in a Northern Virginia public school. Her classmates thoroughly enjoyed the experience and carried it over to junior high school, where the young lady's mainstreaming successfully continues.

We hesitate to suggest amendments to the law as solutions to the problems we have discussed. We agree that "Hard cases make bad law." We do believe that enforcement must be more rigorous, and that rigorous enforcement will eventually lead to acceptance of the principles on which the law is based. Until that happens, we must find no excuse acceptable for compromising the right of every child to appropriate education in the least restrictive environment.

QUESTION FOR ED AKERLEY

1980 AUG 18 PM 2:00

1. What plans have you made to continue your education and training beyond high school?

When I finish High School , I want to go to a training school to get some good jobs . Fixing street lights in an orange snorkel truck , Being a milk man , Making sodas, Being a trash man. When I have a good job, I want to buy a house, get married and have some children. When I have my own house I want a vegetable garden in my backyard , Some cats and a dog. First I will live in an apartment with my wife. When my wife goes to the hospital to have a baby , then I want to start buying my house. I will be living in Arizona by then. I willw want to know how to drive a car and a truck.

Mrs. Mary Akerley
10609 Glenwild Rd., Silver Spring, Md. 20901
NATIONAL SOCIETY FOR AUTISTIC CHILDREN

Senator RANDOLPH. Doris Weber, parent, from Kansas City, Mo. It has been hot out there, hasn't it?

Mrs. WEBER. Yes, sir.

Senator RANDOLPH. Pull the mike closer, that our guests might hear you.

Mrs. WEBER. Thank you, Mr. Chairman.

I would also like to introduce Kathy Roy, of the National UCPA Governmental Activities Office.

I am the parent of eight children, three of whom are classified as "developmentally disabled." My testimony is the result of many years of experience of attempting to obtain an appropriate education for those three children, and as the result of an involvement with the protection and advocacy system in our State, the various boards and committees for United Cerebral Palsy, and a parent advisory council that was formed with the local school district.

Our experiences over the years have been varied, from good to bad, as is true with most parents in attempting to get their children introduced into a school system of any kind.

My other children were fortunate enough to be able to attend private schools, but because of the types of handicaps of my three younger children, they were not able to take advantage of that system, so we introduced them to the public school system.

I am not sure who introduced whom to what, except that I know that my children discovered that school personnel did not always receive them with open arms; that oftentimes, the school personnel and the other students did not understand what a disability was or were able to discern between the different disabilities, and that occasionally—a little too often—their peers were cruel.

Over the years, I have seen some of these circumstances change. I have some very great concerns. My first concern is that the school systems are still not alerting the parents as to the implications of Public Law 94-142. I know this is true from sitting on a parent advisory council and on the initial visits with them, learned that most of them had fought to get their children in school without even being aware that the law existed. We have a gap somewhere.

I am sure that school administrators are leery of educating some of these parents too fully, probably figuring that there is going to be a marching band walking into their offices, demanding more than what they feel they can accomplish. I do not believe that is true, but I would hope that more school districts would begin to implement some parent training or more surrogate parent training.

The next thing that I am concerned about is that we are lacking awareness training both with the students and the teachers. As a result of insensitivity, my daugher, who is 15, whose name is Bernadette, had her hair set on fire by her "normal" peers last October.

Senator RANDOLPH. Where did this take place?

Mrs. WEBER. On the schoolbus.

As a result of that, she psychologically was so damaged that she had to remain out of school for 2 months while the school system tried to make a decision as to what the next step would be.

Senator **Randolph**. Why did it take 2 months to make a decision?

Mrs. **Weber**. Well, it took 2 months because I was requesting some private placement for Bernadette to ease her through the trauma and also to provide a more appropriate setting for her, at least for the next year or so. They were having difficulties with purchase of service agreement at that time.

Senator **Randolph**. I do not want to be too detailed on it, but this is a very unusual case.

Mrs. **Weber**. Yes, it was to us.

Senator **Randolph**. What happened to the individual or individuals who set her hair afire?

Mrs. **Weber**. Well, it so happened that this was a youngster who, for some unknown reason, had been attending the wrong school for 2 months. They did not even realize that the youngster was attending the wrong school until the incident occurred and was reported by the bus driver, and at that point, the school records showed that he did not belong on that bus, nor did he belong in that school.

I left it up to the school administration to take care of the legalities as far as what occurred with the child, only wishing for him to obtain some assistance so that that type of thing would not occur again.

Yes, it was unusual. Thank goodness, Bernadette was not physically hurt. The fire was put out quickly. But psychologically, Bernadette would not take a bus again whether it was public transportation or school transportation, nor would she walk in the door of that public school again.

So eventually, we did obtain a purchase of service agreement with a private school.

The sad thing is that that is not necessary. The fact that her peers, her "normal" peers, saw it necessary to tease her in that sort of way means that our community as a whole, or society as a whole, has a lot to learn.

What I have learned also is that teachers are some of the most wonderful people on Earth, and they have given my children a reason to want to succeed from one day to the next. But I also find that many of them do not understand what the various disabilities are. That has been lacking in their training. We are attempting to make up for that now, through different classes that are required for these teachers. I am very anxious to someday see mainstreaming occur, but I believe my idea of mainstreaming and others may be a little different, only because I do not see every child in a normal classroom. But what I do wish to see is that every child have an opportunity to be integrated into a normal pattern of life and to receive an education to the extent that that child will feel like a whole person. I do not think that is an impossible feat.

We need to look at vocational and prevocational training to a much greater extent than we are now. My 17-year-old son, Phillip, has a great desire to work, like his five older brothers and sisters. That responsibility is not going to be his unless the school system accepts their responsibility to provide some vocational training for Phillip. More than once, the need for that has appeared on his IEP, but it has not been implemented because the school system said they really did not have the capabilities to provide the type of vocational training that I and Phillip felt was necessary for him.

In one instance, he was in a vocationally oriented class, and in mid-semester, that class was withdrawn, and Phillip was left without vocational training again.

I do not believe this is unusual. Vocational training does not seem to be a priority yet; it needs to be, because if we are going to put so much emphasis on providing an appropriate education, a well-rounded education for our youngsters in the elementary stages, via Public Law 94–142, then the natural end result is that these individuals will be able to be employed. To be employed, they need vocational education. It is a natural.

I do not believe we have looked at that as sincerely as we need to.

I feel very fortunate that my three children are still in school due to many of the circumstances that we have encountered. I know that administrators are becoming more open-minded. I know that they are not relegating our children to the far corners of the facilities now, as they were. I know that teachers' education is being expanded. And I have a hope for all three of my children for the future. Bernadette this year will be going back to school in a different school system. She will be provided with prevocational training, as well as her academics. Phillip is going to have vocational training as well as academic. And Thomas, hopefully, is going to attempt to be what many of us call "mainstreamed". He will be in a normal classroom approximately 80 percent of the time. The other 15 percent, he will be in a learning center.

This means that we are making great progress with Public Law 94–142, but it also means that we have got to look at the monitoring of the system from both a Federal and State level. I know from working with the protection and advocacy system that this has not been done, not to the extent which is necessary. The courts should not be the end result or the way to force the systems to implement this law. I would hope that, through more thorough education of our school personnel and the community at large, that we can accomplish this in a different method.

Thank you, Mr. Chairman.

Senator RANDOLPH. Thank you very much, Doris Weber. I noted earlier that we would be joined by, and that he would be chairing the subcommittee hearing—I refer to, for our guests from Canada especially, the former governor of Vermont—Senator Stafford. I am delighted that Senator Stafford is here, and he will continue with the hearing.

May I have the privilege of saying again to the group of Parliamentarians and representative Canadians who are our guests that we know of your schedule, of course. We wish that you might be here for all of the hearing, at least, during the morning.

I just was thinking this morning, with reference to Canada, of Leonard Robinson, who was such an advocate and leader in our program for the vending facilities for the blind. I will have one or two of these books made available to you—he tells the story of the Randolph–Sheppard Act in the book, "Light at the Tunnel End". And the reason I want you, if you would, to carry it back to Canada, is that one chapter concerns the assistance that we had in the early thirties from Mr. Joseph F. Clunk of the Canadian National Institute for the Blind. I remember Joe Clunk so very well and the inspiration and the knowledge that he brought to us. Senator Stafford, this program has been tried on a smaller basis in Canada. And we will have several copies of the book sent to you.

I wish to say, Mrs. Weber, that we will send you questions to be answered for the hearing record. I enjoy nothing more than listening, listening, listening, but the time element, for us as well as others, is something that we have not yet conquered. We are aware of it, and we cannot do anything about it. On the Senate floor, there is certain legislation which is identified with the committee I mentioned earlier, Environment and Public Works.

Now, we feel that these hearings have brought a series of informational, and often inspirational testimony. There are those within the Congress who work on this subject matter. There are others within the Congress who only are involved when we bring legislation to the Senate or House floors, really. So this hearing process is a means of letting those who are not closely associated with the legislation know that this effort is meeting with at least partial success in some areas and, we hope, with substantial success for handicapped children in other areas.

[The prepared statement of Mrs. Weber and the questions and responses referred to follow:]

STATEMENT

RESPECTFULLY SUBMITTED TO THE SENATE SUBCOMMITTEE ON THE HANDICAPPED

ON

Oversight Of P.L. 94-142, The "Education For All Handicapped Children Act"

On Behalf Of

United Cerebral Palsy Associations, Inc.
The Chester Arthur Building, Suite 141
425 "Eye" Street, N.W.
Washington, D.C. 20001

Witness: Doris Weber
Parent/Advocate
Kansas City, Missouri

Accompanied By: Kathleen Roy, Assistant Director
UCPA Governmental Activities Office

July 25, 1980

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SUMMARY

Prior to the enactment of P.L. 94-142, many affiliates of United Cerebral Palsy Associations, Inc., provided handicapped children with special education and related services. Many of our affiliates, through a variety of funding sources, continue to help LEA's provide related services to handicapped children. We feel that agencies such as ours can provide a great deal of positive direction to school systems in their provision of related services. We also firmly believe that interagency agreements between the Bureau of Education for the Handicapped and other federal agencies can enhance the provision of related services to handicapped children. In order to insure that handicapped children receive these related services which are required by P.L. 94-142, we have made the following recommendations:

- We firmly believe that full implementation of the above-mentioned interagency agreements will help assure that the range of related services are provided to handicapped children.
- While such interagency agreements will increase the likelihood that these services will be provided, more funds will be necessary to meet this objective. Thus we recommend that the Congress consider providing more monies to meet the mandates of 94-142.
- We feel that the provision of related services is so important to the overall objective of providing handicapped children with a free appropriate public education that Congress may wish to target funds specifically for this purpose.
- Either Congress or BEH must specify who has "first dollar" responsibility and who has "last dollar" responsibility for the provision of related services. This responsibility was clearly stated in the November 29, 1978 BEH-Health Care Financing Administration (HCFA) joint program interpretation regarding the provision of educational services to residents of Medicaid Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled. Other interagency agreeements must be just as specific regarding exact financial responsibility.
- No amount of funds nor interagency agreements can replace the importance of strong and consistent Congressional oversight. Such oversight is essential if the mandate of P.L. 94-142 is to ever become a reality.

Also of concern to our organization is the IEP and the implementation of due process procedures. These two provisions were created so that parents of handicapped children had an opportunity to articulate their childrens' needs. Yet, in many instances,this has not been the case. Our testimony therefore makes the following recommendations:

- <u>Additional financial resources and administrative support for parent training must be available</u>. School systems should be responsible for some portion of these training activities, but independent parent training centers, advocacy organizations and state P&A systems must also be assisted to provide additional parent training.

- <u>Technical assistance and in-service training for all teachers and administrators must be more widely available</u>.
    - School systems must provide positive support (in-service days, recertification credit, release time) for teachers who participate in training activities.
    - Training must include information about
        - the unique needs of children with various disabilities, and
        - the possible effects on educational performance of those disabilities as well as
        - skills to work effectively with children with a variety of needs, and
        - adequate information about the contents of P.L. 94-142 especially the IEP process which is the heart of a free appropriate public education.
    - The same information about disabilities, methodology and the law must be included in all degree-granting programs responsible for the preparation of future teachers.

Finally, Mrs. Doris Weber is prepared to articulate her experiences in trying to educate three handicapped children in Kansas City, Missouri. Her testimony complements the points made earlier in this statement regarding both the provision of related services and the difficulty which many parents have experienced in obtaining an acceptable IEP for their handicapped child.

INTRODUCTION

Appearing on behalf of United Cerebral Palsy Associations, Inc., is Mrs. Doris Weber, Special Projects Director for Inland Industries, Inc. in Lenexa, Kasas. Mrs. Weber is the mother of three handicapped children, Phillip, Bernadette, and Thomas. She currently serves on both the Governmental Activities Committee and the National Advocacy Committee of UCPA. She is the President of T.A.L.L. (Training Alternative for Living and Learning Inc.), a program which provides training and job placement opportunities for severely handicapped persons. Mrs. Weber also serves on the Jackson County Board of Services which supervises the spending of mill levy monies for group housing for the handicapped and supplementary monies for sheltered workshops. Mrs. Weber plays an active role as a member of the Board of the Missouri Protection and Advocacy Services for the Developmentally Disabled as well as serving as corporate Secretary of the Metropolitan Council for the Developmentally Disabled. Finally, Mrs. Weber serves on the Parents Advisory Board of the Kansas City Public Schools and thus is instrumental in giving directions to the implementation of 94-142 within her own community.

P.L. 94-142, "Education for All Handicapped Children Act" has and will continue to have a very dramatic effect on the lives of our nation's handicapped children. Until the enactment of this legislation, the education of handicapped children was, at best, a fragmented and discouraging process. We at UCPA believe that we are in a unique position to comment on the implementation of P.L. 94-142 for two reasons. First, children with cerebral palsy vary in the degree of involvement from those children who are mildly handicapped and may need little special educational assistance, to those children who are severely and multiply handicapped with cerebral palsy and will need a variety of intensive special education and related services in order to reach their full potential. Second, prior to the enactment of P.L. 94-142, most UCPA affiliates were in the business of providing special education to children with cerebral palsy. While many of our affiliates continue to provide special education services to varying degrees (as will be discussed later in our testimony), many other affiliates are moving out of the business of education and into other services, such as adult programming and infant stimulation activities. We believe that this in itself is an indication that the mandate of P.L. 94-142 is having a positive effect on the education of handicapped children.

In June, 1978 the UCPA Governmental Activities Office issued a report entitled "UCPA Affiliates Report Implementation Experiences With P.L. 94-142: The Education for All Handicapped Children Act." This survey indicated that there were three major areas of concern to UCPA affiliates: 1) the provision of related services to children with cerebral palsy, 2) the concept of least restrictive environment and its relationship to private schools, and 3) the I.E.P. (individual education plan) and due process procedures and their effect upon handicapped children and their families.

Further on April 16, 1980, thirteen advocacy organizations led by the Children's Defense Fund and Mental Health Law project issued a devastating attack on the nation's failure to implement adequately P.L. 94-142, the "Education for All Handicapped Children Act."

The report concludes that "hundreds of thousands of handicapped children nationwide have been denied essential services because of state and local education agencies' noncompliance....and the concomitant failure of the federal Bureau of Education for the Handicapped (BEH) to enforce the Act." Ten states - CA, CO, FL, IL, MI, NY, PA, TN, TX, and VT and the District of Columbia were examined in this study.

The report identifies nine areas of noncompliance: (1) unserved children; (2) inappropriately served children; (3) denial of related services; (4) unnecessarily segregated classes; (5) misclassification and inappropriate placement of black children in classes for the educably mentally retarded; (6) illegal suspensions or expulsions from school; (7) no individual education plans; (8) no system for identifying children in need of surrogate parents; and (9) inadequate notion of rights to parents.

The advocates concluded that BEH has "failed to remedy this situation because of inadequate staff, policy-making, monitoring and enforcement, with only 20 relatively untrained staff...."

Our statement will thus attempt to address some of these issues and offer the subcommittee some possible solutions to these problems.

RELATED SERVICES

Children with cerebral palsy vary in both the degree and type of their neurological involvement. For this reason the provision of related services to children with cerebral palsy is critical. Some children may need a combination of related services such as physical, speech, and occupational therapy and the provision of these services as early as possible in the life of the child with cerebral palsy can often reduce, and in some cases substantially eliminate, the handicapping condition. Prior to the enactment of P.L. 94-142, UCPA provided children with cerebral palsy with such related services. Now the question is raised, to what degree are school systems beginning to take on their responsibilities as far as providing these related services, and what is the role of agencies like UCPA in assisting school systems to meet their responsibilities in this area?

P.L. 94-142 clearly states that our nation's handicapped children are entitled to special education and related services which meet their individual needs. "The Act describes related services as developmental, corrective, and other supportive services including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, medical and counselling services." The term "related services" includes "transportation" as well as those listed in the Act. It also includes school health services, social work services in schools, and parent counselling and training. Thus, there are a broad range of services which are to be provided to handicapped children under the auspices related services. However, the survey of our affiliates found the provision of related services generally inadequate or unavailable.

P.L. 94-142 is still in its infancy stages of implementation, and as both State and local education agencies begin to take on their responsibilities in educating our nation's handicapped children, the provision of such related services will continue to improve. However, during the critical period of implementation, we believe that agencies such as UCPA affiliates can enter into a partnership with both the SEAs and LEAs in providing some of these related services. A brief look at what several of our affiliates are already doing to provide such services may assist the Subcommittee on the Handicapped to better envision how our affiliates can be of assistance.

UCPA of Northeast Maine in Bangor received last year $54,566 in federal funds, a combination of local education monies as well as ESEA Title I monies. Through these funds our affiliate in Bangor was able to provide school age children with education and related services. Our affiliate provided and continues to provide infant and preschool programs for young handicapped children. These programs and funds are complemented by $20,000 in Title XX Social Services funds to operate a home based developmental therapy program for children ages 0-5 and $3,000 for a summer camp program. The State Mental Health Department grants UCPA $2,000 and the State Developmental Disabilities Agency grants $13,330 for its infant development program. The Title XVI of the Social Security Act (Mikva Amendment), administered by the State Crippled Childrens' Agency, grants UCPA $1,000 for services to preschool children receiving Supplemental Security Income. Thus, educational funds are combined with five other agency funds to provide the continuum of related services required by children with developmental disabilities in Northeast Maine.

UCPA of Chicago receives approximately $400,000 in both ESEA Title I and P.L. 94-142 funds. This affiliate also receives approximately $395,000 through the Department of Illinois Mental Health Division of Developmental Disabilities. With these funds UCPA of Chicago is able to provide special education and related services to approximately 150 severely handicapped children in the Chicago area.

UCPA of Hawaii receives $35,000 from the Department of Education to provide a special education class which focuses on physical, speech, and occupational therapy and sensory stimulation.

Thus, UCPA affiliates have expertise in providing related services to handicapped children. We would encourage the Congress to continue to foster such cooperative agreements whereby State and local educational agencies work with private agencies to provide the related services previously described. Such a sharing of responsibility will surely enhance the quality of education and related services which are given to handicapped children and may also serve to help education agencies feel less overwhelmed with their mandated responsibilities.

UCPA can also assist the SEAs and LEAs in helping the regular classroom teacher with the responsibilities of educating severely handicapped children on a day-to-day basis. UCPA has had experience in providing workshops and conferences to help educators and families understand principals of normal growth and development and to assist the child who is severely physically involved to participate in more normalized activities and settings. The following example illustrates how one such conference helped a severely involved child participate more successfully in a regular classroom setting:

> A teacher with a regular classroom who had an eight year old child with cerebral palsy in her classroom learned that the recommendation of the occupational therapy consultant that included a great deal of complicated bracing was not really needed for this particular child during the course of this conference. Thus, she was able to discuss the child's therapy recommendations with more intelligence and expertise.

While we realize that this type of assistance will be required largely on an individual basis, we would encourage SEAs and LEAs to utilize this type of expertise. Such consultative assistance will enhance the quality of education for severely handicapped children and may enable more children with cerebral palsy to participate in regular classroom settings.

Finally the provision of transportation, as a related service, and its relation to the total educational experience must be discussed. Transportation, in and of itself, may not be a key factor in education of handicapped children. However, transportation, as it affects access to all other types of related services is critical, and results from our study indicate it is generally sadly lacking. "Transportation is a related service which most responding states and localities provide. However, transportation services are frequently inadequate and have harmful effects on the child..." In Maryland, for example, there are too few bus vehicles, necessitating multiple stops resulting in physical and emotional strain on children, drivers, and driver assistants. UCPA of California indicated that transportation to therapy for children, mainstreamed into regular classrooms is a major concern. The report found that generally it is more costly for the therapists to travel to individual schools than to transport children to centralized locations for therapy. The report concluded that unless school districts are able to provide transportation to therapy, parents preferred special school placements. Thus, the lack of transportation undermines placement in the least restrictive alternative - the regular classroom or school.

UCPA believes that the provision of transportation is a key factor in accessing all other related services to handicapped children. Because transportation is central to all other types of related services and because it is a problem which appears to be widely experienced the Congress may wish to give this problem special consideration. Again, we suggest that SEAs and LEAs be encouraged to contract with agencies such as UCPA who already have some degree of expertise in this area. Such agreements will enable the SEAs and LEAs to effectively utilize existing expertise and in turn, allow them to focus their efforts on other areas of special education.

- Interagency Agreements and Their Effects Upon Related Services

The provision of related services is critical to the total educational experience for handicapped children. Yet, many children are not receiving these services. In order to address this problem, the Bureau of Education for the Handicapped (BEH) has entered into a number of interagency agreements which are designed to access services to other federal programs already providing related services. The number and extent of these interagency agreements is beyond the scope of this testimony; however, a look at a few of these agreements may aid in our understanding of how related services can be provided through a cooperative effort at the federal level. Further, a look at the effect which these agreements are having on the local level may also indicate the direction which P.L. 94-142 must go if related educational services are ever to be provided in a comprehensive manner.

BEH has entered into a cooperative agreement with the Administration on Children, Youth and Families (ACYF). The effect of this agreement will be that ACYF and BEH will work closely to assure that children who are in Head Start Programs receive a continuum of educational services. As stated in the memorandum of understanding between BEH and ACYF:

> "...In order that children participating in Head Start Programs may fully realize their potential and benefit from a continuing education and related service, it is imperative that Head Start grantees and delegate agencies and State or local education agencies work closely together... Cooperation between State and local education agencies and Head Start is a priority effort of both the Bureau of Education for the Handicapped (BEH) and the Administration for Children, Youth and Families (ACYF) in order to assure handicapped individuals of full opportunities under their respective programs."

BEH has also entered into a cooperative agreement with Bureau of Community Health Services (BCHS) which administers the State Maternal and Child Health and Crippled Childrens' programs. This particular policy statement also addresses the cooperative delivery of "related services" provided and mandated by both agencies. As the joint policy statement between these two agencies indicates:

> "Both constituent agencies within HEW have mandates, under federal law, to identify, screen, and evaluate young children for potential handicapping conditions. Both agencies may provide similar services including counseling, referral and case management...
>
> The BEH and BCHS recognize that these similar mandates may, in some cases, lead to duplication of services, or alternatively, for a child to receive the services of one and not the other. Both agencies recognize that early intervention of all service deliverers is of great importance in assisting the handicapped to success."

These and other interagency agreements are surely intended to foster a better understanding between BEH and other federal programs and such understanding can only enhance the quality of implementation of P.L. 94-142, especially the provision for related services. To this end, UCPA feels that BEH has taken a very laudable first step in facilitating communication between a number of agencies of the federal government.

Yet, the question must be asked, how are these interagency agreements being translated at the local level? Are they having any impact on the provision of related services to handicapped children? While it may be somewhat premature to judge the true effects of these interagency agreements, the survey of our affiliates indicated that in many instances, related services are sadly lacking. Some excerpts from our survey will illustrate the problem:

> "...Alabama's problems with related services are rooted in the vagueness of P.L. 94-142. No consensus has been reached regarding who pays for related services that may be identified as needed in order for a given child to benefit from special education. Related services are generally not available in Illinois..."
>
> "Reasons cited by school authorities for denying children related services include:
>
> (1) Insufficient funds: Sonoma, San Mateo, and Santa Clara counties, California and Arizona
>
> (2) Services not basic to education: Seattle, Washington
>
> (3) Occupational therapy not a school responsibility: San Mateo County, California
>
> (4) Lack of speech therapists: San Mateo County, California
>
> (5) Therapies only available to families meeting Crippled Childrens' Services income eligibility tests: Los Angeles, California."

Perhaps equally as disturbing is the fact that other agencies and organizations concerned with accessing services to handicapped children are also finding that the provision of related services is not being fully implemented. In a letter to the UCPA Governmental Activities Office, Mr. Michael Reynolds, Communicator Program Manager for Telesensory Systems, Inc., (a company which designs a variety of technical devices to aid the handicapped) indicates:

> "Although I am aware of several instances in which specific technical communication aids have been recommended in children's IEPs, funding for these aids has not always been easily obtained. Thus far, for example, we have seen only a single instance in which a Cannon Communicator has been funded by a state Medicaid program; many more requests have been declined as inappropriate."

The vagueness of pinpointing responsibility for related service financing creates a "Catch 22" situation. In April, 1979, Vanessa M. Sheehan of the law firm of Pelletreau and Pelletreau, Patchogue, New York wrote BEH stating that some private health insurance companies have refused to pay claims for related services, such as physical and occupational therapy. In his May 21, 1979 reply, Thomas Irvin, Chief, State Policy and Administrative Review Branch, BEH, demonstrates the vagueness of responsibility:

> BEH regulations "provide that insurers are not relieved by Part B from otherwise valid obligations to pay for services to handicapped children... Further, there is nothing in the regulations which require that parents of handicapped children use their insurance benefits for related services such as physical or occupational therapy..."

If a SEA or LEA, knowing a parent has private insurance coverage, refuses to finance related services, the parent has no choice but to use it. They have thus used up benefits which other family members may need. They have stimulated the need for higher premiums. And the situation promotes negotiation while children are not served.

We are not citing these examples to be overly critical of any one federal agency or to infer that BEH has done less than an adequate job. Rather, we feel that the provision of related services will take a great deal of interagency cooperation over time in order to achieve the type and quality of related services which is envisioned in P.L. 94-142.

- <u>Recommendations Regarding Related Services</u>

Because the provision of related services is so critical and because it appears that this is an area of P.L. 94-142 which has not yet been fully realized, we would like to offer the following suggestions:

- We firmly believe that full implementation of the above-mentioned interagency agreements will help assure that the range of related services are provided to handicapped children.

- While such interagency agreements will increase the likelihood that these services will be provided, more funds will be necessary to meet this objective. Thus we recommend that the Congress consider providing more monies to meet the mandates of 94-142.

- We feel that the provision of related services is so important to the overall objective of providing handicapped children with a free appropriate public education that Congress may wish the target funds specifically for this purpose.

- Either Congress or BEH must specify who has "first dollar" responsibility and who has "last dollar" responsibility for the provision of related services. This responsibility was clearly stated in the November 29, 1978 BEH-Health Care Financing Administration (HCFA) joint program interpretation regarding the provision of educational services to residents of Medicaid Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled. Other interagency agreements must be this specific regarding exact financial responsibility.

- No amount of funds nor interagency agreements can replace the importance of strong and consistent Congressional oversight. Such oversight is essential if the mandate of P.L. 94-142 is to ever become a reality.

THE LEAST RESTRICTIVE ENVIRONMENT AND PRIVATE SCHOOLS

P.L. 94-142, through its mandates of least restrictive environment and the provisions for a free appropriate education clearly encourage the placement of handicapped children in public schools. As the Executive Director of UCPA of Wisconsin, Mrs. Sue Kendrick, testified before the Subcommittee last year:

> "I feel that the majority of children could be mainstreamed if schools are given the flexibility to be creative in seeking solutions and if adequate funding is available. If we are ever to overcome the attitudes and other barriers that prevent full participation of people with disabilities in our society it is essential that people with and without disabilities have opportunities to know, understand, and appreciate each other."

Certainly UCPA applauds regular classroom placement of handicapped children whenever it is appropriate. However, we also recognize that there are times when private special education in a support environment is most appropriate to meet the child's needs. Because children with cerebral palsy vary in degree of neurological involvement, some of these children in fact may need such private education settings.

Recently UCP of New York City successfully completed litigation against the New York City Board of Education related to the fact that 14,000 handicapped children were found to be in need of special education yet were still not receiving such an education through the public school system. Some of the major issues in the case were: 1) long waiting lists of handicapped children unserved by the school system, 2) the lack of accessible public school buildings, and 3) the appropriateness of the school placement for many handicapped children. As a result of this litigation, UCP of New York City is working with a Special Master which was appointed by the Court to bring about changes which are needed in the Board of Education procedures for serving handicapped children. In conjunction with this, UCP of New York City is also meeting every two weeks with the Board of Education in order to assure that handicapped children in New York City receive the services mandated by P.L. 94-142. We feel that this is an excellent example of how UCP affiliates who have worked with handicapped children for several years can become a catalyst for changing our nation's public school systems.

In our survey, some parents indicated anxiety about the quality of education which their children were receiving in public schools. As the survey indicates, "In New York the public sector has generally ignored the role of private education providers and has failed to coordinate and utilize private education resources...The concern of private agencies in these states, as well as in Ohio, is with the quality of service - a fear that in attempting to serve large numbers of previously unserved children, public schools are sacrificing quality of service..."

It is important to realize that what is considered the least restrictive environment may change as the individual child's needs change. For children with cerebral palsy this may mean that a child is in a regular classroom for awhile, but is allowed to return to the private school if that child's developmental needs warrant such a placement.

UCPA realizes that the decision of a child's placement must be made on an individual basis. Further, we fully expect both SEAs and LEAs to take on their responsibilities in meeting the educational needs of handicapped children. (Such a process will clearly be enhanced through improving related services as discussed previously.) However, we also believe that even when related services are fully provided, and education agencies are in total compliance with 94-142, there will still be a place for the private school in meeting the unique needs of some handicapped children. We point this out only because we feel it would be a grave error for the Congress not to continue to fund private schools as the least restrictive environment for some children.

From informal contacts with our affiliates, most LEAs (other than those previously cited) have consulted with private school officials before submitting their applications for P.L. 94-142 funds. This has been helpful in determining the nature and extent of services to private school handicapped children.

Despite this consultation financial reimbursement has been a serious problem, such as in San Francisco, Los Angeles, and Illinois.
Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private school. Since parents are not expected to pay part of the education costs, the quality and scope of educational services may diminish for some children. BEH has carefully avoided becoming involved in this area. In a May 9, 1979 letter to Frank Guthridge, Executive Director Child Development Center, Norristown, Pennsylvania, William D. Tyrrell, Chief, Policy Section, BEH, stated:

> "The specific nature of contractual arrangements between public and non-public education agencies serving the handicapped remains a State matter subject to all applicable program standards."

UCPA recommends that either the Congress or BEH require public reimbursement of the existing level of education and related services in private schools. P.L. 94-142 should not be an excuse to diminish the quality of education.

THE IEP AND DUE PROCESS PROCEDURES

The IEP and the Due Process Procedures are truly the key to the mandates of P.L. 94-142. Without these provisions, parents, advocates, and the Congress, would have no assurance that children were in fact receiving an education which fully meets their needs. It is therefore a bit ironic that these two provisions appear to have the most problems in implementation at the State and local level. We would like to briefly discuss these provisions and make some recommendations to how the law might be strengthened so that these two aspects of the law could be better utilized.

Two parents, Mrs. Sue Kendrick (refer to earlier citation) and Mrs. Lee Viets, (Executive Director, UCPA of Vermont) have testified before the Senate Subcommittee on the Handicapped last year that they have had substantial difficulty with their child's IEP. As Mrs. Kendrick stated,

> "...Although I have yet to participate in the development of my own child's IEP, I feel participation is essential to insure that the recommendations of the M-Team will be carried out and exactly how they will be done so. It is also vital that parents have a copy of the IEP in order to know from progress reports (report cards) and parent-teacher conferences whether the goals and objectives for their child are being accomplished."

Further, as Mrs. Viets said,

> "...And so, a year ago, prepared, I thought, by my experience as an advocate for others, I called the school to request an evaluation and the development of an IEP for my daughter. I found the reality of local implementation to be seriously flawed... This supposed IEP consisted entirely of suggestions concerning adaptations to the physical environment which has been made by me to the school guidance counselor following a conference with the Child Development Clinic. The identified problem was listed as "physical handicaps caused by cerebral palsy" with an annual goal "to eliminate as many barriers as possible for Diana---to encourage her to be independent and successful." This document did not meet any of the criteria for the content of the IEP as stated in the regulations (121a346). When I called to inform the school that this was not an acceptable IEP I was told only that no services would be provided without my signature..."

Thus it is apparent that the provisions of the IEP--which are to assure that a child's individual education needs are met--is still having difficulty being translated at the local level. Mrs. Kendrick is an occupational therapist and Mrs. Viets is a teacher by professional training. Both are involved with their SEAs in developing state-level P.L. 94-142 policy and yet each has experienced difficulties in developing IEPs for their handicapped children. If these professionals are having problems, one wonders about other parents.

Equally disturbing is the way in which due process procedures are being carried out. Ideally, this should be a process which parents can turn to when they feel that their child's needs are not being met. On a realistic level however, this is often far from the case. As our survey indicates,

> "Ohio requires an administrative review process prior to the due process hearing. While hundreds of parents have participated in the administrative review process, relatively few have been involved in due process hearings. Either parents are not adequately informed or they are intimidated at the administrative level for complaints persist."

In Alabama due process hearings are frequently too complex, cumbersome, and potentially time-consuming and expensive. The adversarial nature of the hearing inhibits the parent. Many parents fear "retribution" by school officials.

In their report to the Congress entitled "Towards A Free Appropriate Public Education" (issued in January, 1979) the Bureau of Education for the Handicapped acknowledged that, while mechanisms for due process were in place in some states, other states would need more time in order to fully develop this provision of P.L. 94-142. As their report explains,

> Members of the Bureau's site-visit teams report that most of the State due process procedures are still in the early stages of development. However, from observation of provisions already in existence and of scattered due process actions, it is possible to speculate about some of the issues that seem likely to emerge. Most of the available systems stress formal due process hearings and place less emphasis on parent or child involvement prior to the school's decision for an educational placement. Yet, active parent involvement in developing the initial special education program could deter possible conflicts later on, by encouraging parents and schools to work as partners rather than as adversaries. Those due process procedures that do not provide an opportunity for informal resolution of differences of opinion between the home and school may not be well adapted to the field of education, which relies on the school, the parents, and the child to develop sound programming decisions.
>
> Ideally, due process systems should also provide equal bargaining power between the school and the parents. As many observers have pointed out, when a parent at a due process hearing is not represented by counsel but the school system is, the hearing is hardly a contest between equals. Mere notice to the parent of the "right" to be represented may not be sufficient. Many parents, particularly those from disadvantaged or minority backgrounds, may not be able to obtain legal counsel, and many of the current State due process systems do not take such factors into account.

- Recommendations Regarding the IEP and Due Process Procedures

Solutions to the problems which are present in both the IEP and the Due Process Procedures are not easy. However, we would like to emphasize that these two provisions are absolutely critical to the complete realization of the goals of P.L. 94-142. It would be a terrible mistake to weaken either the IEP or due process procedures for, as we pointed out earlier, these are the only means of reconciliation which parents of handicapped children have if they feel that their child is not receiving an education which fully meets his needs. However, UCPA feels strongly that there are clear ways to strengthen these provisions so that they are more workable for parents and school personnel alike. Mrs. Lee Viets made the following suggestions:

- Additional financial resources and administrative support for parent training must be available. School systems should be responsible for some portion of these training activities, but independent parent training centers, advocacy organizations and state P&A systems must also be assisted to provide additional parent training.
- Technical assistance and in-service training for all teachers and administrators must be more widely available.
    - School systems must provide positive support (in-service days, recertification credit, release time) for teachers who participate in training activities.
    - Training must include information
        - about the unique needs of children with various disabilities, and
        - the possible effects on educational performance of those disabilities as well as
        - skills to work effectively with children with a variety of needs, and
        - adequate information about the contents of P.L. 94-142 especially the IEP process which is the heart of a Free Appropriate Public Education.
    - The same information, about disabilities, methodology and the law must be included in all degree-granting programs responsible for the preparation of future teachers.

To add to Mrs. Viets' comments, we feel that the Congress must continue to give BEH both the support and laditude which it needs in order to work some of these more difficult problems out. With respect to the due process procedures, it is virtually impossible for the Congress to legislate sensitive communication between parents and the school system. However, as we have already pointed out, BEH can offer both technical assistance and direction to states which will assure that the due process mechanism which is in place assures that the process which parents will follow is as objective as possible.

Office Of Special Education Staffing Problems

As mentioned earlier, a coalition of advocacy organizations published a report which stated that the Office of Special Education (formerly BEH) has been lacking in their compliance efforts. Indeed some of the issues which were raised in that report indicate some valid concerns regarding the amount of compliance efforts which the Office of Special Education is making. In researching this problem we have found that staff of the Office of Special Education are also concerned about these problems and cite two reasons: 1) need for additional compliance personnel and 2) need for additional monies to carry out compliance review activities. In discussing the staffing for compliance review with the Office of Special Education, it appears that an additional 20 positions are needed in order to effectively monitor compliance practices within the States, In addition, it appears that an additional $100,000 is needed to carry out compliance reviews and on-site visits. The Office of Special Education has explained that while there is currently $150,000 set aside for this purpose, this has not been enough to adequately monitor states efforts to comply with the law.

It is also our understanding that the Office of the Secretary within the Department of Education will soon release a study which will reach many of the same conclusions articulated by the advocates report. Additionally, this study will recommend additional compliance personnel and monies for this purpose. If in fact the study done by the Office of the Secretary substantiate the finding of the Advocates report, the Subcommittee should give serious consideration to increasing both personnel and funding for compliance review.

Doris Weber's Personal Experiences

The opportunity to testify regarding P.L. 94-142 is a challenge I appreciate because it allows me to hopefully say it's great that this piece of legislation has enhanced the lives of many individuals with disabilities and that with increased appropriations its impact can be the most distinct reason for children with disabilities becoming independent, tax paying adults.

I am the mother of 8 children, 3 of whom are classified as handicapped. They are Phillip 17, Bernadette 15 and Thomas 12. They received pre-school training through a United Cerebral Palsy Day Care Center and with persistence on my part and involved related agencies, have attended public schools since they were 7. In light of my high expectations, particularly since the passage of 94-142, the process has been disappointing and frustrating, but the results are very satisfactory. Much of the success has been due to beautiful teachers, not the system.

As I relate to you why I make the above statements, I am consolidating not just what occurred with my three children, but the awareness I have gained as a member of United Cerebral Palsy National and local committees and Boards and as a member of other DD advisory groups, particularly the Missouri Protection and Advocacy System.

Our school systems are definitely challenged by this legislation, but systems are people not things, which means they are flexible. However, to accept a challenge well, all of the individuals concerned need more assistance in understanding what we are all about. Their education is incomplete.

Bernie, Phil and Tom delight in going to school. They should have as many diverse opportunities open to them in their teen and early adult years as my five other children did but irrespective of the law, they are not and have not been allowed the same experiences. They were not able to attend the same private schools, so we emphasized the joys of attending public schools. They learned that some school personnel did not open their arms to them, that they often had to take separate busses and that other students were often cruel. My daughter's hair was set on fire by her normal peers last year and because of psychological problems that ensued, she was out of school for two months. As Phillip has matured he has wanted to participate in sports, take art and be prepared for employment before he is 18. Tom just wants to go to classes like his "normal" friend Kevin. That type of normalization has not occurred, but we are working toward it. The people who make the system and the students who participate in it need sensitivity training, education as to what the individual disabilities are and on-going support. Then my children and all others with disabilities can be normalized to their capability level.

Everyone talks mainstreaming and it has many faces as I'm sure you are aware. Mainstreaming to me is just having the chance to be integrated into everyday patterns of life and being educated in such a manner that an individual feels like a "whole person" I really do not feel this is an impossible feat and many school districts are implementing such a process. The problem is, not all school districts are synchronized to this thought process.

The opportunity to obtain an education - a priceless commodity in bargaining for a normalized future in today's society - is now available under the auspices of a law. My observations are that: the extent to which an individual child can access this commodity is determined by (1) the parent's advocate's or guardian's, awareness of the law and the implications of such; (2) the local school district's funds and implementation package or plan; (3) the enforcement or monitoring of the local educational system by the State and Federal regulatory agencies; (4) the involvement of all concerned related agencies and (5) whether ongoing awareness training and/or education of professionals (teachers, psychologists, nurses and physcians, therapists, etc.) has been established.

We know that all children are not receiving an adequate or appropriate education, thus, all of the above are not in place.

A marvelous tool called an I.E.P. is provided for in 94-142, but the beauty of its use is often lost in the fear of school administrators regarding the legal implications; the insecurity of teachers who have not received adequate training in its development and use; and the parent's lack of awareness regarding its existence and importance. The degree of development of the I.E.P. is often dependent upon either the School Administrator or the parent's assertiveness. Because my children have attended many schools within the same district and state, their IEP's have ranged from being very inclusive to very brief. For example: It was time for an IEP for Bernadette and via many communications with the Principal, I had requested the involvement of all of her teachers. On IEP day I walked into the classroom with the Principal to be met by five (5) standing teachers. I felt like a general inspecting the troops. He introduced me and said "As you know this meeting is to develop an IEP for Bernadette Weber. Mrs. Weber will tell you what is expected of everyone." This was totally unfair to all concerned, but never to be daunted, I proceeded to inform and an adequate tool emerged. I'm sure that not one other handicapped child in that school had such an inclusive IEP or possibly even an adequate one basically because of the reasons listed before.

A discrepancy that occurs is that if a service is not available in the overall system that specific service (ex. OT or vocational education) is not written into the IEP, yet if it is being written for the same child for a purchase of service agreement in a private school the need is very definitive. I question the need for the expenditure of so much purchase of service money when the total system should be absorbing these services into their schools thus providing a more thorough, all around educational system for all handicapped children.

One of the above mentioned services is pre-vocational and vocational education. It should be an integrated part of the total academic picture for our children but it is still a premium. Phillip and Bernadette have their sights set on realistic types of employment, but even with my constant input, the need has not always been addressed. I found professionals very willing to admit the need but reluctant to include it to the degree to which I felt it was necessary "because we really do not have the capability to provide it at this time." I believe this occurs because they are not equipped to ascertain what the true capabilities of our children are in regard to future employment and lack of funds, but I am not prepared to accept this an an excuse.

An increase of in-service training for school professionals is occurring but it needs to be expanded. Just recently I read that Universities are recognizing the value of expanded curriculum for their educational departments regarding handicapped children because of 94-142. By utilizing this resource we can minimize the fear of "the law" and accentuate the capabilities of the student who has a disability. Perhaps then the caseload for P&A;s could begin to be shifted from educational priorities to investigating the development of resources to expand the individual with a disability's life-style.

You must emphasize that 94-142 funding also be used by school districts to instruct and train parents. As a participant in a Patent Advisory Group for the local system, I can tell you that most parents do not yet know enough about the law, their children's rights or how to implement it and it concerns me greatly. I realize that school administrators might visualize that this would result in troops of Moms and Dads descending upon them, but in those cities wher this type of training has been implemented, it has been a resource to the school, not a hindrance.

I do not see the Courts as being the sole way to bring school districts "around" but the monitoring and/or enforcement must be imporved. The major handicapped programs would then feel that they were not at times spinning their wheels. The absence of particular services necessary to the full development of a child should not be tolerated, especially when the lack of it is obvious upon the submission of the yearly plan, nor should the existence of completely separate schools for children with disabilities. It is the prevalence of inequities that is promoting lawsuits by parents and P&A's. If the mandated agencies do not fulfill their obligations to enforce the law, then it will continue to be necessary to enter the courtroom and waste time money and energy.

My children's future is much brighter because of the existence of 94-142 for the following reasons. The proper development of an IEP has been responsible for obtaining psychological help for my daughter and set in motion on a first time look at pre-vocational awareness and basic training in an area Bernie is interested in. This is what motivated her to return to school and stay there. It is now an integral part of her I.E.P. She is anxious to get on with her life.

Thomas is going to have the opportunity to return to school this year in a regular classroom 85% of his school day. His IEP's have been criticized at times but the teachers have been specific in following each objective and timeline with Tom and me and attempted to interlock all of the pieces of a puzzle known as Tom. Tom is a bit apprehensive, but hopefully the majority of his peers will accept him.

Phillip seems to have been denied access to more normalized conditions than the others. His IEP's were sometimes adequately developed, but inferiorly implemented. While in a foster home quite a distance from his home city, he and others were the objects of school isolation and the class that was vocationally oriented was withdrawn. After 4 years he is now with his family and the IEP that will control his school year is oriented toward the whole Phillip, academically and vocationally. He is looking forward to September.

Each year my expectations for all handicapped children increase as schools use the resourcefulness that are known for to upgrade their programming. My children have been fortunate in many instances to have encountered marvelous teachers who have given them the desire to exceed their success of the day before. My hopes are that everyone within a school will one day enjoy the progress of those who were considered "not to have it" and appreciate the fact that they - be it teacher, principal, aide, student - had exercised a particiaption in that challenge and success.

94-142 will ultimately be responsible for those successes.

Thank you.

AUG 28 1980

UNITED CEREBRAL PALSY ASSOCIATIONS, INC. • 66 EAST 34th STREET • NEW YORK, NEW YORK 10016
(212) 481-6300

REPLY TO:

UCPA Governmental Activities Office
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August 26, 1980

Honorable Jennings Randolph
Chairman
Senate Subcommittee on the Handicapped
Room 4230
Dirksen Senate Office Building
Washington, DC 20510

Received
Date 8-28-80
Subcommittee on
The Handicapped

Dear Senator Randolph:

Enclosed please find the responses to the questions which you submitted to me regarding the implementation of PL 94-142, the "Education for All Handicapped Children Act." Allow me to take this opportunity to thank you for the experience of testifying before the Senate Subcommittee on the Handicapped on July 29, 1980. Clearly, the work which the Subcommittee is doing on behalf of handicapped children is extremely important.

Should you have any further questions regarding the testimony which I gave on behalf of UCPA, please feel free to contact our Governmental Activities Office here in Washington.

Sincerely,

Doris Weber
Southwest District Representative
UCPA Governmental Activities Committee

Enclosure:

1. You stated that "if a service is not available in the overall system that specific service is not written into the IEP, yet if it is being written for the same child for purchase of service agreement in a private school the need is very definitive." Could you explain this situation further?

When I sought vocational education for my daughter, Bernadette, the public school system put in a purchase of service agreement for vocational education services to be provided by a private school. However, the same vocational education services were not in her public school I.E.P. Further, in my efforts with the Missouri Protection and Advocacy System, I have found that occupational and physical therapy are often not stipulated in children's I.E.P.s. Even when these services are required, they can only be obtained through a purchase of service agreement. The school system argues that they have insufficient funds to provide such services. However, I believe that the school systems could provide these services and most likely provide them at a much lower cost. (It should be noted that a purchase of services agreement sometimes can only be obtained through a grievance procedure which is similar to the due process procedure.) I would also call your attention to the portion of our testimony which discusses interagency agreements. It appears that if school systems were to begin to work with other agencies which provide similar services, the cost to the school system would be greatly reduced.

2. Based on your experiences with your children and your experiences with UCP and the Missouri Protection and Advocacy system, how do you feel that special education programs for high school aged children compare with special education programs for elementary school children?

There remains a great discrepancy between the quality of education provided by the elementary and secondary school system. This is exemplified by the increasing number of disabled youngsters who are dropping out of junior high and high school. Often disabled youngsters who are not academically inclined find it difficult or impossible to receive vocational education. While vocational education is important for all youth, it is critical for handicapped youngsters who need these skills to function in the adult world. I strongly urge the subcommittee to investigate how the 10% set aside earmarked for the handicapped in the Vocational Education Act is being utilized. I am deeply concerned about this provision of the Vocational Act and its effect upon handicapped children. Even when vocational education is provided to handicapped youth, it may be inappropriate, such as the placement of a handicapped youth in a sheltered workshop when that person could function in a competitive environment. As you know, states are obligated to spend 10% of their vocational education monies toward meeting the needs of handicapped students. I am especially concerned that states may not be meeting their obligations under this mandate.

3. You indicated in your testimony that some UCPA affiliates receive funds under interagency agreements for the provision of education and related services. Your testimony appears to indicate that these services are provided within UCP centers rather than public school facilities. Does UCPA encourage its affiliates to provide services within public school facilities rather than UCPA centers?

Prior to the enactment of PL 94-142, the "Education for All Handicapped Children Act," approximately half of UCPA's affiliates provided special education and related services to children with cerebral palsy. In recent years there has been a drastic decline in the number of children receiving such services from our affiliates and we believe that this indicates that these children are receiving such services through the public school system. However, many of our affiliates continue to provide related services, such as speech and physical therapy. While each area of the country is different, the National Office of UCPA encourages affiliates to work with their local education agencies whenever possible when providing these services.

In many instances both physical and occupational therapists are provided by the affiliate to the school system in order to access and plan programs for children with cerebral palsy. Some of our affiliates continue to provide services to children whom the school system is not yet ready to serve. Further, there appears to be a lack of trained personnel who are qualified to render these services and this necessitates UCPA involvement. It is important to emphasize that many of our affiliates have a close working relationship with their school systems and view their provision of related services at the affiliate <u>not</u> as an alternative to mainstreaming these children but as a partnership whereby the school system and the affiliates can work together to assure a free appropriate public education.

4. Private school placement may be required to meet the unique needs of some children but certainly not all children. Since private school enrollment is often seen as more desirable by some parents, regardless of needs, how would you suggest that a differentiation be made between those who require private school programs and those who simple desire it?

If the public school system can provide the handicapped child with an appropriate public education, then parents of these children should <u>not</u> request private school placements. However, I am quite concerned about the number of parents who must seek private placement for their children. The fact that many families do not feel that the public school systems can meet the needs of their handicapped children leads me to believe that the school system is not meeting their needs. Perhaps, as we have already suggested, the Office of Special Education should increase their monitoring capabilities, and thus increase the likelihood that more children could be appropriately served by the public school system.

Doris Weber
Southwest District Representative
UCPA Governmental Activities Committee

Senator RANDOLPH. Bob, if you would take over now, as we go into this second half of the hearing.

I believe Mrs. Crawford will be the next witness. I just wish I could remain, as I know you would have liked to have been here earlier, and as other members of our subcommittee would have wanted to be present.

[Whereupon, Senator Stafford assumed the Chair.]

Senator STAFFORD. Mr. Chairman, I will be glad to preside over the second part of the hearing. The problem for us, as the chairman probably has said, is that we are both involved in a bill involving the disposition of nuclear waste, on the floor of the Senate, as well as the necessity of presiding over the meetings of this subcommittee this morning.

I would like, as a matter of personal privilege, before we go to the next witness, to extend my welcome also to the Canadian Members of Parliament who are here. During the period 1960 to 1970, I had the privilege of serving on the Interparliamentary Group between the United States and Canada. I remember the awesome hospitality that you extended to us in Ottawa every other year when we came up there, and we were always very happy to see Canadians come down to Washington in the other years.

But over the last 10 years, I have been a member of our Delegation to International Parliamentary Union Meetings—I do not know whether any of the members present here have served as a delegate from your country or not. But I will say that in our various struggles which have often involved confrontations with the Soviet Union and her bloc allies that the Canadians have certainly been some of our best friends and have done things for us we could not do for ourselves. And I have been very grateful for that, and I have appreciated the chance to tell you so here, in a public meeting in the United States.

Finally, I have watched your "Morning Hours" in Ottawa, or question hour, or whatever you call it, and it is unique and enlightening and entertaining. I am very glad you are here.

And now, let us turn to the next witness, Dorothy Crawford, of Scottsdale, Ariz., representing the Association for Children with Learning Disabilities.

We have your full statement, Mrs. Crawford. We will make it a part of the record in full and invite you to summarize it in whatever way you wish.

Mrs. CRAWFORD. Thank you, Mr. Chairman. It is my intent to highlight the written testimony today.

I am representing the Association for Children with Learning Disabilities, a nonprofit, parent-oriented, volunteer organization, which has State affiliates in every State in the United States, with some 800 chapters.

I am on the national organization's Board of Directors which is the governing body, and I serve on it because I am a parent of two children with learning disabilities.

My major activity at the national level is chairing the Advocacy Committee.

I would just like to make brief mention of how much our association truly appreciates the efforts of this committee on behalf of all handicapped children, particularly in spite of the fact some very important activities are going on before the full Senate, you are taking time to hear us speak.

I want to highlight certain parts of the written testimony the association presented. The highlights will be in respect to concerns, comments, and recommendations from ACLD.

First of all, we have one recommendation that we would like to make for a change in the statute. Since so many of the children that have learning disabilities are mainstreamed, probably more than other handicapped children, we feel this is a very important recommendation. Rather than for in-service training to be only available for general education and people in that area, we would like to recommend the following statute change. In order for a State to qualify for monetary assistance, the State shall demonstrate to the Commissioner that appropriate in-service training is required, rather than just available, for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

In other areas of implementation of Public Law 94-142, we have recognized and defined a number of areas of concern for the education of children with learning disabilities. First of all, under multicategorical placement—this is one of our very important concerns—since children with learning disabilities require very special kind of services with highly trained personnel to remediate their learning disabilities, we are, in the majority of instances, opposed to multicategorical placement, be it in resource rooms or self-contained classrooms. We are convinced that every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; for programs for children with learning disabilities to include the full range of services specified in Public Law 94-142; and that the content of instruction should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs.

Therefore, we are opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities except in cases of certain, carefully justified programmatic circumstances.

On evaluation, we have two concerns, or two parts. The first is relating to referrals of children for evaluation, and the second is with the evaluation process. We see reluctance on the part of some teachers and administrators to refer for evaluation children who might have learning disabilities. We also hear of many States who are now applying a formula method for determining eligibility for placement in learning disability programs.

The Office of Special Education has sent out a number of DAS information bulletins to the State directors of special education and State coordinators. In these bulletins, the Office of Special Education has attempted to clarify the application of a formula. However, we have found that bulletins clarifying regulations do not have the same impact as the regulations, and despite the clarifications, practices are still being applied which run counter to the bulletins.

We have also found that when making placement decisions, there is little in the evaluation process which would assist in or suggest making a placement recommendation into a vocational education program.

Therefore, we recommend there be an amendment so that all DAS bulletins and policy clarification papers are entered into the rules. We also further recommend that vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescent and young adults who are suspected of having learning disabilities.

We further recommend another change in the rules for evaluation procedures, and that is to revise the statement where the words are, "impaired sensory, manual, or speaking skills", to read, "handicapping condition or conditions", since in the present form, the statement does not properly operationalize all of the possible handicapping conditions of persons with specific learning disabilities.

Under procedural safeguards, the role of the Office of Civil Rights relating to implementation of Public Law 94-142 is confusing to many parents. ACLD recommends inclusion of a section in the rules of Public Law 94-142 which explains under what circumstances an appeal to the Office of Civil Rights is appropriate.

Regarding due process, we recommend that public funds be made available for legal fees to parents of the handicapped in the same manner that these funds are available to local education agencies. We feel in the present form where local education agencies have public funds available for attorney fees, that this is a highly discriminatory situation to parents and the handicapped.

Regarding monitoring, we believe the regulations should include a plan for monitoring compliance between the periods of local education agencies, State educational agencies, and the Office of Special Education's formal monitoring activities. Such a plan should call for the establishment of Special Education advisory councils within the local areas, one responsibility of which would be to generally assess compliance. A local advisory council must include parent participation, a component now missing in present monitoring requirements.

We recommend a change in the rules to provide for the establishment of local Special Education Advisory Councils with parent representation, whose responsibilities would be to: one, assess and monitor compliance of applicable State and Federal laws; two, to assist in the development of the local annual plan, and three, to provide advice to the local education agencies on unmet needs.

On the IEP and Surrogate Parents, we are still concerned about the role of the parents at the IEP meetings. All too often, the parent does not know how to participate, and it may be helpful to have a parent handbook developed which should be given to the parent at the time of evaluation so that the parent can be more adequately prepared for the IEP meeting.

In conclusion, the statement as written and as I have highlighted today reflects to ACLD the most critical issues relating to Public Law 94-142.

Again, the association would like to express our appreciation to this subcommittee for the opportunity of being here today, but most of all, for your compassion, concern and dedication for the welfare of all handicapped children.

Thank you, Senator.

[The prepared statement of Mrs. Crawford and the questions and responses referred to follow:]

ACLD

An Association For Children and Adults With Learning Disabilities

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TO: SENATE SUBCOMMITTEE ON THE HANDICAPPED

JENNINGS RANDOLPH, CHAIRMAN

FROM: DOROTHY CRAWFORD
ACLD BOARD OF DIRECTORS

WRITTEN TESTIMONY ON P. L. 94-142

July 29, 1980

A National Non-Profit Organization

I am Dorothy Crawford representing ACLD, an association for children and adults with Learning Disabilities. ACLD is a non-profit organization with some 800 chapters in all 50 states. We are a parent oriented volunteer association, dedicated to helping the child and adult with specific learning disabilities. Our membership consists of parents, individuals with learning disabilities, professionals and interested persons. I serve on the ACLD Board of Directors; the major national committee I chair is the ACLD Advocacy Committee. Also, I am a parent of two children with learning disabilities.

ACLD is deeply indebted to the Chairman and members of this Senate Subcommittee for your continuing efforts on behalf of handicapped persons, including children and adults with learning disabilities. ACLD has been before this committee on many occasions. We have always gone away reassured by the sincere concern and dedication shown for our children.

ACLD is especially grateful for the opportunity to participate in these hearings on PL 94-142 and our input, though brief, hopefully will be particularly significant. As parents, we represent the largest group of handicapped served by PL 94-142. Learning Disabilities has the unique position of special attention in the law and in the regulations. And as parents, we not only have observed but have been part of the implementation of PL 94-142.

ACLD has one important recommendation to make concerning the phrasing of the law. With this one exception, we believe the law is an excellent one, and one in which this subcommittee should be exceedingly proud. Our recommendation is made in response to the many parent members of ACLD who have stated that often programs commensurate with their children's needs are not being provided (in part, at least) due to poor attitudes, misunderstanding, and lack of ability demonstrated by school administrators. This is especially true for principals and the regular classroom teachers, since children with learning disabilities are more frequently mainstreamed than other handicapped children. ACLD, therefore, respectfully requests the following statute change:

> In order for a state to qualify for monetary assistance the state shall demonstrate to the Commissioner that appropriate in-service training be required (rather than just available) for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

In other issues of implementation, ACLD has recognized and defined a number of areas of concerns for the education of children with learning disabilities. We have participated in the BEH national and regional meetings on PL 94-142 and at other meetings with the BEH officials to point out our concerns. We have generally been pleased with the response BEH has made to us. BEH clarification bulletins have addressed some of the concerns we have expressed.

But some problems still persist. While we recognize the complexity of the issues faced by the local and state education agencies in trying to implement PL 94-142, we are expressing priority concerns here in the hope you will use your skills to alleviate some of the major problems our children are facing.

Multicategorical Placement

One of the most important concerns to us is in regard to the placement of students with learning disabilities into multicategorical resource rooms or self-contained classrooms. A survey of our 60,000 plus membership indicates much dissatisfaction over this widespread practice. All too often, students with learning disabilities are given teachers who are not trained or certified to teach students with learning disabilities and despite an IEP, the education program in these multicategorical classrooms are not matched to the unique learning needs of each child in the room.

ACLD is convinced that (1) every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; (2) programs for children with learning disabilities should include the full range of services specified in PL 94-142, matching the intensity of the services to the severity of the child's disability; (3) the content of instruction (curriculum) should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs.

These conditions are not generally met in the classroom where students with learning disabilities are grouped together with children who have other types of handicaps and whose educational needs and modes of remediation are necessarily different in kind, emphasis, and content. ACLD is opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities, except in cases of certain carefully justified programmatic circumstances.

Evaluation

A second important concern is in respect to the evaluation of children suspected to have learning disabilities. Our concern is divided into two parts, the first relating to referrals of children for evaluation and the second is with the evaluation process.

We see a reluctance on the part of some teachers and administrators to refer for evaluation children who might have learning disabilities. The problem is noticeably greater on the secondary level. One reason for these fewer referrals may be related to a reluctance to face the greater responsibility and details placed upon the regular teacher and principals when more learning disabled students are identified.

Regarding the evaluation process, we hear of many states which are applying a formula method for determining eligibility for placement in learning disabilities programs. On January 29, 1980, BEH sent a DAS Information Bulletin #54 to State Directors of Special Education, State Part B Coordinators and State PL 89-313 Coordinators. In the bulletin, BEH attempted to clarify the application of a formula.

Also, in BEH bulletin, DAS Bulletin #9 of April 19, 1978, clarified the use of a specialist on the evaluation team knowledgeable in the area of learning disabilities when learning disabilities are suspected.

It has been our experience that the BEH clarification bulletins do not have the same impact as the regulations. Despite the clarifications, practices are still being applied which run counter to the bulletins.

We have also found that when making placement decisions, there is little in the evaluation process which would assist in or suggest making a placement recommendation into a vocational education program.

ACLD, therefore, recommends an amendment so that all DAS Bulletins and policy clarification papers are entered into the rules. We also recommend that vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescent and young adults who are suspected of having learning disabilities.

We further recommend another change in the rules for Evaluation Procedures. The words, "impaired sensory, manual, or speaking skills" do not properly operationalize all of the possible handicapping conditions of a person with specific learning disabilities. Therefore, this statement should be changed to read, "handicapping condition or conditions."

Procedural Safeguards

The role of the Office of Civil Rights relating to implementation of PL 94-142 is confusing to many parents. Parents do not know when, how or under what circumstances they should appeal to the OCR. For example, situations have been reported to ACLD where the LEA has refused to grant an impartial hearing; where tests have been used which reflect handicapping conditions; where the LEA has refused to evaluate a child suspected by the parents of having a disability; where parent's and children's rights have not been explained, etc.

ACLD recommends the inclusion of a section in the rules of PL 94-142 which explains under what circumstances an appeal to OCR is appropriate.

Due Process

In the case where parents elect to utilize the Due Process procedure, it is usually necessary to engage an attorney to represent the child and present the case. For many parents legal fees are beyond their financial capacities. On the other hand, LEA's have attorneys whose fees are paid through public funds. This creates a situation which is highly discriminatory to parents and the handicapped.

ACLD recommends that public funds be made available for legal fees to parents of the handicapped in the same manner that these funds are available to LEA.

Monitoring

ACLD believes the regulations should include a plan for monitoring compliance between the periods of LEA, SEA, and BEH formal monitoring activities. Such a plan could call for the establishment of LEA Special Education Advisory Councils, one responsibility of which would be to generally assess compliance. A local advisory council must include parent participation, a component now missing in present monitoring requirements.

ACLD recommends a change in the rules to provide for the establishment of local Special Education Advisory Council, with parent representation, whose responsibilities would be to: (1) assess and monitor compliance of applicable state and federal laws; (2) assist in the development of the local annual plan; and (3) provide advice to the LEA on unmet needs.

IEP and Surrogate Parents

ACLD has reviewed the BEH policy papers on the IEP and Surrogate Parents. These policies adequately respond to some of the concerns ACLD has previously expressed to the BEH. As an example, one of ACLD's concerns related to the inclusion of related services such as adaptive physical education and vocational education in the IEP. These are clearly and adequately addressed in the IEP policy paper. However, we are still concerned about the role of the parent at the IEP meetings. All too often the parent does not know how to participate and it may be helpful to have a parent handbook developed which should be given to the parent at the time of the evaluation, so that the parent can be more adequately prepared for the IEP meeting. Perhaps with this method, more appropriate services can be provided for certain handicapped. Many persons need vocational educational training to ensure productive adulthood, indeed, to ensure survival in some cases.

In conclusion, the above statements reflect the most critical issues relating directly to PL 94-142 seen by ACLD at this time. ACLD again expresses its appreciation to this Subcommittee for the opportunity to be here today; but most of all, for your compassion, concern, and dedication for the welfare of all handicapped children.

Thank you.

SUMMARY

ACLD recommends the following revisions or modifications to the Act and/or the Rules and Regulations in order to effectively implement the law:

PL 94-142

In order for a state to qualify for monetary assistance, the state shall demonstrate to the Commissioner that appropriate in-service training be required (rather than just available) for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

Rules and Regulations

A. Multicategorical Placement:

ACLD is convinced that (1) every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; (2) programs for children with learning disabilities should include the full range of services specified in PL 94-142, matching the intensity of the services to the severity of the child's disability; (3) the content of instruction (curriculum) should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs. ACLD is opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities, except in cases of certain carefully justified programmatic circumstances.

B. Evaluation:

(1) That vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescents and young adults who are suspected of having learning disabilities; and (2) change the phrase, "impaired sensory, manual or speaking skills" to read, "handicapping condition or conditions."

C. Procedural Safeguards:

A section be included in the rules to explain when an appeal to OCR is appropriate.

D. Due Process:

Public funds be made available for legal fees to parents of the handicapped in the same manner that these funds are available to LEA's.

E. Monitoring:

Local Special Education Advisory Councils, with parent representation, be established to (1) assess and monitor compliance of applicable state and federal laws; (2) assist in the development of the local annual plan; and (3) provide advice to the LEA on unmet needs.

F. IEP and Surrogate Parents:

Clarify the parents' role, responsibilities and rights in a handbook to enable more effective, productive and meaningful IEP's.

A C L D

An Association For Children and Adults With Learning Disabilities

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1980 AUG 16 AM 10: 23

August 13, 1980

Received
Date 8 - 19 - 80
Subcommittee on
[illegible]

Senator Jennings Randolph
Chairman, Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

This letter is in response to the questions you posed resulting from the testimony I presented on behalf of ACLD at the oversight hearing on Public Law 94-142.

Question #1. You note that appropriate programs are not being provided to handicapped children and that this is in part due to poor attitudes, misunderstanding and lack of ability demonstrated by school administrators and you recommend that inservice training be required for all administrators, teachers and related services personnel. Could you describe what you would view as a good inservice training program?

Response: At the present time, SEA's have good inservice training programs. The point is, however, the programs are only available to General Education staff rather than required. Requiring school administrators, teachers and related school personnel to attend and receive the inservice training (for educating the handicapped) provided by the SEA would be most cost effective. More importantly, this requirement would be instrumental in providing appropriate services to the handicapped in the regular classroom (mainstream).

Question #2. You also state that every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities. How do you feel this goal would be implemented at the secondary school level?

A National Non-Profit Organization

Response: It is essential for all elementary or secondary level LD students to have a teacher trained and certified in the field of LD. This LD Specialist would be the primary person to design the LD student's total program and coordinate the program with other school personnel involved in the child/adolescent's academic mainstream arena. Further, it is a waste of money, human resources, and detrimental to the well-being of LD individuals in <u>self-contained classrooms</u> or <u>resource rooms</u> to receive services from teachers who do not have the expertise and skills in LD.

To implement the goal referred to in the question, teachers in self-contained or resource rooms would be required to train in the field of the handicapping area of their choice, have certification in the same area and provide services to the children who have that particular handicap. It should be noted that LD children do not learn in the so-called normal prescribed manner; nor do they process information in the normal manner. Because of this particular kind of handicapping condition, it takes one with the knowledge and expertise to provide appropriate services.

Question #3. Most of the recommendations given in your testimony appear valid but costly. Other witnesses have identified the high cost of programs for handicapped children as a major problem. If additional funds were to become available, what would be your 1st, 2nd and 3rd priorities for the use of these funds?

Response: It is unfortunate that educating the handicapped is so costly initially. It is good to keep in mind that <u>appropriate</u> education for the handicapped pays priceless future dividends.

Recommendations given in my testimony by and large would create only minimal increases in costs. For example, the inservice training recommendation would not create additional costs as the inservice training is now available but <u>not</u> required. Certainly it seems prudent to make use of the time, effort and energy expended on inservice by including regular classroom teachers and school administrators on a mandatory basis.

Priorities for the use of additional funds or even present funds are:

1. Abolish multicategorical placement in resource rooms and/or self-contained classrooms.

2. Include vocational aptitude and other appropriate vocational assessments in the evaluation of adolescents and young adults who are suspected of having learning disabilities.

3. Establish LEA Special Education Advisory Councils to generally assess and monitor compliance. The local councils must include parent participation, a component now missing in present monitoring requirements.

Once again, Senator Randolph, thank you for inviting and permitting ACLD to present our concerns and comments to your committee regarding LD persons. We are grateful and most appreciative.

Warm regards,

Dorothy Crawford

Dorothy Crawford

DC:rg
cc: ACLD Governmental Affairs Committee
Jean Petersen
Robert Reed

Senator STAFFORD. Thank you very much, Mrs. Crawford. We appreciate your appearance here. There may be some questions for you which Senator Randolph and I well may join in submitting to you in writing for responses, if that is agreeable.

We wish the Canadian delegates well in the rest of their stay here.

The next witness will be Mrs. Jacqueline Mendelsohn, of Silver Spring, Md., who represents the International Association of Parents of the Deaf.

Mrs. MENDELSOHN. Thank you.

My name is Jacqueline Z. Mendelsohn. I am the executive director of the International Association of Parents of the Deaf and the parent of a profoundly deaf 11-year-old boy.

My testimony is based on countless conversations with other parents of hearing impaired children.

The significance of Public Law 94-142, the Education for All Handicapped Children Act, cannot be questioned. A law which provides free, appropriate education for all handicapped children has enormous impact, both on handicapped children and their families.

Public Law 94-142 tells parents, "You have the right to participate, to be involved, to have an opinion, to be informed." Because of this law, the handicapped child is no longer a second priority in public education. Parents, for the first time, are given the right to participate in the decisionmaking process regarding their child's education. Section 121a of Public Law 94-142 clearly states the level of involvement for parents in determining their child's educational placement and plan.

I am here to ask you to resolve the problems parents of hearing impaired children face in relation to the law.

I can state categorically that parents remain uninformed about their rights and their child's rights accorded by the law. The vast amount of materials relating to Public Law 94-142 disseminated to State educational agencies and local educational agencies does not filter down to parents. Inadequate information leads to inadequate decisions relating to the education of a hearing impaired child and his or her unique needs.

Because of inadequate information, parents are not equals on the educational decisionmaking team. Information and education are necessary for parents to understand their rights as stated in the law. The law requires a comprehensive system of personnel development for support personnel. There is no question that parents are key support personnel. State and local educational agencies have not adequately trained parents to fulfill their responsibilities required by the law.

The term, "most appropriate education," as it applies to the education of hearing impaired children is highly controversial. This poorly explained and frequently misinterpreted area of the law causes grave concern for parents who are inadequately informed. Parents are rarely aware of the continuum of alternate education plans available for the hearing impaired child. Too often, they are presented with a hierarchy of choices, ranging from "best"—public school and mainstreaming—to "worst"—special school, segregated classroom.

It is vital for parents and schools to make placement decisions based on the specific needs of each individual child. Consideration must be given to the isolation which hearing impaired children may experience in a mainstreamed environment because of the communication barrier. The least restrictive environment for a hearing impaired child is that environment which is most appropriate, most enriching, and most conducive for overall growth.

Inadequate notification of meetings for the individual education plan for their child is another stumbling block for parents. Because the law does not specify "adequate" notice, parents frequently must cope with little time to prepare themselves for the IEP meeting. Often, the IEP is complete when the parents arrive at the meeting, and they are simply asked to sign it. This is clearly against the law which mandates that parents participate in the development of the individual education plan of their child.

The right for parents to challenge inappropriate educational decisions through due process is stated in the law. Many parents have no knowledge of that right because the SEA's and LEA's are not informing them. Due process has proved to be costly, time-consuming, and at times an unnecessary action initiated because of inadequate information.

Unclear definition of "most appropriate education;" inadequate notification of IEP meetings; preprepared IEP's; and most importantly, lack of recognition of parents' role, are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decisionmaking team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends: (1) a parent education program explaining parent rights and responsibilities under Public Law 94-142 must be provided to parents once a year by the local education agency; (2) notification of an IEP meeting must be given to parents 30 days in advance; and (3) most appropriate education must be defined as a continuum, rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so, they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

[The prepared statement of Mrs. Mendelsohn and the questions and responses referred to follow:]

Summary

Testimony on Public Law 94-142

International Association of Parents of the Deaf

July 29, 1980

Unclear definition of "Most Appropriate Education"; inadequate notification of IEP meetings; pre-prepared IEPs; and most importantly, lack of recognition of parents' role are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decision-making team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends:

a. A Parent Education Program explaining parent rights and responsibilities under P.L. 94-142 must be provided to parents once a year by the Local Education Agency.

b. Notification of an IEP meeting must be given to parents 30 days in advance.

c. Most appropriate education must be defined as a continuum rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

Jacqueline Z. Mendelsohn
Executive Director
International Association of
Parents of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910
301-585-5400

Testimony on Public Law 94-142
International Association of Parents of the Deaf
July 29, 1980

My name is Jacqueline Z. Mendelsohn. I am the Executive Director of the International Association of Parents of the Deaf, and the parent of a profoundly deaf eleven year old boy. My testimony is based on countless conversations with other parents of hearing impaired children.

The significance of P.L. 94-142, the Education for All Handicapped Children Act, cannot be questioned. A law which provides free appropriate education for all handicapped children has enormous impact -- both on handicapped children and their families.

Public Law 94-142 tells parents "you have the right to participate, to be involved, to have an opinion, to be informed." Because of this Law, the handicapped child is no longer a second priority in public education. Parents, for the first time, are given the right to participate in the decision making process regarding their child's education. Section 121a (224, 121a 414) of P.L. 94-142 clearly states the level of involvement for parents in determining their child's educational placement and plan.

I am here to ask you to resolve the problems parents of hearing impaired children face in relation to the Law.

I can state categorically that parents remain uninformed about their rights and their child's rights accorded by the Law. The vast amount of materials relating to P.L. 94-142 disseminated to State Educational Agencies and Local Educational Agencies does not filter down to parents. Inadequate information leads to inadequate decisions relating to the education of a hearing impaired child and his/her unique needs. Because of inadequate information, parents are not equals on the educational decision making team.

Information and education are necessary for parents to understand their rights as stated in the Law. The Law requires a comprehensive system of personnel development for support personnel (241) (c) (3). There is no question that parents are key support personnel. State and Local Educational Agencies have not adequately trained parents to fulfill their responsibilities required by the Law.

The term "Most Appropriate Education" as it applies to the education of hearing impaired children is highly controversial. This poorly explained and frequently misinterpreted area of the Law causes grave concern for parents who are inadequately informed. Parents are rarely aware of the <u>CONTINUUM</u> of alternative education plans available for their hearing impaired child. Too often they are presented with a hierarchy of choices, ranging from "best" (public school, mainstreaming) to "worst" (special school, segregated classrooms). It is vital for parents and schools to make placement decisions based on the specific needs of each individual child. Consideration must be given to the isolation which hearing impaired children may experience in a mainstreamed environment because of the communication barrier. The least restrictive environment for a hearing impaired child is that environment which is most appropriate, most enriching, and most conducive for overall growth.

Inadequate notification of meetings for the Individual Educational Plan for their child is another stumbling block for parents. Because the Law does not specify "adequate" notice, parents frequently must cope with little time to prepare themselves for the IEP meeting. Often the IEP is complete when the parent arrives at the meeting and they are simply asked to sign it. This is clearly against the Law which mandates that parents participate in the

DEVELOPMENT of the Individual Educational Plan of their child.

The right for parents to challenge inappropriate educational decisions through Due Process is stated in the Law (613) (a) (13) (A). Many parents have no knowledge of that right because the SEAs and LEAs are not informing them. Due Process has proved to be costly, time consuming, and at times an unnecessary action initiated because of inadequate information.

Unclear definition of "Most Appropriate Education"; inadequate notification of IEP meetings; pre-prepared IEPs; and most importantly, lack of recognition of parents' role are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decision-making team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends:

a. A Parent Education Program explaining parent rights and responsibilities under P.L. 94-142 must be provided to parents once a year by the Local Education Agency.

b. Notification of an IEP meeting must be given to parents 30 days in advance.

c. Most appropriate education must be defined as a continuum rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

Jacqueline Z. Mendelsohn
Executive Director
International Association of
Parents of the Deaf
814 Thayer Avenue
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QUESTIONS FOR JACQUELINE MENDELSOHN

1. You said that sometimes the IEP is complete when parents arrive at the meeting and they are simply asked to sign it. Did this situation occur with reference to your child's IEP?
2. You suggested that local and State educational agencies have not been adequately informing parents about their rights and their child's rights under Public Law 94-142. Has your organization been involved in trying to create greater parent awareness?
3. Parent education relating to rights and responsibilities under P.L. 94-142 would also appear to be a proper responsibility for parent associations. Would you please address this issue and discuss the relative roles of public agencies and parent associations in this regard.
4. If the regulations required 30 days notice for an IEP meeting, would this requirement also introduce serious delays in providing services to children?

I A
P D International Association of Parents of the Deaf, Inc.

Received
8-8
[illegible]

August 5, 1980

Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Randolph:

Here are the responses to your questions from the testimony presented at oversight hearing on Public Law 94-142 on July 29, 1980

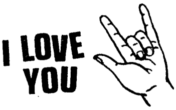
Thank you for your time and attention to the needs of the handicapped.

1. In the case of my child's IEP, the Plan was always developed with myself and my husband present. However, I have spoken to parents, who upon arriving at a Residential school on Parent's day found long tables, with IEP's on them, alphabetically arranged. Each parent as they went through the line to register their child, signed their IEP. Other parents have talked of a 15 minute IEP meeting composed of the school staff reading the completed IEP and the parents signing the Plan.

2. The International Association of Parents of the Deaf is working very hard to inform parents of their rights and their child's rights. Through IAPD Position Papers, coordination with Gallaudet College's Task Force on P.L. 94-142, articles in our newsletter, The ENDEAVOR, and parent workshops, provided locally and Nationally. Our last convention focused on P.L. 94-142. We are trying to reach as many parents of hearing impaired children as possible. However, our numbers are small, and we do not have ability to reach as many parents as have public agencies, particularly schools.

3. Parent Education is an appropriate responsibility for parent associations. However, as a parent association, we do not have knowledge of every parent who has a hearing impaired child.

Cooperation between State and Local Education Agencies and parent associations



would greatly increase the impact and accessibility of parent education. Local Parent Groups, under the guidance of National Parent Associations could provide Parent Education in regards to P.L. 94-142. SEA and LEA would locate the parents and the services needed, a wide population will be reached. This cooperation can be established by:

1. Hiring a parent coordinator
2. By having an advisory committee composed of a Representative of the State Educational Agencies, Local Educational Agency, and parents.
3. By providing funding specifically for annual Parent Education Programs.
4. Clarifying the needs of Parents and schools.

4. Schools schedule IEP meetings well in advance of the date in order to plan for substitutes, teacher planning time and pre-IEP meetings. Parents have the same right as school personnel to plan in advance for the IEP meeting. 30 days notice would not cause delays in providing services to children. Services for handicapped children cannot be provided until the IEP has been signed and the IEP cannot be signed unless parents are notified of a time and and date of a meeting. Thirty days notice would not delay the IEP, merely give adequate notice to parents.

Sincerely,

Jacqueline Z. Mendelsohn
Executive Director

JZM:mmh

Senator STAFFORD. Thank you very much, Mrs. Mendelsohn.

Your remarks about the failure of information to get to parents of deaf children—do you have any specific suggestions beyond the paper as to how that information might reach you?

Mrs. MENDELSOHN. I would suggest that the State educational agencies and the local educational agencies have parents participate on advisory committees composed of representatives of the school on the State, local, and district levels, and that parents and schools take the responsibility at PTA meetings, and at registration on first day of school that all parents are supplied with the adequate information.

Senator STAFFORD. That seems to be a very vital failure in the chain.

Mrs. MENDELSOHN. Information is available in libraries and in principals' offices. It does not seem to get directly into the hands of parents.

Senator STAFFORD. All right, thank you.

That concludes the panel. I want to express the appreciation of the subcommittee to all of the members who have participated in it, and to once again point out that unfortunately, Senator Randolph and I are simultaneously involved not only here, but in a rather important bill on the disposition of nuclear waste, pending in the Senate itself.

Thank you very much.

The next witness is from my own State of Vermont. I am more than happy to welcome Fran Rice, advocate and legislative chairman of the Vermont Association of Learning Disabilities as a witness before this committee.

We will put your entire statement in the committee record and invite you to summarize it, if you would, please.

STATEMENT OF FRANCIS R. RICE, ADVOCATE AND LEGISLATIVE CHAIRMAN, VERMONT ASSOCIATION OF LEARNING DISABILITIES, MONTPELIER, VT.

Ms. RICE. Very good, thank you, Senator Stafford and members of the committee.

I greatly appreciate the opportunity to come before the committee to share with you my observations and concerns regarding the implementation of Public Law 94-142, the Education of the Handicapped Act. I shall excerpt from my prepared statement.

My name is Frances Rice, and I am from Montpelier, Vt. I am a product of a public school experience that at best can be described as miserable, because I was an unrecognized dyslexic. It was only through the intervention of some knowledgeable professors and my own determination that I became a graduate of Tufts University.

I am also a parent of six children, three of whom are moderately affected by specific learning disabilities, sufficient to have made their school years often difficult and frequently frustrating not only for them but for us as their parents. Neither they nor I benefited from the Federal legislation I champion as an advocate for the specific learning disabled population in Vermont.

By way of introduction, I am a past president of the Vermont Association for Learning Disabilities, am currently a member of the specific learning disability task force for the State of Vermont, and I serve on the national board of directors for the Association for Children and Adults with Learning Disabilities.

Being a dyslexic, a parent of SLD children and an advocate has given me a perspective many educators have not experienced and provides me with an intimate look at the implementation of Public Law 94–142, as well as section 504 of the Rehabilitation Act of 1973.

I support the traditional classification system as detailed in Public Law 94–142, and I hope that my testimony will illustrate the severe problems generated when classification regulations are allowed to be circumvented.

First of all, classification is the law. Public Law 94–142 mandates that full procedural safeguards be established and maintained in order to protect a child and his parents in the identification, evaluation, and educational placement process.

Unfortunately, some States such as Vermont have been allowed to take a noncategorical approach to Public Law 94–142. This has caused inaccurate diagnosis of the handicapping condition, entry into special education of children who do not meet the Federal definition criteria resulting in an inflated special education budget, and inappropriate and inadequate educational programs.

The classification of handicapping conditions in Public Law 94–142 eliminates the confusion between children poorly served and the handicapped child. Classification allows us to know individual needs and to design programs that fit the child, rather than fitting the child into an existing program. The noncategorical approach sets the stage for budgetary escalation and the growth of a burgeoning parallel educational system that competes with regular education for the same moneys.

When we permit poorly served children to be eligible for the expensive services of special education then we now see that we are spending special education moneys to do the job we thought regular education was to accomplish, while draining the resources for those truly handicapped.

Public Law 94–142 was not designed to shore up sagging educational failures. We urge a return to the intent of Public Law 94–142, and that it be accomplished through strict adherence to the Federal eligibility requirements.

Vermont's children have been almost exclusively served through the Vermont Consulting Teacher Model at the University of Vermont. This delivery model has been heavily supported by HEW. The key elements of the model, which is a noncategorical model, are behavior modification and task analysis. The philosophy operates on the belief that it is not necessary to understand the cause of a handicapping condition and that learning and performance are the same and do not need different strategies.

We are informed that this undimensional approach can be useful for the mentally retarded and the seriously emotionally disturbed for whom it was originally developed, but this across-the-board approach has been a disaster for the average to bright SLD, now acknowledged to represent our State's largest handicapping condition.

The behavior modification aspect alarms many parents. We do not support the purchasing of our children through the reward system via money, gifts, or the earning of tokens which are redeemable at a store for material items. This manipulation is abhorrent to us, for when a teacher encourages students to learn for a price, she is teaching them that having a price is quite acceptable. This is an abuse of power and insidious in implication. It is to be remembered that the whole business of behavior control is basically a question of power, of conditioning young minds to accept a power authority. Parents thought that it was the responsibility of education to teach children to think independently and wisely for themselves, still a birthright in this country.

I bring the Vermont model to your attention as an illustration that monitoring of federally funded programs is sorely needed. We must open up the existing program to incorporate the many disciplines that contribute to the understanding of children's needs and we must provide our teachers with access to indepth training at both the undergraduate and graduate levels. We need programs that acknowledge that the central nervous system is indeed involved in the acquisition and use of language.

To obtain relief from this problem, knowledgeable SLD parents with the assistance of the Office of Civil Rights and the Vermont Legislature, recently achieved a first step toward rescuing the SLD population in our State. Attached is a memorandum from the director of special education, State of Vermont, issued June 26, 1980, requiring the identification of the SLD through procedures guaranteed in Public Law 94–142.

Monitoring in Vermont has been limited to one of paper monitoring, not program monitoring, and we need both. Monitoring should include a funded training program for parents to assist school districts in monitoring themselves as well as training for parents to monitor their own child's progress. Parents need training to support themselves in disagreements with schools so that costly attorney fees are not necessary at the fair hearing level. Parent groups need readily accessible information and assistance competing for grants through BEH for parent training.

We urge that national policies be developed that will guide the Office of Civil Rights and the Bureau of the Education of the Handicapped when they are jointly involved in overlapping responsibilities under both section 504 and Public Law 94–142. Such policies should hopefully accelerate the response from the agencies to those who wait for their findings long past published time frames.

In our work with the Office for Civil Rights, we have found them responsive and helpful, but they report to us that they are receiving ever-increasing complaints to process with too little staff. Something needs to be done to insure concrete solutions. The framework of the Federal regulations is basically adequate. The problems are stemming from inadequate enforcement at all levels.

It is my firm conviction that Public Law 94–142 has become a catalytic force in causing the public schools to take a good, hard look at themselves and the regular education practices. As Dr. Lieberman has said, "The back to basics movement is not an accident and no bandwagon, but a well-documented need. Special education has become confused with being an answer to the problems of regular education."

Presently, a stumbling block to equal access to education is the adequacy of educational personnel. Section 504 requires that "teachers must be trained in the instruction of persons with the handicap in question. . . ." When classroom teachers do not have access to knowledgeable preservice or inservice or are allowed by choice to ignore the responsibility to participate in any inservice workshops, then the concept of mainstreaming collapses, and we come to acknowledge that mainstreaming is really more a political and social term than an educational reality.

Dr. Richardson succinctly sums it up this way:

> We need to extend the capacity of regular educational personnel so that they can accommodate a broader range of individual differences to prevent learning failures, thereby reducing the need for extensive and expensive special education support. Few teachers have been exposed, much less trained, within the multidisciplinary framework.

In conclusion, and in behalf of the Vermont Association for Learning Disabilities, I again extend our appreciation for the opportunity to come before this committee. We are grateful for the legislation. Do not weaken the regulations or consumer participation. Parents have had to come to the Federal Government for responsiveness.

Thank you.

[The prepared statement of Ms. Rice along with questions and responses and additional material supplied follow:]

PREPARED STATEMENT

OF

FRANCES R. RICE

ADVOCATE

VERMONT ASSOCIATION FOR LEARNING DISABILITIES

JULY 29, 1980

IMPLEMENTATION OF PL 94-142

BEFORE THE U.S. SENATE

SUBCOMMITTEE ON THE HANDICAPPED

CHAIRMAN: JENNINGS RANDOLPH

It is the intent of my testimony to address problems that are surfacing in Vermont in the implementation of PL 94-142 and Section 504 of the Rehabilitation Act of 1973.

I wish to provide the Committee and others who may be interested with an overview of the non-catagorical approach to serving children under these mandates.

We are concerned, as is the Committee, that a public backlash focused upon the mandated regulations is building. We realize that funding for these laws must compete with other equally deserving needs from dwindling tax revenues.

Therefore, in order to help preserve the intent and spirit of the legislation and ensure better fiscal and program accountability, we provide Vermont's experience from the consumers point of view. We urge that Congress tighten up the eligibility standards to conform with those defined in PL 94-142 and call for closer monitoring on the effectiveness of funded programs, from consumers as well as from the educational profession.

The non-catagorical approach stands on shaky grounds and I enclose a statement from the respected Dr. Nicholas Hobbs, 1975.

> "Classification of exceptional children is essential to get services to them, to plan and organize programs and to determine the outcomes of the intervention efforts. We do not concur with the sentiments widely expressed that classification of exceptional children should be done away with. Although we understand that some people advocate the elimination of classification in order to get rid of its harmful effects, their proposed solution oversimplifies the problem. Classification and labeling are necessary to human communication and problem solving; without catagories and concept designators, all complex communicating, and thinking stops. Classification is necessary to open doors of opportunity, to get help for a child, to write legislation, to appropriate funds, to design service programs, to evaluate outcomes, (emphasis mine) to conduct research and to communicate about the problem of an exceptional child."

I also enclose copies of Dr. Lieberman's full article from which I quote in my testimony, as published in the February issue of the "Journal of Learning Disabilities".

I shall excerpt my testimony to confine my delivery to the time period allowed.

Sincerely,

Frances R Rice

Frances R. Rice
Advocate
July 21, 1980

Mr. Chairman and members of the Committee I greatly appreciate the opportunity to come before this committee to share with you my observations and concerns regarding the implementation of PL 94-142, the Education of the Handicapped Act.

My name is Fran Rice and I am from Montpelier, Vermont. I am a product of a public school experience that at best can be described as miserable because I was an unrecognized dyslexic. It was only through the intervention of some knowledgable professors and my own determinations that I became a graduate of Tufts University. I am also a parent of six children, three of whom are moderately affected by specific learning disabilities sufficient to have made their school years often difficult and frequently frustrating, not only for them but for us as their parents. Neither they nor I benefited from the federal legislation I champion as an advocate for the Specific Learning Disabled (SLD) population in Vermont.

By way of introduction, I am a past president of the Vermont Association For Learning Disabilities (VALD), am currently a member of the Specific Learning Disability Task Force for the State of Vermont and I serve on the National Board of Directors of the Association For Children and Adults with Learning Disabilities. In Vermont I am best known as a member of the VALD Advocacy Team.

Being a dyslexic, a parent of SLD children and an advocate has given me a perspective many educators have not experienced and provides me with an intimate look at the implementation of PL 94-142 and Section 504 of the Rehabilitation Act of 1973. I support the traditional classification system as detailed in PL 94-142 and I hope that my testimony will illustrate the severe problems generated when classification regulations are allowed to be circumvented. There are many aspects of the implementations that I would like to address but I shall restrict my testimony to issues of classification, related budget concerns, monitoring and training.

<u>Classification is the law</u>. PL 94-142 mandates that full procedural safeguards be established and maintained in order to protect a child and his parents in the identification, evaluation and educational placement process. Unfortunately, some states such as Vermont, have been allowed to take a non-catagorical approach to PL 94-142. This has caused inaccurate diagnosis of the handicapping condition, entry into special education of children who do not meet the federal definition criteria resulting in an inflated special education budget and inappropriate and inadequate educational programs. It should follow that the lack of accurate reporting information from states such as Vermont must then distort the accuracy of information provided by the Commissioner of Education in his annual report to Congress, required under PL 94-142. The rippling effects have far reaching impact upon such area as research, training programs, fiscal and program monitoring.

The classification of handicapping conditions in PL 94-142 eliminate the confusion between children poorly served and the handicapped child. Classification allows us to know individual needs and to design programs that fit the child rather than fitting the child into an existing program. The non-catagorical approach sets the stage for budgetary escalation and the growth of a burgeoning parallel educational system that competes with regular education for the same monies. When we permit "poorly served" children to be eligible for the expensive services of special education than we now see that we are spending special education monies to do the job we thought regular education was to accomplish, while draining the resources for those truly handicapped. PL 94-142 was not designed to shore up sagging educational failures. We urge a return to the intent of PL 94-142 and that it be accomplished through strict adherence to the federal eligibility standards.

Vermont's children have been almost exclusively served through the Vermont Consulting Teacher Model at the University of Vermont. This delivery model has been heavily supported by HEW. Graduates are employed in local school districts with 75% of their salaries funded by the State of Vermont. Until recently, at legislative recommendation, only Vermont trained Consulting Teachers have been able to meet the certification standards for employment jointly designed by the Division of Special Education and the University of Vermont. Special educators trained out of the state have turned away or have had to agree to take Behavior-Modification courses leading to certification as a Consulting Teacher while employed on a conditional basis.

The key elements of the non-catagorical model are Behavior Modification and Task Analysis. The philosophy operates on the belief that it is not necessary or important to understand the cause of a handicapping condition and that learning and performance are all the same and do not need different strategies. A child merely become eligible for special education when he is at a 50% deficit of performance. This clearly is not the intent of PL 94-142. We are informed that this unidimensional approach can be useful for the mentally retarded and the seriously emotionally disturbed for whom it was orginally developed, but this across the board approach has been a disaster for the average to bright SLD, now acknowledged to represent the largest handicapping condition in the state.

The Behavior Modification aspect alarms many parents. We do not support the purchasing of our children through the Reward System via money, gifts or the earning of tokens which are redeemable at a store for material items. This manipulation is abhorant to us, for when a teacher encourages students to learn for a price she is teaching them that having a price is quite acceptable. This is an abuse of power and insidious in implication. It is to be remembered that the whole business of behavior control is basically a question of power, of conditioning young minds to accept a power authority. Parents thought that it is the responsibility of education to teach children to think independently and wisely for themselves, still a birth right in this country.

I bring the Vermont Model to your attention as an illustration that monitoring of federally funded programs is sorely needed. If a program is rejected by the consumer in the marketplace, why are we continuing to fund it? We must open up the existing program to incorporate the many disciplines that contribute to the understanding of children's needs and give our teachers access to in-depth training at both the undergraduate and graduate levels. Especially, we must have training programs that acknowledge that the central nervous system is involved in the acquisition and use of language.

To obtain relief from this problem knowledgable SLD parents with the assistance of the Office of Civil Rights (OCR) and the Vermont Legislature, recently achieved a first step towards rescuing the SLD population. Attached is a memorandum from the Director of Special Education, State of Vermont, issued 6/26/80 requiring the identification of the SLD through procedures guaranteed in PL 94-142. I would be very remiss if I were not to add that this memorandum represents the culmination of efforts on the part of many persons from allied professions who have encouraged and assisted our efforts over a period of years, and to whom we remain indebted.

<u>Monitoring</u> in Vermont has been limited to one of paper monitoring, not program monitoring. We need both. Monitoring should include a funded training program for parents to assist school districts in monitoring themselves as well as training for parents to monitor their own child's progress. Parents need training to support themselves in disagreements with schools so that costly attorney fees are not necessary at the Fair Hearing level. Parent groups need readily assessible information and assistance competing for grants through BEH for parent training.

In Vermont public confidence was eroded when the state monitoring team members were allowed to monitor the school districts they were assigned to serve. The federal monitoring team was led by a former Vermont Division of Special Education employee. Our VALD parent concerns, shared with the team during its on-site visit in January 1979, remain unanswered.

We urge that national policies be developed that will guide the Office of Civil Rights and the Bureau of the Education of the Handicapped when they are jointly involved in overlapping responsibilities under both Section 504 and PL 94-142. Such policies should hopefully accelerate the response from the agencies to those who wait for their findings long past published time frames. In our work with OCR we have found them responsive and helpful, but they report to us that they are receiving ever increasing complaints to process with too little staff. Perhaps BEH would respond similarly. We hear that other advocacy groups and parents across the country feel that BEH ignores their complaints. Something needs to be done to ensure concrete solutions. The framework of the federal regulations are basically adequate. The problems are stemming from inadequate enforcement at all levels.

<u>Training</u> It is my firm conviction that PL 94-142 has become a catalytic force in causing the public schools to take a look at themselves and the regular education practices. Dr. Lawrence Lieberman Ed.D, former HEW Director in charge of Title VI G (SLD area) has said: "The crisis in the schools belongs to regular education. The fact that 37 states have passed some form of minimum competency testing for students in the last five years testifies to this. The back to the basics movement is not an accident and no bandwagon but a well documented need. Special education has become confused with being an answer to the problems of regular education."

Presently, a major stumbling block to equal access to education is the adequacy of educational personnel. Section 504 requires that "teachers must be trained in the instruction of persons with the handicap in question..." When states provide only generic special education training and classroom teachers do not have access to knowledgable pre-service or in-service or are allowed by choice to ignore the responsibility to participate in any in-service workshops, than the concept of "mainstreaming" collapses and we come to acknowledge that mainstreaming is really more a political and social term than an educational reality. This is difficult for parents to resolve when they realize that schools were charged with the responsibility to prepare teachers long before PL 94-142 was fully effective.

Dr. Sylvia O.Richardson succinctly sums it up this way. "We need to extend the capacity of regular educational personnel so that they can accommodate a broader range of individual differences to prevent learning failures..thereby reducing the need for extensive and expensive special education support. (emphasis mine). Few teachers have been exposed, much less trained, within a multi-disciplinary framework."

In conclusion, and in behalf of the Vermont Association For Learning Disabilities, I again extend our appreciation for the opportunity to come before this committee. We are grateful for the legislation. Do not weaken the regulations or consumer participation. Parents have had to come to the federal government for responsiveness.

Thank You.

QUESTIONS FOR FRAN RICE

1. You comment on the fact that a public backlash to P.L. 94-142 may be building. Could you explain this statement?

Reply to question from Senate Sub-Committee on the Handicapped:

Public backlash to PL 94-142 is not a reaction to anticipate. It is here. It is visible at fiscal levels, primarily the result of a severe misperception or ignorance on the part of state and local agencies to understand their responsibilities to educate all children equally, including the handicapped. Pl 94-142 reflects criticism of what our public schools have been and still remain.

As an advocate I meet school personnel, including those at administrative levels, who remain comfortably uninformed or misinformed. PL 94-142 is incorrectly viewed as a new concept and responsibility, mandated without warning by the federal government. And so it is repeated, "If the Fed's mandate it, let the Fed's pay for it." Few acknowledge or understand that PL 94-142 was enacted because states were ignoring their own state statutes. The federal government, in its role of responsibility to legislate in behalf of the general welfare of all citizens, enacted PL 94-142 to force change on an unresponsive educational system.

Lack of enforcement of PL 94-142 has produced anger and disillusionment among parents and supportive educational personnel. We see that BEH has been allowed to merely go through the motions of paper monitoring and the resulting message is clear. PL 94-142 is a paper tiger...The law, supposedly enacted to protect handicapped children and their parents is now seen as having been permitted to protect the very conditions and systems it was designed to correct. The "Report By The Education Advocates Coalition On Federal Complicance Activities To Implement The Education For All Handicapped Children's Act", issued April 16, 1980, presents a scathing indictment of BEH in its monitoring and enforcement activities.

Public school education is in serious trouble even without considering the need to appropriately serve handicapped children. The commonness of this perception is seen in one example, by the frequency with which even the most prestigeous of professional journals and magazines tackle the subject in articles that warn of "The Collapse of Public School Education" or of "Teachers Who Can't Teach". Lack of enforcement of PL 94-142 accelerates this perception, because the public is not sure if children are handicapped or the educational system is handicapped! All the while special education builds a parallel educational system which actively competes with regular education for the same monies, services and jobs. The squeeze is on..Lack of enforcement of PL 94-142 is actively contributing to the accelerating erosion of public confidence in public school education and its government. It is a sad comentary, for PL 94-142 had the promise and has the potential of becoming the catalytic force in reversing this pervasive trend.

The educational system is not allowing parents to be partners with their schools in the education of their children. But, parents and taxpayers are held responsible for children who fail. Parents are overwhelmed with hopelessness. Children sit in misery, frequently traumatized by poorly trained educators and remain permanently scarred by a system whose priority is the protection of the existing establishment.

I would dearly hope that my thoughts shared so openly will not just become another piece in the "paper trail".

Frances Rice

JUL 1 1980

STATE OF VERMONT
DEPARTMENT OF EDUCATION
MONTPELIER
05602

TO: Superintendents of Schools
Special Education Coordinators
Other Interested Persons

FROM: Jean S. Garvin, Director
Division of Special Education &
Pupil Personnel Services
Vermont Department of Education
State Office Building
Montpelier, Vermont 05602
Telephone: (802) 828-3141

SUBJECT: Determination of Eligibility for Special Education

DATE: June 26, 1980

As time goes on, we see more clearly where adjustments must be made in our approach to fulfilling the requirements of P.L. 94-142 and Section 504 of P.L. 93-112. The identification of specific learning disabilities and serious emotional disturbance youths is one of these areas where adjustments are going to be necessary.

Background

The Office for Civil Rights has conducted a number of investigations of alleged failure to meet the requirements of P.L. 94-142 and Section 504 of P.L. 93-112 with respect to the identification and evaluation of SLD children. After comparing the Vermont Eligibility Standards for Special Education with the regulations for P.L. 94-142, OCR concluded: "that the State's policy of avoiding labels and categories when describing the handicapping conditions obfuscates the various disabilities leading to the misidentification of children, particularly children who are specific learning disabled" (p. 10). OCR has also cited a number of districts for failure to measure intellectual ability: "Since the May 25, 1979 Basic Staffing Team never dealt with the specific diagnosis of (the child's) intellectual ability ... but simply identified him as handicapped and eligible for special education services, we find the Basic Staffing Team meeting's conclusions and recommendations to be deficient" (p. 20).

On June 3, 1980, the Division received a request from the Legislative Committee on Administrative Rules (Vermont General Assembly) to amend its policy concerning the identification of children with specific learning disabilities. The Committee concluded that under Vermont's nonlabeling approach to identifying handicapped children: "Many learning disabled children will never receive the opportunity to be diagnosed. By contrast, the federal rule on the subject requires a range of procedural protections for children who have 'suspected' specific learning disabilities.

(over)

Also, Vermont's statutes clearly contemplate that children of adequate mental ability with learning disabilities ought to receive diagnosis by specially trained teams, possibly including psychologists. In the committee's view, your rule requiring 'nonlabeling' type special education to undiagnosed, but suspected, learning disabled students violates both the federal regulation and Vermont statute" (p. 2).

On June 19, 1980 a meeting was held between representatives of the Department of Education, and the Region I Office for Civil Rights (Maria Montalvo, Chief of Elementary and Secondary Education Programs and Legal Counsel for OCR). The meeting was the first in a series of meetings aimed at amending Vermont's eligibility standards so that they comply with OCR interpretations of various federal requirements. In the afternoon of the same day, a special SLD Task Force was convened for a second time to discuss the development of guidelines for identifying and serving SLD children. The Task Force anticipates having guidelines for the State Board of Education to consider by November of 1980. OCR may require changes in our procedures for identifying SLD children prior to November.

Current Practice

Although I am not in a position at this time to issue new guidelines for SLD identification, I urge you from this point on to ensure that all handicapped children suspected of having a specific learning disability be identified according to all of the criteria outlined in the May 23 and December 29, 1977, Federal Register.

In monitoring, we have found very few children whose records acknowledged a finding of specific learning disabilities. Because of this, we ascertain that some two or three thousand children may need to have their records amended to show a specific learning disability and to show an appropriate diagnosis and Basic Staffing Team report. The reason for this is that we are fast approaching a time when school districts must be able to document that every handicapped child can, if necessary, be categorized in one of the eleven handicapping conditions defined in P.L. 94-142. When pushed to the extreme, if a district cannot substantiate that a child is mentally retarded, seriously emotionally disturbed, speech impaired, deaf, hard of hearing, visually impaired, multi-handicapped, deaf-blind, other health impaired or orthopedically impaired, then they must either classify the child as SLD or as not eligible for special education.

Fortunately, as of this time, we have yet to be pushed to the extreme in labeling children. We clearly are, however, being forced to designate all SLD children. Moreover, we must be able to substantiate that all served children could, if necessary, be categorized in one of the eleven P.L. 94-142 definitions.

For monitoring purposes, the Division will expect to find that between 20% and 40% of a district's enrollment in Special Education are identified as SLD. In the December, 1979 Child Count, the national incidence of SLD was 31.7% of the total enrollment in Special Education. A deviation of 15% plus or minus will alert the Division to the need for a review of procedures for identifying SLD students.

As I said before, more explicit guidelines for identifying SLD youths will be forthcoming after a series of meetings with our SLD Task Force and personnel in the Office for Civil Rights.

Guidelines for Serious Emotional Disturbance

In the months that lie ahead, a set of guidelines will be issued for identifying children with serious emotional disturbance. This category, like SLD, could become a major point of contention unless we have rather explicit defining criteria. It is important that this category be limited to children with an unquestionable need for special education because of severe disturbance. We cannot become a vehicle for serving socially maladjusted children, except those who qualify for special education under one of the eleven handicapping conditions.

We will make every effort to consider your input in these matters and to keep you well informed as new guidelines are developed.

Viewpoint

The Implications of Noncategorical Special Education

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VERMONT ASSOCIATION FOR
LEARNING DISABILITIES
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Laurence M. Lieberman, EdD

Few states have legislation requiring the abolition of traditional classifications of the handicapped. However, many state and local education agencies have established guidelines tantamount to providing noncategorical services. The obvious intent of a general approach to the handicapped is to describe rather than label, to accept rather than stigmatize.

LABELING VS. CLASSIFICATION

Classification of children for various purposes has been the historical norm. The early 1970s brought a rebellion against such practices. There is a wealth of research and discussion on the evils of labeling, and well there should be; however, it has become more and more evident that labeling is not inherently evil. What is questioned is the purpose of the labels and how stereotyped thoughts and attitudes evolve from them.

In the spring 1979 *Directive Teacher Journal*, Nicholas Hobbs, chairman of the Project on Classification of Exceptional Children and principal author of *The Futures of Children* stated, "People are saying that we should not classify...these good people are wrong." (pp. 1, 8-9). Yet much of the noncategorical movement seems to have emanated from Hobbs' work and is attributed to him. In another interview in *Exceptional Children*, April 1978, Dr. Hobbs expressed the following: "The existing classification systems serve important functions in schools. It is hard to abandon what we have until there is something to take its place." (pp. 494-497).

There is no doubt that the use of labels in the public schools has been reduced. However, to say that labels are no longer in use would overstate the case. There are, of course, aberrations. Some refer to mental retardation as a general learning disability or to emotional disturbance as an adjustment reaction. "Underachiever" is probably preferable to "slow learner." New labels are constantly being invented, such as "substantially independent" rather than "educable mentally retarded."

There is no beginning and no end—only more confusion. Some argue for more benign labels; others say the problem is inherent in any label; and still others prefer behavioral descriptors. Whatever the approach, we end up with words that convey ideas and ultimately general notions about groups of children.

For 15 years the Bureau of Education for the Handicapped (BEH) in the U.S. Office of Education has been a major funding source for university-based teacher training. In 1972 BEH changed its policy from funding specific areas such as mental retardation, emotional disturbance, etc., to noncategorical grants to university training programs. The universities were pressured to decompartmentalize programs for specific handicapping conditions within their special education departments. Course titles such as "Methods and Materials for the Learning Disabled" became "Remedial Strategies," with the assumption that the latter would be applicable for all children with inadequate skills.

Children were looked upon as individuals, while curricula and learning theory were generalized. However, indepth study of particular handicapping conditions tended to be minimized. Blindness and deafness split from the main line as being just too different. Mild mental retardation, learning disabilities, and emotional disturbance short of autism were lumped together for teacher training purposes. Professionals titled "learning disabilities specialists" were replaced by "resource room teachers." Instead of providing an addition to the specialist, the generalist replaced the specialist. The children, although never considered similar, were thought to be teachable in a similar fashion.

Special education teachers soon began to realize that their knowledge of the handicapped was cursory and that they were ill equipped to deal with the medical, social, parental, and psychological aspects of specific handicaps. Perhaps this entire situation is cyclical and learning disabilities specialists will someday make a triumphant return only to be banished at some future time.

There are important practices in effect that are highly significant for those who would choose noncategorical special education. Program decisions are still made by classification.

Assessment procedures are organized to develop a diagnosis and to respond with a program for similarly labeled children. Programs do not exist by behavioral descriptor, such as a class for acting out, a class for aggressive children, or a resource room for children exhibiting written reversals. Programs are designated for learning disabled students, emotionally disturbed students, or retarded students. Within the same grouping of learning disabled children one might find a hyperactive child whose primary problem is visual information processing, a child with a verbal fluency deficiency, or a child holding his pencil in his fist because of fine motor coordination problems. The possible combinations are infinite, especially if one considers the so-called usual spectrum of behaviors associated with mental retardation and emotional disturbance. While lip service is being given to individualized programming and evaluating the strengths and weaknesses of each child, that child may in fact be grouped in such a way as to negate teaching to his known attributes.

The conceptual alternative for those taking issue with this is to work with each child individually. However, then the teacher becomes a tutor and loses the group as a worthwhile educational process. There is no clear-cut answer. The point is that children find their way into groupings called programs because of classifications. Classifications may be the result of behavioral descriptions, but they take an obvious back seat when it is time for important decisions to be made. The label is primary.

The counter argument is dropping all labels in favor of "children who need special education." This grand experiment is doomed to failure. The heterogeneity of traditional groupings of behavior and learning is wide and difficult enough to deal with, without compounding the situation by cross-categorical grouping.

CONSEQUENCES OF NONCATEGORIZATION

Sanctioning noncategorization can result in a terrible mess. One of the more significant problems is that educators do not know who is handicapped anymore. The BEH was originated with a very clear mandate for the handicapped. When this mandate was given, a handicapped child was not handicapped because he was failing in school; he was failing in school because he was handicapped. We evaluated children because physicians, parents, teachers, psychologists, social workers, school nurses, etc., were astute enough to suspect that something was developmentally wrong with a child. A child did not have to fail in school for two years before being rated academically deficient enough to warrant special education programming. Not every child failing in school is handicapped, but in many places every child failing in school becomes a candidate for special education services and consequently is considered handicapped.

This is not terribly wrong in and of itself. Chronic school failure may result in genuine emotional disturbance. The problem is confusing children who fail in school with handicapped children. Conceptually, focus on the handicapped is primary both in terms of the federal government and in the minds of those associated with the inception of special education. Lumping together children who fail in school with truly handicapped children does an obvious disservice to both. This is most evident in learning disabilities, which is operationally defined by many as a discrepancy between ability and academic success, usually represented as low basic skill achievement. Many special education administrators are familiar with having to provide educational plans for children who score six months below grade level in reading on a standardized achievement test. These same administrators are fully aware that the categorically handicapped child may be shortchanged as the result of the glut of failing students. Many parents want extra help for their children and rightfully so. This is a commentary on regular education practices, not an admission of having given birth to a handicapped child. In some school systems 30% to 40% of the children are functioning below grade level. This is not an epidemiological survey of handicapping conditions but an indictment of educational practices in some school systems.

TRADITIONAL CATEGORIES AND CLASSIFICATIONS

An obvious way to short-circuit a possible large-scale abuse is to officially utilize traditional categories and classifications. If learning disabilities were really thought of as being a central nervous system disorder, a euphemism for brain damage or brain dysfunction, would parents and school personnel be so eager to tap special education services? Many parents want their children to be designated as special education students to be eligible for support services, which is usually aid in the resource room. Would these parents want their children labeled "handicapped" in order to receive those same services?

The confusion between school failure as evidenced by underachievement or inadequate acquisition of basic skills and having a genuine handicap is particularly potent in the realm of reading. Poor readers usually have even more difficulty with written expression and spelling. These deficits result in failure of a vast number of school tasks unless teachers are willing to task analyze and utilize the child's strengths in formulating teaching strategies. Unfortunately, many professionals use discrepancies in reading achievement as the sole indicator of a learning disability. This has contributed to the widespread and often erroneous use of the term *dyslexia.*

This is the classic case of school failure being translated into a disorder of the central nervous system. Literature abounds on the myriad, diagnosable, neurological concomitants of dyslexia, suggesting that its correlates are detectable prior to the introduction of written material to the child. We know the futility of after-the-fact assessment of reading disability. Children unable to read are referred for an evaluation; the evaluation is geared to finding children unable to read; the evaluator corroborates the referral agent's contention that the child is unable to read. In *Reading, Writing, and Speech Problems in Children* (W.W. Norton and Co., Inc., New York, 1937) Samuel Orton wrote:

> There are multiple causes for a delay in learning to read. Marked defects in vision may underlie such a difficulty. Defects of hearing have also been encountered which have led to poor auditory discrimination of words. General intellectual deficit is also a frequent cause of failure in reading. Emotional disturbances, such as antagonisms toward a particular teacher or general apathy toward all schoolwork, or lack of adequate disciplinary training at home, may all play their part in giving rise to a slow start in this academic need.

Another major area of concern is the confusion of discipline with emotional problems and the consequent overloading of special education responsibilities. School rule breaking, lack of willingness to perform school tasks, lack of homework production, and general attitudes of apathy and malaise are pervasive. It is apparent that many of these problems are being foisted on special educators under the guise of emotional problems. Discipline has never been the province of special education, but it has always been the province of regular education to ensure appropriate student participation in the school program. Furthermore, just as neurologically based dyslexia is not always an explanation for poor reading achievement, emotional disorder or disturbance is not always an explanation for lack of assigned homework or refusal to go to detention. Too often educators are trapped into instituting special education programming for discipline problems. Perhaps professionals would be more realistic in their assessments of these problems if special education programming was contingent on a traditional label such as "emotional disturbance."

Some parents demand special education services because their adolescents get Cs in trigonometry when the students may have received As in mathematics all through school. The suggestion here is not that they shouldn't receive help. All students should be helped in every way possible to ensure the highest possible achievement. However, special education should not be the programmatic mechanism for this help. Using it as such represents another defeat for the handicapped, for whom these services are a primary consideration. Special education must be reserved for the handicapped. This will not be the case as long as noncategorical approaches and general school failures result in having to deliver special education services. Special education is warranted for the mentally retarded, emotionally disturbed, truly learning disabled, blind, deaf, and physically impaired. It is not warranted for underachievement, discipline problems, and bad grades.

CONCLUSION

The crisis in the schools belongs to regular education. The fact that 37 states have passed some form of minimum competency testing for students in the last five years testifies to this. The back to the basics movement is no accident and no bandwagon but a well-documented need. Special education has been confused with being an answer to the problems of regular education. Special education, with its traditional classification system, would not be confused in this manner. In fact, the intent of PL 94-142 is such that special education will only be as good as regular education allows it to be. If educational practices for normal children are questionable, how can anyone expect educational practices for the abnormal to be better?

It is noteworthy that PL 94-142 maintains a traditional categorical approach in designating those eligible for benefits under the law. Classifications as presented in PL 94-142 will eliminate confusion between school failure and handicaps and will preserve the primary rights of the handicapped to special education services. This will also force regular education to solve its own problems, without looking outside itself for answers only to be found internally.

ABOUT THE AUTHOR

Laurence M. Lieberman *received his doctorate in special education for the neurologically impaired from Teachers College, Columbia University. From 1970 to 1973 he was the learning disabilities coordinator in the Bureau of Education for the Handicapped, U.S. Office of Education, Washington, D.C. He was the chairman of the Special Education Doctoral Program at Boston College from 1974 to 1978. Currently Dr. Lieberman is a consultant to numerous school systems in Massachusetts and throughout the United States. Requests for reprints should be addressed to him at 28 Sheffield Rd., Newtonville, Mass. 02160.*

Senator STAFFORD. Thank you very much, Ms. Rice. We appreciate your coming down here and assisting the subcommittee. I can assure you that the other members of the committee will also read the testimony, since they were not able to hear you deliver it to us, because of the multitudinous assignments that all of us in the Senate seem to inflict upon ourselves.

Ms. RICE. We understand that. Thank you very much.

Senator STAFFORD. I hope I will see you soon in Vermont, where I trust also it will be somewhat cooler than it is down here.

The next witness this morning will be Ms. Ruthann Saxman, of Alexandria, Va.

Welcome to the committee hearings. We will be glad to hear your testimony, which may either appear in full as we have before us and summarized by you, or you may read it into the record, whichever you prefer.

STATEMENT OF RUTHANN SAXMAN, CHAIRMAN, COMMITTEE ON THE HANDICAPPED, BLESSED SACRAMENT CHURCH, ALEXANDRIA, VA.

Ms. SAXMAN. Mr. Chairman and distinguished Senators of this subcommittee, my name is Ruthann Saxman, and I am appearing here today as chairman of the committee on the handicapped at Blessed Sacrament Church in Alexandria, Va.

I would like to thank the committee for inviting me to give my insights and comments on Public Law 94-142, for it is one of the most important laws to ever be passed for handicapped people, because it deals with the rights of a handicapped child to have a free and appropriate education.

One of the problems in the implementation of this act seems to be the position of educators that all handicapped children should be educated in public schools and the argument by parents that their children should, if already enrolled, continue to receive their education in private schools and have their education paid for.

Section 121a.550(b)(i) of the least restrictive environment clause clearly states:

> Each public agency shall insure to the maximum extent appropriate, handicapped children, including children in public or private institution 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.

I also take from that statement that handicapped children are to be educated for the most part in public schools. I have talked with many people in my work, and there came about a lot of discussion about how do you educate a blind child in a public school or how do you educate a deaf child in a public school. And our resolutions were that a blind child could be taught by means of running a tape of the entire class in the classroom, then giving the tape to that child to take home and study in the evening, just as you or I would study a book. For the deaf child whose problem is hearing, if the teacher would merely highlight the important points of her class on the blackboard, and the deaf child took notes, he too could go home that evening and study his notes.

So that where it says that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, it is not that these methods cannot be achieved satisfactorily; it is merely that the educators in our country have not taken the time to think up these ideas. And I cannot blame the educators for their position, because they have to be concerned about budgets and remaining eligible with the programs they have developed to get their Federal funding.

On the other hand, parents also have fears which need to be overcome, for they want the best for their child. For these very reasons, Public Law 94-142 is a law which must be implemented very carefully. For instance, people training to go into the field of teaching and education are not required to take any courses concerning the education of handicapped children. Anyone going into this field should, before they were able to be certified, have training in this area. The general public as a whole has no knowledge of what the needs of the handicapped person are and the needs of each handicapped student differ. And I also feel that the related services clause in the act should define more clearly, not the services involved, but who is responsible for each service; the parent or the child. This is something that at the present time is not defined clearly in the act.

I believe that for this act to be successful, individuals involved in the educational placement of these children should be required to have in-house training in the awareness of handicapping conditions so that these children will be appropriately placed and there should be the same in-house training for teachers in regular schools, transitional programs to prepare both handicapped and nonhandicapped students in relating to each other should be established, and conferences for joint planning between resource staff and regular and special education teachers should be started.

The other problem area—at least, so it seems to be in my home State of Pennsylvania—seems to be in the area of development of the IEP for each child. The law clearly states that this program is to be developed with a representative of the public agency, the child's teacher, one or both of the child's parents, and other individuals at the discretion of the parents or agency. At the present time in the State of Pennsylvania, the IEP's are sent home already developed for the parent, and all they request of the parent is that the parent sign them. We must not lose sight of the fact that these are decisions to be made jointly between parent and teacher. This joint effort is the only way that fears for both sides will be overcome.

The group that I chair is very involved in educating people about the handicapped world, its problems, its laws and its needs. On my committee serve an attorney, a social worker, a legislative aide, and a young woman with background in special education. I myself have 2 years toward my bachelor's degree in the education of socially disadvantaged and handicapped children. I put together the educational programs, my attorney handles the legal problems, my social worker helps fill out difficult forms, and the young woman and I are presently involved in developing a way to train our religious education teachers on how to deal with the handicapped child in the classroom.

But it is of the utmost importance that everyone get involved in this effort, including PTA's, church committees such as mine, and parent groups, so that we may all work together to achieve one common goal: A better understanding of each handicapped child's needs so that we can help them integrate themselves into our society and the education of educators in this area so that they can make sound, reasonable judgments concerning these children.

The handicapped do not choose to be pitied or treated special, but for some more than others, their road to independence takes longer. Only through both sides being aware and coming to an understanding of each other can this goal ever be achieved.

However, this goal will take time to achieve, and both sides must learn to be patient with each other to achieve this goal. It is not the law that needs changed but rather the attitudes of the people toward the handicapped. You as Senators can play a very important part in this area by setting examples and by recognizing handicapped people in your home States who are worthy of recognition.

That concludes my statement, and, once again, I would like to thank you for this opportunity.

[The prepared statement of Ms. Saxman follows:]

TESTIMONY ON P.L. 94-142

Mr. Chairman and distinguished Senators of this Committee, my name is Ruthann Saxman and I am appearing here today as Chairman of the Committee on the Handicapped at Blessed Sacrament Church in Alexandria, Virginia.

I would like to thank the Committee for inviting me to give my insights and comments on P.L. 94-142. This law is one of the most important laws to ever be passed for handicapped people. It is so important because it deals with the rights of a handicapped child to have a free and appropriate education. Unfortunately, one of the problems in the implementation of this Act has been the position of educators that all handicapped children should be educated in public schools and the argument by parents that their children should, if already enrolled, continue to receive their education in private schools and have their education paid for. Section 121a.550(b)(i) of the least restrictive environment clause clearly states:

> "Each public agency shall insure to the maximum extent appropriate, handicapped children, including children in public or private institution 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.."

In a sense one cannot blame the educators for their position. After all they have to be concerned about budgets, remaining eligible with the programs they have developed to get Federal funding. On the other hand, parents have fears which need to be overcome for they want the best for their child. For these very reasons, 94-142 is a law which must be implemented very carefully. For instance, (1) people training to go into the field of teaching and education are not required to take any courses concerning the education of handicapped children. With the implementation of this Act, anyone going into this field, should, before they are able to be certified, have training in this area; (2) The general public, as a whole, has no knowledge of what the needs of the handicapped are; (3) The needs of each handicapped student differ; and (4) The related services clause should define more clearly, not the services involved, but who is responsible for each service.

For this Act to be successful individuals involved in the educational placement of these children should be required to have in-house training in the awareness of handicapping conditions so that these children will be appropriately placed and there should be the same in-house training for teachers in regular schools, transitional programs to prepare both handicapped and non-handicapped students in relating to each other should be established, and conferences for joint planning between resource staff and regular and special education teachers should be started.

The other problem area seems to be in the area of development of the IEP for each child. The law clearly states that this program is to be developed with a representative of the public agency, the child's teacher, one or both of the child's parents and other individuals at the discretion of the parent or agency. At the present time these programs are merely being sent home already developed for the parents to sign. We must not loose sight of the fact that these are decisions to be made jointly between parent and teacher. This joint effort is the only way that fears will be overcome.

The group that I chair is very involved in educating the people about the handicapped world, its problems, its laws and its needs. On this Committee serve an attorney, a social worker, a legislative aide and a young woman with background in special education. I myself have two years toward's my Bachelor's degree in the Education of Socially Disadvantaged and Handicapped Children. I put together the educational programs, my attorney handles the legal problems, my social worker helps fill out difficult forms and the young woman with the background in special education advises me in that area. She and I are beginning to work on various projects together to aid our teachers in religious education on how to deal with a handicapped child or children in the classroom.

It is of the utmost importance that everyone get involved in this effort including PTA's, church committees such as mine and parent groups so that we may all work together to achieve one common goal: A better understanding of each handicapped child's needs so that we can help them integrate themselves into our society and the education of educators in this area so that they can make sound, reasonable judgments concerning these children.

The handicapped do not choose to be pitied or treated special but, for some more than others, the road to independence takes longer. Only through both sides being aware and coming to an understanding of each other can this goal ever be achieved. However, this goal will take time to achieve and both sides must learn to be patient with each other to achieve this goal. It is not the law that needs changed but rather the attitudes of the people towards the handicapped. You, as Senators, can be instrumental in this area by setting examples and seeing to it that handicapped people in your State worthy of recognition are recognized.

Thank you for this opportunity. That concludes my statement. Should you have any questions I shall be happy to remain to answer them.

NOTE.—Response to the written question subsequently submitted to Ms. Saxman appears at the conclusion of the printed word on p. 616.

Senator STAFFORD. Well, the subcommittee certainly thanks you, Ms. Saxman, for helping us today. As I have told the others, your testimony will be read by those who were not able to be here personally, and out of all of these hearings that we have held in this Congress, I am sure we are going to make some corrections as we see them in the various laws that we think help the handicapped in the next Congress, which I am sure Senator Randolph and I will both be a part of, since neither of us faces election this year.

We thank you all, and the Chair will announce, in terminating this meeting that we are going to meet next on Thursday, July 31, for those of you who care to come—we hope you will. We will start the meeting promptly at 9:30, and it will be in room 5110 of this building, which is up on the fifth floor. And, reversing the order of precedence of today, Senator Stafford will be presiding during the first half and Senator Randolph during the second part of that meeting.

So the subcommittee stands in adjournment until 9:30 on Thursday at room 5110.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned, to reconvene Thursday, July 31, 1980, at 9:30 a.m.]

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

THURSDAY, JULY 31, 1980

U.S. Senate,
Subcommittee on the Handicapped,
Committee on Labor and Human Resources,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 5110, Dirksen Senate Office Building, Senator Robert T. Stafford presiding pro tempore.

Present: Senator Stafford.

Staff present: Patricia Forsythe, staff director.

Opening Statement of Senator Stafford

Senator **Stafford**. The Subcommittee on the Handicapped will come to order.

Good morning, and welcome to the 14th oversight hearing by the Subcommittee on the Handicapped during the 96th Congress. As you know, 11 of these hearings have dealt specifically with implementation of Public Law 94-142, the education for all handicapped children, as does this hearing today.

When we started these oversight hearings in 1979, we announced what might be called a reversal of the usual order of witnesses before congressional committees. That is, instead of hearing administration witnesses first and then hearing other witnesses present their comments on recommendations by the administration, we thought a more productive first step would be to hear first from those individuals—parents, teachers, local and State administrators, and representatives of national organizations serving the handicapped—who, through their personal experiences in working with the law, could give us valuable insight into how the law is actually working and into those areas where their first hand experiences indicated it might be improved.

The second step would then be to hear from administration witnesses and learn of their thinking on the earlier testimony as well as on how necessary improvements in the law could best be effected. By combining the experiences of the administration and the experiences of those individuals who are most intimately involved with the implementation of the law and with those persons the law is designed to benefit, it is our hope that we will be able to move much closer to our national commitment to provide a free and appropriate public education to our Nation's handicapped children.

Today's hearing will complete the important first step of the subcommittee's oversight hearings. With the addition of the testimony we are to hear this morning and the testimony presented to the subcommittee in our previous hearings in this Congress, we will have amassed an impressive body of information concerning the implementation of Public Law 94-142—on the benefits it has already provided to thousands of our handicapped children; on the areas in which improvement is needed; suggestions as to how these improvements can be made. At our next hearing we expect to hear testimony from administration witnesses; we will hear the views of the people charged with administering the law at the national level. It is our hope that those departmental witnesses who appear before us will have had an opportunity to read the testimony presented in previous hearings and let us have the benefit of their comments on the concerns and suggestions voiced by previous witnesses, as well as providing us with their own views on how Public Law 94-142 is working and what, in their opinion, can and should be done to improve the law.

The Chair will note in starting that we will be interrupted at 10 o'clock by a rollcall or more rollcalls back to back in the Senate. But we will go as far as we can up to that time and we will resume again as soon as the rollcalls are over.

The Chair would also ask that witnesses, as far as possible, summarize their testimony in 5 minutes, understanding that, without objection, the Chair will place full statements that have been provided to us in the record as if delivered.

With no further ado, the Chair will invite Mr. Albert Shanker, president of the American Federation of Teachers, to take the witness stand. And having come in early this morning in heavy traffic, I failed to recognize you, Mr. Shanker, in the elevator because I was still cursing the traffic that I was in for the last hour.

We are very glad to have you and appreciate your coming down.

STATEMENT OF ALBERT SHANKER, PRESIDENT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, ACCOMPANIED BY GREG HUMPHREY AND MARILYN RAUTH

Mr. SHANKER. Thank you, Mr. Chairman.

I have with me two of my assistants, Greg Humphrey, who works with the legislation generally, and Marilyn Rauth, who is especially qualified in this area of education of the handicapped.

I have submitted written testimony, and I am just going to rather quickly underline a number of the points made in that testimony.

I am Albert Shanker, president of the American Federation of Teachers, AFL-CIO, and we represent more than 568,000 teachers, paraprofessionals, members in higher education, health care professions, and civil servants.

I can say that this topic is not one of mere academic interest to our members. At our annual convention and at State conventions of our teachers throughout the country, there is not only a great deal of interest but, in many cases, so much frustration in terms of the application of this piece of legislation that on a number of occasions our members have introduced resolutions from the floor calling for a moratorium on the implementation of this act, or calling for its reconsideration. It has taken considerable effort to urge restraint on the part of our delegates and members at these meetings because the implementation of this legislation has caused very serious problems and difficulties within the schools.

Now, before us, and particularly before this committee, is the question of what should be our next step toward institutionalizing the right of handicapped persons to a free, appropriate education. Our members continue to question how a law, which is meant to help assure children's rights, can result in the following:

Less instructional time for each child;

Staffs that are ill prepared to work effectively with handicapped children;

Children being placed in settings with no resources or materials adapted to their special needs;

An inability to remove handicapped students from the premises as rapidly as any other child in an emergency; and

An apparent dismantling of special education, promulgated not in the interest of individual children, but rather in the interest of stretching ever-shrinking dollars.

The only way we believe that Public Law 94-142 will ever work in its present form is with a massive infusion of additional Federal funds totaling several billions of dollars.

We, in this testimony, point a good deal to the research that was done by BEH. We feel that quite a bit of it is inadequate; that, in a sense, the research was kind of self-evaluation of the agency. We point to some studies that have not seen the light of day or been given adequate publicity that indicate some of the problems, and we urge you to take a close look at those studies that seem to have been set aside.

We believe that empirical studies that are critical of the effects of Public Law 94-142 or its implementation were suppressed by BEH and that studies that have the potential to produce such results are being assiduously avoided. We hope that this committee will look into this matter and insist that the research orientation of the new Office of Special Education be different. We are willing to put our reports of serious problems growing out of this legislation in the schools to the test of empirical research and feel that the Office of Special Education must do the same.

It is time that we discuss our problems and our options. At the root of all these problems is money. With the infusion of several billions more Federal dollars, Public Law 94-142 could be made to work.

The AFT would make this option its first choice because it could not help but foster the goal of an appropriate education for all handicapped children. If, on the other hand, Congress feels an increased appropriation of this amount of several billion dollars for Public Law 94-142 would not suit the mood of the country, it cannot turn its back on State and local governments who face this same public sentiment.

I come from New York State and that State alone, the education department really, recently estimated that the cost of educating children with handicapping conditions for the 1980-81 school year at close to $1 billion, with the State contributing $415 million, local districts contributing $472 million and the Federal Government contributing $60 million. Again, we offer the reminder that if the mandate were fully met, those costs would have to be much higher. I am very much involved with the problems of New York City. I have been since the great crisis of 1975 when we helped to provide some bailout money to the tune of $1.3 billion in teacher pension funds. We had hoped that school costs could be reduced as enrollments declined. However, we have managed so far to find over 70,000 handicapped youngsters as a result of a court decision, and the education of these youngsters will cost approximately four times the amount of the education of regular youngsters within the school.

The effect of that is that we have really located 280,000 additional youngsters in terms of costs. Just think of that in terms of the problems of a city like New York. We are a national organization. We represent cities like Detroit, San Francisco, Cleveland, Chicago and Washington, D.C. I do not have to say that all of these cities are on the brink of bankruptcy and their school systems are faced with massive layoffs. At the same time, to be faced with the obligation of providing all these additional costs is disastrous in terms of education and your urban policy within this country.

Now, if the Federal Government is not prepared to provide life-giving dollars for this mandate, several serious consequences are possible. First, we fear that the number of disabled children—whose education is actually being diminished as a result of some Public Law 94-142 provisions—will continue to grow to alarming proportions. They will lose many benefits won within special education over the last three-quarters of the century, ironically in the name of their own civil rights.

As courts expand their interpretations of an already broad legislative mandate, schools will either be unable to meet the costs or will be forced to draw from regular operating budgets. Arguments will be made that services to handicapped children need only match those offered to nonhandicapped students.

Within the current financial trend, both regular and special education could sink to such levels that public education itself could be undermined.

I should say that the more we take away from one group of students and give to another group and create the kind of community conflict and deterioration of education, the more we foster support for all types of schemes to provide support for nonpublic education providing for further erosion.

If Congress cannot back up this mandate with adequate resources, it should be exploring ways of preserving its intent and perhaps cutting back on unnecessary bureaucratic processes.

To begin this, we believe that the IEP requirement should be eliminated, as it has resulted primarily in a reduction of child-teacher contact time. The cost of this process in terms of education dollars and staff and parental time is in no way justified by the research reports showing it surrounded by confusion and resentment. It is surrounded by a good deal of confusion and resentment. More importantly, it has been shown not only to be basically unproductive but even detrimental in a number of ways.

We would hope that this requirement would be suspended and that studies would be undertaken to explore reasonable means of assuring individualized education programs.

At the same time, some steps must be taken to prevent least-restrictive environment placements from being used as a cost-saving device without insuring that the placement is truly in the best interest of the child; that the receiving teacher is adequately trained to work effectively with the child; and that the receiving classroom is adequately prepared and equipped. Inservice training should be required by law for teachers and other school personnel assuming new roles and responsibilities as a result of least-restrictive environment placements. This training must be completed prior to placement.

Finally, we call your attention to a glaring loophole in Public Law 94-142. Although deadlines are affixed to most of its provisions, no mention is made of a time limit that cannot be exceeded between the time a child is referred for evaluation and the time that evaluation actually takes place. Not all States have such time restrictions and, in those that do, they are rarely enforced. As a result, large numbers of children are lost in the limbo of referral waiting lists.

In conclusion, we urge Congress to support the rights of handicapped persons espoused in section 504 of the Rehabilitation Act of 1973 by increasing appropriations under Public Law 94-142 to several billion dollars. We recommend close examination of all provisions of Public Law 94-142 and their effects on handicapped students, nonhandicapped students, school and local and State finances, and public education itself.

We reject the idea that we should continue to live with the shortcomings of this legislation and that somehow it is sacrosanct and that we need another 2½ or 5 or 10 or 25 years of experience before changes are made. Major changes should be made. That handicapped persons are entitled to a free, appropriate public education need not be utopian or theoretical. It should be fact. The theoretical premises that must be scrutinized and experimented with are the avenues by which we can best accomplish this goal. Responsible action will resolve emerging problems; neglect could make our present problems seem trivial.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Shanker and additional information supplied follow:]

TESTIMONY OF
ALBERT SHANKER, PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO SENATE SUBCOMMITTEE ON THE HANDICAPPED
ON P.L. 94-142

July 31, 1980

I am Albert Shanker, president of the American Federation of Teachers, AFL-CIO. On behalf of the 550,000 teachers, paraprofessionals and other members of the AFT, I would like to thank you for this opportunity to offer our views before this Committee on P.L. 94-142, the Education for All Handicapped Children Act.

Since its original support of passage of P.L. 94-142 in 1975, the AFT has often reaffirmed its belief in the goals of this legislation, namely the equal right of all handicapped persons to a free appropriate public education. On the other hand, we have continuously expressed reservations about certain aspects of this law and its regulations where we felt their effect on children to be negative. It is probable that in the course of these hearings, you will hear conflicting stories -- one side extolling the virtues of P.L. 94-142, the other its vices. Such a debate is healthy unless, of course, one of these groups is ultimately judged exclusively right or wrong. Either judgment, in our opinion, is irresponsible. Yet, failure to hold P.L. 94-142 up to careful scrutiny could result in exactly this, an assessment that the law is all good or all bad. Inaction on the part of Congress in resolving the problems of P.L. 94-142 would be as grave a mistake as any efforts undertaken to negate its intent.

You no doubt are aware of the position espoused by some representatives of the former Bureau of Education for the Handicapped, as well as others, that despite its faults, P.L. 94-142 must not be opened to change for fear that this might occasion the loss of all its key provisions. Incumbent in this philosophy, whether it is conscious or not, is a belief that the law itself -- and not its goal -- is sacrosanct. It allows the well-being of any number of children to be sacrificed to what is supposed by this group of theorists, to be the future "common good." Our members work in day-to-day classroom contact with the individual children upon whom the law impacts injuriously. They have little understanding of proponents of the above philosophy who counsel that there inevitably are bugs in any new system which time should be allowed the chance to work out. Originally it was argued that two to three years should be allowed to elapse before further government intervention. Now that we are two and a half years into P.L. 94-142's implementation, a further extension of time needed for the law to begin to work to significantly benefit children and education is requested of us. How long are we to wait before considering how we might better adapt P.L. 94-142 to accomplish its stated goals -- five, ten, twenty years or more? We will shortly review why neither our members, nor hopefully this Committee, can afford or indeed condone the disinterested and dispassionate viewpoint outlined above.

Before doing so, we would like to mention a second stance on P.L. 94-142, which would be equally nonsensical. This amounts to abolishing the protections provided by P.L. 94-142 altogether and returning to the status quo prior to its implementation. While we believe that the state of the art and conditions of special education prior to 1975 were evolving impressively, we cannot ignore the abuses that still existed. These included placement in special education for the purpose of segregation, inappropriate evaluation methods, dead-end tracking and misdirection of funds. Additionally, we might mention the large numbers of handicapped children who were either turned away from the schools entirely or placed in classrooms only to be ignored. It seems clear that, if nothing else, P.L. 94-142 has exposed the seamier side of special education to public scrutiny. For this reason, we feel a positive purpose has been served. We make this judgment on the basis that only if problems are allowed to surface can they be dealt with forthrightly and solutions found.

Looming before us, and particularly before this Committee, is the question of what should be our next step toward institutionalizing the right of handicapped persons to a free appropriate public education.

There are some who would have you believe that this indeed is what is happening in the schools as a result of P.L. 94-142, with only minor difficulties. Yet, reports from the field and conferences we have held with teachers, paraprofessionals and other school employees in urban, suburban and rural school systems throughout the country tell another story: it is one of confusion, abuse and massive non-compliance with law in relation to Section 504 of the Rehabilitation Act and P.L. 94-142. To an even greater extent than teacher rights issues, although these are just as important, our members question how a law which is meant to help assure children's rights can result in the following:

- less instructional time for each child;
- placement of children in new settings before staff has been trained to work effectively with them;
- children being in settings with no resources or materials adapted to their needs;
- inability to remove handicapped students from the premises as rapidly as any other child in an emergency.
- parental loss of confidence in the schools, in some instances, as a result of educators asking them for their opinions on their child's placement and program;
- an apparent dismantling of special education promulgated not in the interest of individual children but rather in the interest of stretching ever-shrinking dollars.

These are just a few of AFT members' concerns which are catalogued in more detail in our testimony on P.L. 94-142 given before the House Subcommittee on Select Education on October 9 of last year. As nothing has changed in the situation in the schools depicted in that testimony, we hope you will consider it as an addendum to these remarks. A copy is attached.

Although P.L. 94-142 has had some positive effects, several of its provisions have done great harm and must be revised or eliminated immediately. We maintain, moreover, that the only way P.L. 94-142 will ever work in its present form is with a massive infusion of additional federal funds totaling several billions of dollars.

Evidence of this can and will be pieced together from various sources. But first let us raise a concern about research on P.L. 94-142 conducted by BEH which you may want to take steps to correct in the new Office of Special Education. From our perspective, it appears that BEH was increasingly restrictive not only in the type of research it allowed on implementation of P.L. 94-142 but even more so in the use and exposure of any data which did not support its basic premise that with minor exceptions, implementation of P.L. 94-142 is progressing smoothly with great benefits accruing to all concerned. The hard data, we believe, which would support or negate our reports were not sought by BEH which, to the best of our knowledge, has consistently avoided research on school, classroom and student outcomes as affected by aspects of the P.L. 94-142 mandate. Even its data collection from the states on monitoring efforts, enforcement and compliance is less than adequate as recently reported by the Education Advocates Coalition made up of 13 advocacy organizations. To date, for example, we have not been able to get data on the number of teachers and other staff who have received inservice education related to their responsibilities under this legislation and their knowledge of special education. Such data, we believe, would prove that inservice training is so minimal as to have the law potentially result in a dismantling of special education because educators have not been trained adequately, or in most instances, at all, to assume new roles required of them as a consequence of P.L. 94-142. Instead, BEH offered us figures only on numbers of persons "projected" by states to be targeted for training and dissemination activities. Most SEAs will tell you that they were ill-equipped to assume their 94-142 monitoring and enforcement function and consequently have been forced to give inservice training a low priority. Misgivings about the lack of inservice education, as well as other problems associated with P.L. 94-142, are expressed in a report entitled, "A Study of Teacher Concerns with P.L. 94-142," completed under the auspices of BEH in 1978. Again, to the best of our knowledge, the findings of this report and its five major recommendations of steps BEH could take (see Appendix 1) to alleviate teacher concerns were buried and ignored. Another report, "Case Study of the Implementation of P.L. 94-142," done by Education Turnkey Systems for BEH and dated May 31, 1979 was mysteriously reported in the press (e.g., Education Daily) as finding that P.L. 94-142's implementation is progressing nicely. Yet, a close reading reveals the following facts:

- "In all sites, moderate to large numbers of students had to wait for assessment and placement because of the large amount of staff time needed for 'processing' students."
- "In most sites, particularly during the school year 1978-79, regular education teachers became more hesitant to refer students with suspected learning problems, because of the 'processing' burden or because of their perception that such children would not be placed before the end of the school year."
- "During the 1978-79 school year...virtually all IEPs written for transition students (e.g., those transferring from middle schools to high schools) had to be revised when the students moved; these revisions involved large numbers of teachers and other staff."
- "In most instances, parental involvement in IEP meetings is limited to attendance and approval, with limited interaction concerning the development of specific instructional programs."
- "Many parents who attend central office or building meetings feel intimidated by the presence of large numbers of LEA staff or feel the process is too complex."
- "The IEP meeting has become essentially a formal mechanism for complying with the law rather than for involving and informing parents."
- "In sites where formal due process hearings were conducted, the impact of the hearings upon the LEA staff involved and, to a lesser extent, upon the parents was traumatic, regardless of the outcome. The threat of hearings generated an enormous amount of paperwork and documentation of the special education process, as staff developed coping strategies to protect themselves from legal reprisals."

Implicit in the tone of these findings is an indication that although a bureaucratic process is clumsily being put in place, proof of its positive effects on education is less than obvious.

Finally, let us mention a third BEH study which we feel it most important that this Committee have the opportunity to examine carefully. Its original title was "Local Implementation of P.L. 94-142." This was a four-year study designed as an in-depth examination of local school systems and incidentally is, we believe, the only longitudinal study of the law's implementation in public schools. In April of this year the first report of findings was submitted to BEH describing the status of implementation in 22 LEAs in nine states during the 1978-79 school year. In the draft report which we were asked to review last winter, we saw that the situation we have reported in the schools was confirmed. Yet here again the data has not been released by BEH or OSE. We hope that it will be cited extensively and copies provided this Committee during these hearings. If not, serious questions should be raised as to why this evidence has not been reported. Our suspicions concerning the fate of this study's findings were raised as a result of several factors. It was said that submission of the draft report in December, 1979 raised a flurry of concern in some quarters at BEH because it exposed the weaker side of the law and that one remedy suggested for diluting its effect would be to rename it, "Case Studies of Implementation of P.L. 94-142 in Selected Sites." The difference between this and what was intended to be a fairly generalizable study of "Local Implementation of P.L. 94-142" is not difficult to see. In addition, anyone who reads the body of the report carefully will see that the summaries and conclusions have been muted somewhat, although they too reveal problems. The study was carried out with great integrity but it would seem that these researchers were aware that the "kid glove approach" would be required to keep their findings from being totally buried at BEH.

Consequently, it appears that serious problems have arisen from the fact that BEH has been responsible for both implementation and evaluation of P.L. 94-142, given that the agency has persistently clung to the position that the law in its present form must be made to work at all costs and that any evidence to the contrary endangers the rights of handicapped persons. It is our understanding, by the way, that the focus of the longitudinal study mentioned above has now been changed. Future studies are to be descriptive rather than analytical or interpretive. Instead of a continuation of in-depth studies of LEA implementation of P.L. 94-142, we will get technical assistance documents on "boundary crossers," which is a fine idea few schools will be able to afford, and service delivery related to medical/educational needs. For the most part, BEH sought descriptive data which it evaluated for itself. The evaluator, we suggest, has been much less than objective.

We believe that empirical studies critical of the effects of P.L. 94-142 or its implementation were suppressed by BEH and that studies which have the potential to produce such results are being assiduously avoided. We hope that this Committee will look into this matter and insist that the research orientation of the new Office of Special Education be different. We are willing to put our reports of serious problems growing out of 94-142 in the schools to the test of empirical research and feel OSE must do the same.

Finally, we must discuss our problems and our options. At the root of all these problems is money. With the infusion of several billions more federal dollars to support continuous inservice training; appropriate support personnel and services; adequate equipment, resources and materials, with adaptations when necessary; additional record-keeping, planning and reporting time; additional staff to handle the administration of the law and so forth, P.L. 94-142 could be made to work (see pp. 4-5 of attached House testimony for details of what would be required to make P.L. 94-142 operate effectively in the schools). The AFT would make this option its first choice because it could not help but foster the goal of an appropriate education for all handicapped children. If, on the other hand, Congress feels an increased appropriation of several billion dollars for P.L. 94-142 would not suit the mood of the country, it cannot turn its back on state and local governments who face this same public sentiment. Let us consider the prospects of Congress ignoring the serious financial restraints the SEAs and LEAs are already operating under.

The **general** financial condition of the schools, particularly our urban schools where the majority of handicapped students are, is well-known. Frequent school closings, loss of tax bases, rising inflation, mismanagement of funds, and local governments on the verge of bankruptcy all contribute to weakening the institution of public education. As reported by the National School Boards Association in "A Survey of Special Education Costs in Local School Districts," released in June, 1979:

- Local school district budgets for special education are rising at the rate of 14 percent per year, or twice as rapidly as instructional and operating budgets (7 and 8 percent per year);
- The cost of placing a handicapped student in a non-residential setting outside the district's facilities is four times the average per pupil expenditure for all students and in a residential setting is eight times the average per pupil expenditure;
- The cost ratio between education of the handicapped and so-called regular education is at least two to one nationwide and this is likely to be a conservative estimate because districts often do not calculate all costs, such as transportation, related to education of the handicapped;
- Out of an average per pupil cost of $3,638 annually for handicapped students, the federal government will be contributing only slightly over $200 per child;
- The nationwide cost of special education for the 1978-79 school year was projected to be $5 billion--if one adds the need for better services to reach compliance and the costs of inflation, you can get some idea of the financial resources which would be required to give P.L. 94-142 a chance to work.

In New York State alone, the education department recently estimated the cost of educating children with handicapping conditions for the 1980-81 school year at close to $1 billion, with the state contributing $415 million, local districts $472 million and the federal government $60 million. Again, we offer the reminder that if the mandate were fully met, these costs would have to be much higher. In January, 1980, the Institute for Research on Educational Finance and Governance at Stanford University published a report on "Policy Effects of Special Education Funding Formulas" in which the major reasons for the greater costs of educating handicapped children are outlined as:

- Additional and related special education services--the majority of handicapped children receive special education programs and services in addition to being enrolled in a regular education program. As a result, the total cost of their education includes both the cost of the regular program and the cost of special education programs and services.
- Special classes--with smaller student/teacher ratios, the bulk of the classroom costs (i.e., teacher salary and benefits, operation and maintenance expenses) do not vary with the number of students in the room, which greatly increases the cost per student.
- Multiple special education services.
- Residential programs--not only are educational services needed, but a complete set of housing, feeding, self-help skill training, vocational and recreational services may also be required, and it is not uncommon for the annual cost per student in these programs to reach $25,000.
- Identification, assessment and educational planning--this is often a lengthy and expensive step not required for non-handicapped children.
- Newly mandated procedures--child-find; IEP development; due process; local planning, record-keeping, and reporting requirements involve additional costs not required for non-handicapped children.
- Additional staff support and training--specialized staff to provide direct and indirect assistance to handicapped children, then parents, teachers and other students and school personnel and to conduct inservice training are additional cost factors.
- Greater age span--P.L. 94-142 and similar state legislation mandate special education programs for children ages three to twenty-one, a larger age range than regular education.

In enumerating these costs, our purpose is certainly not to begrudge these additional responsibilities but to emphasize the significant expenditures required in special education, over and above regular education. New York City's fiscal crisis is by now legendary. A federal district court ruled in Lora vs. Board of Education that the city's financial plight, however, provides no excuse for violating the statutory and constitutional rights of emotionally disturbed students. In discussing this case, a recent American School Board Journal article reports:

> "The court objected to the school system procedures for placing such students in its 'special day schools,' which are largely segregated. Lack of money is no reason for these practices, even though the court acknowledged '*the inescapable fact that to spend substantially more on this pupil population may well necessitate a sacrifice in services now afforded children in the rest of the system*' /emphasis added/. The price tag that comes with the court's decree has begun to mount, and this includes notifying the children's parents and the New York City school system's entire professional staff of students' rights, conducting an inservice training program in the 'bias free mainstreaming' of these children, and providing an advocacy or ombudsman system for affected parents and children.

In addition to this type of court decree and others which, for example, require school systems to provide year-round education for handicapped students when needed, schools' non-compliance with P.L. 94-142 is resulting in numerous suits being filed against them which will likely mean the loss of added billions of dollars. One city school system in New York State is being sued for program deficiencies on behalf of 65 trainable mentally retarded youngsters, and the award being sought is $1 million in compensatory damages and $3 million in punitive damages. In urban areas particularly, excessive amounts of staff time are being spent in court-related activities. Such court cases will continue to deplete schools' already meager resources. Compounding funding problems is the fact that the elimination of state revenue sharing has had the effect of reducing federal aid to education by somewhere in the neighborhood of $750 million. In some states, such as Pennsylvania, half of the funds received through state revenue sharing were used for education of the handicapped. Because of this, we now not only have no growth in the federal contribution to special education, we actually have a reduction.

This Committee surely knows the irrationality of expecting local and state school systems in today's economy to come up with billions of dollars in new monies to support widely expanded services in special education. We certainly wish as much as anyone that it could be done. But holding out false hopes and failing to address rights of handicapped students realistically would, we feel, be a cruel hoax. To the chagrin of theorists and social thinkers through the ages, life does not always coincide with reason or dreams. Nor has any institution been changed overnight. If the federal government is not prepared to rush substantial life-giving dollars to the P.L. 94-142 mandate, several serious consequences are possible. First, we fear that the number of disabled children whose education is actually being diminished as a result of some 94-142 provisions will continue to grow to alarming proportions. They will lose many benefits won within special education over the last three-quarters of a century, ironically in the name of their own civil rights (see attached House testimony, October, 1979 for specific examples). As courts expand their interpretations of an already broad legislative mandate, schools will either be unable to meet the costs or will be forced to draw from regular operating budgets. Arguments will made made that services to handicapped children need only match those offered non-handicapped. Within the current financial trend, both regular and special education could sink to such levels that public education itself could be undermined.

To those who do not want to address problems in the context of the real world of the schools, who prefer to let the pot simmer, we offer reminders that a backlash could seriously damage rights of the handicapped. That the simmering pot could explode is evidenced by a New York Times editorial on July 21, 1980 entitled "Going Wrong with Handicapped Rights" (see Appendix 2). It maintains that in relation to P.L. 94-142 the federal government has promised more than it can deliver and that since states and cities must bear the major portion of the cost, they should be allowed to balance the needs of the handicapped against the compelling claims of all children. It goes on to say:

> "It is only right to remedy a pattern of neglect. But is is perverse for Congress and, the courts to define an 'appropriate' education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.

If the New York Times is prepared to take this stance, consider the emotions and frustrations fermenting throughout the country. It is this situation and its likely reaction which makes us so strongly oppose resistance to opening P.L. 94-142 to close examination. If Congress cannot back up this mandate with adequate resources, it should be exploring ways of preserving its intent and perhaps cutting back on unnecessary bureaucratic processes. Rights need guarantees but guarantees must not be allowed to masquerade for rights. We feel it is safe to open P.L. 94-142 because of the back-up of Section 504 and precedents set through various judicial decisions. To begin with there should be at least a six-month moratorium on penalties for non-compliance with P.L. 94-142 to allow SEAs and LEAs to report the true impact of this legislation. Documentation could be given as to exactly what the schools had been able to accomplish with their present resources and what requirements they had not been able to meet and why. Out of such an examination could come a synthesis which would provide assurances of rights for handicapped and non-handicapped as well which could be implemented in the schools without undermining the very foundations of education. Many forces are operating in the special education arena -- often with conflicting purposes. Only Congress has the ability to remove emerging roadblocks to progress and establish sensible means of achieving quality education for handicapped and non-handicapped students alike.

To begin this process, we believe the IEP requirement should be eliminated as it has resulted primarily in a reduction of child-teacher contact time. The cost of this process in terms of education dollars and staff and parental time is in no way justified by the research reports showing it surrounded by confusion and resentment. More importantly, it has been shown not only to be basically unproductive but even detrimental to children's education. In general, the only parents who seem to benefit from involvement in the IEP process were those who always have actively pursued their rights in the school system. In suspending this requirement, studies might be undertaken to explore reasonable means of assuring individualized educational programs.

At the same time, some steps must be taken to prevent least restrictive environment placements from being used as a cost-saving device without insuring that the placement is truly in the best interest of the child, that the receiving teacher is adequately trained to work effectively with the child and that the receiving classroom is adequately prepared and equippped. Inservice training should be required by law for teachers and other school personnel assuming new roles and responsibilities as a result of least restrictive environment (LRE) placements. This training must be completed prior to placement. The many abuses of LRE placements are indicative of the fact that this concept has little chance of working unless the law is expanded to detail the circumstances under which a less restrictive placement is appropriate. We refer you to pp. 9-10 of the attached House testimony for suggestions on what such guidelines might entail. Furthermore, much more research is needed on how the least restrictive environment concept is being implemented in schools throughout the country and the impact this is having on both handicapped and non-handicapped children.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt that neither the parents or LEA have acted in the best interest of the child, nor can they be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

Finally, we call your attention to a glaring loophole in P.L. 94-142. Although deadlines are affixed to most of its provisions, no mention is made of a time limit which cannot be exceeded between the time a child is referred for evaluation and the time that evaluation actually takes place. Not all states have such time restrictions, and in those that do, they are rarely enforced. As a result, large numbers of children are lost in the limbo of referral waiting lists.

In conclusion, we urge Congress to support the rights of handicapped persons espoused in Section 504 of the Rehabilitation Act lf 1973 by increasing appropriations under P.L. 94-142 to several billion dollars. We recommend close examination of all provisions of P.L. 94-142 and their effects on handicapped students, non-handicapped students, school and local and state finances, and public education itself. A utopian outlook which makes no attempt to find realistic means of plugging theory into actuality must necessarily collapse in upon itself. That handicapped persons are entitled to a free appropriate public education need not be utopian or theoretical. It should be fact. The theoretical premises which must be scrutinized and experimented with are the avenues by which we can best accomplish this goal. Responsible action will resolve emerging problems; neglect could make our present problems seem trivial.

TESTIMONY OF
WALTER TICE, VICE PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO HOUSE SUBCOMMITTEE ON SELECT EDUCATION
ON P.L. 94-142

10/9/79

I am Walter Tice, a classroom teacher in Yonkers, New York and vice president of the American Federation of Teachers, AFL-CIO. On behalf of the 520,000 teachers, paraprofessionals and other education personnel who are members of AFT, I would like to thank you for the opportunity to offer our views before this Committee on P.L. 94-142, The Education for All Handicapped Children Act.

Because we believe strongly in the right of all handicapped persons to a free appropriate public education, we supported passage of P.L. 94-142 in 1975. Yet, reservations we expressed at that time about certain aspects of this law have proven to be well-founded. We would like to use this opportunity to point out how several sections of the law designed to protect handicapped student's rights in reality result in just the opposite.

The root problem underlying the negative effects P.L. 94-142 has had is insufficient funding. If there were billions of dollars available to the schools through this legislation, problems arising from various requirements of the law would be overcome. But obviously this is not the case. In its "Survey of Special Education Costs in Local School Districts: An Assessment of the Local Impact of the Education for All Handicapped Children Act," the National School Boards Association in June, 1979 reported that local school district budgets for special education are rising by 14 percent a year as compared to only a 7 percent per year raise in the instructional and operating budgets. The Committee is no doubt aware that many school systems were besieged with severe financial problems prior to implementation of P.L. 94-142. Likewise, you know the public mood is one of maintaining or cutting back on spending, including education dollars, at both the state and local levels. This leaves most school systems with one choice — new monies needed for special education must come, at least partially, from the regular instructional or operating budget. These budgets, especially in urban areas where the majority of handicapped students are and where special education costs are the greatest, in many cases were already pared to the bone.

While the annual per pupil expenditure for regular education in FY 1980 will average $1,819, the same for handicapped pupils is $3,638. The excess cost contribution to be made by the federal government in fiscal 1980 will be $218 per child or slightly less. This leaves the LEA to find, on the average, an extra $1600 per handicapped student. These averages don't take into consideration the added costs of due process hearings, transportation, and additional staff time.

Here we want to point out very clearly that we are not suggesting that full educational services as mandated by P.L. 94-142 should be withdrawn from handicapped persons. On the contrary, we want to maintain such services but eliminate requirements which serve to diminish the quality of education provided both handicapped and non-handicapped students.

As you will see from the policy resolution attached which was passed at our 1979 convention, the 2500 delegates who attended called for modifications in P.L. 94-142 which would first provide adequate federal monies to meet the new mandate; second, eliminate the IEP process which has only resulted in further reducing child-teacher contact time; and third, prevent least restrictive environment placements from being used as a cost-saving device without insuring that the receiving teacher is adequately trained or informed or the receiving classroom adequately prepared and equipped. We would like to expand on these last two problems.

IEP

A 1978 AFT convention resolution calls for legislation that will remove the "onerous mandate" of individualized education programs and "allow teachers, as professionals, to plan appropriate educational activities for the children in their classes." Does this mean teachers do not want to teach handicapped children or that they do not want to individualize instruction or that they do not want parents to know whether their children are receiving appropriate services? Of course not. The IEP is a very fine sounding proposal which looks nice on paper but when actually implemented in the schools becomes a nightmarish disaster.

If you so desired, we could submit an extensive list of problems associated with development of IEPs. But let us refer you to the IEP section in the "Case Study of the Implementation of P.L. 94-142" prepared for BEH by Charles L. Blascke at Education Turnkey Systems, Inc. This study reported that IEPs for the most part are developed around learning activities which can be most easily provided; the time teachers spend writing IEPs is significant, as is the time the teacher spends in revising the IEP when, as is often the case, the teacher who implements the IEP is not the one who wrote it; parental involvement in most instances is limited to attendance and approval, with little interaction on the development of specific instructional programs; many parents feel intimidated by LEA staff or feel the process is too complex; and the IEP meeting has become essentially a formal mechanism for complying with the law rather than for informing and involving parents.

If schools could hire as much personnel as needed, the IEP process might create no problem. But it is usually teachers who must make the parental contacts (this may involve numerous phone calls and even visits to their homes), who usually must write up a tentative IEP prior to the meeting, who often have to leave their classrooms to attend such meetings, and who then write up the final IEP. The effect on instructional contact time with children, teacher planning time and teacher morale is devastating. Consider a speech and hearing therapist. This teacher used to have an average caseload of 60 to 80 students. With increasing numbers of handicapped children being identified but a shortage of funds for necessary personnel, this caseload may now go over 125. The teacher therefore is involved in developing and/or reviewing IEPs for 125 children. It is not hard to imagine how all of the duties associated with getting an IEP ready for even one child involves substantial time but now multiply this by 125 or even 60: Yes, this is certainly difficult for the teacher but imagine how much time the teacher actually has to work with children. They receive the least and the worst from the IEP process, no matter how ironic this may seem.

We must therefore recommend that the present IEP process be deleted from P.L. 94-142 or at least suspended until Congress can conduct a thorough investigation into the effect it is actually having on the education of handicapped children.

There possibly is an alternative which would allow the IEP process to work but it would be expensive and those funds would have to be provided by the federal government. The IEP process might accomplish its goal if it were required by law that:

1) All parental contacts required to set up IEP meetings were to be made by administrators and not by teachers, counselors, psychologists or other support personnel whose time should be devoted to working with children;
2) Special personnel be hired to attend IEP meetings and write up the individualized programs agreed to by the participating parties;
3) Teachers be provided with an additional preparation period during which IEP meetings can be held so as not to have these meetings keeping teachers out of the classroom and lessening the time they

spend in instruction (teachers could also use this time for consultation with support personnel and inservice education which are so sorely needed);

4) Administrators may not discourage teachers from listing on the IEP services, resources or equipment needed by a child simply because of their cost;

5) Teachers may challenge the effectiveness or appropriateness of an IEP for a child through the due process mechanism;

6) Every teacher will be guaranteed inservice education by the LEA on how to write an IEP;

7) IEPs clearly do not hold teachers liable if students do not attain the established goals;

8) The IEP is to be a brief, general statement of annual goals for a child, outlining various developmental skills or levels which the child will hopefully accomplish or reach. (Short-term instructional objectives should be deleted from the IEP as these must be flexible and should not require reassembling the IEP planning group each time a minor change is determined to be needed in a child's programs).

If the above conditions were to be established by law and supplemented by appropriate funding, the IEP process would be workable. Otherwise, it will continue simply to deprive children of instructional time, and the time they do have with the teacher will, despite the window dressing of the IEP, be much more poorly planned. Although our list of eight conditions frequently mentions teachers and support personnel, a careful reading will show each of these affects the quality of services provided children, not the self-interest of teachers.

Finally, we reiterate on this topic that we are asking for a suspension, deletion or revision of the IEP section in P.L. 94-142 because our members, regardless of the size of their school system, have consistently and with great concern reported that the IEP process is simply resulting in less education for handicapped children and increasing frustration for parents and school personnel.

Least Restrictive Environment Placements

Confusion over the meaning of this concept, as well as scarce dollars in a time of rapidly expanding special education costs, has led to abuse of least restrictive environment placements. Here again, AFT fully supports the concept of the least restrictive environment placement (often referred to as mainstreaming) for some children when done under the proper conditions. Despite the fact that there is no research to show that such placement is effective (see latest comprehensive study on this subject done for BEH by Wynne Associates in 1975), we support the idea on philosophical grounds. It makes sense that if a child can function effectively in a less restrictive environment, he or she should be able to go on to live a fuller, more normal life.

Yet the desperate financial condition of the schools has made a Dr. Jekyll and Mr. Hyde out of this requirement also. We have already cited in this testimony the fact that the average cost of special education is at least twice that of regular education. Normally, the more "restrictive" the education, the more expensive. Couple a situation of too few dollars with a law encouraging placement of handicapped children in least restrictive environments which just happen to be successively less expensive and imagine what is happening out there in the schools.

Not only are the parties involved in the IEP process usually totally ignorant of what the IEP is and how to do one, but the LRE requirement has created many new roles for school personnel and in an overwhelming majority of cases, no inservice education has been provided. You may be startled to know that in almost all workshops related to P.L. 94-142 which we do around the country for teachers, paraprofessionals, counselors and psychologists, it is the first and only inservice they have received.

Can this be said to be those educators' self-interest also — that they should be crying for inservice education? Here too it is children who are suffering. The special education teacher's role has changed; they are shifted to new responsibilities as more and more handicapped children are identified and enrolled in the schools. That the special education teacher can teach any handicapped child is a misconception. They specialize in various areas and the teacher who has been working with educable mentally retarded children may need extensive inservice training before being competent to work with trainable mentally retarded children. There are many other examples, all of which are envidenced by the growing divisions and strictures on certification within areas of special education. Also, as larger numbers of children are "mainstreamed," special education teachers are increasingly assigned to resource rooms. Two problems are common in this instance. Often the number of children the resource room teacher works with has risen to the point where the teacher can hardly give the individualized instruction intended, let alone help other teachers plan activities, lessons, and materials to be used with mainstreamed children. Even when there is time for this type of consultation, the resource room teacher who has not been trained to work with adults and received no inservice for this new role often is therefore ineffective. Regular teachers suffer even more by the lack of inservice training and the almost total lack of accessibility to support personnel.

Once more it is children who suffer. By the mid-1970s when P.L. 94-142 was implemented, there were many flaws in special education which led us all to support this law in the hope they would be corrected. Part of this goal has been accomplished. Testing procedures are improving, although the schools still do not have nearly enough testing specialists, diagnosticians, psychologists or counselors and although there is still no law or regulation which prevents an inordinate amount of time to go by between the time of referral and actual testing and diagnosis. Children should now have a better chance of "graduating" from the special education program into the regular one because of the reevaluation required at least once every three years. Yet despite its faults, special education in the mid-70s was a highly developed, specialized field, and the sophistication of services to handicapped children was growing by leaps and bounds. Now, after implementation of P.L. 94-142, you have a situation in which most teachers feel inadequately trained to work with children given to their care or feel that they cannot do so effectively in the environment or setting or with the insufficient resources provided them. If teachers and other school personnel were an insensitive and uncaring lot, we could ignore this situation, stick these children in a corner somewhere and go about our business. Indeed the attitude of BEH and some advocacy groups has been that the law should not be touched for at least three or four years in the hopes that its bugs will work themselves out. But we who see these children's faces day in and day out, who know their dreams, their joys, their setbacks, we can not in good conscience sit back and see these hundreds of thousands of children used as guinea pigs. We implore this Committee not to be drawn down this avenue.

Instead, the least restrictive environment placement provision of P.L. 94-142 should be expanded to allow placement of a child in a less restrictive environment only if:

1) Receiving personnel, including teachers and paraprofessionals in special or regular education, have been informed of such placement and provided inservice training to enable them to work effectively with the child prior to placement;
2) The child's emotional, social and physical well-being are considered in addition to cognitive benefits in determining the placement of the child;
3) The LEA has assured availability of adapted resources; instruction on how to use them, if necessary; and access to support personnel, as needed;
4) The child's health and safety are guaranteed in the new placement situation;
5) School personnel are free of all liability which might result from a less restrictive environment placement which requires them to perform new or non-educational tasks;
6) Transitional programs are available to handicapped children, non-handicapped children or school personnel whenever needed, prior to placement;
7) Children can perform within the normally expected ranges of achievement within the placement setting;
8) Certified special education teachers and support personnel are available in ample numbers to assure that "special attention" can follow the handicapped child into the less restrictive setting;
9) Teachers have regularly scheduled release time for consultations with support personnel, whenever needed;

10) Scheduling of the educational program and buses conforms to individual needs of handicapped children and not vice-versa;

11) Assurances are given that regular class sizes will be reduced if special education students are assigned to them, that no more than three handicapped children will be placed in any one regular classroom to prevent potential for abuse, and that special education maximum class sizes not be exceeded;

12) It is recognized by all SEAs and LEAs that a less restrictive environment for many students, as opposed to a traditional setting, would be unproductive;

13) Safeguards exist to assure that funds designated for special education follow the child, even if in a less restrictive environment.

If the above mandates cannot be set by law, the present practice in growing numbers of school systems of "wholesale mainstreaming" could eventually progress to the point that we have accomplished little more than tearing down a system of special education it took this entire century to build, without replacing it with anything better. Perhaps we should keep in mind Horace Mann's warning that "one former is worth a thousand reformers."

We suggest that in this case also Congress would benefit from a careful investigation of how the least restrictive environment requirement is being implemented in schools throughout the country and the impact this is having on handicapped and non-handicapped children alike.

Reports to us from our membership in the schools indicate that the schools have been unable to obtain the monies needed to meet P.L. 94-142's mandate, that consequently there are extensive abuses of the law and a massive cover-up of these abuses by school boards and administrators. It must be remembered, however, that if they were to come forward with the true but tragic picture of what is going on in the schools as a result of P.L. 94-142, they would open themselves up to innumerable law suits, as well as to a cut-off of desperately needed federal funds. Perhaps a 6-month moratorium on non-compliance penalties should be called to allow SEAs and LEAs to report to Congress the true impact of this legislation. If the consequences of P.L. 94-142 are not seriously studied and its strengths and weaknesses documented, many children -- handicapped and non-handicapped -- will be denied a decent education. In these times, this is hardly a viable option. Congress must also reevaluate its commitment to education of handicapped children in terms of the paucity of funding offered to back up this much needed commitment.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt the parents or LEA have not acted in the best interest of the child and cannot be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

We could give many more examples of problems associated with P.L. 94-142 but this would involve submitting testimony of excessive length. For this reason, we ask for a thorough investigation of the law's impact in the schools and an opportunity to meet with committee staff at some future time to discuss various aspects of the law and how they are actually affecting children in the schools.

We have discussed here the major weaknesses of P.L. 94-142 in the hope that they can be overcome so that our mutual goal, the provision of a free appropriate public education to all handicapped children, can become a reality -- not a paper pipedream. Thank you for this opportunity to express our views.

AFT Policy Resolution
1979 Convention

PL 94-142

WHEREAS, the AFT supports the objective of providing effective educational services to handicapped children contained in PL 94-142, and

WHEREAS, PL 94-142 (The Handicapped Children's Act) and the federal regulations created by H.E.W. to enforce it have created federal mandates on state and local school districts which have required the expansion of expensive services to handicapped children without supplying adequate funding thereby frequently necessitating serious cut-backs in services to non-handicapped children, and

WHEREAS, the complicated and time-consuming processes required by PL 94-142 have increased paper-work time for teachers, counselors and paraprofessionals and have resulted in the reduction of child-contact time, and

WHEREAS, the "least restrictive environment" mandate has resulted in the wholesale mainstreaming of handicapped children . . . without insuring that teachers into whose classes the students are placed are adequately informed regarding the placement or adequately trained prior to the placement, and

WHEREAS, the wholesale mainstreaming of handicapped children created by PL 94-142 has been beneficial to some children it has been educationally and emotionally harmful to other handicapped and non-handicapped children, and

WHEREAS, such serious harm is being done at this time by the improper implementation of PL 94-142 and its regulations;

RESOLVED, that the AFT, while continuing to support the objective of providing effective educational services to handicapped children, works to modify the provisions of PL 94-142 and its regulations in order to end the serious problems stated above, and

RESOLVED, that the AFT notify the above agencies of government that immediate investigation of these conditions and action to correct them should be taken within a short period of time, and

RESOLVED, that, in the event that corrective action is not taken within a short period of time, the American Federation of Teachers shall seek federal legislation to suspend immediately further implementation of the mandates of PL 94-142, in respect to the matters stated above, while local school programs for handicapped children and the federal moneys adhering to these programs continue, until:

1. The federal government provides every dollar of new moneys needed to implement the federal mandates.
2. All teachers and paraprofessionals who are or will be teaching mainstreamed students have the opportunity to complete the necessary professional in-service training.
3. A study on the full effects of PL 94-142 on handicapped students and non-handicapped students and its impact on the structures of state and local school district financing be conducted and made available to Congress before it acts to restore the PL 94-142 mandates. (1979)

APPENDIX I

Draft Final Report

For A Study of Teacher Concerns
With PL 94-142

Prepared For:

Bureau For Education of the Handicapped
(State Program Studies Branch)
DHEW

Prepared By:

Roy Littlejohn Associates, Inc.
1328 New York Avenue, N.W.
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October 6, 1978

V. Lessons Learned and Recommendations

Before attampting to summarize some of the lessons learned by this study and formulate recommendations for the future, our own role and perspective needs to be clarified. Several points may serve to explain the role we adopted in undertaking this study, at first pointing out the position we did not adopt and finally stating the position we have chosen.

- We have not attempted to be the advocates of the teachers themselves.
- Nor have we attempted to be advocates of the law and its formulators, or of maintaining the law in any given form.
- And we have not been the agents of BEH attempting to insure compliance with PL 94-142.

Our study was not a part of any auditing process emanating from BEH. At the same time, we have avoided being the advocates of teachers and their problems with "management" at any level -- since, if for no other reason, the problems and organized political positions of teachers are quite diverse around the country. What, then, has been our orientation and our role in this action-oriented study?

- We have attempted to be the advocates of having teachers' concerns with PL 94-142 heard, listened to, and thoughtfully considered as further efforts at implementation proceed.

Thus if it appears that our reporting is biased from the teachers' viewpoint, and often seems to come down harshly on "management" (without giving the latter "equal time"), we admit to this fault -- because the purpose of the study was to discover and air "teacher concerns." It should also be pointed out that what we have reported are the perceptions of situations expressed by teachers, and no effort has been made (except almost incidentally at times) to "correct" those perceptions on the basis of other information.

Moreover, it should be pointed out that we did not have to be advocates of the new law or of mainstreaming and improved educational services for the handicapped. Many of the teachers contacted were strong advocates of that law, even more were in favor of mainstreaming, and almost all favored improved education for the handicapped (although not all put the same -- or highest -- priority on that goal).

Finally, our own position on changes in the law is entirely neutral. PL 94-142 is the law under which BEH now administers funds; but our function was not to defend or justify the law's provisions, nor conversely to probe for problems with a view to undermining the law.

With this position stated, it should then be noted (in anticipating the form of our recommendations) that we are avoiding suggesting specific changes in the law. In truth, far more important at present are clarifications and the examination of allowable variations.

We obtained many recommendations from the teachers contacted. In some instances these were systematically spelled out -- for example, by the discussion group in Eastern Metropolis -- and came close to representing a position on the law by political spokespersons. In our own recommendations we have avoided, for the most part, the type of specific suggestions proposed by such teacher groups. Instead, we have attempted to speak to strategies and future lines of action that can begin to experiment with the specific kinds of changes advocated by those groups. However, in a few instances we have found specific recommendations of teachers to be insightful enough and of such general applicability that we have incorporated them into our recommended strategies.

Important Lessons

None of the members of the research team has been a practicing educator in the public schools of the United States in recent years. None is an expert in the education of the handicapped, in mainstreaming, or in the provisions of PL 94-142 and their rationale. Therefore, some of the lessons learned by the team may be common knowledge among those more expert and experienced. Nevertheless we present them as a backdrop to our recommendations.

- Priorities of teachers are heavily weighted by their sense of professional values and knowledge of professional practices. Bargaining for time and assistance to cope with new responsibilities is partly -- if not totally -- a matter of this identification with a value system. As in any institution and profession, of course blinders and recalcitrance to change are to be expected. But cooperation, not coercion, is most frequently cited by teachers as the key to fostering mandated change. This approach proceeds from the assumption that professionals do not have to be forced to change their ways if groups of people are working together to achieve professional goals.

- Information about PL 94-142 has spread with great unevenness, not only across different States and LEAs, but within LEAs. And even where information has been provided and assimilated, there are many unanswered questions being asked and many requests for interpretations of the law being posed.

- LEAs vary greatly in their facilitation of communication and in their support of teams of teachers working together on educational problems at the building level. And schools -- buildings -- also vary greatly in this regard.

- LEAs vary - as do schools - in the ways they facilitate working relationships between regular ed and special ed teachers. Some have sub-district arrangements for crucial services; some are highly centralized in coordinating special ed personnel and services; others are highly decentralized in emphasizing organization of special ed services and relationships between regular and special ed at the building level.

- Priorities for, and experiences with, educating the handicapped, and experience with mainstreaming, vary greatly across States and LEAs in the country -- and within LEAs, across schools. Some States have laws which predate PL 94-142 and which mandate educational rights of the handicapped and efforts to provide their education in nonsegregated settings. Other States are only beginning to draft such legislation, under impetus provided by PL 94-142.

- In the first year of implementation, there was tremendous variability in the involvement by teachers -- and in the pressures they felt -- in assisting their LEAs and their schools to achieve compliance with PL 94-142. Even more, there was great variability in the pressures felt by special ed and regular ed personnel; and for the most part special ed felt the greatest impact on their day-to-day functioning in the first year of implementation.

- An audit process, always necessary in some form where financial accountability is involved, can generate forces that (at least in the eyes of the teachers feeling the greatest impact) can hinder and weaken resources for education of the handicapped. Moreover, "audit" and "compliance" have different meanings and priorities for LEA administrators (worrying about program budgets) than for teachers attempting to deliver in the educational process while prompting themselves to question old ways and try new ones. The impact of an audit on the service-delivery level (i.e., "on the line") needs to be strongly considered as its requirements and procedures -- and time dimensions -- are defined.

- (A "lesson" based on our own judgment as professional action-researchers.) A law which defines rights of a target group and which also calls for new and far-reaching responsibilities from another group, should speak to the rights of all responsible parties. Teachers are not sure what "rights" go along with their responsibilities under PL 94-142. In the first year of implementation, their questions in this regard were not being answered to their satisfaction.

Recommendations

During the course of the field work a number of interesting ideas were uncovered on future steps for implementing PL 94-142. The recommendations on future strategy we are presenting have in common the assumptions that:

- Beyond our present airing of "Voices from the Classroom," teachers should continue to be heard and called upon for their knowledge and experience as planning and action proceed.
- Future steps should be conducted in the spirit of, and with procedures that permit, continued learning about educating the handicapped in the "least restrictive environment" and the application of this knowledge in buildings and classrooms around the country.

1. Create a Forum for Building Knowledge and Sharing Experiences

Teachers manifested a great desire, not only to be heard, but to hear from others like themselves -- to learn what is happening among their peers as problems of mainstreaming are addressed. They felt strongly that most orientation workshops on PL 94-142 had not gotten to the teacher level. But this complaint was only the tip of the iceberg. For many teachers wanted to be called upon in the future to share more than their concerns. They wanted to share lessons they are learning through classroom and building - level experiences with mainstreaming and with meeting the requirements of PL 94-142.

We recommend that a project be instituted by BEH which would: (1) identify (on a regional basis) exemplary classroom/building experiences with mainstreaming; (2) invite up to 30 teachers from a region to appear and share their experiences at a 2- or 3-day regional workshop or retreat; (3) conduct 4 such regional workshops around the country; (4) document the workshops and disseminate this documentation; (5) instruct participants to follow through in their LEAs by making efforts to share the workshop experience with their peers. In various LEAs, we heard the following additional thoughts on this basic idea:

- Call on several people from the same building to attend -- so that exemplary total-school programs are represented.
- But be sure to include individual teachers, making exemplary contributions, who teach in less exemplary schools.
- And don't overlook individual teachers in most difficult and isolated settings who have a strong desire to learn how to meet the requirements of PL 94-142.

The specific next-step project proposed would be only a first building-block in the development of an ongoing network of forums for developing and disseminating grass-roots knowledge regarding mainstreaming among teachers, schools and LEAs across the country.

2. Create a Teachers' Review Body at The LEA Level

In the implementation of the law, a condition has developed which fosters largely administrative interpretations of compliance requirements. At the same time, State and LEA administrators are not clear what the law implies or requires in many areas; but as local policies are established and effected, the teachers' perspectives are not adequately considered. We recommend that BEH sanction and support be given to the creation of a teachers' review committee, addressing problems of implementation, in every LEA. A Teacher Review Body (committee or board) need not have dictatorial or policy-veto powers in order to have a positive influence on the climate for implementation in LEAs. It can ensure that as policies are formed on IEPs, record-keeping, diagnosis... -- all areas of policy impacting on special and regular ed teacher roles, and especially on existing teams in buildings -- the teachers' perspectives and professional values are recognized.

Even military organizations have instituted procedures for grass-roots inputs on problems of morale etc. -- procedures which ensure that information on perceived problems is delivered from company level to corps level (in spite of the implied threat to commanders in between).* And educational institutions should be far less command-control systems than military organizations are.

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* At least this was true during Korean War days, when one of the authors of this report served on a "feedback" body -- providing information which, admittedly, "blew the minds" of battalion and regimental commanders, since, of course, there could be no problems in their units.

We recommend that each building in an LEA have a representative to such a body. However, an elected executive committee of the Teacher Review Body might be the smaller group actually meeting to review pressing issues (while building reps would be responsible for delivering information to the smaller body).

3. Create Regional Assistance Teams

We recommend that a national effort be undertaken to provide substantive assistance on a regional basis in specific problem areas identified with PL 94-142. Because of existing, and potential future, unevenness in State efforts at disseminating information, preparing for training etc., we believe this assistance should be organized on a regional basis. It may benefit from, and tap the resources of, the effort proposed under Recommendation #1; but a separate effort to provide regional assistance in crucial problem areas should be instituted by BEH. Assistance should be directed to both State and LEA levels but should be concentrated on the LEAs. Problems addressed should include:

- Training regular ed teachers for new responsibilities in mainstreaming (developing curriculum and/or delivering training).
- Re-training special ed teachers....(developing curriculum and/or delivering training).
- Assisting with IEP procedures (and assisting LEA efforts to develop efficient and effective IEP procedures).

4. Develop and Disseminate Guidelines on Documentation and IEP Procedures

While technical assistance with the concrete problems of implementation is provided at the regional level, we recommend that BEH proceed at the national level to develop materials (which may be applied and delivered by regional personnel, as well as otherwise disseminated) to guide LEAs in facing the formidable problem of the IEP and its documentation. This effort should not be dictatorial or lead to a standard federal package. In fact, many LEAs have record-keeping systems and procedures for IEPs which they may wish to share as contributions to national guidelines; and any external guidelines must be compatible with State and local systems. But many more LEAs doubtless would welcome an effort by outsiders to give structure to IEP procedures with a view to making them efficient, effective and minimally time-consuming.

5. Create a Review Office at the National Level

A law once on the books means whatever judges and courts -- right up to the highest tribunal -- say it means. But this does not mean that the administrators of a law should abdicate their responsibilities for continuing to interpret its mandates. At present, many teachers feel they are being abandoned by fellow educational professionals, at the local, State and Federal lvels, as administrative imperatives, along with the rulings of judges, dominate the drama of implementation. In Eastern Metropolis the feeling was strong that the professional knowledge and experience of teachers was given no consideration whatsoever as implementation of PL 94-142 proceeded. They felt that teachers "on the line" could not find a sympathetic professional ear at BEH since that agency currently was allowing the law to find its course in legal actions.

We recommend that a National Review Office be established by BEH to continue to weigh implications of the law, consider important issues and ongoing controversies, and publish current positions regarding interpretations. Although this office need not be a part of BEH itself, it should be supported by that agency and sanctioned to develop positions that will be used by BEH in monitoring compliance. This National Review Office should be continually informed by the information and knowledge being developed and shared through the network advocated in Recommendation #1.

Reviewing some of the specific problem areas cited by teachers, and especially by the teacher discussion group in Eastern Metropolis, some of the priority problems this office should review in early implementation phases are:

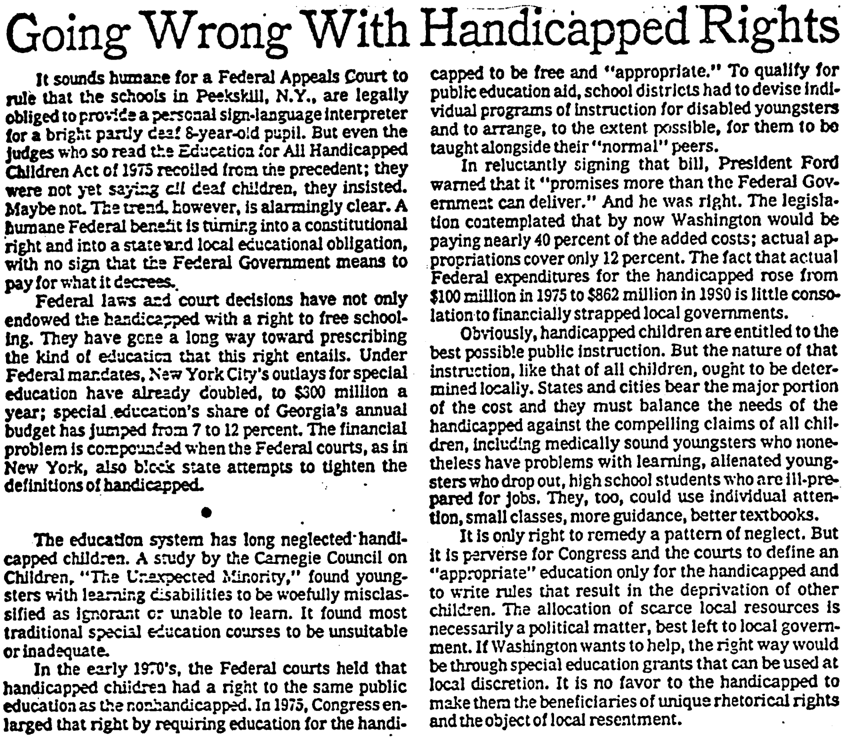
- The definition of "least restrictive" (developing guidelines for permissible variability).
- Necessary staff development and staff supplementation (developing guidelines for this requirement).
- Optional approaches to meeting problems of increased workloads.
- Teacher participation in the IEP (guidelines for permissible variability).
- Due process for teachers: a national professional position from BEH regarding the rights of teachers under PL 94-142.

The Review Office should not, in our view, be constituted to receive and formulate interpretations of State and local problems of compliance on a case by case basis. But it should prepare for wide distribution interpretive guidelines which will be used when audits do take place; and these periodically updated guidelines should be informed constantly by what is happening in implementation (the priority problems; the varied local interpretations) in LEAs throughout the country.

Our Federal system sanctions tremendous flexibility as national laws are enacted and then catalyze varied actions in the diverse states and localities of our nation. In effect, properly functioning, our system allows us to learn from one another as the general mandates of laws are translated into myriad experiments in achieving common goals. Therefore, we are not proposing future actions that will standardize and rigidify the requirements for implementing PL 94-142. We are recommending procedures that will promote a rich and open learning process with regard to mainstreaming in education of the handicapped. And we are also recommending procedures that will promote the development and exercise of responsible leadership in this pursuit. Finally, we wish to see teachers from the classroom drawn into that open learning process and into that exercise of leadership.

NEW YORK TIMES
July 21, 1980

APPENDIX II



Going Wrong With Handicapped Rights

It sounds humane for a Federal Appeals Court to rule that the schools in Peekskill, N.Y., are legally obliged to provide a personal sign-language interpreter for a bright partly deaf 8-year-old pupil. But even the judges who so read the Education for All Handicapped Children Act of 1975 recoiled from the precedent; they were not yet saying all deaf children, they insisted. Maybe not. The trend, however, is alarmingly clear. A humane Federal benefit is turning into a constitutional right and into a state and local educational obligation, with no sign that the Federal Government means to pay for what it decrees.

Federal laws and court decisions have not only endowed the handicapped with a right to free schooling. They have gone a long way toward prescribing the kind of education that this right entails. Under Federal mandates, New York City's outlays for special education have already doubled, to $300 million a year; special education's share of Georgia's annual budget has jumped from 7 to 12 percent. The financial problem is compounded when the Federal courts, as in New York, also block state attempts to tighten the definitions of handicapped.

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The education system has long neglected handicapped children. A study by the Carnegie Council on Children, "The Unexpected Minority," found youngsters with learning disabilities to be woefully misclassified as ignorant or unable to learn. It found most traditional special education courses to be unsuitable or inadequate.

In the early 1970's, the Federal courts held that handicapped children had a right to the same public education as the nonhandicapped. In 1975, Congress enlarged that right by requiring education for the handicapped to be free and "appropriate." To qualify for public education aid, school districts had to devise individual programs of instruction for disabled youngsters and to arrange, to the extent possible, for them to be taught alongside their "normal" peers.

In reluctantly signing that bill, President Ford warned that it "promises more than the Federal Government can deliver." And he was right. The legislation contemplated that by now Washington would be paying nearly 40 percent of the added costs; actual appropriations cover only 12 percent. The fact that actual Federal expenditures for the handicapped rose from $100 million in 1975 to $862 million in 1980 is little consolation to financially strapped local governments.

Obviously, handicapped children are entitled to the best possible public instruction. But the nature of that instruction, like that of all children, ought to be determined locally. States and cities bear the major portion of the cost and they must balance the needs of the handicapped against the compelling claims of all children, including medically sound youngsters who nonetheless have problems with learning, alienated youngsters who drop out, high school students who are ill-prepared for jobs. They, too, could use individual attention, small classes, more guidance, better textbooks.

It is only right to remedy a pattern of neglect. But it is perverse for Congress and the courts to define an "appropriate" education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.

AMERICAN FEDERATION OF TEACHERS AFL-CIO

1. In your testimony, you mentioned that the only way for P.L. 94-142 to work in its present form would be with massive infusion of additional Federal funds totalling several billions of dollars. What amount do you consider appropriate?

As you note in your first question, AFT believes that a massive infusion of Federal funds amounting to several billion dollars would be necessary for P.L. 94-142 to work, as now written. Although this year's appropriation is nearly $1 billion, programmatic needs necessary to meet this law's mandate are at least three to four times greater than what is possible with present funds. We can make this estimate on the knowledge that the current twelve percent funding level does not come close to:

- Making sure all personnel now working with handicapped children are adequately trained to do so effectively;
- Allowing transitional programs and adapted materials in less restrictive environments when needed;
- Guaranteeing staff facilities and equipment required to provide programmatic and related services as needed for as long as needed--in some instances year-round;
- Assuring comprehensive evaluations of all children referred for special education;
- Assuring due process inquiries will not be avoided because of the cost involved.

This list could be greatly expanded. When P. L. 94-142 was originally passed, the forty percent authorization level, which we should have reached by now, indicates that its sponsors and supporters also recognized that its cost would be $3 to $4 billion.

2. You suggest the elimination of the IEP requirement. Since one of the major themes in P.L. 94-142 is the individualization of instruction, what would you suggest to replace the IEP?

In our testimony we said our first choice would be a Federal funding level of several billion dollars for P.L. 94-142 which would allow the schools to fully implement the law's requirement, including the IEP process. Without this funding, however, the IEP provision, for one, will actually diminish individualization. Instructional and therapeutic time with children is now in many instances less than before because of all the staff time spent in creating theoretical individualization on paper. We suggest this pretense in the form of present IEP procedures be abolished, that schools be required to individualize instruction for disabled students just as they should for any other child and that a committee be formed to study the extensive literature on individualization which exists and bring recommendations to Congress in a period of from six months to one year.

At some point it will be discovered that paper and meetings don't guarantee individualization. More important are reasonable class sizes; adequate support services and access to support personnel as needed; adapted resources; teacher planning time; and opportunities for good inservice education, in such areas as diagnostic and prescriptive techniques. You cannot legislate individualization; you must create the conditions which allow it.

3. What sort of time limits would you suggest between referral for evaluation and when the actual evaluation takes place?

The time between referral for evaluation and the time evaluation takes place should be no longer than 30 days. If a child indeed needs special education services, this means 60 days could pass before a child is placed because 30 days are allowed between evaluation, development of the IEP and placement. Even these timelines cause a child to miss two months of appropriate educational services.

Senator STAFFORD. Thank you. We really appreciate your being here.

This Committee does intend to make changes, as indicated in Public Law 94-142. If that were not our intent, we would not have bothered with this long series of hearings that we have and the hearings that we yet propose to have for the administration.

Your comments will be helpful, even those in connection with IEP which, frankly, was a Stafford idea to start with. If it does not work, we will drop it, as you say, or we will modify it to try to make it work. We want the education of handicapped children to be as good and to be as effective as the Nation can make it.

Our Supreme Court told us we have to do that anyway. We want to do it as well as we possibly can. This is a hard time to get more money, but Senator Randolph and I always try to get as much money for the handicapped programs as we can convince our colleagues to let us have. We will keep on doing that.

We may have some questions, almost certainly we will, but facing our time constraints, if it is agreeable to you, we will submit them to you in writing and ask that you submit them in writing.

Do either of your colleagues have anything that they wish to add?

Ms. RAUTH. I do not want to take up your time.

I do want to say that, having traveled throughout the country about the last 3 years, meetings with teachers in workshops, informal meetings and so forth, and hearing their remarks, I want to point out that the questions they raise are not primarily the teacher rights issues. They are concerned with what is happening in terms of the quality of education of the children they are working with in their classrooms. They feel that it has been very definitely diminished; they feel a terrible mistake has been made, and they are waiting for some direction, for someone to find out what is really going on in their schools. Our concern has been that it is very difficult that the message of reality and how something that intent is very positive, is actually having a negative effect in hundreds of thousands of cases around the country. And something has to be done, or you have generations of children who have suffered in the name of their own civil rights, and we are very concerned.

Senator STAFFORD. Thank you very much. Thank you all very much.

The next witness is Dr. Joseph Noshpitz, professor of psychiatry, George Washington School of Medicine, and a staff psychiatrist at Children's Hospital, Washington, who is representing the American Academy of Child Psychiatry and the American Psychiatric Association.

Doctor, welcome to the Subcommittee on the Handicapped. We appreciate your being here.

We would ask you also, if you might, to summarize your statement and we will place the entire statement in the record. I can assure you that other members of the subcommittee will read the record who are not able to be here at this point.

Chairman Randolph is at the White House at the moment and that is the reason that he is unable to be here with us until later in the morning. For some reason or another, he seems to think that the President, when he summons him, has precedence over his colleagues here in the Congress.

STATEMENT OF JOSEPH D. NOSHPITZ, M.D., PROFESSOR OF PSYCHIATRY, GEORGE WASHINGTON SCHOOL OF MEDICINE; STAFF PSYCHIATRIST, CHILDREN'S HOSPITAL, WASHINGTON, D.C., REPRESENTING THE AMERICAN ACADEMY OF CHILD PSYCHIATRY AND THE AMERICAN PSYCHIATRIC ASSOCIATION

Dr. NOSHPITZ. Thank you very much, Senator Stafford. I would like to speak very briefly about the——

Senator STAFFORD. Can you speak up just a little bit louder, bring the mike closer.

Dr. NOSHPITZ. How is that?

Senator STAFFORD. That is more than adequate.

Dr. NOSHPITZ. I will speak very briefly.

Most of the comments, of course, are in the written record, but I did want to set a bit of context to my remarks by reviewing an aspect of our culture that involves our address to the problems of children.

If we go back to the beginning of the century, the juvenile court was established in the first decade with the intention of caring totally for children in need and using all the power and the majesty of the law to pull in services and require that proper health care be given to the children who needed it. And it has worked at it for all these many decades without signal success. In the twenties and in the thirties, the child guidance clinic appeared on the scene and it, too, tried to take over the task of coordinating services and bringing to each child in distress and to each family in need everything that was essential for it. The clinic achieved a kind of quasi-success but surely did not accomplish anything like what it had hoped to do.

More recently, there was the Joint Commission on the Mental Health of Children. I was a member of the Board of Directors, and I recall how hard we worked to try to develop some principles that the Government and the Nation could adopt that would help handle the problems of children. We came up with a principle of advocacy and I think there was even an Office of Advocacy within NIMH, which is now, I believe of sainted memory. Subsequently the community health center idea was then the repository of the hopes of all of us working with children, and again in that context, the work with children has been one of the classic—I would not say it is quite a failure, but it certainly is not a success.

Now, Public Law 94–142 is entering into this territory, not with precisely the same intention and yet not able to avoid some of the problems implicit in it. The difficulties emerge from the fact that a child and a family are a totality with an interwoven set of needs, and that every attempt to address a part of it, whether from the legal side or mental health side or the educational side or the welfare side, inevitably comes up against all the others as well as many that I have not mentioned. It is not unusual for a multiproblem family to have 15 or 16 agencies involved. When we face that, and we see that we are trying to now take on the matter of special education and have it do those things that will be supportive of its mission, we are immediately into this same universe with all its complexities and all its difficulties. What then to do? We would like to make a number of suggestions.

First, the matter of the interdisciplinary requirements can be strengthened in various ways. The importance of many agencies working together around each child or at least those agencies that are clearly involved, can be mandated in various ways at various levels in a way that is more specific than I believe the law now entails. So that is one realm.

Second, definitions. For example, the definition of related services. I am sure that the committee will hear again and again people explaining the difficulties that they are having with that issue, and part of it comes out of the fact that it is a complex area and the lines are not sharply drawn, and so all sorts of hopes and expectations and territorial safeguards and other issues creep in. As a result, the need for clarity, for some specificity and definition become especially important in this realm. I think the law will function best if its perimeter is better stated, more clearly organized, and then can be more effectively defended.

Finally, of course, the last issue is the one that I am sure you will hear about from everyone who comes and sits in these seats, the problem of funding. Clearly the various agencies in the past that have tried so hard to cope with this have not lacked in good will. They have not even lacked in theory but they have often--well, for example, the juvenile court with the youngsters that it has to handle has no place to send them; certainly no good place. Again and again its mission blocked. There are no good services and there will be no good services unless there is adequate funding for the services that are mandated.

So these are the things that we would like especially to stress.

Senator STAFFORD. We are very grateful to you, Doctor, for helping us with our problems in trying to make Public Law 94-142 as good as we can to the benefit of the handicapped children of this country. And, in your case, as in Mr. Shanker's, we do have some questions we would like to submit to you in writing, in view of the compressed time problem we have this morning, with the activities in the Senate. So we will do that and we will send you a few questions and ask that you respond to them. If that is agreeable.

Dr. NOSHPITZ. We would appreciate that and be glad to. And let me add one word.

This is a world in which there are many good things but very few excellent things, and in the opinion of the two organizations that I represent with all its problems, this is an excellent law.

[The prepared statement of Dr. Noshpitz and questions and answers follow:]

American Psychiatric Association
1700 Eighteenth Street, N.W., Washington, D.C. 20009 • Telephone: (202) 797-4900

SUMMARY OF PRINCIPAL POINTS

OF

STATEMENT

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

July 31, 1980

by

Joseph D. Noshpitz, M.D.

1. Commendation to Subcommittee and the professional staff for continued dedication and concern about implementation of P.L. 94-142.

2. Despite honorable intentions, problems have arisen with implementation of the law at the state and local levels.

3. Mental and emotional needs of handicapped children identified under the Act are not being met.

4. Confusion with respect to psychiatric treatment as "related services" as defined under P.L. 94-142.

5. That related services by personnel specified to furnish educational and psychological counseling to handicapped children be a required provision of P.L. 94-142.

6. Interagency agreements between state educational and mental health agencies be reached, which shall determine and specify both administrative and reimbursement systems to provide continuing mental health services outside the educational system to children who need them but whose parents are not able to pay for them in whole or part.

7. That each State P.L. 94-142 advisory committee be required to include a qualified child mental health professional.

8. There are serious problems about protecting the confidentiality of sensitive, private information.

9. There is a need to train professionals in the medical and mental health disciplines for service in cooperation with school personnel under P.L. 94-142.

10. There is a need to train school personnel to work with physically and emotionally handicapped children.

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STATEMENT
of the
AMERICAN PSYCHIATRIC ASSOCIATION
and the
AMERICAN ACADEMY OF CHILD PSYCHIATRY
on
OVERSIGHT OF P.L. 94-142
presented by
Joseph D. Noshpitz, M.D.
before the
Subcommittee on the Handicapped
Committee on Labor and Human Resources
United States Senate
July 31, 1980

Mr. Chairman and members of the Subcommittee, my name is Joseph Noshpitz, M.D. of Washington. I am a staff psychiatrist at Children's Hospital in Washington, Psychiatric Director of the Florence Crittenton Home, Professor of Psychiatry at George Washingtion University School of Medicine and a past President of the American Academy of Child Psychiatry.

I am here today to present the joint testimony of the American Psychiatric Association and the American Academy of Child Psychiatry, two national associations which respectively represent more than 25,000 psychiatrists the country over and the approximately 2,300 physicians who have received two additional years of advanced training in child psychiatry.

At the outset I would like to commend the Chairman, the members of the Subcommittee and the professional staff for their continued dedication to and concern about the implementation of P.L. 94-142, evidenced by the thoughtful, indepth oversight hearing record. I welcome the opportunity to offer our collective comments and reactions.

We consider P.L. 94-142 landmark legislation, of extreme importance to the community of handicapped children and their families -- a subgroup of our population which often has been either forgotten or discriminated against, both officially and unofficially. In this law, we have for the first time, a federal mandate to provide services to children, regardless of handicap -- to establish such services as a right, to be guaranteed by the law, with appropriate safeguards as to due process. This is truly a breakthrough of far-reaching social significance.

These remarks are made from the perspective of our active participation, together with colleagues in many other disciplines in providing services to handicapped children and their families. While our particular expertise lies in treating the emotionally disturbed and the mentally retarded and learning disabled, we are also concerned about the social and psychological ramifications of the other handicapping conditions involving speech, general health impairment, orthopedic handicaps, multi-handicaps, and disabilities involving the critical senses of vision and hearing. As medical clinicians working in the community, we have contact with many such afflicted children, and provide a variety of services to them and their families. Many general and child psychiatrists also work directly with school staffs, especially in special education, being involved with initial diagnostic assessment, consultation to school personnel, in-service training, staff development, and a variety of other functions. Consequently, we urge that this statement be viewed as coming from a group of professional colleagues who share the commitment to the care of handicapped children and their families with those in education and special education, our medical colleagues (particularly those in pediatrics, neurology, orthopedics, ophthalmology and otolargyngology), and the great variety of other non-medical disciplines, whether or not specifically mentioned in 94-142.

P.L. 94-142 is one of the most important pieces of legislation ever enacted in the field of children's services. It seeks to ensure both forcefully and undeniably the provision of services for handicapped children. We are particularly pleased with the importance placed on early diagnosis and intervention, both important tenets of good physical and mental health practice.

However, despite its honorable intent, many problems have arisen with implementation of the law at state and local levels. These problems have been accompanied by high levels of confusion, frustration and hostility among otherwise well-meaning and dedicated people. Unintended as they may have been, the conflicts and antagonisms which have been uncovered must be faced before solutions can be found. Allow me to list a few of the most important of these problems. Realizing that you have heard about some of these from other groups, we will be brief and not all-inclusive.

Misinterpretations of the law by educators, special educators, school boards, parents, and others have led to grossly exaggerated expectations from 94-142. Consequently, the law has appeared to promise a great deal more than it can possibly deliver. Many school administrators worry about whether the alleged "open-ended" nature of the commitment to the provision of services to the handicapped will result in the bankruptcy of the entire educational system at both state and local levels. It would be accurate to say that 94-142 has at least strained the financial and emotional resources of schools to new limits. In addition, there has been much concern about the number of forms to be filled out and the bureaucratic tangle necessitated by compliance to federal, state and local guidelines, which often change, and sometimes contradict one another. Teachers complain that much of the time which used to be spent with children is now used to do paperwork.

Implementation has varied widely among the states, and from one locality to another. Ancedotally, one hears that affluent families and communities have taken advantage of the law to obtain increased services, while poorer families and communities have benefitted relatively less from 94-142. In addition, states and localities which had a strong commitment to special education prior to 94-142 have expressed resentment about the rigidity of the federal statute and the administrative difficulties it has presented.

It is important to note that some school districts actually have violated the spirit of the law by purposefully under-identifying or mislabelling the child with a handicap. This is done presumably so that they will not be forced to provide services that they do not now have. Often, school personnel are instructed to make no recommendations to parents for outside professional help (even when it is desparately needed) for fear that schools will have to pay for those services.

As a result, many handicapped children in need of mental health services, including psychotherapy, are not presently receiving them.

Moreover, it must also be acknowledged that in many districts receiving 94-142 funds, psychiatrists who are trained in both the physical and mental aspects of development are not being properly utilized to participate in recommending appropriate treatments to meet the mental and emotional needs of handicapped children. It is ironic that the law appears to pay for mental health services delivered by every mental health professional except those most trained to provide them. The irony continues when we realize that psychiatrists, because of the comprehensive nature of their training, often provide the most cost effective services available; they represent the only mental health profession able not only to render psychiatric treatment per se but also to perform the necessary antecedent differential diagnosis.

For reasons that are very complex, this well-meaning law has often been a paradox in its implementation. A bill so clearly espousing the goals of child advocacy has brought with it so much anxiety, confusion, defensiveness, and suspicion that it virtually promotes an adversarial relationship between the very people it wants to bring together in cooperative interaction for the ultimate benefit of the child. We wonder if something may be lost when "voluntary" efforts give way to mandated ones -- resulting ultimately in emphasis on quantity rather than quality, on appearances rather than realities, on fulfilling bureaucratic red tape rather than providing direct service to children.

Problems of handicapped children do not lend themselves to easy solutions or remedies. Even the simplest handicap can be of complex etiology, involving biological, social and psychological interactions which defy easy assessment and diagnosis, and which call for complicated programs of interventions requiring many disparate resources. For example, some children who demonstrate problems with academic achievement and behavior in school do so because of chaotic family experiences and difficulties arising out of poverty, unemployment, drug abuse, and other factors in their neighborhood and community, which impinge upon their lives. An IEP, which focuses exclusively on the three R's and which does not take into account complex etiology, and difficult environmental circumstances, will frequently be too simplistic and not relevant.

However difficult it may be, what must be accomplished is to develop and implement an IEP for the whole child and for the environment around him. It is ludicrous to presume that special educators can take on these burdens alone. Input and commitment from medical and other professional and community resources is essential.

The challenge of 94-142 is for all of the child-serving professions to consider this an opportunity to redesign the service delivery system for children with appropriate concern for the sharing of responsibility, authority, and funding, and to make integration, collaboration, and cooperation a governing principle.

It has been apparent to many of us that the various child-serving agencies on the state and local level (e.g., mental health departments, departments of education, departments of children and family services, welfare departments, and departments of correction, to name just a few) often are at war with each other. Burdened with too much to do and too few resources with which to do it, they are driven to frantic efforts to limit their own liability and responsibility for handicapped children. In these days of high tax burdens, intensive surveillance, and probing fiscal accountability, albeit lamentable it is altogether understandable that state agencies might place higher priority on balancing their books than on providing an integrated network of human services for children.

Unfortunately, the intention of the law with respect to psychiatric treatment within the context of "related services", as the term is defined in P.L. 94-142, is unclear. When the subject of related services was considered in the Senate Bill (S. 6), the Senate Committee Report (94-168), the House Bill (H.R. 7217), the House Report (94-332), by the House-Senate Conference, and in the Joint Explanatory Statement of the Conference Committee, it was--to quote one of the staff architects of the legislation, Dr. Martin LaVor, in a recent article--"not the focus of extensive discussions". After citing every House and Senate reference to the term "related services", which we have reviewed carefully, Dr. LaVor concluded:

> When S. 6 and H.R. 7217 were considered by the full House and the full Senate there was virtually no discussion, reference or explanation that would further clarify legislative intent for the term "related services".

We concur. Thus, it is not clear whether the law intended for psychiatric treatment to be mandated and paid for out of school funds. As an example, the very point of whether "psychotherapy" was a "psychological service", a "related service" which schools must provide in connection with a free appropriate education, has already been litigated in Montana (<u>In the Matter of the "A" Family</u>, 602 P. 2d 157 Mont. Sup. Ct. 1979). The court concluded that "psychotherapy" was a "psychological service" under the Federal regulations' enumeration of "related services" which a school district providing education for a handicapped child must provide. Since a Montana regulation exists which provides for submission to Federal regulations when there is a conflict, the State regulations excluding psychotherapy from those services which a school district must provide were overridden by the Federal regulations.

We agree with the Montana Supreme Court's statement, that "In large measure, this issue arises out of confusing if not conflicting Federal and state statutes relating to special education." We believe that additional guidance needs to be given to the Office of Special Education and Rehabilitation Services than is provided in the legislative history of P.L. 94-142.

The provisions in the law limit the payment for medical treatment to diagnostic and evaluation procedures, and at the same time authorize payment for psychological services (under "related services"). This fails to acknowledge the reality of the complex nature of the treatment modalities provided by psychiatrists. These include a variety of psychotherapies which are presumably fundable as psychological services, but because they are provided by psychiatric physicians, they can also be classified as medical treatments, and would thus not be paid for under the Act.

There must be clarification of this tormented issue so that litigation will cease and the special educational and medical needs of identified handicapped individuals can be addressed with the necessary resources, be they educational or otherwise.

The APA and AACP, along with ten other consumer, provider and professional organizations, endorsed the Position Paper Supplement, dated March 21, 1980, of the National Consortium for Child Mental Health Services on P.L. 94-142 which acknowledged continuing problems with the "major gaps between diagnostic services and the actual delivery of an appropriate continuum of mental health services to individual children and adolescents." The Consortium endorsed the utilization of related services and recommended the following:

(1) That related services by personnel specified to furnish educational and psychological counseling to handicapped children be a required provision of P.L. 94-142. These services should be a part of the support system in the remediation and amelioration of handicapping conditions of emotionally disturbed children.

(2) That interagency agreements between state educational and mental health agencies be reached, which shall determine and specify both administrative and reimbursement systems to provide continuing mental health services outside the educational system to children who need them but whose parents are not able to pay for them in whole or in part. While educational systems should not be obliged to pay first dollar for continuing psychotherapy services (after diagnosis and evaluation), children and adolescents shall be assured needed psychotherapy services under the interagency agreements funded through any and all existing sources. Such available sources of funding would include Medicaid, Private Health Insurance, Community Mental Health Centers, and funding by other State agencies such as Mental Health and Child Welfare. P.L. 94-142 states that services necessary for utilization of special education shall be at no cost to the parents. Since some continuing psychotherapy services may lie outside P.L. 94-142, parents are not automatically or entirely shielded from costs for them. Together with local and State School Districts, parents should be able to participate as a last dollar resource in the provision of such services.

(3) That each State P.L. 94-142 advisory committee be required to include a qualified child mental health professional. This resource professional should identify the mechanisms to provide for the mental health needs of children, through local mental health centers, other agencies, and private providers; thus assuring that the Individual Education Plan not ignore or omit the related mental health needs of the child in order to avoid or minimize expense.

In addition to these recommendations, the APA and AACP recognize (1) that physicians need to be included in diagnostic and intervention roles as indicated by the child's physical and/or mental condition; and (2) that parents need to be involved with their children in a variety of intervention processes in order for them to learn to manage and help their children live at home. There must be a sustained collaboration between parents and professionals for handicapped children to make real progress in special education programs.

Another major area of concern is that of funding. We realize that appropriations are not within this Subcommittee's jurisdiction and that you, Mr. Chairman, have been a leading advocate for adequate services. However, we believe, concomitant with the need for clarification of "related services" is the necessity to have Congress provide adequate funding for special education and related services under P.L. 94-142, which this Subcommittee has so carefully designed. As you know, Congress authorized paying for special education and related services under P.L. 94-142 at the rate of five percent of State costs in 1978 and increasing to 40 percent of State costs by 1982. Unfortunately, Congress has not appropriated the fully-authorized amount. For example, for F.Y. 1980, only 12 percent, instead of the 20 percent which could be made available, was appropriated. In drafting this bill, your Subcommittee recognized that considerable additional expenditures would be necessary to comply with its provisions. Ultimately, this will be cost effective both in economic and human terms. We are fully cognizant of fiscal constraints but we would hope that full funding of P.L. 94-142 will be forthcoming to ameliorate the shortfall in funding for needed special education and related services.

We also wish to point out that handicapped children who cannot be educated in the classroom often require placement in residential facilities for the severely mentally retarded and severely emotionally disturbed. To make such units function effectively requires dedicated staff, with considerable experience and expertise. However, we are concerned that the major criterion in the choice of facility may be cost, not quality of education or treatment. Because of this, we are concerned that some excellent private facilities which have been providing services for many years may be forced to close. There is grim experience to suggest that they would be replaced by less adequate facilities. Furthermore, non-placement or inadequate placement of these children imposes unwarranted burdens on untrained personnel, causing staff burn-out, an ever present and serious problem.

There are also a number of serious problems with confidentiality under the law. Because of the openness of the record, errors occur on both ends of the confidentiality continuum, i.e., either too much or too little information appears in the record. The problem can be compounded if the IEP is not developed with involvement of fully-qualified medical and child development experts. Most often, in the effort to avoid the communication of any sensitive, private information, and the problems which can arise therefrom, important data on the family and the child are not included. In terms of educational planning, the open record can thus become a relatively useless document.

Professionals working for the school are sometimes under pressure to come up with IEPs based on programs that are already available -- but which might be ideally suited to the needs of the child. (Obviously, no school system has an infinite array of programs, classrooms, and faculty). At the same time, outside professionals are encouraged to take an advocacy position on behalf of the child and/or his or her family, which sometimes result in conflict between the school, on the one hand, and the outside professional and the family, on the other. This will often become manifest in implementation of the due process portion of the law. We quite agree with those who prefer to see resolution of the problems through less formal means than hearings or court proceedings. Amicable resolution of conflict is superior to the rancor and anxiety of formal adversarial proceedings.

There is a distinct need to train school personnel to work with handicapped children. This could be accomplished through cooperation and consultation with medical and mental health professionals. Thus, there are ongoing needs to train such professionals in how to work cooperatively with school personnel under 94-142. Our organizations believe that considerable, additional discussions are necessary with OSERS to explore a variety of such inputs for our own membership as well as for medical students and resident physicians in various fields. Conversely, there is need to train school personnel to work cooperatively with medical and mental health team members.

Having presented major concerns with the content and specifics of this law, we wish to reiterate that it does provide a major and significant framework and a bold articulation of public policy and priorities.

We particularly would like to vigorously endorse those provisions of the Act that provide for early childhood education. We believe that this is a prime site for preventive intervention and that whatever monies are invested at this point in development will be repaid many fold by improved function and diminished dependency in later years.

The American Psychiatric Association and the American Academy of Child Psychiatry applaud the intent of P.L. 94-142 and welcome the opportunity of working with you and the staff and, suggesting legislative amendments in conformity with my presentation. We hope thus to strengthen and improve this landmark legislation and to work out the substantive content problems of concern.

Thank you for the opportunity to speak to you this morning and I will be available to answer any questions you may have.

Response of Dr. Noshpitz to Questions Asked by Senator Randolph

1. In your opinion, what mental and emotional needs of handicapped children are not being met?

Because P.L. 94-142 is implemented in local systems, it is difficult to generalize about unmet needs. We believe the following points should be used as a guide to assess each local system's capacity to meet these unmet mental and emotional needs.

a. We believe that there currently is an insufficient degree of mental health consultation to inpatient and outpatient pediatric services, special educators, teachers, recreational services, sheltered workshops, vocational programs and other rehabilitation services.

b. There is not adequate psychiatric and other mental health diagnosis, evaluation, assessment, and screening.

c. There currently are significantly unmet mental health intervention needs for various therapies (e.g. individual, group, family milieu, psychopharmacological). In addition, there is a lack of adequate parental guidance and counseling.

The above should be included as part of a range of services. It is financially unwise and therapeutically unsound to allow a school system to select only one or two modalities of treatment, thus excluding other appropriate treatments and causing some children to receive no or inappropriate care.

Therefore, participation in this program should be conditional on provision of a full array of services ranging from early intervention to hospitalization.

2. Would you please describe the extent to which medical and other professionals should have input in the IEP process?

It should be required that there be medical input with each school in the development of the IEP, which the APA/AACP believes must include psychiatric and pediatric consultation. Any screening of children for mental and physical problems that may influence their schoolwork or school adjustment should be formulated into a statement of relevant findings and recommendations.

In addition, each state plan should include several items not previously mandated: a) that there be members of both Health and Mental Health professionals on the state and local advisory committees so that they have their input into the state and local plans and b) that each state plan specify that there be written inter-agency agreements between the state Departments of Education, Health and Mental Health in terms of the cooperative responsibility for the health and mental health care of children, and that this requirement be conditional to the receipt of education funds. This is particularly important since at the federal level there are now separate departments of education and health and

and human services. This charge would prevent various school districts from refusing to consider the therapeutic needs of their children in special education for fear that they may be stuck with the treatment programs which they cannot afford or which will reduce their capacity for providing special education programs to children in their charge. The concept of shared responsibility for these children must be emphasized over and over again.

3. Please elaborate on the problems regarding the protection of confidentiality of sensitive, private information?

Since the IEP is an essentially public document, any confidential details should not be included in the medical and mental health report. Only pertinent findings and recommendations for specific action should be attached to the IEP. These might be such details as might be offered to teachers when a child mental health professional consults with the school.

4. You raise a very important issue with reference to "related services." In your judgment, where should the line be drawn between the responsibilities of the public schools and the State mental health programs with reference to providing mental health services to P.L. 94-142 children?

It is difficult to define the cutting edge because of the varieties of capabilities of the educational and mental health systems within each jurisdiction. The answer to the dilemma must be to require working interagency agreements as a condition to the receipt of federal funds. This requirement is a sine qua non to effecting appropriate treatment for each child covered by the mandate of P.L. 94-142. These interagency agreements could provide that direct treatment services, including psychotherapy, be paid for through such third party payors or parental funds as would ordinarily cover this type of professional expense. The schools should be concerned with and pay for mental health assessments, evaluations and diagnoses that arise with school related problems. The schools should also be required to purchase mental health consultation for school staff working with handicapped children. Finally, where necessary, the school system should pay for residential care when such is indicated. Reimbursement for such residential placement should be at a level which recognizes the cost of providing such needed services.

Senator STAFFORD. Thank you, sir. We know it is far from perfect.

The next witness will be Dr. Sharon Robinson, who is director of instruction and professional development in Washington, representing the National Education Association.

Doctor, welcome to our subcommittee hearings. Again if you could summarize, and we will place your entire statement in the record.

STATEMENT OF DR. SHARON ROBINSON, DIRECTOR, NATIONAL EDUCATION ASSOCIATION'S PROGRAM FOR INSTRUCTION AND PROFESSIONAL DEVELOPMENT

Dr. ROBINSON. Thank you, Mr. Chairman.

In the interest of time, I will attempt to summarize.

Senator STAFFORD. Could you bring the mike up just a little so that we can hear, especially those in the back of the room.

Dr. ROBINSON. I am Sharon Robinson, director of the National Education Association's program for instruction and professional development. The 1.8 million member NEA particularly values the opportunity to share with you urgent concerns of the Nation's teachers about one of the most important Federal educational initiatives ever enacted, the Education for All Handicapped Children Act.

In an effort to summarize, I would just say that this initiative imposes upon our members at a classroom level in a most dramatic way. Perhaps no initiative other than desegregation is felt so keenly at the level of the classroom teacher. And our members have been very open in sharing concerns with us.

I could capsulize those concerns by stressing that they are these: training, adequate training. It is a matter of morale, as well as a matter of professional integrity. Our members are concerned about being able to provide adequate instructional services to all students who come into their classrooms. They recognize it as an imposition as well as a threat to the children that they attempt to serve when they have students for which they recognize their training is inadequate.

The issue of class size is also an instructional matter that has not been dealt with adequately at the local level. We have been trying to gauge the impact on class size of the introduction of one handicapped child to the classroom. The best information that we can get from our members, lacking hard empirical research in this area, suggests that there should be a reduction of five students for every handicapped child mainstreamed into the regular classroom.

Another issue of particular concern to us is the involvement of teachers in the placement process. While the law is being implemented in some places through which perfunctory involvement of teachers is allowed, this involvement is not universally mandated by strict requirements that all are held to observe.

The issue of adequate resources comes into play when our teachers are required to fill the need and to seek out support services for children that come into their classrooms; the identification of those services is near impossible. The entire system needs to be tuned up so that the support resources for supplying the needs of handicapped children are readily identifiable and available.

Compliance and enforcement procedures are not always forthcoming and the whole process is not easy. The bureaucratic structure almost defies adequate attention given to any particular compliance problem relative to the intent of this law. And, finally, as I am sure you will hear often during the course of these hearings, we must bring to your attention the issue of funding. All these concerns work together in what I call an intent to fully implement this initiative. While our members are in sympathy with the notion of 94-142, many are even committed advocates for the whole notion of mainstreaming.

We do have to recognize and call to your attention the negative impact of incomplete implementation of any initiative or any innovation. It is that kind of systematic observation and analysis that we would encourage on the part of the committee, as you seek to rectify some of the deficiencies in the initiative.

Thank you.

Senator STAFFORD. Thank you very much, Doctor. We really appreciate your being here and I can assure you that your testimony will get attention from the entire subcommittee and eventually the full committee.

In your case, if it is agreeable, we would like to submit some questions in writing for response in writing also.

We thank you for your presence here very much.

[The prepared statement of Dr. Robinson along with questions and answers follow:]

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STATEMENT

OF THE

NATIONAL EDUCATION ASSOCIATION

ON

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

PRESENTED BY

SHARON ROBINSON

NEA DIRECTOR OF INSTRUCTION AND PROFESSIONAL DEVELOPMENT

JULY 31, 1980

Mr. Chairman and members of the Subcommittee, I am Sharon Robinson, director of the National Education Association's program for Instruction and Professional Development. The 1.8 million-member NEA particularly values the opportunity to share with you urgent concerns of the nation's teachers about one of the most important federal educational initiatives ever enacted, the Education for All Handicapped Children Act. These concerns are especially critical as the date for full implementation of that law -- September 1, 1980 -- is upon us.

That date is surely circled on the calendars of many of our members since, in the final analysis, it is the teachers who must strive to fulfill the mandate of the law -- to deliver a free appropriate public education to all handicapped children aged three through twenty-one. The teachers -- not Congress or state education agencies or school boards or panels or commissions -- must meet this enormous challenge despite too little involvement in the process, too little training in educating these children, too little money, and too few resources.

The simple fact is that the ideal of a free appropriate public education for all handicapped children will not be a reality on September 1, nor perhaps for some time to come unless changes are made in the funding, regulation, administration, and enforcement of the law.

Let me stress, however, that we are not interested in trying to lay blame on any agency or individuals. Certainly, teachers are dedicated to the goals of PL 94-142; and we believe that the vast majority of all those involved with its implementation are equally supportive of those goals. It is just that all of us are a bit staggered by the charge to provide the best education possible for eight million children with special needs, indeed to meet the needs of all children, when staff, resources, and support are so desperately low.

We want to underline that the Education Department's Office of Special Education (and its predecessor agency) has been concerned, cooperative, and responsive in many ways. Policy papers from this office have, for example, supported some teacher involvement in development of each state's Comprehensive System of Personnel Development (teacher training plan) and in the process of developing the Individualized Education Programs (IEP). While required by the law, enforcement of this teacher involvement has not occurred to any great degree.

We are all making strong efforts. But we must do more if the reality is to resemble the ideal. Toward this goal, I would like to share teacher perceptions of a few of the central issues we have identified as most critical to improved implementation of the law.

1. <u>Adequate training for teachers</u>. The inservice training, mandated by the law, has been provided for very few educational personnel who bear responsibility for providing services to the handicapped students. Even where some training is offered, teachers say it is not really relevant to what they need to meet the day-to-day challenges of educating handicapped children, nor are incentives for participating -- also discussed in the law -- being offered. The central problems are that most of those who need training are not getting it, and that teachers, who know most about what they need, are not being involved in development of training programs.

To meet these basic deficiencies, a number of steps must be taken. The Office of Special Education should monitor and enforce the law's mandates for development by states of quality programs for personnel training and retraining. The states should place both regular and special education teachers on their personnel development panels to help devise recommendations for realistic programs. Teachers should have a prominent role at the local level in helping to determine the content of inservice programs, and the full range of incentives in the law, such as released time, should be made available to teachers so that they can fully participate.

In short, no teacher should be assigned a handicapped student until that teacher is trained to understand and meet the student's needs. People who have not been in the classroom can have no idea of the impact on a teacher's morale of feeling, as one put it, "woefully unprepared" but being unable to do anything about it.

Certainly, a step in the right direction is the proposed Senate amendment to the Higher Education Act to set up a new fellowship program for elementary and secondary teachers in areas where there is a shortage of personnel trained to teach the handicapped. As far as we're concerned, there is a shortage of such teachers everywhere!

2. Class size. Teachers would like to individualize instruction for all children, and they make a valiant effort to do so. Even to meet that goal for children with a "normal" range of needs, current class sizes are unmanageable. When a child needs help or encouragement, he or she needs it now, not tomorrow or next week. The loss to a child's learning or self-esteem because a teacher could not give the needed attention may never be recouped. The frightening thing is that the teacher never knows for sure just how serious the eventual repercussions will be.

Educational researchers have now proved conclusively that reduced class size not only produces increased student achievement but also that smaller classes have a positive effect on classroom processes and environment, student attitudes and behavior, and teacher satisfaction. Teachers can use a greater range of instructional techniques and a greater variety of materials. Discipline problems decrease since students' frustrations are fewer, and teachers are better able to diagnose causes of misbehavior and deal with individuals before major problems occur. From verifiable gains in student achievement to better human interaction, the benefits of smaller classes have been documented. If smaller classes are this important for students in general, you can imagine how critical they are for handicapped children.

Teachers in the classroom don't have to imagine. They know from experience. NEA's 1980 National Teacher Opinion Poll showed that 81 percent of teachers believe that when a handicapped child is placed in a regular classroom for some or all of the time, class size should definitely be reduced. Reduction by five students for each handicapped student was the median recommendation of teachers polled. There are some class-size reduction plans already in effect in school districts which are based on a "weighted-count" formula for determining class size not by the numbers of students but by the level and type of their needs. These could provide a good starting point for development of a model by the Office of Special Education for use by local school districts.

3. Involvement of teachers in placement and planning. There is currently no recognition in the law of the right of the teacher, either regular classroom or special education, to call for the possible reassignment of an inappropriately placed handicapped child. This is true despite the fact that teachers are precisely the ones who most likely know best whether children's needs are being met in their current placement. Without provision for teacher input on this

critical decision, handicapped children will continue to drift aimlessly in the wrong classroom environment without the services they need -- to the detriment of themselves and other students.

Equally important is the participation of teachers in the initial decision-making about the child's Individualized Education Program (IEP). It is absolutely essential that the teacher who will have to carry out the goals set out in the IEP -- as well as the teacher who has had most exposure to the child previously -- be fully involved in the IEP process. Only when this occurs will there exist the maximum opportunity for adequate evaluation and instruction of each handicapped child. NEA members think that this involvement of the receiving teacher is so important that they have incorporated their support for it into NEA's continuing policy statement on education of the handicapped.

4. Adequate resources. The list of resources that teachers need and do not have would take up a sizable chunk of the fine print in the *Congressional Record*. They can be summarized as more people, more time, and more materials, equipment, and facilities.

The "people" include everybody from regular classroom teachers so that class size may be reduced, to more specialists to diagnose problems and prescribe solutions, to aides to do everything from preparing braille instructional materials to assisting with less physically mobile students. The "time" includes released time or compensatory time to participate in inservice training, work on IEP's, and work with other teachers or parents to provide needed services to handicapped students. Much of that precious time, by the way, is all too often taken up with intolerable amount of paperwork imposed by local and state agencies.

The "materials, equipment, and facilities" needed to serve the varied types of handicapped children are staggering. They include special instructional materials for those with any one of several learning disabilities; braille typewriters; amplification devices for the hearing impaired; and "crisis rooms" for the emotionally disturbed. And we're talking about school districts which already do not have enough books or classroom equipment.

5. Compliance/enforcement. A major difficulty with enforcing compliance is the lack of hard data on the extent to which local and state agencies are fulfilling the mandates of the law. This is an area in which OSE needs to make additional efforts. When we look at the magnitude of the task of monitoring, and the difficulty that even experienced agencies have had with enforcement, we cannot harshly criticize the Office of Special Education. The OSE staff is strong in educational theory and practice -- and we certainly need that expertise -- but they have little training or experience in monitoring and law enforcement skills. Agency staff need more training and need to work more closely with the Office for Civil Rights, which has staff with the necessary expertise.

Nevertheless, we have to be aware of the problems resulting from this lack of full enforcement. Handicapped students linger in the limbo land of waiting lists -- waiting to be evaluated, waiting to be placed, waiting to be served adequately. Even when handicapped children have ostensibly been identified, evaluated, and placed for services, too often they are misclassified, misplaced (literally as well as figuratively), and ill-served. This doesn't speak to those who have never even begun the process toward proper placement and services. Further, the handicapped child who is swiftly identified, properly evaluated, and rightfully placed is often faced with an inadequately prepared teacher.

The teacher also may be trying to deal with too many students of too many kinds, as well as not having the necessary resources and back-up personnel.

Unfortunately, OSE is, at this point, monitoring paper, not people. What good is the most responsive, efficient plan in the world if the plan is just that? What good is a plan that is never fully implemented due to lack of commitment or understanding by education agencies or to lack of resources for teachers?

Performance Administrative Reviews are cursory and draw little, if any, follow up. A disapproving shake of the head often constitutes the substance of enforcement demands made to state or local education agencies that fail to comply with either the letter or the spirit of the law. In some cases, OSE has simply not made clear what these agencies should be doing and how they should be going about it. We need, for example, policies on non-discriminatory evaluation procedures, criteria for placement of children in the least restrictive setting, guidelines on use or abuse of standardized tests, and enlightenment on the scope of education-related services required.

Further, OSE has not set out the most serious problems for first-and-foremost attention. Priorities have to be identified for both monitoring and enforcement. Priority areas should include: teacher inservice education and training; handicapped students denied any services; handicapped students still on waiting lists; institutionalized students still not being served; handicapped students remaining segregated; minority students being disproportionately misclassified; handicapped students being illegally suspended and expelled; handicapped students not receiving IEP's; and parents not being notified of their rights, or surrogate parents not being adequately identified.

We know that the Secretary of Education has charged a task force to look into many of these problems. We look forward with great interest to its recommendations and the Department's follow-up actions.

We have left the greatest problem until last because it underlies all the others. That problem is funding. Most school districts were in desperate financial straits before PL 94-142 was instituted; they are in worse shape now -- due to the worsening economic picture in the nation, the so-called "tax revolt," and the state and federal mandates for programs like PL 94-142 which do not carry with them the funds necessary for implementation.

The law authorizes funding at the level of 30 persent of the average per-pupil expenditure for the fiscal year ending September 30, 1981, going to 40 percent subsequently. We are looking at more like 12 percent in real funding. State and local governments simply cannot make up the difference.

For our part, the teachers of this nation are committed to make the Education for All Handicapped Children Act work. What is needed from the federal government is full funding, good administration, careful regulation, and thorough enforcement. Teachers are willing and dedicated partners in the effort to see that this unprecedented challenge is met; on their behalf, we ask that your commitment match theirs in reality as well as in ideals.

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August 12, 1980

8-14

The Honorable Jennings Randolph
Chairman, Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

The National Education Association welcomes the opportunity to supplement our earlier testimony on implementation of Public Law 94-142 as requested in your August 1 letter which contained two questions.

> Your question #1: "...you suggest that a handicapped student should not be assigned to a teacher until that teacher is trained to understand and meet the needs of the student. Suppose we have a small school district with limited resources, does NEA feel that the student should then receive no services or would it be more beneficial to place the student in the class and have the teacher receive training within a reasonable period of time?

The law is very clear. If a local school district is unwilling or unable to provide services, then it's the state's responsibility. If small districts cannot provide both teacher training and a free, appropriate education for their handicapped students, then Congress should move to increase the amount of funds directly to those districts or to the states so that area, regional, or statewide programs can be initiated. This again raises the fundamental problem of inadequate funding that I alluded to in my written testimony of July 31, 1980.

The requirement that teachers receive training prior to the placement of a handicapped student in their classrooms is of the highest priority for our members. A teacher who is not specifically trained is soon demoralized. Moreover, the absence of such training is an anathema to the goal of providing an appropriate education based upon the individual needs of the child. An alternative to prior training could be for the teacher to receive training concurrent with the placement of a handicapped child in his or her classroom. We wouldn't advocate such an approach other than as a last resort, lest such become the mode.

(continued)

> Your question #2: "In a time when Federal agencies and school systems are faced with massive budget restraints, how does NEA suggest that reduced class size be accomplished?"

Special educators and school boards have long recognized that students with special needs require more teacher time and individualized instruction. Accordingly, class sizes for the handicapped have been smaller. However, with the advent of PL 94-142 and "mainstreaming," regular classroom teachers are being asked not only to provide specialized services without the benefit of special training but also to teach their regular load of 25 or more students. We have literally lost ground.

When teachers advocate reduced class size, they are often patronized by being told about available special services. However, these services--no matter how essential--do not resolve the problem of numbers. The critical problem of numbers is acutely exacerbated when handicapped children are placed in regular classrooms.

The public, and especially parents, want schools to function better and improve not only student achievement but also student attitudes and behavior. There are ways to improve. A most important way is to reduce class size so that teachers can use a variety of instructional techniques and give each student enough personal attention to recognize and deal with instructional and behavioral problems before they get out of hand. We know that it will cost money. But reduction of class size is the single change that we can make that has been shown by education researchers to bring such significant and gratifying results regardless of the type of student involved or subject being taught. Therefore, we believe that it is our responsibility as the organization representing teachers to point out the importance of reducing class size and help the public to understand that doing so will more than pay for itself in the preparation of more independent, productive citizens.

Teachers have for a long time known that class size is important to the fulfillment of their professional responsibility to educate our young people. However, only recently have the research studies begun to show the correlation between achievement and class size. A study by Gene Glass and others on class size concluded that "average pupil achievement increases as class size decreased. The typical achievement of pupils in instructional groups of 15 and fewer is several percentile ranks above that of pupils in classes of 25 and 30."

The following suggestions are offered as ways to reduce class size in the face of budgetary restrictions:

1. At a time of reduced enrollments, school districts should not cut back on the percentage of their support to public schools but rather use their funds to reduce class size.
2. Federal laws and policy statements should recognize that the effort required to achieve effective instruction is a significant factor in determining proper class size, particularly in mainstreamed classrooms. Such laws and policy statements should also include incentives toward reduced class size.

3. Concerned teachers, citizens, and legislators must join together to highlight and educate the public as to the importance of class size for providing a free, appropriate public education for all our children.

4. Congress should explore the issue of class size as it relates to the education of handicapped children by calling for regional or national hearings on the issue.

At this point, I will offer the following additional comments:

During the recent Oversight Hearing on the Education for All Handicapped Children Act, one witness suggested that the individualized educational program (IEP) for all disabled students is actually a "roadblock" to the implementation of the law. This view represents unfortunate insensitivity to the intent and import of the IEP.

The NEA strongly supports the concept of the IEP. The states and the local education agencies must insure adequate time to prepare the IEP, identify all required support services, and establish the full participation of appropriate role groups.

Rather than regard the IEP as a time-consuming "roadblock" to the implementation of PL 94-142, we regard it as the contract which represents the local and state commitment to the education of each handicapped child. Without such a statement, the parents of handicapped children would be involved with the classroom teacher only, thereby encouraging the perception that the classroom teacher is solely responsible for the educational needs of the child.

The IEP serves the valuable function of defining and fixing responsibility for delivery of the various services, including classroom instruction. It represents the contract binding all parties involved to the educational objectives of each handicapped child.

In conclusion, we hold that developing individualized education programs would benefit all children. This is rather the core of PL 94-142. Teachers desperately want to make the concept work. Accordingly, our basic plea is for the creation of conditions whereby teachers can succeed.

If I can provide further information, please contact me.

Sincerely,

Sharon Robinson

Sharon Robinson, Director
Instruction and Professional
Development

SR/ebl