

**TWENTY SECOND GUAM LEGISLATURE
1994 (SECOND) REGULAR SESSION**

**BILL NO. 955
INTRODUCED BY:**

**M. Z. BORDALLO
C. T. C. GUTIERREZ**

**"AN ACT TO AMEND CHAPTER 14A OF TITLE XII
OF THE GOVERNMENT CODE OF GUAM RELATIVE
TO PROVIDING EDUCATIONAL AND TRAINING
FACILITIES AND OPPORTUNITIES FOR ALL
INDIVIDUALS WITH DISABILITIES; THEREBY
MAKING LOCAL LEGISLATION CONFORM WITH
FEDERAL LEGISLATION, THE 'INDIVIDUALS WITH
DISABILITIES EDUCATION ACT'."**

94 MAR 30 PM 2:15

**BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF
GUAM:**

**Section 1. Chapter 14A of Title XII of the Government Code of Guam
is hereby repealed and reenacted to read as follows:**

"CHAPTER 14A

**Educational and Training Facilities
and opportunities for students with Disabilities**

Section 11980. Same: Declaration of Public Policy.

**It is and shall be the duty of the various branches and divisions of
the public school system of Guam to offer free and appropriate public
educational and training services and opportunities to all children of school
age whether normal, gifted or disabled regardless of the degree of disability.**

1 **Section 11981. Same: Purpose.**

2 (a) The purpose of this part is to require that appropriate special
3 education and training facilities, services, classes, and opportunities be provided
4 for all individuals with disabilities of public school age, or within the broader
5 age limits hereinafter provided.

6 (b) As used in this part the term "Children With Disabilities" means
7 those children evaluated as having mental retardation, hearing impairments
8 including deafness, speech or language impairments, visual impairments
9 including blindness, serious emotional disturbance, orthopedic impairments,
10 specific learning disabilities, deaf-blindness, or multiple disabilities, and who
11 because of those impairments need special educational and/or training services,
12 facilities and opportunities.

13 (c) All identified children with disabilities birth (0) through (21) are
14 eligible for services in the categories described in the preceding paragraph,
15 subject to the rules and regulations of the Board of Education.

16 (d) For children zero (0) through two (2) the term "Children With
17 Disabilities" means those children - - - Who require early intervention services
18 because they are experiencing developmental delays or have a diagnosed physical
19 or mental condition that has a high probability of resulting in developmental
20 delay, including children zero (0) through two (2) who are at risk of having
21 substantial developmental delays.

22 (e) For children aged three (3) through five (5) the term "Children With
23 Disabilities" means those children - - - Who are experiencing developmental
24 delays, as defined by the Board of Education and as measured by appropriate
25 diagnostic instruments and procedures, in one or more of the following areas:
26 physical development, cognitive development, communication development,
27 social or emotional development, or adaptive development: and (i) Who, for that
28 reason, need special education and related services.
29

1 **Section 11982. Same: Identification for Special Education and Related**
2 **Services.**

3 (a) **The Annual State Plan for Special Education will assure that, to the**
4 **maximum extent appropriate, children with disabilities (including children in**
5 **public or private institutions or other care facilities) are educated with children**
6 **who are not disabled and that special classes, separate schooling, or other**
7 **removal of children with disabilities from the regular education environment**
8 **occurs only when the nature or severity of the disability is such that education**
9 **in regular classes with the use of supplementary aids and services cannot be**
10 **achieved satisfactorily.**

11 (b) **Children suspected of experiencing disabilities and needing special**
12 **education and related services are to be identified,**

13 1. **At the school level --- through procedures established by the**
14 **Territorial Board of Education or by concerned staff**
15 **requesting an In-School Referral Meeting.**

16 2. **Outside the school --- by concerned parents and/or other**
17 **individuals contacting the Department of Education, Division**
18 **of Special Education.**

19 The policies and procedures for identification and referral of disabled
20 students shall be established by the Board of Education through the "Territory
21 of Guam State Plan for the Delivery of Special Education Services Under Part
22 "B" of the Individuals with Disabilities Education Act (IDEA) and the
23 "Handbook for the Delivery of Special Education Services."

24 (c) **Each child, who is determined to be eligible, through the evaluation**
25 **process established by the Board of Education, for special education and related**
26 **services shall be subject to an Individualized Education Plan (IEP) to be**
27 **developed by the appropriate personnel.**

28 1. **The Individualized Education Plan (IEP) must include a**
29 **statement of the student's current educational functioning**
30

1 level, annual goals and objectives for each area of need, a
2 statement of the specific special education and related services
3 that will be provided to the student, as well as a statement of
4 the extent the student will participate in regular education
5 programs.

6 2. The IEP must include a statement of projected dates for
7 service delivery, and objective criteria and evaluation
8 procedures for determining progress made in achieving stated
9 objectives. For students with disabilities 14 years of age or
10 eighth (8th) grade, (or younger when determined appropriate),
11 the IEP must also include a plan for "transition services."

12 Transition services should include the following areas:

13 a. instruction, community experiences,
14 development of employment and/or other
15 post-school adult living objectives, and if
16 appropriate, acquisition of daily living
17 skills and functional vocational evaluation.
18 Whenever, the issue of transition is to be
19 discussed, the student shall be invited to the
20 IEP meeting. Whether the student attends
21 or not, his or her interests and preferences
22 must be taken into account. Adult service
23 agencies must also include a representative
24 that is likely to be responsible for providing
25 or paying for transition services.

26 3. For the purpose of developing an Individualized Educational
27 Program (IEP) an IEP meeting must be conducted insuring
28 that a plan is designed to meet all eligible disabled student's
29 unique educational needs, and that a determination is made

- 1 as to where the IEP will be implemented.
- 2 4. Re-evaluation of a child's progress within his/her
- 3 Individualized Educational Program (IEP) will be required
- 4 every year.
- 5 5. A formal evaluation of a student with disabilities will be made
- 6 prior to the initial placement or denial of placement of a child
- 7 with a disability into a special education program and as part
- 8 of a three year re-evaluation.
- 9 (d) Placement decisions are to be determined after the IEP has been
- 10 developed.
- 11 1. Placement is to be based upon the student with disabilities
- 12 IEP, and in accordance with the mandate under the Individuals
- 13 with Disabilities Education Act (IDEA) for placement in the
- 14 Least Restrictive Environment. In order for a student with
- 15 disabilities to be removed from the regular classroom
- 16 program, the school must document that supplemental aids and
- 17 services have been appropriately implemented, without
- 18 success.
- 19 2. Placement decisions are not to be based solely upon the
- 20 availability of programs.
- 21 3. A full continuum of services must be available to students
- 22 with disabilities as outlined in the IDEA,
- 23 4. When determining placement for a student with limited
- 24 English proficiency all policies and procedures that are used
- 25 to determine placement for non limited English proficient
- 26 students must be followed. Additionally the full continuum
- 27 of special education and bilingual/LOTE services is to be
- 28 made available to the student with a disability,
- 29 (e) For individuals with disabilities, ages 0-2, an Individualized Family

1 Plan (IFSP) will be developed which will:

- 2 1. Be developed jointly by the family and appropriate qualified
3 personnel involved in the provision of early intervention
4 services.
- 5 2. Be based on a multidisciplinary assessment of the unique
6 strengths and needs of the infant and toddler and the
7 identification of services appropriate to meet such needs.
- 8 3. Be based on a family directed assessment of the resources,
9 priorities, and concerns of the family and the identification of
10 the support and services necessary to enhance the family's
11 capacity to meet the developmental needs of their infant
12 and/or toddler with a disability.
13

14 **Section 11983. Same: Special Education Teachers, Classes, Materials,**
15 **Opportunities, Day Schools, Hospital Classes and Home Instruction.**

16 The Board of Education shall, subject to the limitations hereinafter
17 specified, provide appropriate special education teachers, aides, materials, and
18 opportunities for all children identified, in accordance with the Individuals with
19 Disabilities Education Act (IDEA), as needing special education, so that such
20 children shall be kept in regular school classes unless the nature and severity of
21 the disability requires the establishment and maintenance of special classes. For
22 the same purpose the Board of Education, shall remove all architectural and
23 other barriers as mandated in the Americans with Disabilities Act (ADA) and
24 Section 504 of the Rehabilitation Act of 1973 including the use of certified
25 interpreters for the Hearing Impaired and transcribers and readers for the
26 Visually Impaired, pursuant to qualifications for those positions as established
27 by law.

28 All Government of Guam agencies and departments shall pool their
29 resources for meeting the requirements of this part.

1 **Section 11984. Amended: Payment of Extra Cost of Instruction,**
2 **Education or Training of Children with Disabilities and Other Exceptional**
3 **Children.**

4 (a) Whether the children with disabilities, certified as needing or
5 requiring the special educational or training services, are served in regular
6 classes, special classes, day schools, hospital classes, or in their homes, each
7 school is hereby authorized to include in its program cost the salaries, according
8 to the Official Guam Teachers Salary Schedule, of each special education
9 teacher, therapist, and/or teacher's aide who is qualified according to the
10 requirements of the Board of Education and who is engaged in the teaching or
11 training, exclusively, of individuals with disabilities who are eligible to receive
12 such education or training as specified herein and according to the rules and
13 regulations of the Board of Education.

14 (b) The allotment of teachers as hereinabove stated is to be
15 determined by the Board of Education within the mandates of the
16 IDEA.

17 The special education teachers, therapists, and aides employed
18 by the allotment as aforesaid shall primarily serve those children
19 needing special educational or training services for whose benefit
20 the allotment was named. These services shall be rendered under
21 such rules and regulations as the Department of Education may
22 adopt.
23

24 **Section 11985. Same. Qualifications of Supervisors,**
25 **Teachers, Therapists, and Aides.**

26 No person shall be employed as director, supervisor,
27 therapist, teacher, or aide who does not hold a valid degree or
28 certificate as provided by law or unless he/she has had such
29 special training as the Board of Education may require.
30

31 **Section 11986. Same: Purchase of Services.**

1 The Department of Education may, with the consent and
2 approval of the Board of Education, contract with the Department
3 of Public Health and Social Services and Guam Memorial
4 Hospital, or approved private schools, facilities, or contractors for
5 the rendition of special educational and training services, physical
6 and occupational therapy, speech therapy and auditory training, on
7 the job training, or distributive education to particular children
8 with disabilities when for valid reasons it is not feasible or
9 desirable for the Board of Education to itself serve the particular
10 child or children to the same extent. This shall not relieve the
11 Board of Education of the Department of Education of its
12 obligation or supervision. In such event that the Board of
13 Education is authorized to pay tuition or training costs not to
14 exceed the average gross cost per educable student in the school
15 plus the pro rata part of the allotment provided above for serving
16 pupils requiring special education, training, or opportunities. The
17 time of payment may be determined by contract.

18 No pupil shall be eligible for funds for contract services
19 under this Act unless he has been diagnosed and evaluated as
20 eligible to enroll in an appropriate special education class or
21 facility if such were available in his school, following procedures
22 put forth in the Territory of Guam State Plan ensuring that a
23 complete continuum of special education placement, required by
24 34 CFR §300,551 (a) (b) under the IDEA is available for
25 placement in the least restrictive environment.

1 **Section 11987. Same: Administration of Chapter.**

2 The entire provisions of this Chapter shall be
3 administered by the Department of Education with the approval of
4 the Board of Education; and the Board of Education shall
5 promulgate such rules and regulations as it may deem necessary
6 for the proper administration of this chapter.

7 The Board of Education shall prescribe the standards and
8 approve the conditions under which the facilities are furnished or
9 services purchased. The Director of Education shall be
10 responsible for administrating the same.

11
12 **Section 11988. Same: Cooperation With Other Agencies:
13 Gifts or Donations.**

14 School agencies are required to cooperate with other agencies
15 within the Territory, both public and private, that are interested in
16 working toward the education or training or the alleviation of the
17 disabilities or children with disabilities and other exceptional
18 children, and said educational agencies are authorized to accept
19 gifts or donations, or aid from such private agencies.

20
21 **Section 11989. Same: Advisory Committee.**

22 The Territorial Board of Education shall ensure that a
23 Territorial Advisory Panel shall be established composed of fifteen
24 (15) persons involved in or concerned with the education of children with
25 disabilities. The Territorial Board of Education shall be responsible
26 for establishing procedures for appointment of the members,

1 length of terms, and frequency of meetings,

2 The membership must include at least one person
3 representative of each of the following groups:

- 4 (1) Individuals with disabilities;
- 5 (2) Teachers of children with disabilities;
- 6 (3) Parents of children with disabilities;
- 7 (4) Territorial educational officials;
- 8 (5) Special education program administrators;
- 9 (6) A Representative from the Guam Legislature, to be
10 appointed by the Speaker of the Legislature.
- 11 (6) Others at the discretion of the Director of
12 Education and the Guam Territorial Board of
13 Education.

14 The Advisory Panel shall:

- 15 (a) Advise the Board of Education of unmet needs
16 within the Territory in the education of children
17 with disabilities;
- 18 (b) Comment publicly on the State Plan and the
19 policies and procedures proposed for issuance by
20 the Territory regarding the education of children
21 with disabilities and the procedures for distribution
22 of funds under this part; and
- 23 (c) By July 1 of each year the Advisory Panel shall submit an
24 annual report of panel activities and suggestions to the Board
25 of Education. This report will be made available to the public
26 in manner consistent with other public reporting requirements.

1 Section 11990. Same: Names, Facts and Opinions to be Furnished the
2 Board of Education and the Department of Education.

3 It shall be the duty of all government agencies offering services to children
4 with disabilities to provide to the Department of Education or its designated
5 competent authorities, names, facts, and opinions pertinent to the proper
6 educational or training placement of children with disabilities or other
7 exceptional children who enrolled or expect to enroll in the public schools, and
8 to advise other volunteer agencies by the Board of education of those facts
9 concerning any exceptional child in need of the services provided by that
10 agency.

11 The facts and opinions pertinent to the proper education or training of
12 children with disabilities and other exceptional children shall so far as
13 practicable be used in order to provide services to children to enable them to
14 remain in the mainstream of education to the greatest degree that is appropriate.
15

PUBLIC LAW 13-207

Bill No. 825
Enacted: December 21, 1976
Governor's Action: Approved
Riders: None

Introduced by: A.C. Ysrael

AN ACT TO ADD CHAPTER 14A TO TITLE XII OF THE
GOVERNMENT CODE TO PROVIDE EDUCATIONAL AND
TRAINING FACILITIES AND OPPORTUNITIES FOR ALL
HANDICAPPED.

Section 1 New education and Training Facilities and Opportunities for
the Handicapped.

- §11980 Declaration of Public Policy
- §11981 Purpose
- §11982 Identification for Special Education or Training Services
Required for Exclusion from Normal Classes
- §11983 Special Education Teachers, Classes, Materials, Opportunities,
Day Schools, Hospital Classes and Home Instruction.
- §11984 Payment of Extra Cost of Instruction, Education or Training
of Handicapped and Other Exceptional Children
- §11985 Qualifications of Supervisors, Teachers, Therapists, and Aides
- §11986 Purchase of Services
- §11987 Administration of Chapter
- §11988 Cooperation with Other Agencies
- §11989 Advisory Committee
- §11990 Names, Facts and Opinions to be Furnished the Board of
Education and DOE

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter 14A is added to Title XII of the Government Code to read:

CHAPTER 14A

Education and Training Facilities
and Opportunities for the Handicapped

§11980. Declaration of Public Policy. It is and shall be the duty of the various branches and divisions of the public school system of Guam to offer free and appropriate educational and training services and opportunities to all children of school age whether normal, gifted or handicapped regardless of the degree of the handicap.

§11981. Purpose. (a) The purpose of this part is to require that suitable special education and training facilities, services, classes and opportunities be provided for all exceptional children of public school age, or within the broader age limits hereinafter provided.

(b) Handicapped children, for the purposes of this and subsequent sections, include: children who are classified as trainable mentally retarded or educable mentally retarded, children with specific learning disabilities, children who are blind, deaf or hard of hearing, visually handicapped, severely emotionally disturbed, children with health impairment, speech and language disabled children and orthopedically handicapped children who require special educational and/or training services, facilities and opportunities. The Board of Education shall define the specific areas of exceptionality.

(c) Children who have been identified and are eligible for services in the categories described in the preceding paragraph shall be not less than one (1) year of age nor more than twenty-one (21) years of age, subject to the rules and regulations of the Board of Education and the Department of Public Health and Social Services concerning the age groups of children who may be reasonably taught or trained together.

§11982. Identification for Special Educational or Training Services Required for Exclusion from Normal Classes. (a) The State Plan for Special Education will assure that, to the maximum extent appropriate, handicapped children (including children in public or private institutions or other care facilities) are educated with children who are not handi-

capped and that special classes, separate schooling or other removal of handicapped children from the regular education 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.

(b) The teacher may, upon the written consent of the child's parents and/or guardian request the Division of Special Education to begin the diagnostic process, unless such a diagnosis or evaluation has been made within the current calendar year.

(c) Re-evaluation of a child's progress within his individualized educational plan will be required every year.

(d) The parents and/or supervisor of special education services may request a re-evaluation after six (6) months of enrollment in a special education class.

(e) Each child identified for special educational or training services shall be the subject of an Individualized Instructional Plan (IIP) to be developed by the appropriate personnel. This plan shall be developed by medical, psychological, educational and other concerned specialists, as required. Said IIP shall outline the specific objectives to be reached for by the child and shall contain a mechanism for continuing re-evaluation in order to determine whether the goals of said plan have been achieved.

§11983. Special Education Teachers, Classes, Materials, Opportunities, Day Schools, Hospital Classes and Home Instruction. The Board of Education shall, subject to the limitations hereinafter specified, provide appropriate special education teachers, aides, materials and opportunities for all children diagnosed, in accordance with applicable Federal law, as needing special education, so that such children shall be kept in normal school classes unless the nature and severity of the handicap requires the establishment and maintenance of special classes. For the same purpose, transportation shall be provided, as necessary, and the removal of all architectural and other barriers including the use of certified interpreters for the deaf and transcribers and readers for the blind for blind students.

Whenever the best educational or training results can be obtained by assembling special services for any of the several types of children specified in §11981, the Board of Education shall establish and maintain such special educational services and/or training facilities and/or classes for such children. Adjacent and nearby schools as well as other departments and agencies of the Government shall pool their resources with the Department of Education for this purpose.

§11984. Payment of Extra Cost of Instruction, Education or Training of Handicapped and Other Exceptional Children. (a) Whether the handicapped children certified as needing or requiring the special educational or training services as provided in §11982 are served in regular classes, special classes, day schools, hospital classes or in their homes, each school is hereby authorized to include in its program cost the salaries, according to the Official Guam Teachers Salary Schedule, of each special education teacher, therapist and/or teacher's aide who is qualified according to the requirements of the Board of Education and who is engaged in the teaching or training, exclusively, of handicapped who are eligible to receive such education or training as specified herein and according to the rules and regulations of the Board of Education.

(b) The allotment of teachers as hereinabove stated is in addition to the allotment of teachers in the regular classroom and is based on the following minimum and maximum pupils per teacher or therapist:

- (1) Supportive services to mildly handicapped in regular classrooms: One resource teacher and a teacher aide per twenty-five (25) pupils;
- (2) Mildly handicapped serviced in resource rooms or special classes: One teacher and aide per maximum of fifteen (15) pupils;
- (3) Moderate and severely handicapped: One teacher and aide per maximum of twelve (12) pupils;
- (4) Hearing handicapped serviced in special classes: One teacher and aide to ten (10) pupils;
- (5) Visually impaired serviced in special classes: One teacher and aide per eight (8) pupils;
- (6) Children with speech or language problems: One therapist per eighty (80) identified pupils; after September 1, 1977 there shall be One therapist per maximum of

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the categories age nor more the Board of he age groups

Required for ll assure that, in public or re not handi-

sixty (60) after September 1, 1978 there shall be One therapist per maximum of fifty (50) students identified in need of services;

(7) Profoundly handicapped (including deaf/blind): One teacher and one aide per three pupils or two aides and one teacher per five pupils (maximum);

(8) Others: as determined by the Board of Education.

The special education teachers, therapists and aides employed by the allotment aforesaid shall primarily serve those children needing special educational or training services for whose benefit the allotment was named. These services shall be rendered under such rules and regulations as the Department of Education may adopt.

§11985. Qualifications of Supervisors, Teachers, Therapists and Aides. No person shall be employed as director, supervisor, therapist, teacher or aide who does not hold a valid degree or certificate as provided by law or unless he has had such special training as the Board of Education may require.

§11986. Purchase of Services. The Department of Education may, with the consent and approval of the Board of Education, contract with the Department of Public Health and Social Services and Guam Memorial Hospital, or approved private schools, facilities or contractors for the rendition of special educational and training services, physical and occupational therapy, speech therapy and auditory training, on-the-job training, or distributive education to particular handicapped children when for valid reasons it is not feasible or desirable for the Board of Education to itself serve the particular child or children to the same extent. This shall not relieve the Board of Education or the Department of Education of its obligation of supervision. In such event that the Board of Education is authorized to pay tuition and training costs not to exceed the average gross cost per educable student in the school plus the pro rata part of the allotment provided above for serving pupils requiring special education, training or opportunities. The time of payment may be determined by contract.

No pupil shall be eligible for funds for contract services under this Act unless he has been diagnosed and evaluated as eligible to enroll in an appropriate special education class or facility if such were available in his school, following procedures put forth in §11982.

§11987. Administration of Chapter. The entire provisions of this Chapter shall be administered by the Department of Education with the approval of the Board of Education and the Board of Education shall promulgate such rules and regulations as it may deem necessary for the proper administration of this Chapter.

The Board of Education shall prescribe the standards and approve the conditions under which the facilities are furnished or services purchased. The Director of the Department of Education shall be responsible for administering the same.

§11988. Cooperation With Other Agencies: Gifts or Donations. School agencies are required to cooperate with other agencies within the Territory, both public and private, that are interested in working toward the education or training or the alleviation of the handicapped or handicapped children and other exceptional children, and said educational agencies are authorized to accept gifts or donations, or aid from such private agencies.

§11989. Advisory Committee. An Advisory Committee composed of fifteen (15), or more persons representing parents of handicapped children, consumer groups, educators and the professionals involved shall be appointed by the Board of Education to study and review the activities of the existing Special Education programs to determine if they are performing satisfactorily.

§11990. Names, Facts and Opinions to be Furnished the Board of Education and the Department of Education. It shall be the duty of all government agencies offering services to handicapped children to provide to the Department of Education or its designated competent authorities, names, facts and opinions pertinent to the proper educational or training placement of handicapped or other exceptional children who are enrolled or who expect to enroll in the public schools, and to advise other volunteer agencies by the Board of Education of those facts concerning any exceptional child in need of the services provided by that agency.

The facts and opinions pertinent to the proper education or training of handicapped and other exceptional children shall so far as practicable be used in order to provide services to children to enable them to remain in the mainstream of education to the greatest degree that is practical."

PUBLIC LAW 13-208

Bill No. 855
Enacted: December 22, 1976
Governor's Action: Approved
Riders: Yes

Introduced by: A.L. Cristobal
R.F. Taitano F.R. Santos
J.R. Duenas A.C. Sanchez
A.A. Sekt C.T.C. Gutierrez
R.P. Duenas E.T. Charfauros

AN ACT AUTHORIZING AND DIRECTING THE GOVERNOR OF GUAM TO UNDERTAKE A LONG OVERDUE LAND EXCHANGE ALONG THE Y-SENGSONG ROAD IN DEDEDO WITHOUT FURTHER LEGISLATIVE CONCURRENCE AND FOR OTHER PURPOSES.

Preamble

- Section 1 Exchange authorized.
- Section 2 No further legislative concurrence required.
- Section 3 Amends P.L. 13-116, Section 9.
- Section 4 Amends §49013.1(g) GC, unclassified employees of GMH.
- Section 5 Effective dates of Sections 3 & 4.
- Section 6 Adds Subsec. (e) to §53644 GC, tax preparers: examination fee.
- Section 7 Adds Subsec. (f) to §53644 GC same: re-examination.

WHEREAS, on April 30, 1973, the Director of Public Works of the government of Guam agreed with the owners of Lot 10070-1, Dededo, to acquire that portion of said lot within the proposed right-of-way for the improved Y-Sengsong Road by trading adjacent government land on an area-for-area basis, said proposed trade being set out in a sketch map attached to the said April 30, 1973 letter; and

WHEREAS, over three (3) years have passed and although the Government has acquired the portion of the private owners' land needed for the right-of-way it has not lived up its end of the bargain by giving to the landowners the agreed government land adjacent thereto; and

WHEREAS, in the opinion of the Legislature it is unconscionable for the Government to acquire land in such a manner and justice demands that the preferred land exchange be forthwith consummated; now, therefore

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Exchange Authorized and Directed. Notwithstanding any law, rule or regulation to the contrary, the Governor of Guam is authorized and directed to exchange with the owners of Lot No. 10070-1 (also designated as Lot No. 10070-C), Dededo, Guam, a portion of adjacent government land adjacent thereto in order to acquire that portion of Lot No. 10070-1 (also designated as Lot No. 10070-C), within the right-of-way of Y-Sengsong Road. Said exchange shall be on an area-for-area basis, pursuant to the terms of the letter dated April 30, 1973, from the Director of Public Works to the said landowners including the sketch map attached thereto.

Section 2. No further legislative concurrence shall be required for the land exchange authorized by this Act.

Section 3. Section 9 of P.L. 13-116 is hereby amended to read as follows:

"Section 9. The provisions of Section 8 shall expire two (2) years after the effective date of this Act."

for / from

RECEIVED
APR 06 1994
[Signature]

GUAM PUBLIC SCHOOL SYSTEM
GOVERNMENT OF GUAM
P.O. BOX DE
AGANA, GUAM 96910
TEL: (671) 472-8901/2/3/4
FAX: (671) 472-5003

TESTIMONY

TWENTY-SECOND GUAM LEGISLATURE

BILL NO. 955

Thank you for the opportunity to testify in support of Bill No. 955 "An Act to amend Chapter 14A of Title XII of the Government Code of Guam relative to providing educational and training facilities and opportunities for all Individuals with Disabilities; thereby making local legislation conform with federal legislation, the "Individuals with Disabilities Education Act."

Changes to the statute (P.L. 13-207) are necessitated by the United States Office of Special Education Programs conditional approval of the Territory of Guam State Plan for FY 1994-1996 and more importantly, the need to bring Local Statutes in line with the Federal Requirements under the Individuals with Disabilities Act (IDEA).

The staff of the Division of Special Education have worked diligently to formulate changes which would meet federal requirements as well as those propagated locally. I wish to take this time, if I may, to commend them for their efforts. It is through cooperative efforts such as this, that programs are developed which will meet the needs of Individuals with Disabilities as well as all students attending Guam's schools.

The Guam Public School System fully supports the intent of the bill.

If you have any questions or concerns please feel free to contact me.

[Signature]
Robert Klitzkie
Director of Education



Vincent T. Leon Guerrero, Acting
Associate Superintendent

**DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DIVISION**
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April 7, 1994

Senator Madeleine Z. Bordallo
Chairperson, Committee on Education
22nd Guam Legislature
Agaña, GU 96910

Dear Senator Bordallo:

Thank you for allowing us to provide testimony on Bill 955. Essentially this bill is intended to update the old law, P.L. 13-207, which provides the policy and direction for providing special education for individuals with disabilities in the Territory of Guam.

Late last year, when we submitted our 1994-1996 State Plan for Special Education for the Territory of Guam in order to receive funding from the Office of Special Education Programs, (OSEP), they noted that our local law was not consistent with the federal law on special education, the Individuals With Disabilities Education Act (IDEA).

Essentially, the differences are as follows:

1. The term "Handicap" or "Handicapped" is used in P.L. 13-207 and should be updated to the usage of "Disability" or "Individual(s) With A Disability".
2. The definition for Individuals With A Disability needs to be updated and these changes have been incorporated.
3. Services for Individuals With A Disability who are between the ages of birth through five (5) years of age need to be further specified and these changes have been incorporated.
4. We have done away with the term "Individual Instructional Plan (IIP)" and replaced it with "Individual Education Program (IEP)" to be consistent with IDEA.

5. The IEP must now include transition services for an eligible Individual With A Disability who is 14 years old or in eighth grade. Transition services are defined in the proposed legislation.
6. The Advisory Committee section has been updated to comply with IDEA.
7. This bill is more flexible and grants authority to the Department of Education to make rules and establish standards so that we do not have to continually amend the law whenever federal legislation is amended or as community standards (such as terminology) changes.

Thank you for the opportunity to provide testimony on this important legislation. I look forward to working with your staff on any improvements or amendments, both technical and substantive, that need to be made.

Sincerely,


VINCE LEON GUERRERO

ASG Autism Society of Guam

P.O. BOX 7502 • AGAT, GUAM 96929 • TEL: (671) 565-1335, 647-4430, 649-9637, 344-5115

April 7, 1994

Senator Madeleine Z. Bordallo, Chairperson
Committee on Education
Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Senator Bordallo and Committee Members:

On behalf of the Autism Society of Guam, I, Jelly N. Flores, Founder and President, DDPC Legislative Committee Member, Autism Consultant for the Public School System, Division of Special Education, and parent of a child with autism, thank you for the opportunity to testify on Bill 955 : "An Act to amend Chapter 14A of Title X11 of the Government of Guam Code relative to providing educational and training facilities and opportunities; thereby making local legislation conform with federal legislation 'Individuals with Disabilities Education Act'".

The Autism Society of Guam was first organized in 1989. It is a non-profit organization chartered by the Autism Society of America. Our organization serves to promote and advocate for the general welfare of persons with autism. Autism occurs along a spectrum from mild to severe. However, the difficulties of children with autism still result in a need for appropriate educational and training facilities.

In the new law 'Individuals with Disabilities Act' (IDEA) P.L. 101-476, Autism is now a separate eligibility category. This category means that autism is a disability in its own right and



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no longer can IEPs fail to address a code system for autism or exclude those with autism from appropriate programming.

The Autism Society of Guam upholds and commends Senator Madeleine Bordallo and the committee members involved in the amendment of Bill 955. This Bill meets an essential, critical need for the children with autism.

In view of this endorsement and support of the bill, the ASG respectfully recommends that AUTISM be included as one of the eligibility category in the term "Children with Disabilities", which means that Guam Public School System will be required to address the following needs:

- * A comprehensive system teacher training and certification in the area of autism which can include off-Island or on Island training provided by expertise in the field of autism.

- * Current staff needs additional intensive training in order to be certified to teach children with autism.

- * Establishment of teachers and para-professionals positions and Autism Program Coordinators that addresses the specialized staffing needs for autistic program.

- * A budget designed to provide appropriate educational materials that is able to meet the unique needs of autistic children like, the computer software for the severely autistic children who can ^{not} speak and to the verbal high functioning autistic provide, Art, Music and physical education equipment supplies.

- * Appropriate office and storage space for staff, materials, testing, meeting, training etc..

The ASG looks forward to the passage of Bill 955 and to actively participate in making sure that the needs of autistic children and their families are met.

Thank you very much.

Sincerely yours,

Jelly D. Flores
Jelly D. Flores



Director M. Bordallo
copy

Major Issues for Autism and PDD (Pervasive Developmental Disorder) Program Services

The education for all Handicapped Act (EHA) Public Law P.L. 94-142 has a new name: The Individuals with Disabilities Act (IDEA) P.L. 101-476. In this new law Autism is now a separate eligibility category. This category means that Autism is a Disability in its own right and no longer can IEPs fail to address a code system for AUTISM or exclude those with autism from appropriate programming.

Therefore, Guam Public School System needs to address:

- * A comprehensive system teacher training and certification in the area of Autism which can include off-Island or on the job training.
- * Current staff needs additional intensive training to be certified.
- * New qualified educators for Autistic children need to be hired.
- * Establishment of Teachers and Paraprofessionals positions that addresses the specialized staffing needs for Autistic Program.
- * A budget designed to provide appropriate educational materials to meet the needs of the autistic children such as: Computer Software for the severely autistic who can not speak and to verbal high functioning autistic; Art, Music, and Physical Education equipment supplies.
- * Appropriate office and storage space for staff, materials, testing, meetings, training, etc.

Changes in Public Law 94-142 - What You Need to Know

The Education for All Handicapped Act (EHA), Public Law (P.L.) 94-142 has a new name: "the Individuals with Disabilities Education Act" (I.D.E.A.), P.L. 101-476. The term "handicapped" has been replaced with the term "disability" throughout the new law.

Parents and professionals should make every effort to know this amended law. It will have significant impact on all special education of children with disabilities, particularly those with autism. It is imperative that we also know the law's amendments, why provisions were changed and how they are interpreted in the Code of Federal Regulations (CFR). This knowledge will empower parents and educators in their efforts to obtain appropriate programs for their children with autism.

The following are the basic changes (P.L. 101-476):

Autism is Now a Separate Eligibility Category

This category means autism is a disability in its own right. No longer can IEPs fail to address autism or exclude those with autism from appropriate educational programming.

Working with their Departments of Education, state and local chapters need to address the definition of state standards for teacher training and certification in the areas of autism. Does current staff meet the needs? Does existing staff need retraining? Do new educators need to be hired? Is there a comprehensive system for training personnel in the areas of autism? Is there a certification mechanism? Under the amended law, all these items must be addressed.

Individualized Education Plan (IEP) Changes

Transition services are more formally defined, and must now be included in a child's IEP by at least age 16.

Related Services: Two new related services were added to the law, and two previous services were clarified:

Rehabilitation Counseling: Must now be placed on the IEP to prepare for career/employment development.

Assistive Technology Service: Must now include "Any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of individuals with disabilities." This also means training the child, family and staff in using this equipment.

Recreation Therapy: Schools must now "employ and utilize therapeutic recreation professionals to evaluate, plan and administer the recreation component of an individual's education plan." Students with disabilities have unique leisure needs, and this addresses them.

Social Work Services: Testimony to Congress proved that many schools did not consider social services as a related service. Expect this service to be available for your child. It will help develop connections for them with other community support programs and provide case management services.

Least Restrictive Environment

In the reauthorization of the law, Congress wanted to be sure that each student is in the least restrictive setting, so they authorized a special study on integration. The study will show what states are successfully integrating children with special needs and the way they are doing it. With this knowledge Congress hopes to help the states that are not practicing supported integration. Also, the new law requires that each state put in place a system for training regular educators in special education needs areas.

Residential Placement

Congress was troubled by the frequency of students being placed in residential facilities. The problems included: expense, improvement in services, and disruption of family relationships. To rectify this, Congress

authorized grants to help develop strategies to decrease the use of "out-of-community" placements.

Removal of Immunity

Congress clarified in this most recent amendment that Eleventh Amendment immunity was removed from state education agencies for suits under the IDEA. This means you can sue any agency which violates or obstructs the provisions of this Act - from your local school or district to the Governor of your state.

P.L. 101-476 is an important piece of legislation, but not the only law that protects individuals with disabilities. Section 504 of the Rehabilitation Act of 1973, and the Carl D. Perkins Vocational Education Act also help persons with disabilities obtain full services and rights. These may be cited as further support for vocational development focus in IEPs.

Remember: IDEA went into effect October 1, 1990. School districts must act now to be in compliance, and your IEP must be complete and measurable under the new law.

(References used in this article are from the NICHCY News Digest, Vol. I, Number 1, 1991. P.O. Box 1492, Washington, DC 20013; Reed Martin, Attorney at Law, presentation for the "Special Education and the Law" conference.)

Barbara Renfro
Johnette Kobes
ASA Education Committee



federal register

**Tuesday
September 29, 1992**

Part II

Department of Education

34 CFR Parts 300 and 301

**Assistance to States for the Education
of Children with Disabilities Program and
Preschool Grants for Children with
Disabilities; Final Rule**

§ 300.504 to clarify the conditions that must be met if a State adds consent requirements beyond those in the Federal regulations; (5) specifying that findings of fact and decisions in due process hearings must be made available to the public, after deleting personally identifiable information; (6) adding a provision to § 300.510 regarding which officials may not conduct State-level reviews; and (7) transferring requirements on State complaint procedures from the Education Department General Administrative Regulations (EDGAR) (34 CFR §§ 76.780-76.782) to this part in §§ 300.660-300.662, and making some modifications to those requirements.

These final regulations incorporate technical changes made to part B, including changes made by the 1990 Amendments, to update the terminology and references used in the current regulations. Examples of these technical changes include: (1) Deleting all references to "handicapped children" in the regulations and substituting "children with disabilities;" (2) deleting all references to "annual program plan" and substituting "State plan;" (3) revising the list of other regulations that apply to this program in § 300.3 to include all currently applicable provisions of EDGAR; and (4) abbreviating certain frequently used terms and adding a new note following the heading in subpart A, "Definitions," to specify that abbreviations will be used in place of certain terms in the regulations (e.g., "IEP" for "individualized education program" and "SEA" for "State educational agency").

These final regulations also implement changes to part B made by the National Literacy Act, by amending the list of jurisdictions eligible to participate in the part B program (i.e., by deleting the Trust Territory of the Pacific Islands and adding the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau).

In addition, these final regulations incorporate certain technical changes to part B made by the 1991 Amendments. These changes conform the regulations to the statutory changes and are implemented as final regulations. The Secretary, however, invites comment on these changes and on whether additional regulatory changes are needed with respect to the statutory changes made by the 1991 Amendments.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 280 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have

been made in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Major Changes in the Regulations

The following discussion in section A, Technical Changes, identifies the changes made to reflect statutory amendments to Part B made by the National Literacy Act. Section B, Substantive Changes, identifies all major changes made in the regulations based on the NPRM published on August 19, 1991. Additional changes made in the regulations in this document as a result of the 1991 Amendments are identified separately in section C.

A. Technical Changes

In accordance with changes made by the National Literacy Act, § 300.700 has been revised to reflect the current names of the successor entities to the Trust Territories of the Pacific Islands. Similarly, § 300.711 (previously numbered § 300.710) now lists the current names of these entities, consistent with a statutory change made by the National Literacy Act as amended by the 1991 Amendments.

B. Substantive Changes

Below is a summary of the major substantive changes in these final regulations based on the August 19, 1991 NPRM. References to section numbers are to the final regulations.

1. Changes in Subpart A—General

- The proposed definition of "autism" (§ 300.7(b)(1)) has been revised to clarify that the characteristics listed as generally associated with autism are not an exhaustive list of characteristics necessary for a child to be considered as having autism.

- The proposed definition of "traumatic brain injury" (§ 300.7(b)(12)) has been revised to describe this disability category more appropriately, and to clarify that the term "traumatic brain injury" refers to injuries acquired after birth.

- The proposed definition of "rehabilitation counseling services" (§ 300.18(b)(10)) has been revised to change the term "qualified counseling professional" to "qualified personnel."

- The phrase "in schools" has been retained in the definition of "social work services in schools" (§ 300.18(b)(12)), and the phrase "to receive maximum benefit" in the statement concerning mobilizing school and community resources has been changed.

- The last sentence of the proposed Note following the definition of "transition services" at § 300.18 has

been revised to delete the statement that the listed activities are only examples.

2. Changes in Subpart B—State Plans and Local Applications

- Proposed Note 2 following § 300.128 ("Identification, location, and evaluation of children with disabilities") has been revised to clarify that where the part H lead agency is different from the SEA, actual implementation of the child find activities for infants and toddlers with disabilities by the part H lead agency does not alter or diminish the SEA's responsibility for ensuring compliance with child find and evaluation requirements.

3. Changes in Subpart C—Services

- Proposed § 300.308 ("Assistive technology") has been revised to specify that assistive technology devices and services must be provided if required as part of special education under § 300.17, related services under § 300.16, or supplementary aids and services under § 300.550(b)(2).

- Section 300.344 ("Participants in meetings") has been revised (1) to specify that if a purpose of a student's IEP meeting is the consideration of transition services to the student, the public agency must invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services, and (2) to clarify what the public agency must do if either the student or the agency representative does not attend.

- Section 300.345 ("Parent participation") has been revised to provide that if a purpose of the IEP meeting is the consideration of transition services, the notice to the parents about the meeting must indicate this purpose and indicate that the student will be invited.

- Section 300.346 ("Content of IEP") has been revised to specify that the statement of needed transition services in a student's IEP must include the three areas listed in the definition of "transition services" in § 300.18(b), unless the IEP team determines that services are not needed in one or more of those areas and includes in the IEP a statement to that effect and the basis for making the determination.

- Proposed § 300.347 ("Agency responsibility for transition services") has been revised (1) to clarify that, if a participating agency does not provide agreed-upon services, the public agency must initiate another IEP meeting "as soon as possible"; (2) to delete the phrase "to be implemented," following "alternative strategies"; and (3) to add

5. State Administrative Set-Aside for Small States

The 1991 Amendments revised section 611(c)(2) of the IDEA to increase from \$350,000 to \$450,000 the minimum amount that each State may reserve from its part B allocation for administrative expenses. This change is reflected in § 300.620.

6. Part B Services for Indian Children with Disabilities

The 1991 Amendments significantly revised section 611(f), which authorizes payments to the Secretary of the Interior under part B for the education of certain Indian children with disabilities. Section 300.709 has been revised in its entirety, consistent with the new section 611(f)(1) of the IDEA. Section 300.709 now provides that, subject to meeting the requirements in § 300.260, the Secretary makes payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations, aged 5-21, who are enrolled in elementary and secondary schools for Indian children operated by the Secretary of the Interior, and for Indian students aged 3-5 who are enrolled in programs affiliated with Bureau of Indian Affairs (BIA) schools that are required by the States in which the schools are located to attain or maintain State accreditation and which schools had such accreditation before the enactment of the 1991 Amendments. Previously, the Secretary of the Interior had been responsible for the education of all Indian children with disabilities, aged 3-21, on reservations (1) served by elementary and secondary schools operated by the Department of the Interior, and (2) for whom services were provided through contract with an Indian tribe or organization prior to FY 1989. The amount of payment is one percent of the aggregate amount of funds available to all States for that fiscal year.

In accordance with the new section 611(f)(3) of the IDEA, and in light of the revised responsibilities of the Secretary of the Interior for the education of Indian children with disabilities aged 3-21 as specified in section 611(f)(1) of the IDEA, § 300.260 also has been revised. That section identifies the specific provisions of sections 612, 613, and 614 of the IDEA that the Secretary has determined continue to be appropriate to applications from the Secretary of the Interior. Similarly, § 300.263 has been revised to reflect the regulatory requirements that continue to apply to the Secretary of the Interior in the implementation of the program supported by part B.

While the 1991 Amendments limit the responsibilities of the Secretary of the Interior for the education of Indian children with disabilities, it expanded the responsibilities of SEAs for Indian children with disabilities on reservations. Consistent with the requirements of the new section 611(f)(2) of the IDEA, § 300.300 (Timelines for FAPE) has been revised by adding a new paragraph (c) to specify that, with the exception of children identified in § 300.709(a) (1) and (2), the SEA shall be responsible for ensuring that all of the requirements of part B are implemented for all children aged 3-21 on reservations.

In addition, in accordance with the new section 611(f)(4) of the IDEA, a new § 300.710 has been added to provide that the Secretary make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities, aged 3-5, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of the payment is .25 percent of the aggregate amount of funds available to all States under this part for that fiscal year. These funds are to be used for child find, screening, and other procedures for the early identification of children, aged 3-5, parent training, and for direct services.

The Secretary believes that those statutory changes resulting from the 1991 Amendments can be effectively implemented by incorporation into existing regulations without additional regulatory guidance. However, if experience in the implementation of these provisions indicates that additional regulatory guidance is needed, the Secretary will undertake additional rulemaking at a future date.

II. Preschool Grants Program

The Preschool Grants program under section 619 of part B of the Act provides additional Federal financial assistance to States for providing special education and related services to children with disabilities aged 3-5 and, at a State's discretion, for providing FAPE to two-year-old children with disabilities who will reach age three during the school year. The Preschool Grants regulations in 34 CFR part 301 establish the administrative procedures for applying for and distributing Preschool Grants funds.

The substantive rights and protections established under part B of the Act and its implementing regulations at 34 CFR

part 300 apply to 3-5 year old children with disabilities. Therefore, these rights and protections, which include the right to FAPE, placement in the least restrictive environment, and the availability of due process procedures, are not repeated in the part 301 regulations.

The 1991 Amendments included several revisions to section 619. The following is a summary of those revisions:

- The 1991 Amendments expanded the age range for which SEAs and LEAs may use Preschool Grants funds to include two-year-old children with disabilities who will reach age three during the school year, whether or not those children are receiving, or have received, services under part H of the Act. These children are entitled to receive FAPE.

The use of Preschool Grants funds to provide FAPE to two-year-old children with disabilities is at a State's discretion and must be consistent with State policy. This is not a requirement to provide FAPE to all two-year-old children with disabilities who will reach age three during the school year. Rather, this provision increases States' options for use of Preschool Grants funds to meet the needs of children with disabilities and their families during the transition from early intervention services under part H of the Act to preschool special education under part B of the Act. Although children below age 3 cannot be included in the annual part B child count, States are permitted to use their part B funds to serve these children.

- Part H of the Act does not apply to any two-year-old child with disabilities receiving FAPE, in accordance with part B of the Act, with Preschool Grants funds. However, part H of the Act continues to apply to all other two-year-old children with disabilities, including those receiving FAPE with other sources of funds, such as part B funds under section 611 of the Act.

These statutory amendments are incorporated into these final regulations in §§ 301.1, 301.3, 301.6, 301.10, and 301.30.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on all changes proposed to be made in the Department's regulations. However, since the additional changes made in

- 300.139 Comprehensive system of personnel development.
- 300.140 Private schools.
- 300.141 Recovery of funds for misclassified children.
- 300.142-300.143 [Reserved]
- 300.144 Hearing on application.
- 300.145 Prohibition of commingling.
- 300.146 Annual evaluation.
- 300.147 State advisory panel.
- 300.148 Policies and procedures for use of Part B funds.
- 300.149 Description of use of Part B funds.
- 300.150 State-level nonsupplanting.
- 300.151 Additional information if the State educational agency provides direct services.
- 300.152 Interagency agreements.
- 300.153 Personnel standards.
- 300.154 Transition of individuals from Part H to Part B.
- Local Educational Agency Applications—General**
- 300.180 Submission of application.
- 300.181 [Reserved]
- 300.182 The excess cost requirement.
- 300.183 Meeting the excess cost requirement.
- 300.184 Excess costs—computation of minimum amount.
- 300.185 Computation of excess costs—consolidated application.
- 300.186 Excess costs—limitation on use of Part B funds.
- 300.187-300.189 [Reserved]
- 300.190 Consolidated applications.
- 300.191 [Reserved]
- 300.192 State regulation of consolidated applications.
- 300.193 State educational agency approval; disapproval.
- 300.194 Withholding.
- Local Educational Agency Applications—Contents**
- 300.220 Child identification.
- 300.221 Confidentiality of personally identifiable information.
- 300.222 Full educational opportunity goal—timetable.
- 300.223 Facilities, personnel, and services.
- 300.224 Personnel development.
- 300.225 Priorities.
- 300.226 Parent involvement.
- 300.227 Participation in regular education programs.
- 300.228 [Reserved]
- 300.229 Excess cost.
- 300.230 Nonsupplanting.
- 300.231 Comparable services.
- 300.232-300.234 [Reserved]
- 300.235 Individualized education programs.
- 300.236 [Reserved]
- 300.237 Procedural safeguards.
- 300.238 Use of Part B funds.
- 300.239 [Reserved]
- 300.240 Other requirements.
- Application from Secretary of the Interior**
- 300.260 Submission of application; approval.
- 300.261 Public participation.
- 300.262 Use of Part B funds.
- 300.263 Applicable regulations.

Public Participation

- 300.280 Public hearings before adopting a State plan.
- 300.281 Notice.
- 300.282 Opportunity to participate; comment period.
- 300.283 Review of public comments before adopting plan.
- 300.284 Publication and availability of approved plan.

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- 300.300 Timelines for free appropriate public education.
- 300.301 Free appropriate public education—methods and payments.
- 300.302 Residential placement.
- 300.303 Proper functioning of hearing aids.
- 300.304 Full educational opportunity goal.
- 300.305 Program options.
- 300.306 Nonacademic services.
- 300.307 Physical education.
- 300.308 Assistive technology.

Priorities in the Use of Part B Funds

- 300.320 Definitions of "first priority children" and "second priority children."
- 300.321 Priorities.
- 300.322 [Reserved]
- 300.323 Services to other children.
- 300.324 Application of local educational agency to use funds for the second priority.

Individualized Education Programs

- 300.340 Definitions.
- 300.341 State educational agency responsibility.
- 300.342 When individualized education programs must be in effect.
- 300.343 Meetings.
- 300.344 Participants in meetings.
- 300.345 Parent participation.
- 300.346 Content of individualized education program.
- 300.347 Agency responsibilities for transition services.
- 300.348 Private school placements by public agencies.
- 300.349 Children with disabilities in parochial or other private schools.
- 300.350 Individualized education program—accountability.

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- 300.361 Nature and location of services.
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- 300.372 Applicability of nonsupplanting requirement.

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- 300.381 Adequate supply of qualified personnel.
- 300.382 Personnel preparation and continuing education.
- 300.383 Data system on personnel and personnel development.
- 300.384-300.387 [Reserved]

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- 300.401 Responsibility of State educational agency.
- 300.402 Implementation by State educational agency.
- 300.403 Placement of children by parents.

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- 300.451 State educational agency responsibility.
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- 300.463 Request to show cause.
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- 300.466 Judicial review.

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- 300.502 Opportunity to examine records.
- 300.503 Independent educational evaluation.
- 300.504 Prior notice; parent consent.
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- 300.507 Impartial hearing officer.
- 300.508 Hearing rights.
- 300.509 Hearing decision; appeal.
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- 300.541 Criteria for determining the existence of a specific learning disability.
- 300.542 Observation.
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Direct services (§ 300.370(b)(1))
 Education records (§ 300.500)
 Evaluation (§ 300.500)
 First priority children (§ 300.320(a)) Highest requirements in the State applicable to a specific profession or discipline (§ 300.153(a)(2))
 Independent educational evaluation (§ 300.503(a)(3)(i))
 Individualized education program (§ 300.340)
 Participating agency, as used in the IEP requirements in §§ 300.346 and 300.347 (§ 300.340(b))
 Participating agency, as used in the confidentiality requirements in §§ 300.560-300.576 (§ 300.560)
 Party or parties (§ 300.584(a))
 Personally identifiable (§ 300.500)
 Private school children with disabilities (§ 300.450)
 Profession or discipline (§ 300.153(a)(3))
 Public expense (§ 300.503(a)(3)(ii))
 Second priority children (§ 300.320(b))
 Special definition of "State" (§ 300.700)
 State-approved or recognized certification, licensing, registration, or other comparable requirements (§ 300.153(a)(4))
 Support services (§ 300.370(b)(2))

Note 2: Below are abbreviations for selected terms that are used throughout these regulations:

"FAPE" means "free appropriate public education."

"IEP" means "individualized education program."

"IEU" means "intermediate educational unit."

"LEA" means "local educational agency."

"LRE" means "least restrictive environment."

"SEA" means "State educational agency."

As appropriate, each abbreviation is used interchangeably with its nonabbreviated term.

§ 300.4 Act.

As used in this part, "Act" means the Individuals with Disabilities Education Act, formerly the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1400)

§ 300.5 Assistive technology device.

As used in this part, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(25))

§ 300.6 Assistive technology service.

As used in this part, "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes —

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(Authority: 20 U.S.C. 1401(a)(26))

Note: The definitions of "assistive technology device" and "assistive technology service" used in this part are taken directly from section 602(a)(25)-(26) of the Act, but in accordance with Part B, the statutory reference to "individual with a disability" has been replaced with "child with a disability." The Act's definitions of "assistive technology device" and "assistive technology service" incorporate verbatim the definitions of these terms used in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

§ 300.7 Children with disabilities.

(a)(1) As used in this part, the term "children with disabilities" means those children evaluated in accordance with §§ 300.530-300.534 as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who because of those impairments need special education and related services.

(2) The term "children with disabilities" for children aged 3 through 5 may, at a State's discretion, include children—

(i) Who are experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, for that reason, need special education and related services.

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

(1) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance, as defined in paragraph (b)(9) of this section.

(2) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Multiple disabilities" means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(7) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital

§ 300.15 Qualified.

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

(Authority: 20 U.S.C. 1417(b))

§ 300.16 Related services.

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

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

- (1) "Audiology" includes—
 - (i) Identification of children with hearing loss;
 - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
 - (vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need

for special education and related services.

- (5) "Occupational therapy" includes—
 - (i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
 - (ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
 - (iii) Preventing, through early intervention, initial or further impairment or loss of function.
- (6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.
- (7) "Physical therapy" means services provided by a qualified physical therapist.
- (8) "Psychological services" includes—
 - (i) Administering psychological and educational tests, and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.
 - (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents.
- (9) "Recreation" includes—
 - (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (10) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- (11) "School health services" means services provided by a qualified school nurse or other qualified person.
- (12) "Social work services in schools" includes—
 - (i) Preparing a social or developmental history on a child with a disability;

- (ii) Group and individual counseling with the child and family;
- (iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.
- (13) "Speech pathology" includes—
 - (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (14) "Transportation" includes—
 - (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

Note: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and

within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each State plan must include a copy of each State statute, court order, Attorney General decision, and other State documents that demonstrate that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each State plan must—

(1) Describe in detail the extent that the exception in paragraph (c) of this section applies to the State; and

(2) Include a copy of each State law, court order, and other documents that provide a basis for the exception.

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

§ 300.123 Full educational opportunity goal.

Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21.

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

§ 300.124 [Reserved]

§ 300.125 Full educational opportunity goal—timetable.

Each State plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all children with disabilities.

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

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

Each State plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all children with disabilities.

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

§ 300.127 Priorities.

Each State plan must include information that shows that—

(a) The State has established priorities that meet the requirements of §§ 300.320–300.324;

(b) The State priorities meet the timelines under § 300.122; and

(c) The State has made progress in meeting those timelines.

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

§ 300.128 Identification, location, and evaluation of children with disabilities.

(a) *General requirement.* Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, to ensure that—

(1) All children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each State plan must:

(1) Designate the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation.

(3) Describe the extent that—

(i) The activities described in paragraph (a) of this section have been achieved under the current State plan; and

(ii) The resources named for these activities in that plan have been used.

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes.

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains—

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

Note 1: The State is responsible for ensuring that all children with disabilities are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements of §§ 300.560–300.576.

Note 2: Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part H program are different and the Part H lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part H lead agency's participation must, under paragraph (b)(2) of this section, be included in the State plan. With the SEA's agreement, the Part H lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part H lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a)(1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

§ 300.129 Confidentiality of personally identifiable information.

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560–300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

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

Note: The confidentiality regulations were published in the *Federal Register* in final form on February 27, 1976 (41 FR 8603–8610), and met the requirements of Part B of the Act. Those regulations are incorporated in §§ 300.560–300.576.

§ 300.130 Individualized education programs.

(a) Each State plan must include information that shows that each public agency in the State maintains records of the IEP for each child with disabilities, and each public agency establishes, reviews, and revises each program as provided in §§ 300.340–300.350.

(b) Each State plan must include—

(1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised; and

(1) An estimate of the number and percent of LEAs in the State that will receive an allocation under this part (other than LEAs that submit a consolidated application);

(2) An estimate of the number of LEAs that will receive an allocation under a consolidated application;

(3) An estimate of the number of consolidated applications and the average number of LEAs per application; and

(4) A description of direct services that the SEA will provide under § 300.360.

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

§ 300.150 State-level nonsupplanting.

Each State plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of the SEA or LEAs—expended for special education and related services provided to children with disabilities under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

Note: This requirement is distinct from the LEA nonsupplanting provision already contained in these regulations at § 300.230. Under this State-level provision, the State must assure that Part B funds distributed to LEAs and IEOs will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to children with disabilities in the absence of the Part B funds. The portion of Part B funds that are not distributed to LEAs or IEOs under the statutory formula (20 U.S.C. 1411(d)) are not subject to this nonsupplanting provision. See 20 U.S.C. 1411(c)(3). States may not permit LEAs or IEOs to use Part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in the IEPs of children with disabilities.

(H.R. Rep. No. 860, 99th Cong., 21-22 (1986))

§ 300.151 Additional information if the State educational agency provides direct services.

If an SEA provides FAPE for children with disabilities or provides them with direct services, its State plan must include the information required under §§ 300.226, 300.227, 300.231, and 300.235.

(Authority: 20 U.S.C. 1413(b))

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The SEA; and

(2) All other State and local agencies that provide or pay for services required under this part for children with disabilities.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for children with disabilities; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing children with disabilities with FAPE;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which LEAs may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(Authority: 20 U.S.C. 1413(a)(13))

§ 300.153 Personnel standards.

(a) As used in this part:

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with disabilities who are served by State, local, and private agencies (see § 300.2).

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides special education and related services to children with disabilities under this part;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or

other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the SEA, and available to the public.

(e) In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with disabilities must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Note: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and

| | |
|---|-----------|
| (8) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965..... | 150,000 |
| Total..... | 1,600,000 |

(An LEA would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: Children with disabilities, educationally deprived children, and bilingual education for limited English proficient children.)

This amount is subtracted from the LEA's total expenditure for elementary school students computed above:

| |
|--------------|
| \$10,000,000 |
| - 1,600,000 |
| 8,400,000 |

c. The LEA next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its students with disabilities).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph: \$8,400,000/7,000 students = \$1,200/student.

This figure is in the minimum amount the LEA must spend (on the average) for the education of each of its students with disabilities. Funds under Part B may be used only for costs over and above this minimum. In this example, if the LEA has 100 elementary school students with disabilities, it must keep records adequate to show that it has spent at least \$120,000 for the education of those students (100 students times \$1,200/student), not including capital outlay and debt service.

This \$120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the LEA has secondary school students with disabilities, it must do the same computation for them. However the amounts used in the computation would be those the LEA spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183, if two or more LEAs submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

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

§ 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay

for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for nondisabled children in that age range. However, the LEA must comply with the non-supplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

§ 300.187-300.189 [Reserved]

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* An SEA may require LEAs to submit a consolidated application for payments under Part B of the Act if the SEA determines that an individual application submitted by an LEA will be disapproved because—

(1) The agency's entitlement is less than the \$7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1)); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

(c) *Size and scope of program.* The SEA shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1414(c)(1))

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The SEA shall issue regulations with respect to consolidated applications submitted under this part.

(b) The SEA's regulations must—

(1) Be consistent with sections 612(1)-(7) and 613(a) of the Act; and

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

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

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

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

§ 300.193 State educational agency approval; disapproval.

(a)-(b) [Reserved]

(c) In carrying out its functions under this section, each SEA shall consider any decision resulting from a hearing under §§ 300.506-300.513 that is adverse to the LEA involved in the decision.

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

§ 300.194 Withholding.

(a) If an SEA, after giving reasonable notice and an opportunity for a hearing to an LEA, decides that the LEA in the administration of an application approved by the SEA has failed to comply with any requirement in the application, the SEA, after giving notice to the LEA, shall—

(1) Make no further payments to the LEA until the SEA is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the LEA under § 300.180; or

(3) Both.

(b) [Reserved]

(Authority: 20 U.S.C. 1414(b)(2))

Local Educational Agency Applications—Contents

§ 300.220 Child identification.

Each application must include procedures that ensure that all children residing within the jurisdiction of the LEA who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, including a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

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

Note: The LEA is responsible for ensuring that all children with disabilities within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements of §§ 300.560-300.576.

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in §§ 300.560-300.574 are met.

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

local school boards before the adoption of the policies, programs, and procedures required under paragraphs (a)(1)-(3) of this section:

(7) Includes an assurance that the Secretary of the Interior will provide such information as the Secretary may require to comply with section 618(b)(1) of the Act, including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed;

(8) Includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with SEAs and LEAs and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. That agreement must provide for the apportionment of responsibilities and costs, including, but not limited to, those related to child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies, or both, as needed for a child to remain in school or a program; and

(9) Includes an assurance that the Department of the Interior will cooperate with the Department of Education in the latter's exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under the Act and will fulfill its duties under the Act.

(b) Sections 300.581-300.585 apply to grants available to the Secretary of the Interior under this part.

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

§ 300.261 Public participation.

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

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

§ 300.262 Use of Part B funds.

(a)(1) The Department of the Interior may use five percent of its payment under § 300.709 in any fiscal year, or \$350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(2) The remainder of the payments to the Secretary of the Interior under § 300.709 in any fiscal year must be used in accordance with the priorities under §§ 300.320-300.324.

(b) Payments to the Secretary of the Interior under § 300.710 must be used in accordance with that section.

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

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements of §§ 300.301-300.303, §§ 300.305-300.307, and §§ 300.340-300.347, § 300.350, §§ 300.380-300.383, §§ 300.400-300.402, §§ 300.500-300.585, §§ 300.600-300.621, and §§ 300.660-300.662.

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

Public Participation

§ 300.280 Public hearings before adopting a State plan.

Prior to its adoption of a State plan, the SEA shall—

- (a) Make the plan available to the general public;
- (b) Hold public hearings; and
- (c) Provide an opportunity for comment by the general public on the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.281 Notice.

(a) The SEA shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the general public about—

- (1) The purpose and scope of the State plan and its relation to part B of the Act;
- (2) The availability of the State plan;
- (3) The date, time, and location of each public hearing;
- (4) The procedures for submitting written comments about the plan; and
- (5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced—

- (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and
- (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(7))

(Authority: 20 U.S.C. 1412(7))

§ 300.282 Opportunity to participate; comment period.

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its State plan, the SEA shall—

- (a) Review and consider all public comments; and
- (b) Make any necessary modifications in the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves a State plan, the SEA shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(Authority: 20 U.S.C. 1412(7))

Subpart C—Services

Free Appropriate Public Education

§ 300.300 Timelines for free appropriate public education.

(a) *General.* Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

- (1) The child is enrolled full time in a separate facility; or
- (2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(6))

Note: The Report of the House of Representatives on Public Law 94-142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in

our school systems, they are often viewed as a luxury for handicapped children.

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94-332, p. 9 (1975))

§ 300.308 Assistive technology.

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5-300.6, are made available to a child with a disability if required as a part of the child's—

- (a) Special education under § 300.17;
- (b) Related services under § 300.16; or
- (c) Supplementary aids and services under § 300.550(b)(2).

(Authority: 20 U.S.C. 1412(2), (5)(B))

Priorities in the Use of Part B Funds**§ 300.320 Definitions of first priority children and second priority children.**

For the purposes of §§ 300.321-300.324, the term:

(a) "First priority children" means children with disabilities who—

- (1) Are in an age group for which the State must make FAPE available under § 300.300; and

(2) Are not receiving any education.

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

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

Note 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving Part B funds for fiscal year 1979, that all children with disabilities will have FAPE available by that date.

Note 2: The term "free appropriate public education," as defined in § 300.8, means special education and related services that "are provided in conformity with an IEP."

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

§ 300.321 Priorities.

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

- (1) To provide FAPE to first priority children, including the identification,

location, and evaluation of first priority children.

(2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

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

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.820.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

Note: SEAs as well as LEAs must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, part B funds may be used—

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

(2) To provide FAPE to newly identified first priority children;

(3) To meet the full educational opportunity goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual children with disabilities; and

(4) To meet the other requirements of part B.

§ 300.322 [Reserved]**§ 300.323 Services to other children.**

If a State or an LEA is providing FAPE to all of its first priority children, that State or LEA may use funds provided under part B of the Act—

(a) To provide FAPE to children with disabilities who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

(b) To provide FAPE to second priority children; or

(c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

An LEA may use funds provided under part B of the Act for second priority children, if it provides assurance satisfactory to the SEA in its application (or an amendment to its application)—

(a) That all first priority children have FAPE available to them;

(b) That the LEA has a system for the identification, location, and evaluation of children with disabilities, as described in its application; and

meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

§ 300.345 Parent participation.

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

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

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

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

(2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also—

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

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

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

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

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Content of individualized education program.

(a) General. The IEP for each child must include—

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(b) Transition services. (1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in § 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in § 300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

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

Note 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101-544, p. 11 (1990).

Note 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in § 300.18 (b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not

needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

Note 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., " . . . and, when determined appropriate for the individual, beginning at age 14 or younger."). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Public Law 101-476 includes the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

§ 300.347 Agency responsibilities for transition services.

(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1401 (a)(18), (a)(19), (a)(20); 1412(2)(B))