

EDUCATION OF THE HANDICAPPED

ISSUE BRIEF NUMBER IB78040

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CONGRESSIONAL RESEARCH SERVICE

MAJOR ISSUES SYSTEM

DATE ORIGINATED 04/21/78

DATE UPDATED 11/14/83

FOR ADDITIONAL INFORMATION CALL 287-5700

ISSUE DEFINITION

Federal involvement in the education of the handicapped increased significantly with the enactment of the Education for All Handicapped Children Act of 1975 (P.L. 94-142) in the 94th Congress. This legislation amended the provisions for State assistance under Part B of the Education of the Handicapped Act (EHA, P.L. 91-230, title VI, as amended) to require that a "free appropriate public education" be available for all handicapped children age 3 through 21 by September 1980. P.L. 94-142 authorized increased Federal financial assistance along with new requirements for participating State agencies and local school districts. Current issues relating to Federal policy for the education of the handicapped include concerns about costs and responsibilities in educating the handicapped, about the level of Federal financial support, about the characteristics of handicapped children actually identified and served, about the implementation of P.L. 94-142 requirements by State and local school districts, and about Administration proposals to revise Part B regulations.

In addition, project grants authorized under the EHA, Parts C-F, expire at the end of FY83. The Senate passed legislation that would reauthorize, expand, and amend these programs (S. 1341). Similar legislation has been reported by a House committee (H.R. 3435).

BACKGROUND AND POLICY ANALYSIS

Part B of the Education of the Handicapped Act (EHA), as amended by P.L. 94-142, provides Federal financial assistance to States for the education of 3-through 21-year-old children having one or more of nine physical or mental disabilities ranging from learning disabilities to severely and profoundly handicapping conditions. The level of Federal assistance is based on an annual count of handicapped children being served by appropriate educational programs and is intended to pay a percentage of the excess costs associated with educating handicapped children. Payments to States are affected by the authorized Federal reimbursement ceilings (40% of the national average per pupil expenditure) and the annual congressional appropriation. Approximately 4 million handicapped children are currently participating in State and local special education programs that qualify for Federal assistance. The 1983-1984 school year Federal contribution under Part B is \$1,018 million or about \$252 per student. The Federal contribution represents about 8% of the excess costs of educating a handicapped student.

Current educational rights of handicapped children were established initially in two major State-level lawsuits, PARC [Pennsylvania Association for Retarded Citizens] v. Commonwealth of Pennsylvania, and Mills v. D.C. Board of Education. Both of these suits addressed the exclusion of certain handicapped children from any educational instruction and the lack of appropriate educational programming for certain handicapped children. The basic rights of handicapped children to public education affirmed by the rulings on these cases have since been modified by State court decisions regarding various aspects of a handicapped child's right to an educational program designed to meet his or her individual educational needs.

At the national level, two Federal laws are intended to assure certain rights for handicapped persons. Section 504 of the Rehabilitation Act prohibits any program or activity receiving Federal assistance from discriminating against any persons because of a handicapping condition. Part B of EHA, as amended by P.L. 94-142, requires that each State participating in the State grant program provide a "free appropriate public education" to all handicapped children 3-21 years of age in the "least restrictive environment."

As States and local school districts have worked to comply with both their own legislative and judicial mandates and the requirements of P.L. 94-142 and Section 504, a number of concerns have emerged:

- What is the estimated total cost of providing free appropriate public education for all handicapped persons aged 3-21?
- What is the legislative intent of P.L. 94-142 and what have been its effects thus far?
- What is the level of additional State and local revenue necessary to provide full educational services for all handicapped children and how will such additional revenues be raised?
- What is the appropriate level of Federal funding commitment for P.L. 94-142 and other special education legislation?
- What is the best way to implement the various requirements of P.L. 94-142 and Section 504 of the Rehabilitation Act of 1973?
- What is the best way to educate all handicapped children within each State in order to achieve both State and Federal education objectives?

These concerns are briefly examined under four issues: (1) costs and responsibility for educating all handicapped children, (2) the level of Federal funding, (3) handicapped children identified and served, and (4) implementation of P.L. 94-142 requirements.

Issue 1: Costs and Responsibility for Educating All Handicapped Children

States and their local school districts have the primary responsibility for the education of handicapped children of elementary and secondary school age. Federal involvement in this area is primarily the result of legislation enacted over the past 15 years. Currently, approximately 4 million handicapped children participate in State and local special education programs funded under P.L. 94-142.

A 1982 study by the Rand Corporation entitled "The Cost of Special Education" estimates the total cost of educating handicapped children in the Part B State grant program in school year 1982-1983 to be \$23.6 billion. Of

this amount; State and local educational agencies will have spent \$12.7 billion in excess costs, i.e., those additional costs associated with educating a handicapped child compared to a non-handicapped child.

In addition, the Federal Government contributes over \$1 billion in special education support to States and local school districts for the education of handicapped children. The following totals indicate the amount of Federal funds which are available for use during the 1982-83 and 1983-84 school years under selected education programs (administered by the Department of Education) that have specific authorizations for the education of the handicapped. These figures reflect the FY82 and FY83 appropriations. (Note: Most Federal education programs, including the Part B program, are either advance- or forward-funded, i.e., funds provided in an appropriation act or a continuing resolution for one year are primarily used to provide education services -- thus are actually spent or outlaid -- the following year. Therefore, the FY82 appropriation for Part B was obligated by ED for use in 1982-1983; the FY83 appropriation will be obligated for use in the current school year 1983-1984.)

	<u>FY82</u>	<u>FY83</u>
	(in thousands of dollars)	
EDUCATION OF THE HANDICAPPED ACT		
Part A -- Removal of Architectural Barriers	\$ 0	\$ 40,000
Part B -- State Grants	931,008	1,017,900
-- Preschool		
Incentive Awards	24,000	25,000
Parts C, D, E, F	113,572	116,502
ELEMENTARY AND SECONDARY EDUCATION ACT		
Title I, subpart 2 -- Programs for Handicapped Children in State Supported Schools	146,520	146,520
PUBLIC LAW 81-874		
Title I -- Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activities (special section 3 entitlement rate for certain handicapped children)	30,000*	30,000*
VOCATIONAL EDUCATION ACT		
Part A -- State Vocational Education Programs (section 110 handicapped priority)	55,500*	55,800*

* Estimates.

At the State and local level, a number of factors influence attempts to cost-estimate and to implement a full service educational program for all handicapped children. Among these factors are the following:

- The actual number of handicapped children identified and served within each State. (See Issue 3: Handicapped Children Identified and Served, for further discussion.)
- Type of handicapping condition served. Since different types of handicapping conditions require different average levels of expenditure, the incidence of various handicapping conditions among the children in each State will influence total costs.
- Type of special education program. Even under a least restrictive environment approach as required under P.L. 94-142, the exact type of handicapped program provided by a State or local agency may vary significantly in terms of total cost per pupil.
- Quantity and quality of special education services provided.

How individual States and their local school districts finance increased costs in the area of special education in the years ahead may depend largely on financial decisions made within each State and on the level of Federal funding. Generalizations based on past spending trends by States and localities may be an inadequate means of predicting future expenditures for program areas. Several unpredictable factors could influence spending priorities within a State or locality, i.e., changes in State law which may affect the direction and scope of a State's participation in a program; State and local budget constraints which may redirect educational expenditures to other areas; and the effect of Federal program funding cuts in areas other than education which may have an indirect impact on education budgets. (See Issue 2: Federal Funding, for further discussion.) Whatever the disposition of these financial considerations, however, the final responsibility for meeting both the State and Federal mandates for special education rests with the States and their local agencies. In the end, it is the States and their school districts that have the primary responsibility to provide free public education for all handicapped children.

Issue 2: Level of Federal Funding

Under P.L. 94-142, the formula for the allocation of Part B funds among States is the number of handicapped children 3-21 years of age in the State receiving a free public education multiplied by a percentage of the national average per pupil expenditure (APPE). The percentage of the APPE used in the formula for calculating maximum authorized payments increased from 5% for FY78 to 40% for FY82 and succeeding fiscal years. A State must receive, each fiscal year, at least the amount of funding it received under Part B in FY77. Actual allocations to States each fiscal year are subject to appropriations made available for Part B.

The Omnibus Budget Reconciliation Act of 1981 (OBRA, P.L. 97-35) set authorization levels for the Part B program for FY82-FY84 well below the levels that would otherwise have been provided by the Part B formula. For example, the appropriation amount authorized by the formula for FY83 would have been about \$4 billion (assumes 4 million children served times 40% of \$2,500 (APPE)). OBRA authorized appropriations for Part B programs (other than evaluations and preschool incentive grants) of \$969.9 million for FY82 and \$1,017.9 million each year for FY83 and FY84.

S. 1340, the Rehabilitation Act Amendments of 1983, as passed by the House on Sept. 13, 1983, would provide a \$1.5 billion authorization for all Education of the Handicapped Act programs. While the distribution of these funds between the Part B State grant program and discretionary programs is not specified, this authorization level would be likely to provide an increase for the State grant program from its current authorization level.

Despite the OBRA authorization for Part B, however, P.L. 98-139, the Department of Education's appropriations legislation for FY84, provides \$1,043,875,000 for the State grant program. Congress recently agreed to an additional \$25 million for Part B in FY84 under the resolution providing further continuing appropriations for FY84 (H.J.Res. 413), bringing total FY84 appropriations for the State grant program to \$1,068,875,000.

The level of Federal funding. When P.L. 94-142 was enacted, some believed that providing a free appropriate public education for all handicapped children aged 3-21 implied a Federal commitment to fund the new Part B, State grant entitlement formula annually and fully in the years ahead. For each of school years 1977-78 and 1978-79, the first 2 years after implementation of P.L. 94-142, total Part B appropriations were sufficient to pay the full authorization for the program. Beginning in school year 1979-80 and continuing through the current school year 1983-84, appropriations have been insufficient to meet the level authorized by the Part B formula in P.L. 94-142. The following table summarizes the estimated number of children served and the relative levels of Federal support since the passage of P.L. 94-142.

<u>Fiscal Year</u>	<u>Children served</u>	<u>Federal funding</u>	<u>Funded % of APPE authorized under P.L. 94-142</u>	<u>Actual funded % of APPE</u>
1977	3,485,000	\$251,769,927	5	5.1
1978	3,561,000	566,030,074	10	10.1
1979	3,700,000	804,000,000	20	12.5
1980	3,803,000	874,500,000	30	12.0
1981	3,941,000	874,500,000	40	10.0
1982	3,990,000 <u>a/</u>	931,008,000 <u>b/</u>	40 <u>c/</u>	9.0
1983	4,040,000 <u>a/</u>	1,017,900,000 <u>d/</u>	40 <u>c/</u>	8.0
1984	4,044,500	1,068,875,000 <u>e/</u>	40 <u>c/</u>	8.9

a/ ED estimate.

b/ Based on P.L. 97-161, Further Continuing Appropriations Resolution for FY82 (H.J.Res. 409) signed into law, P.L. 97-161, providing funding through Sept. 30, 1982 for EHA programs as well as other ED programs and P.L. 97-257, Supplemental Appropriations for FY82 (H.R. 6863).

c/ Authorization separately limited to \$969.9 million for FY82 and \$1,017.9 million for FY83 and FY84 under the Omnibus Budget Reconciliation Act of 1981.

d/ Based on P.L. 97-377, Further Continuing Appropriations, FY83, providing funding through Sept. 30, 1983; and on P.L. 98-63, Supplemental Appropriations Act, 1983.

e/ Based on P.L. 98-139, Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1984, and the conference agreement on H.J.Res. 413, Further Continuing Appropriations, FY84, providing funding through Sept. 30, 1984.

Issue 3: Handicapped Children Identified and Served

When P.L. 94-142 was enacted in 1975, there were an estimated 8 million handicapped children between the ages of birth through 21 in the United States. The most recent information available from the States, however, indicates that in 1982-83 there were approximately 4 million handicapped children between the ages of 3 through 21 being served by State and local agencies. Where are the remaining 4 million handicapped children? Some of these children are not in school especially those in the birth-6 and 18-21 age ranges. Some of these "missing" children are in various private institutions and thus do not appear in public school and State institution totals. Presumably, some of these unreported children have handicaps that remain undiagnosed. In addition, some of the older children are already enrolled in higher education or vocational institutions and thus do not appear in the elementary and secondary education reports. Possibly, some of these handicapped children are in State hospitals or other institutions that provide no educational services for some reason. And possibly, the 7.9 to 8 million estimated total of handicapped children aged 3-21 is inaccurate. Both the State court decisions and the P.L. 94-142 mandate to educationally serve all handicapped children aged 3-21 presumably has led to increases in State and local totals of handicapped children receiving instruction. The number of handicapped children who are currently unserved and will eventually be provided service in each State is a matter for conjecture.

Another issue is the disproportionate representation of students with certain characteristics in special education programs. Findings from various recent studies indicate that the "typical" child participating in public school special education programs is young (about 67% are 12 years of age or younger), male (twice as many males and females receive special education) and mildly handicapped (in school year 1980-81 about 13% of the children served had severe handicaps, 36% had moderately severe handicaps, and the majority, 51%, had mild handicaps). Learning-disabled children exceed the number of children in any other category of handicapping condition. In six States, over half of the handicapped children counted as receiving special education services under P.L. 94-142 were learning-disabled. Recent studies have also shown a disproportionate number of minority children participate in some special education programs (41% of black students in special education in 1978-79 were in classes for the educable-mentally retarded as compared with 17% of Hispanic students and 6% of white students). Males are three times as likely as females to be found in programs for the seriously emotionally disturbed and two and one-half times as likely as females to be in learning disabled programs.

The disproportionate representation of certain groups of students in special education programs may result from: variations within and among States with regard to the type and severity of the handicap of those children identified as learning disabled; the preference of teachers to identify a child as learning disabled over identifying a child as mentally retarded; the existence of racial bias in the identification and assessment of minority children for special education; and sexual bias which may result in misidentifying social maladjustment or misbehavior as emotional disturbance. There has been no conclusive evidence which explains the nature, cause or scope of any one of these problems. Studies have concluded that there are children in school who need but are not receiving special education, but their number is unknown.

Issue 4: Implementation of P.L. 94-142 Requirements

In 1975, P.L. 94-142 substantially amended the Part B -- State grant program authorized under the Education of the Handicapped Act by revising both the State grant entitlement formula and the State and local agency program requirements. Since enactment of this legislation, a number of concerns regarding the implementation of P.L. 94-142 have emerged. Among such concerns are:

- apparent "prescriptiveness" of a number of provisions under P.L. 94-142;
- emphasis on educating handicapped children with nonhandicapped children (the "least restrictive environment" or "mainstreaming" requirement);
- adequacy of teacher preparation for educating all handicapped children in a least restrictive setting;
- development and significance of the individualized education program (IEP) required for each handicapped child;
- State administrative accountability and potential problems with the due process procedures under P.L. 94-142;
- determination of the number of children with "specific learning disabilities" entitled under the Part B -- State grant program;
- problems in the provision of related services.

States and their local school districts are also affected by Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits any program or activity receiving Federal assistance from discriminating against any person because of a handicapping condition.

Is P.L. 94-142 "too prescriptive"? In view of the primary responsibility of States and local school districts to provide educational opportunities for all handicapped children under P.L. 94-142, one general concern is whether some of the Federal requirements -- such as the due process provisions -- are too prescriptive.

Some State and local educators believe the answer is "yes," especially when the Federal requirements clash with differing State or local procedures. Others respond that the answer is "no" because precise Federal requirements are the only way to ensure that all handicapped children have access to equal educational opportunities.

Educating handicapped children with nonhandicapped, or the "least restrictive environment" requirement. P.L. 94-142 requires each State to establish procedures that assure, to the maximum extent appropriate, that handicapped children (including those in public or private institutions or other care facilities) be educated with children who are not handicapped. Furthermore, special classes, separate schooling, or the removal of handicapped children from the regular education setting is to be provided

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 satisfactorily achieved.

In the view of some State educators and organizations, P.L. 94-142 is too prescriptive in instituting a "least restrictive environment," or "mainstreaming" approach. Such critics believe that the choice of method for providing educational services for the different types of handicapped children should remain a State prerogative. Some also conclude that a mainstreaming approach will not prove satisfactory without a significantly increased funding commitment to special education training for the regular classroom teacher. In addition, some educators fear that mainstreaming might be instituted without sufficient teacher preparation, thus leading to a negative result for both handicapped and non-handicapped school children.

Adequate teacher preparation. The necessity of adequately trained classroom teachers continues to be a key ingredient for successful education of the handicapped child. Many school districts continue to have difficulty in hiring sufficient numbers of adequately prepared special education teachers.

Among others, the National Association of State Boards of Education has indicated that P.L. 94-142 does not adequately couple the "least restrictive environment" approach with proper teacher training. In addition, the National Association has noted that, while P.L. 94-142 places top priority on educating handicapped children not yet served, these children often are the most severely handicapped and there is an insufficient number of trained teachers for them. According to ED, some 60,000 additional teachers are needed to adequately staff special education programs.

Individualized Education Program (IEP). P.L. 94-142 requires that local school districts develop an individualized education program for each handicapped child. This IEP is to include a written statement of the present levels of educational performance of the child, of annual and short term instructional goals, and of particular services to be provided and the extent to which the child is to participate in the regular school program. In addition, the IEP is to include a projected date for the start and anticipated duration of education services, and evaluation procedures to determine whether instructional objectives are being achieved. In each case, the IEP is to be developed by the child's parents or guardian, teacher, a representative of the school district, and whenever appropriate, the handicapped child.

One area of continuing concern remains the estimated cost of developing the IEP. Some argue that the IEP requirement should be deleted from P.L. 94-142 unless more Federal funds are made available for its implementation. Others respond that cost should be a factor only if States insist on putting the IEP at the top of the placement and classification systems already in place. In fact, some argue that use of the IEP could ultimately require fewer people, less paperwork, and less professional time than current placement systems.

State responsibility and due process. P.L. 94-142 requires the State educational agency (SEA) to be responsible for assuring that the Section 612 eligibility requirements for State participation in Part B are carried out. The SEA is also required to see that all education programs for handicapped children within the State, including those administered by other State or local agencies, are under the general supervision of the SEA personnel who

are responsible for handling educational programs for handicapped children. Questions have been raised concerning both the wisdom of such centralized administration and possible jurisdictional conflicts in some States in attempting to carry it out. (See #2 of the Evaluation section of this brief for a further discussion of this issue.) The Department of Education has noted that the States have flexibility in meeting these requirements under the Federal regulations.

P.L. 94-142 also prescribes procedures for due process hearings to safeguard the rights of handicapped children and their parents with respect to provision of a free appropriate public education. A number of States, however, have established due process procedures of their own that could differ from the Federal requirements under P.L. 94-142. As a result, there may be potential for difficulty in cases where State and Federal procedures conflict.

Serving children with Specific Learning Disabilities (SLD). Because the Education for All Handicapped Children Act, P.L. 94-142, now covers learning disabled children in its definition of "handicapped", it is a particularly difficult problem to identify and try to serve those children under Part B -- State grant program. When P.L. 94-142 was passed, it was determined that categorizing children as learning disabled was difficult and that including learning disabled among handicapping conditions might lead to overlabeling. Testimony from the Office of Education indicated that the entire lower quartile of any normal class might be classified as having learning disabilities. Therefore, a 2% limit was placed on the number of SLD children who could be counted for allotment purposes under the Part B -- State grant formula until such time as Federal regulations were published that defined and gave criteria for identifying learning disabilities. On Dec. 29, 1977, these Federal regulations became final, but controversy over the criteria used for determining the existence of a specific learning disability remains. (See Issue 3 -- Handicapped Children Identified and Served -- above for a more detailed discussion of this issue.)

Provision of Related Services

P.L. 94-142 requires each child's IEP to specify related services that are necessary to assist the child in benefiting from the special education services. As defined under the legislation, required "related services" could include transportation and such developmental, corrective, and other supportive services as speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities, counseling services, medical services for diagnostic or evaluative purposes, school health services, social work services in schools, and parent counseling and training.

In the first six years of program operations under P.L. 94-142, the provision of required related services has proven to be one of the most difficult and costly problems encountered by local school districts. Numerous problems have arisen with regard to exactly what "mix" of related services must be provided for each handicapped child attending public or private schools and what agencies are responsible for paying the costs of providing needed related services. As a result of these problems, many school districts are cautious in their related services commitments. This is especially true in States where local or State departments of health, mental hygiene, etc., have withdrawn payments for related services once a State or local educational agency has assumed responsibility for the education of a

handicapped child who had previously not been under State or local educational agency care. Recent studies have concluded that some children are excluded from special education, and other children are not provided adequate services because of fiscal limits on school districts' programs related to the need for such services.

Evaluations

Evaluations of the State grant (Part B) program, although varied in scope and direction, have basically focused upon the ability of State and local educational agencies to implement the new and extensive revisions made to this program in 1975 by P.L. 94-142 -- The Education of All Handicapped Children's Act. Success of the program has therefore been measured more in terms of how State and local agencies have accommodated the Federal legislative changes rather than how Federal program requirements have either raised the academic achievement of or enhanced equal educational opportunities for handicapped school-aged children. The three most recent evaluations of this program are discussed below.

1. General Accounting Office: Disparities Still Exist in Who Gets Special Education, September 1981. 130 p. In this report, the General Accounting Office (GAO) analyzed 15 evaluation studies and two data bases to determine if the goal of providing special education to handicapped children, as defined in the Federal legislation, was being met. This study found that while more children receive special education than ever before, access for some children remains a matter of chance. A child's home State, handicap, race, sex, school district, teachers, and parents all can determine whether and how well the child is served by special education. The report concludes that while not all children have equal access to special education, the primary congressional objective that those most in need of services receive them has largely been accomplished. Fewer and fewer of handicapped children that schools know about are denied an education. One reason some children have a better chance than others to receive special education is the type and degree of handicapping conditions which are included in varying State definitions of "handicap" for purposes of participation in the Federal program. The report also concluded that racial and ethnic minorities are "over-represented" (in comparison with their proportion of the overall youth population) in some disability categories: blacks in educable mentally retarded, American Indians in learning disabled and Asian Americans in speech impaired. Males of all races are over-represented in all categories, particularly in the learning disabled category.

Other findings of the GAO report are that some children are excluded from special education because not enough programs are available, and that the resources of a school district affect access to special education. Further, the report concluded that local school districts have had to limit their programs because of a shortage of funds. The report also noted that there is inconsistency between eligibility standards used to select children for special education under P.L. 94-142 and State policies currently in effect.

2. Education Turnkey Systems, Inc. P.L. 94-142 -- A Study of the Implementation and Impact at the State Level, Executive summary, Fall, 1981. 10 p. This study found that the provision of "related services" as mandated under P.L. 94-142 (these are services supplemental to educational services which help a child benefit from special education, such as transportation, developmental, corrective or other support services) is becoming a relatively "uncontrollable" expenditure for States and localities. For example, the

study found that a full quarter of one State's school transportation budget is spent on handicapped children who make up only 3% of the total school population. The study also reports that "turf" battles have developed between State education agencies and other State agencies over which should ultimately be responsible for providing other-than-educational services to handicapped children. Some State non-educational agencies have totally eliminated aid to handicapped students because they theorized that educational agencies were receiving more than enough P.L. 94-142 funds to take responsibility for these services.

3. Rand Corporation, The Cost of Special Education: Summary of Findings, November, 1981, 56 p. This report concerned the cost of educating handicapped children. The results of this study, which used data from the 1977-1978 school year, indicated that it cost an additional \$7 billion nationally to educate handicapped children. This amount represented 2.7 times the average cost of educating nonhandicapped children. The cost ratio (handicapped compared to nonhandicapped children) varied by age level from 1.98 at the elementary level to 2.48 at the secondary level. The cost weighing factor varied by age level ranging from 1.98 at the elementary level to 2.48 at the secondary level. It varied by type of handicap from 1.37 for speech impaired children to 5.86 for functionally blind children. It varied by type of educational placement from .55 for students working full-time under the auspices of the special education program, rather than attending classes, up to 3.24 for students in special day schools for handicapped pupils. The study concluded that all of the above factors must be considered in determining the total cost of special education to State and local educational agencies.

The study also identified the highest cost per handicapped child, on the average, which was \$743 for instruction provided by regular education teachers in the regular classroom setting. In addition, related services cost an average of \$191 per child, assessment and identification \$100 per child, and general district level and school level administration together cost approximately \$400 per child.

Activity in the 97th Congress, 2d Session

The Reagan Administration's FY83 budget request proposed reductions in budget authority for education of the handicapped programs in both FY82 and FY83, and a consolidation of all programs currently authorized under the Education of the Handicapped Act. For FY82, the Administration requested a rescission of \$256 million, or 28%, for the education of the handicapped State grant program. This would have resulted in a reduction in the average Federal payment for about four million handicapped children from \$218 to \$168 per child. For FY83, funding for the education of the handicapped was proposed to be reduced by 19% compared to FY82 and a consolidation of the programs would take place, resulting in a reduction in the FY82 average Federal payment for about 4.5 million handicapped children currently participating in the programs proposed for consolidation from \$246 to \$180, and reducing the Federal share of the aggregate average per pupil expenditure for these programs from 10% to 7%. According to the FY83 documents, legislation was planned to (1) consolidate Part B, State Grants and Preschool Incentive Grants currently authorized under the EHA, and the chapter 1 handicapped program (State-operated programs for the education of the handicapped) authorized under the Education Consolidation and Improvement Act of 1981, into a single special education grant; and (2) consolidate the discretionary projects currently authorized under the EHA into a special

purpose authority providing the Secretary of ED with the discretion to fund any or all of the discretionary activities. Budget authority for all of these programs would have been reduced from the FY82 level of \$1.2 billion to \$846 million for FY83 under the Administration's request. No formal proposal was submitted on this consolidation by the Administration in the 97th Congress.

At the end of the 97th Congress, programs authorized under the Education of the Handicapped Act were funded at \$1,110,252,000 under a further continuing appropriations resolution, P.L. 97-377 (H.J.Res. 631), through the end of FY83 (Sept. 30, 1983). [For a more detailed discussion of funding issues for FY82 and FY83, see IB82019: Education: FY82 and FY83 Funding Issues.]

Proposed Regulations for the Part B Program

On Aug. 4, 1982 ED published proposed regulatory changes for the Part B program. In its statement accompanying the proposed regulations, ED argued that the changes would eliminate "excessive paperwork requirements and regulatory detail that result in expenditure of time and resources on administrative activities", while "maintaining the key procedural protections and rights of handicapped children and their parents." In general, the proposed regulations would have deleted most of the detailed requirements in the current regulations while they would have maintained some of the more general provisions. These regulations would have made significant changes in the following areas: definitions; related services; timeline requirements for IEPs and due process hearings; the provision of a free appropriate public education; the procedural safeguards and due process protections; the least restrictive environment. The proposed regulations would have added several provisions in areas that are not addressed in current regulations, such as disciplining handicapped children and authorizing local agencies to consider how the handicapped child's behavior may disrupt non-handicapped children before placing a handicapped child in a regular class.

On Nov. 3, 1982, Secretary Bell officially announced in the Federal Register the withdrawal of certain sections of the proposed regulations and the insertion of certain current regulatory sections in their stead for six areas: parental consent prior to evaluation or initial placement, least restrictive environment, related services, timelines, attendance of evaluation personnel at IEP meetings and qualifications of personnel. In addition to the announced withdrawal of certain proposed regulations, the Secretary extended the period for comment on modifications, occasioned by the withdrawals, from Nov. 4, 1982 to Dec. 3, 1982. Assistant Secretary of Education Madeleine Will recently announced that the Department has abandoned its review of the regulations. [For further information see CRS White Paper, "Summary of the Proposed Regulatory Changes to Selected provisions of the Education of the Handicapped Act -- State Grant Program," by Angela Evans and CRS White Paper, "Analysis of the Department of Education's Withdrawal of Sections of Proposed Regulations under P.L. 94-142, the Education of All Handicapped Children Act," by Angela Evans and Nancy Lee Jones.]

Activity in the 98th CongressReauthorization of the Discretionary Project Grants Authorized Under EHA

Authorization of appropriations expire Sept. 30, 1983, for most of the EHA discretionary programs. For these expiring discretionary programs to receive funding in FY84, their authorization of appropriations would have to be extended. This could be done either by legislative amendments to the EHA, or by an automatic one-year extension of authorizations allowed for certain education programs under the General Education Provisions Act, GEPA, Section 414(a)2 (B). Two bills considered by the 98th Congress, S. 1341 and H.R. 3435, would amend and extend the discretionary programs of the Education of the Handicapped Act, Parts C through F. Parts C through F of the Education of the Handicapped Act include: Part (C), Centers and Services to Meet Special Needs of the Handicapped; Part (D), Training Personnel for Education of the Handicapped; Part (E), Research in the Education of the Handicapped; and Part (F), Instructional Media for the Handicapped. The instructional media program is the only activity that does not require reauthorization because its authority is indefinite.

On June 27, 1983, the Senate passed S. 1341, the Education of the Handicapped Act Amendments of 1983. This bill would extend authorization of appropriations for 3 years (FY84-FY86) for most of the project grants currently authorized under the EHA. Part G -- Special Programs for Children With Specific Learning Disabilities -- would be repealed. Part G has not been authorized since FY77, since children with specific learning disabilities have been included in the Federal definition of handicapped, and have participated fully in the Part B State grant program. In general, S. 1341 would retain current provisions for most of the EHA discretionary grant programs. New provisions would be added to the preschool incentive grant and early childhood education programs to encourage Federal funds to be used for handicapped children from birth. In addition, special emphasis would be placed on evaluation studies which address the impact and effectiveness of the EHA programs. The bill also mandates two specific evaluation studies: (1) a longitudinal study of the academic and social progress made by handicapped students both in school and after leaving or graduating from special education programs; and (2) a study of the actual per pupil expenditure of providing education and related services to handicapped students. New provisions would be included for: (1) inservice and preservice training of personnel who would work with handicapped students; (2) special training of personnel who would work with handicapped children who are underserved (due to either the nature of their handicapping condition or their geographic location); (3) the establishment of parent training and information programs; (4) the initiation of a new discretionary grant program directed at meeting specific needs of handicapped youth by promoting successful transition from secondary school to work, postsecondary education, or vocational training; and (5) the expansion of postsecondary education programs to include all disabilities.

H.R. 3435 was reported by the House Committee on Education and Labor on Oct. 6, 1983 (H.Rept. 98-410). This bill would reauthorize the discretionary programs under the Education of the Handicapped Act for FY85 through FY87. It would reestablish the National Advisory Committee on the Education of Handicapped Children, would expand the evaluation section of the Act to require more specific State data, would broaden responsibilities of the regional resource centers, would expand the early education of the handicapped projects, and would authorize model demonstration projects for secondary education and transitional programs. Much of the language

contained in H.R. 3435 is similar to S. 1341.

Budget for Education of the Handicapped Programs

The FY83 funding level of \$1,110,252,000 provided under P.L. 97-377, the FY83 continuing resolution, for education of the handicapped programs was an increase of \$41.7 million over FY82 funding for these programs and \$264.6 million over the Administration's budget request for FY83.

During the first session of the 98th Congress, two supplemental appropriations bills added over \$89 million in FY83 budget authority for handicapped programs. Congress passed the Emergency Jobs Appropriations Act, 1983, P.L. 98-8, which included \$40 million in FY83 appropriations to fund grants for the removal of architectural barriers (authorized under Part A of the EHA). This is the first time since the program was enacted in 1975, under P.L. 94-142, that funds have been provided for this activity.

P.L. 98-63, Supplemental Appropriations, 1983, included \$47.9 million for the State grant program under Part B of the Education of the Handicapped Act and \$1,250,000 for regional resource centers funded under Part C of the Education of the Handicapped Act.

As previously mentioned, for 2 years the Administration had proposed major funding reductions and consolidations for Federal special education programs. The FY84 budget request, however, would have maintained overall funding for programs authorized under the Education of the Handicapped Act (EHA) at the FY83 funding level of \$1.11 billion (not including FY83 supplemental appropriations). The FY84 request would have shifted funds from certain EHA discretionary programs, which are special projects funded directly by the Federal Government, to the EHA basic State grant program, which is distributed to States and through them to local agencies to help finance special education. The FY84 request would have increased the State grant program to \$998 million from the FY83 continuing resolution's level of \$970 million, an increase of 3%. This increase would have maintain the Federal Government's share of the excess costs of educating handicapped children (compared to nonhandicapped children) at approximately 8%. The Administration sought overall reductions of 25% for five of the ten EHA discretionary programs, i.e., deaf-blind centers, early childhood education, innovation and development, media and captioned films, and special education personnel development. The other five discretionary programs would have been maintained at the FY83 funding level.

The First Concurrent Resolution on the Budget for FY84 (H.Con.Res. 91), allowed increases for education programs above an FY83 base. The House-passed version of the first budget resolution contained a specific recommendation of \$1.226 billion for EHA programs for FY84. The Senate-passed and final versions of the first budget resolution did not recommend FY84 funding levels for specific education programs.

P.L. 98-139, making appropriations for the Department of Education programs for FY84, provides \$1,214,445,000 for the education of the handicapped account, about a \$15 million (1%) increase over FY83 appropriations. The most significant increase is the nearly \$26 million in additional appropriations for the State grant program; in contrast to the FY83 appropriation, there would be no funding for the removal of architectural barriers. The following table summarizes FY83 and FY84 appropriations for the various handicapped programs:

<u>Program</u>	<u>FY83 approp.</u> <u>(P.L. 97-377;</u> <u>P.L. 98-8;</u> <u>P.L. 98-63)</u>	<u>FY84 approp.</u> <u>(H.R. 3913 conf.</u> <u>agreement)</u>	<u>Difference</u>
Education for the handicapped:			
State assistance:			
State grant program	1,017,900,000	1,043,875,000	+25,975,000
Preschool incentive grants	25,000,000	26,330,000	+1,330,000
Deaf-blind centers	15,360,000	15,000,000	-360,000
Special purpose funds:			
Severely handicapped projects	2,880,000	4,000,000	+1,120,000
Early childhood education	16,800,000	21,100,000	+4,300,000
Regional vocational, adult and post-secondary programs	2,832,000	5,000,000	+2,168,000
Innovation and development	12,000,000	15,000,000	+3,000,000
Media services and captioned films	12,000,000	14,000,000	+2,000,000
Regional resource centers	4,130,000	4,500,000	+370,000
Recruitment and information	720,000	1,000,000	+280,000
Special education personnel dev.	49,300,000	55,540,000	+6,240,000
Special studies	480,000	3,100,000	+2,620,000
Secondary Education and transitional services for handicapped youth	---	6,000,000	+6,000,000
Architectural barrier removal	<u>40,000,000</u>	<u>---</u>	<u>-40,000,000</u>
Total, Education for the handicapped	1,199,402,000	1,214,445,000	+15,043,000

The House and Senate have agreed to an additional \$25 million for the State grant program for FY84 in H.J.Res. 413, making further continuing appropriations for FY84, which is expected to be signed by the President shortly.

[For a more detailed discussion of FY84 funding for education programs, see CRS Issue Brief 83024: Education: FY83 and FY84 Funding Issues, by Angela Evans.]

LEGISLATION

P.L. 98-139, H.R. 3913

Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1984. Makes appropriations for the fiscal year ending Sept. 30, 1984, and for other purposes. Appropriates \$1,214,445,000 for education of the handicapped programs. Reported by House Committee on Appropriations Sept. 16, 1983 (H.Rept. 98-357). Passed House Sept. 22. Reported by Senate Committee on Appropriations Sept. 28 (S.Rept. 98-247). Passed Senate Oct. 4, 1983. Conference held. Conference report (H.Rept. 98-422) agreed to by House and Senate Oct. 20, 1983. Signed into law Oct. 31, 1983.

H.R. 3435 (Murphy et al.)

Education of the Handicapped Act Amendments of 1984. Reauthorizes discretionary programs under the Education of the Handicapped Act for FY85 through FY87. Reestablishes the National Advisory Committee on the Education of Handicapped Children. Expands evaluation provisions requiring certain specific State data. Broadens responsibilities of regional resource centers. Expands early education of the handicapped projects. Authorizes model demonstration projects for secondary education and transition programs. Introduced June 28, 1983; referred to the Committee on Education and Labor. Reported Oct. 6, 1983 (H.Rept. 98-410).

S. 1340 (Hatch)

Rehabilitation Act Amendments of 1983. As passed by the House, section 402 authorizes \$1.5 billion to carry out programs under the Education of the Handicapped Act for FY84. Introduced May 23, 1983; referred to the Committee on Labor and Human Resources. Passed Senate, amended, July 26, 1983. Passed House, amended, in lieu of H.R. 3520 Sept. 13, 1983. Conference scheduled Sept. 13, 1983.

S. 1341 (Weicker)

Education of the Handicapped Act Amendments of 1983. Reauthorizes discretionary programs under the Education of the Handicapped Act for FY84 through FY86. Adds language to encourage the use of Federal funds for handicapped children from birth. Mandates certain evaluation studies addressing the impact and effectiveness of EHA programs. Provides new authority for certain personnel training activities, and for the establishment of parent training and information programs. Authorizes model demonstration projects for secondary education and transition programs. Introduced May 23, 1983; referred to the Committee on Labor and Human Resources. Reported May 23, 1983 (no written report). Passed Senate, amended, June 27, 1983. Written report issued by the Committee on Labor and Human Resources (S.Rept. 98-191) July 21, 1983.

HEARINGS

N/A

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Committee on Appropriations. Departments

of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Bill, 1984. Sept. 16, 1983. Washington, U.S. Govt. Print. Off., 1983. (98th Congress, 1st session. House. Report no. 98-357)

U.S. Congress. Senate. Committee on Education and Labor. Education of the Handicapped Act Amendments of 1983. July 21, 1983. Washington, U.S. Govt. Print. Off., 1983. (98th Congress, 1st session. Senate. Report no. 98-19)

OTHER CONGRESSIONAL ACTION

N/A

CHRONOLOGY OF EVENTS

- 10/31/83 -- President signed H.R. 3913 into law (P.L. 98-139), which provides appropriations of \$1,214,445,000 for programs under the Education of the Handicapped Act for FY84.
- 09/13/83 -- House amended and passed S. 1340, the Rehabilitation Act Amendments of 1983, authorizing \$1.5 billion for programs under the Education of the Handicapped Act.
- 07/30/83 -- President signed into law H.R. 3069, Supplemental Appropriations, 1983, which provides \$99.5 million in FY83 appropriations for Department of Education, including \$47.9 million for Part B, EHA (State Grant Program), and \$1,250,000 for Regional Resource Centers.
- 07/26/83 -- The House Committee on Education and Labor marked up and ordered to be reported H.R. 3435, the Education of the Handicapped Act Amendments of 1984.
- 07/21/83 -- S.Rept. 98-191 was published on S. 1341, the Education of the Handicapped Act Amendments of 1983 (report submitted after passage of S. 1341 in the Senate).
- 07/14/83 -- Hearings held by the House Subcommittee on Select Education on H.R. 3435, the Education of the Handicapped Act Amendments of 1984.
- 06/28/83 -- H.R. 3435, Education of the Handicapped Act Amendments of 1984, introduced by Rep. Murphy and seven others.
- 06/27/83 -- Senate amended and passed S. 1341, the Education of the Handicapped Amendments of 1983.
- 06/23/83 -- House and Senate passed the conference agreement on the First Concurrent Resolution on the Budget, FY84, H.Con.Res. 91 (H.Rept. 98-248).
- 05/18/83 -- Education of the Handicapped Act Amendments of 1983, S. 1341, reported by the Senate Committee on Labor and

Human Resources.

- 03/24/83 -- H.R. 1718, the Emergency Jobs Appropriations bill, signed into law by the President, P.L. 98-8.
- 11/04/82 -- Department of Education issued a modification of notice of proposed rulemaking, withdrawing certain provisions in specified areas of the Aug. 4 Notice of Proposed Rulemaking (NPRM); specifying current regulatory provisions which would be restored in these specified areas; extending the comment period to Dec. 3, 1982; and announcing the intention to publish a single revised NPRM for the State grant program (P.L. 94-142) after a review of the comments is made.
- 08/04/82 -- Department of Education issued notice of proposed rulemaking for regulations pertaining to the Part B program authorized under the Education of the Handicapped Act.
- 08/10/82 -- Senate Subcommittee on the Handicapped held hearings on proposed changes in Part B regulations.
- 08/04/82 -- ED issued notice of proposed rulemaking for regulations governing the Part B program.
- 06/23/82 -- Conference report on the First Concurrent Resolution on the Budget -- Fiscal year 1983, S.Con.Res. 92 (S.Rept. 97-478) agreed to in the Senate.
- 06/22/82 -- Conference report on the First Concurrent Resolution on the Budget -- FY83, S.Con.Res. 92 (H.Rept. 97-614) agreed to in the House.
- 06/10/82 -- First Concurrent Resolution on the Budget -- Fiscal Year 1983, H.Con.Res. 352 passed the House amended (Latta amendment).
- 03/31/82 -- Further Continuing Appropriations Resolution for FY82 (H.J.Res. 409) signed into law, P.L. 97-161, providing funding through Sept. 30, 1982 for EHA programs as well as all other ED programs.
- 02/08/82 -- President Reagan submitted budget request for FY83 containing proposed reductions in FY82 and FY83 budget authority for EHA programs as well as a proposed special education consolidation affecting all programs currently authorized under EHA.
- 12/15/81 -- Further Continuing Appropriations Resolution for FY82 (H.J.Res. 370) signed into law, P.L. 97-92, providing temporary funding through Mar. 31, 1982 for EHA programs as well as all other ED programs.
- 08/13/81 -- Omnibus Budget Reconciliation Act of 1981 signed into law, P.L. 97-35.

- 06/05/81 -- Supplemental Appropriations and Rescission Act, 1981, signed into law, P.L. 97-12.
- 03/25/81 -- Reagan Administration announced review of Education of the Handicapped regulations as part of the Presidential Task Force on Regulatory Relief.
- 11/20/80 -- The House Subcommittee on Select Education held the last of 7 days of oversight hearings in the 96th Congress, 2d session, on the implementation of P.L. 94-142. Other hearing dates were May 9, June 6, 21 and 22, Sept. 22, and Nov. 19, 1980.
- 09/10/80 -- The Senate Subcommittee on the Handicapped held the last of 5 days of oversight hearings on P.L. 94-142 in the 96th Congress, 2d session. Other hearing dates were Mar. 3, July 29 and 31, and Aug. 20.
- 08/23/77 -- Final regulations issued for Part B, Education of the Handicapped Act, as amended, State Assistance and Incentive grants.
- 05/04/77 -- Final regulations issued for Sec. 504 of the Vocational Rehabilitation Act - Nondiscrimination on the basis of handicap.
- 11/29/75 -- S. 6, Education for All Handicapped Children Act of 1975, signed into law as P.L. 94-142.

ADDITIONAL REFERENCE SOURCES

- Education Advocates Coalition. Report by the Education Advocates Coalition on Federal compliance activities to implement the Education for All Handicapped Children Act (P.L. 94-142). Washington, Apr. 16, 1980. 23 p. and appendices.
- Education Turnkey Systems, Inc. P.L. 94-142: a study of the implementation and impact at State level. Executive summary, Falls Church, Virginia, 1981. 10 p.
- Institute for Research on Educational Finance and Governance. Estimating the cost of educating handicapped children: a resource-cost model approach-summary report. Meno Park, California, Stanford University, June, 1979. 29 p.
- National School Boards Association. A survey of special education costs in local school districts. Washington, May 1979. 27 pages.
- Rand Corporation. The cost of special education: summary of findings. Santo Monica, California, November 1981. 56 p.
- Stanford Research Institute International. Local implementation of P.L. 97-142: first year report of a longitudinal study. Meno Park, California. 1980. 139 p.
- U.S. Department of Education. Second annual report to Congress on

the implementation of P.L. 94-142: The Education for all Handicapped Children's Act. Washington, 1980. 219 p.

- U.S. Department of Health, Education, and Welfare. Office of Education. Progress toward a free appropriate public education; a report to Congress on the implementation of Public Law 94-142: the Education for All Handicapped Children Act. Washington, January 1979. 215 p. (LRS79-3638)
- U.S. General Accounting Office. Disparities still exist in who gets special education. Washington, 1981. 129 p.
- Federal direction needed for educating handicapped children in state schools. Washington, 1978. 65 p. (LRS78-1825)
- Unanswered questions on educating handicapped children in local public schools. Washington. 1981. 122 p.
- U.S. Library of Congress. Congressional Research Service. Analysis of the proposed regulatory changes to major provisions of the Education of the Handicapped Act -- State grant program [by] Angela Evans. Sept. 3, 1982.
- Analysis of the Department of Education's withdrawal of sections of proposed regulations under P.L. 94-142, the Education for All Handicapped Children Act [by] Angela Evans and Nancy Lee Jones. Oct. 4, 1982.
- An analysis of the Federal policy of mainstreaming: educating handicapped children with their nonhandicapped peers [by] Angela Giordano Evans. Apr. 24, 1979.
- Education for the handicapped: legislation enacted in the 95th Congress [by] David Osman. Apr. 23, 1979.
- Education of handicapped children in State operated or supported schools: program summary and issue analysis [by] David Osman. Nov. 3, 1980. 87 p.
CRS Report no. 80-193
- Funding and State plan approval process as practiced under the Education of the Handicapped Act, Part B, State grant program for FY 1978 through FY 1980 [by] Angela Giordano Evans. Nov. 1, 1979.
- Impact of budget changes on major education programs, both enacted and proposed, during the 97th Congress [by] Education staff. Feb. 23, 1982.
- Public Law 94-142 -- Education for All Handicapped Children Act of 1975: summary of provisions [by] David Osman. Apr. 16, 1979.