



The Managerial Aspects of Public Law 94-142

JOSEPH BALLARD
JEFFREY J. ZETTEL

This is the final article in a three part series to appear in *Exceptional Children* during the current volume year that deals with Public Law (P.L.) 94-142, the Education for All Handicapped Children Act. The expressed intent of the overall series is to provide the reader with a background as well as a substantial understanding of this monumental and most complex piece of federal legislation. To accomplish this goal, it was decided to analyze the Act from three different perspectives: (1) what it says about rights and protections (see *Exceptional Children*, November 1977); (2) the fiscal arrangements of the law (see *Exceptional Children*, February 1978); and (3) the managerial procedures and requirements established by this Act. To maintain consistency with the two previously published articles, the vehicle for the present discussion of the managerial aspects of the law will likewise assume a question and answer format.

What are the overall management responsibilities established by Public Law (P.L.) 94-142?

P.L. 94-142 is administered through a series of interlocking responsibilities among local education agencies, state education agencies, and the US Commissioner of Education.

Two documents are at the core of this administrative interaction: the state plan and the

local education agency application. The US Commissioner may not allocate funds under this Act to a state until he has approved the state plan. Correspondingly, the state education agency may not allow a local education agency's entitlement to flow through to the locality until it has approved the local application. Both the state plan and the local applications are composed of three major ingredients: certain assurances, a detailing of certain procedures, and a detailed resource plan.

1. "Certain assurances":

Both the state plan and the local applications must include a guarantee of all of the rights and protections for children and their parents or guardians set forth in the law. (Refer to Sections 613 and 614 of the Act).

2. "A detailing of certain procedures":

The state plan must, further, include a comprehensive blueprint for personnel development and procedures for active, ongoing child find. The local applications must likewise demonstrate how they are going to achieve such basic requirements. (Refer to Section 612(2)(c) and Section 613(a)(3) of the Act.)

3. "A detailed resource plan":

Finally, the state plan, and to the degree appropriate—the local applications—must include a description of the kind and number of facilities, personnel, and services required to reach and maintain full service for all handicapped children. (Refer to Section 612(2)(A) and Section 614(a)(1)(E) of the Act.)

2408
3319
3320
3321

J #2561
J #2560

DE

CARD

ALL TIMES
members of CEC
ership in the
stration at all
nces or pay
Preregistrants
entification
n.
Action, 1976

Is there a general rule of thumb with regard to local education agency application?

Yes. The local application must conform in all respects to the overall state blueprint as presented in the state plan. (Refer to Section 614(a)(5) of the Act.)

Is this state plan requirement something new?

No. State education agencies have been required to submit state plans in the area of education of handicapped children to the US Commissioner of Education for a number of years.

Are the state plan and the local applications public documents?

Yes, and both must be made available to parents and other interested parties upon request. Furthermore, the state plan must be made available to the general public at least 30 days before submission to the US Commissioner. Comments must be received and responded to by the state education agency. (Refer to Section 612(7) and Section 614(a)(4) of the Act.)

Is there a manpower development requirement in P.L. 94-142?

Yes. As previously noted in "a detailing of certain procedures," P.L. 94-142 requires states and local school districts to engage in comprehensive manpower development toward the achievement of full educational opportunity for all handicapped children through both inservice and preservice training. Readers are encouraged to carefully study sections 121a.380 through 121a.387 of the P.L. 94-142 regulations.

May P.L. 94-142 dollars be utilized for manpower development?

Yes, but for inservice training only; expenditure for preservice is prohibited. Moreover, inservice expenditures may occur only within the constraints imposed by the overall statutory priorities in the use of P.L. 94-142 funds.

Are there other federal dollars available for special education personnel development?

Yes. Part D of the federal Education of the Handicapped Act (P.L. 94-142 is Part B of that

Act) authorizes an ongoing program for personnel development through both preservice and inservice training. The funding authority for that component in fiscal 1978 (not actual appropriations) is \$75 million.

Does P.L. 94-142 require efforts to locate handicapped children who need special education?

Yes. As previously noted in "a detailing of certain procedures," P.L. 94-142 requires the states and the local school districts to engage in active, ongoing child find within the age range of 0 through 21. Section 504 carries an identical stipulation.

Are conditions attached to the local pass through of funds?

Though P.L. 94-142 authorizes a substantial local entitlement, there are numerous "strings attached." The state education agency must refuse to pass through federal monies generated when:

- The school district does not conform to the overall state plan requirements contained in this Act and in existing law (such as "full service" goal, confidentiality, etc.).
- The school district fails to meet the local application requirements.
- The state deems the local district unable to make effective use of its entitlement unless it consolidates its entitlement with the entitlement of one or more other school districts (thus allowing great flexibility in funding arrangements).
- The program for handicapped children within the school district is of insufficient size and scope.
- The school district is adequately providing a free, appropriate public education for all handicapped children with state and local funds. (This provision is permissive. The state education agency does not have to do so.)
- The state determines that one or more children in a local school district can best be served by a regional or state center.

Furthermore, P.L. 94-142 establishes a flat monetary minimum. If a school district, after counting all of its handicapped children served, cannot generate an allocation for itself

of at least \$7,500, a pass through to that school district does not occur. This provision is, of course, also aimed at encouraging various sorts of special education consortia in order to make meaningful use of the federal dollars. However, this \$7,500 minimum does not apply in the first year under the new formula (school year 1977-78). (Refer to Section 614(b)(c)(d)(e) and (f) and Section 611(c)(4)(A)(i) of the Act.)

May a local education agency refuse to submit a local application and therefore circumvent guaranteeing the rights and protections of the Act?

Yes, but as a result it becomes the state's responsibility to assure these rights and protections for the handicapped school children of the said district. Subsequently, such a local school district also remains subject to compliance with Section 504.

What is an intermediate education unit?

Provision is made in the Act for a type of educational unit larger than the local education agency. An intermediate educational unit is defined as a public authority established by state law to provide free public education on a regional basis to handicapped children.

Such an intermediate educational unit, when so determined by the state education agency, may have all of the rights and responsibilities of a local education agency under this Act and may receive a federal entitlement. (Refer to Section 614(c)(2)(C) of the Act.)

For the purposes of P.L. 94-142, what is the relation of the state education agency to other state agencies?

P.L. 94-142 requires that the state education agency be responsible for ensuring that all requirements of the Act are carried out. Moreover, all education programs within the state for all handicapped children, including such programs administered by any other state or local agency, must meet state educational agency standards and be under the general supervision of the state education agency. This provision establishes a single line of responsibility within one state agency for the education of all handicapped children within each state. (Refer to Section 612(6) of the Act and refer to §121a.600 of the P.L. 94-142 regulations.)

What is the basic relationship between P.L. 94-142 and P.L. 89-313?

Children counted for purposes of generating an entitlement under P.L. 94-142 may not concurrently be counted under the formula for P.L. 89-313, the program of supplemental educational services for handicapped children in state operated or supported facilities. However, monies under this Act and monies under P.L. 89-313 may be programmatically mingled with each other where the target populations of these two authorities intersect.

Regardless of whether the children counted under P.L. 89-313 enjoy the fiscal benefits of P.L. 94-142, all of the rights and protections of P.L. 94-142 must apply to these children as well. (Refer to Section 611(a)(5)(A)(iii) of the Act.)

Does P.L. 94-142 require advisory panels?

P.L. 94-142 mandates that each state shall have an advisory panel to be appointed by the Governor or any other official authorized under state law to make such appointments. This panel must be composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, state and local education officials, and administrators of programs for handicapped children.

The panel shall have the following duties:

- Advise the state education agency on unmet needs relative to the education of all handicapped children within the state.
- Comment publicly on rules and regulations issued by the state and procedures proposed by the state for distribution of funds.
- Assist the state in developing and reporting such data and evaluations as may assist the US Commissioner. (Refer to Section 613(a)(12) of the Act.)

How is P.L. 94-142 enforced?

Essentially, the US Commissioner must engage in whatever monitoring and evaluation procedures may be required to achieve enforcement state by state. The state education agency, in turn, is required to do the same with respect to its local and intermediate education agencies. Undoubtedly, the Act is complaint oriented, and enforcement will depend heavily on the vigilance of parents and other advocates.

Are there sanctions for failure to comply with P.L. 94-142?

The state education agency must cut off the flow through to a local education agency if it does not conform to its own local application. Correspondingly, the US Commissioner must cut off funds to the state education agency if that agency is in substantial noncompliance with its own state plan. Moreover, the US Commissioner may order the state education agency to cut off the flow through to a school district if the Commissioner evidences substantial noncompliance by a school district. (Refer to Section 616 of the Act in its entirety.) In such instances, the US Commissioner may also cut off funding for those programs specifically designed for handicapped children under the following titles:

- Part A of Title I of the Elementary and Secondary Education Act.
- Title III of the Elementary and Secondary Education Act (innovative programs) and its successor, Part C, Educational Innovation and Support, Section 431 of P.L. 93-380.
- The Vocational Education Act.

(Refer to Section 616(a)(B) and Section 613(a)(2) of the Act.)

Are there sanctions for failure to comply with Section 504?

Yes. The US Secretary of Health, Education, and Welfare has the authority to cut off all HEW funds going to a state or a locality when the Secretary makes a judgment of non-compliance with Section 504.

Must efforts be made to employ handicapped individuals?

Both the state education agency and the local education agencies receiving funds under this Act must make positive efforts to employ and advance in employment qualified handicapped individuals. (Refer to Section 606 of the Act and also Section 503 of P.L. 93-112.)

Does P.L. 94-142 address the issue of architectural barriers within school facilities?

P.L. 94-142 authorizes such sums as may be necessary for the US Commissioner to award grants to pay all or part of the cost of altering existing buildings and equipment to eliminate

architectural barriers in educational facilities. Such provision is aimed at assuring certain handicapped children an appropriate public education in the least restrictive environment. As in the case of the previous heading on the preschool incentive, however, the actual money for this component must be separately appropriated by the Congress. (Refer to Section 607 of the Act.)

What does the Section 504 regulation say with respect to architectural barriers in school systems?

One of the principal objectives of Section 504 is the termination of discriminatory program inaccessibility for handicapped children in the public schools—handicapped children in both regular and special education programs.

A crucial distinction must be made here: Section 504 does not order totally architecturally barrier free school facilities; it does, however, order full program accessibility. Therefore, as of June 1, 1977:

- All new facilities must be constructed so as to be readily accessible and usable from a program standpoint by all handicapped children.
- Although every existing facility need not be totally physically accessible, there must be an assurance that programs conducted in those facilities are made accessible.
- While flexibility is allowed in choosing methods that in fact make programs in existing facilities accessible, structural changes in such facilities must be undertaken if no other means of assuring program accessibility is available. The regulations state that such structural changes shall be made "expeditiously," but shall be completed no later than three years from the effective date of June 1, 1977. (Refer to entire Subpart C of the 504 regulations.)

Does P.L. 94-142 contain data gathering requirements?

The US Commissioner is required to provide to the Congress and the public at least annually—and is required to update annually—data and information on the educational status of the nation's handicapped children, such as the number of children served and unserved within each disability, the kinds and number of educational personnel

employed, etc. (Refer to Section 613(b) of the Act.)

What national evaluations are mandated by P.L. 94-142?

The US Commissioner must evaluate the impact of this Act on an annual basis and provide a full report to the Congress not later than 120 days after the close of each fiscal year. That annual evaluation shall include the following segments:

- An analysis and evaluation of the effectiveness of procedures undertaken to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs.
- An analysis and evaluation of the effectiveness of procedures to improve programs of instruction for handicapped children in day or residential facilities.
- An evaluation of the effectiveness of procedures undertaken to prevent the erroneous classification of children.
- Recommendations for changes in P.L. 94-142 and any other federal law providing support for the education of handicapped children.

Finally, P.L. 94-142 stipulates that, in order to carry out these specific analyses and evaluations, the US Commissioner shall conduct a statistically valid survey for assessing the effectiveness of individualized education programs. (Refer to Section 613(d) of the Act.)

How long will P.L. 94-142 be in force?

P.L. 94-142 carries the rather unique characteristic of being a permanent statutory authority with no expiration date.

What are the time requirements established by P.L. 94-142?

As indicated in Table 1 on the following page, P.L. 94-142 establishes specific dates for both the escalation of its funds as well as for the provision of special education and related services to handicapped children.

To obtain a copy of P.L. 94-142, write to your member of the US House of Representatives or to one of your US Senators.

To obtain a copy of the final regulations for P.L. 94-142, get a copy of the *Federal Register* for Tuesday, August 23, 1977.

To obtain a copy of the final regulations for Section 504 of P.L. 93-112, get a copy of the *Federal Register* for Wednesday, May 4, 1977.

For further information with respect to full implementation of both P.L. 94-142 and Section 504, the reader is referred to the following resources available from The Council for Exceptional Children:

- *P.L. 94-142 The Education for All Handicapped Children Act of 1975* by Joseph Ballard, Jean N. Nazzaro, and Frederick J. Weintraub (multimedia package), 1976, Stock No. 136, \$50.00
- *P.L. 94-142 Implementing Procedural Safeguards—A Guide for Schools and Parents*, produced by CEC in conjunction with The Children's Television Workshop (multimedia package), 1977, Stock No. 167, \$90.00
- *Special Education Administrative Policies Manual* by Scottie Torres, 1977, 175 pp., Stock No. 164, \$27.50
- *Training Institutes*

Training institutes for staff development and inservice training are available from CEC to local school districts, state departments, colleges or universities, professional organizations and any other agency desiring training. Agencies may negotiate with CEC to offer training to their specific constituency on the date and at the location of their choice. Currently, institutes are available in the areas of *Delivery of Services*, *Early Childhood Education*, and *Individualized Education Program Planning*. Among specific topics are *Child Identification*, *Nondiscriminatory Testing*, *Developing and Implementing IEP Objectives*, *Preschool Gifted and Handicapped*, and *Language Development in Young Children*. For more information and complete information on all institutes, contact the CEC Conventions Unit, 800-336-3728.

All three of the articles presented in this series have been combined by The Council for Excep-

TABLE 1
Public Law 94-142 Timetable

<i>Fiscal year</i>	<i>Funding timetable</i>	<i>Service timetable</i>	
1978 (10/1/77 to 9/30/78)	October 1: The first allocation will be made according to the primary funding formula, using 5% of the national average expenditure per pupil. used by the state.	October 1: 50% of the funds allocated to states must go directly to eligible local and intermediate education agencies. The remaining 50% of the funds may be used by the state.	Substantive provisions, such as state education agency "general supervision" and further modifications from P.L. 93-380 of procedural safeguards mechanism, take effect. Individual education programs must be developed for all handicapped children in the state, regardless of the public agency (agencies) delivering the educational program.
1979 (10/1/78 to 9/30/79)	October 1: The funding formula uses 10% of the national average expenditure.	October 1: 75% of the funds allocated to states must go directly to eligible local and intermediate agencies. The remaining 25% of the funds may be used by the state. For each year thereafter this same percentage is used.	Commencing September 1, 1978: A free, appropriate public education must be available for all handicapped children, ages 3 to 18 if the given state is to continue receiving P.L. 94-142 funds
1980 (10/1/79 to 9/30/80)	October 1: The funding formula uses 20% of the national average expenditure.		
1981 (10/1/80 to 9/30/81)	October 1: The funding formula uses 30% of the national average expenditure.		Commencing September 1, 1980: A free, appropriate public education must be available for all handicapped children, ages 3 to 21 if a given state is to continue receiving P.L. 94-142 funds.
1982 (10/1/81 to 9/30/82)	October 1: The funding formula uses 40% of the national average expenditure. This is the final funding increase.		

tional Children in a new publication entitled *Public Law 94-142 and Section 504 - Understanding What They Are and Are Not*. Single copies may be obtained by writing:

The Council for Exceptional Children
Unit 9
1920 Association Drive
Reston, Virginia, 22091
Additional copies are also available:

1 - 9 copies, 50¢ each
10 or more copies, 40¢ each
Remittance must accompany all orders.

JOSEPH BALLARD is Assistant Director for Policy Implementation and JEFFREY J. ZETTEL is a Specialist for Policy Implementation, Governmental Relations Unit, The Council for Exceptional Children.