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94TH CONGRESS }
1st Session }

SENATE }

REPORT
No. 94-455

EDUCATION OF HANDICAPPED CHILDREN

NOVEMBER 14, 1975.—Ordered to be printed

Mr. RANDOLPH, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 6]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

EXTENSION OF EXISTING LAW

SEC. 2. (a) (1) (A) Section 611(b) (2) of the Education of the Handicapped Act (20 U.S.C. 1411(b) (2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(B) Section 611(c) (1) of the Act (20 U.S.C. 1411(c) (1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(2) Section 611(c) (2) of the Act (20 U.S.C. 1411(c) (2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "2 per centum" each place it appears therein and inserting in lieu thereof "1 per centum".

(3) Section 611(d) of the Act (20 U.S.C. 1411(d)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977".

(4) Section 612(a) of the Act (20 U.S.C. 1412(a)), as in effect during the fiscal years 1976 and 1977, is amended—

(A) by striking out "year ending June 30, 1975" and inserting in lieu thereof "years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977"; and

(B) by striking out "fiscal year 1974" and inserting in lieu thereof "preceding fiscal year".

(b) (1) Section 614(a) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1975," and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(2) Section 614(b) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(3) Section 614(c) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(c) Section 612(a) of the Act, as in effect during the fiscal years 1976 and 1977, and as amended by subsection (a) (4), is amended by inserting immediately before the period at the end thereof the following: ", or \$300,000, whichever is greater".

(d) Section 612 of the Act (20 U.S.C. 1411), as in effect during the fiscal years 1976 and 1977, is amended by adding at the end thereof the following new subsection:

"(d) The Commissioner shall, no later than one hundred twenty days after the date of the enactment of the Education for All Handicapped Children Act of 1975, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this section and section 611."

(e) Notwithstanding the provisions of section 611 of the Act, as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated \$100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and \$200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act, as in effect during such fiscal years.

STATEMENT OF FINDINGS AND PURPOSE

Sec. 3. (a) Section 601 of the Act (20 U.S.C. 1401) is amended by inserting "(a)" immediately before "This title" and by adding at the end thereof the following new subsections:

"(b) The Congress finds that—

"(1) there are more than eight million handicapped children in the United States today;

"(2) the special educational needs of such children are not being fully met;

"(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

"(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

"(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

"(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

"(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

"(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

"(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

"(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2) (B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children."

(b) The heading for section 601 of the Act (20 U.S.C. 1401) is amended to read as follows:

"SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE"

DEFINITIONS

Sec. 4. (a) Section 602 of the Act (20 U.S.C. 1402) is amended—
(1) in paragraph (1) thereof, by striking out "crippled" and in-

serting in lieu thereof "orthopedically impaired", and by inserting immediately after "impaired children" the following: ", or children with specific learning disabilities,";

(2) in paragraph (5) thereof, by inserting immediately after "instructional materials," the following: "telecommunications, sensory, and other technological aids and devices,";

(3) in the last sentence of paragraph (15) thereof, by inserting immediately after "environmental" the following: ", cultural, or economic"; and

(4) by adding at the end thereof the following new paragraphs:

"(16) The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

"(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

"(18) The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5).

"(19) The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

"(20) The term 'excess costs' means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs

which would qualify for assistance under this part or under such titles.

"(21) The term 'native language' has the meaning given that term by section 703(a)(2) of the Bilingual Education Act (20 U.S.C. 880b-1(a)(2)).

"(22) The term 'intermediate educational unit' means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State."

(b) The heading for section 602 of the Act (20 U.S.C. 1402) is amended to read as follows:

"DEFINITIONS"

ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

Sec. 5. (a) Part B of the Act (20 U.S.C. 1411 et seq.) is amended to read as follows:

"PART B.—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

"ENTITLEMENTS AND ALLOCATIONS

"Sec. 611. (a) (1) Except as provided in paragraph (3) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

"(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services; multiplied by—

"(B) (i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

"(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

"(2) For the purpose of this subsection and subsection (b) through subsection (e), the term 'State' does not include Guam, American

Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average of the number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceding the fiscal year for which the determination is made.

"(4) For purposes of paragraph (1)(B), the term 'average per pupil expenditure' in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(5) (A) In determining the allotment of each State under paragraph (1), the Commissioner may not count—

"(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State;

"(ii) as part of such percentage, children with specific learning disabilities to the extent the number of such children is greater than one-sixth of such percentage; and

"(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

"(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

"(b) (1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

"(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

"(2) Of the funds which any State may use under paragraph (1)(A)—

"(A) an amount which is equal to the greater of—

"(i) 5 per centum of the total amount of funds received under this part by such State; or

"(ii) \$200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613; and

"(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(c) (1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

"(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

"(2) (A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

"(i) an amount which is equal to the greater of—

"(I) 5 per centum of the total amount of funds received under this part by such State; or

"(II) \$200,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

"(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

"(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

"(4) (A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

"(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than \$7,500 for such fiscal year; or

"(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

"(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

"(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount

available under subsection (b) (1) (B) or subsection (c) (1) (B), as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part.

“(e) (1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

“(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Commissioner in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

“(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or \$35,000, whichever is greater.

“(f) (1) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this part for that fiscal year.

“(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Commissioner an application which meets the applicable requirements of section 614(a) and which is approved by the Commissioner. The provisions of section 616 shall apply to any such application.

“(g) (1) If the sums appropriated for any fiscal year for making payments to States under this part are not sufficient to pay in full the total amounts which all States are entitled to receive under this part for such fiscal year, the maximum amounts which all States are entitled to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

“(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made

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

“ELIGIBILITY

“SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

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

“(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

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

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

“(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed

special education and related services and which children are not currently receiving needed special education and related services;

“(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617 (c); and

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

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

“(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a) (5).

“(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

“(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

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

procedures required pursuant to the provisions of this section and section 613.

“STATE PLANS

“SEC. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

“(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611 (b), 611 (c), 611 (d), 612 (2), and 612 (3);

“(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305 (b) (8) of such Act (20 U.S.C. 844a (b) (8)) or its successor authority, and section 122 (a) (4) (B) of the Vocational Education Act of 1963 (20 U.S.C. 1262 (a) (4) (B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

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

“(4) set forth policies and procedures to assure—

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

“(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents

or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

"(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

"(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

"(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

"(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

"(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

"(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized

education programs), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

"(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, 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, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

"(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

"(c) The Commissioner shall approve any State plan and any modification thereof which—

"(1) is submitted by a State eligible in accordance with section 612; and

"(2) meets the requirements of subsection (a) and subsection (b).

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"APPLICATION

"SEC. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

"(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

“(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

“(C) establish a goal of providing full educational opportunities to all handicapped children, including—

“(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

“(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

“(iii) the participation and consultation of the parents or guardian of such children; and

“(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

“(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

“(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

“(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

“(3) (A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

“(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency

may find necessary to assure the correctness and verification of such information furnished under subclause (A);

“(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

“(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program of each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

“(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

“(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C) and 615.

“(b) (1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Commissioner under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

“(2) (A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

“(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

“(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

“(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

“(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

“(c) (1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c) (4) (A) (i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

“(2) (A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agency may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

“(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

“(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

“(d) Whenever a State educational agency determines that a local educational agency—

“(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

“(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

“(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such educa-

tion and services are provided shall be consistent with the requirements of this part.

“(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

“(f) Notwithstanding the provisions of subsection (a) (2) (B) (ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

“PROCEDURAL SAFEGUARDS

“Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

“(b) (1) The procedures required by this section shall include, but shall not be limited to—

“(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

“(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

“(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

“(i) proposes to initiate or change, or

“(ii) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

"(e) (1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the

parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"WITHHOLDING AND JUDICIAL REVIEW

"SEC. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

"(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Commissioner (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Commissioner withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

"(b) (1) If any State is dissatisfied with the Commissioner's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the

United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner hereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"ADMINISTRATION

"SEC. 617. (a) (1) In carrying out his duties under this part, the Commissioner shall—

"(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

"(B) provide such short-term training programs and institutes as are necessary;

"(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

"(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

"(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this part in order to assure equity among the States.

"(b) In carrying out the provisions of this part, the Commissioner (and the Secretary, in carrying out the provisions of subsection (c)) shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

"(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part.

"(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out his duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

"EVALUATION

"SEC. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

"(b) The Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part. In carrying out his responsibilities under this section, the Commissioner shall—

"(1) through the National Center for Education Statistics, provide to the appropriate committees of each House of the Congress and to the general public at least annually, and shall update at least annually, programmatic information concerning programs and projects assisted under this part and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part including—

"(A) the number of handicapped children in each State, within each disability, who require special education and related services;

"(B) the number of handicapped children in each State, within each disability, receiving a free appropriate public education and the number of handicapped children who need and are not receiving a free appropriate public education in each such State;

"(C) the number of handicapped children in each State, within each disability, who are participating in regular educational programs, consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv), and the number of handicapped children who have been placed in separate classes or separate school facilities, or who have been otherwise removed from the regular education environment;

"(D) the number of handicapped children who are enrolled in public or private institutions in each State and who are receiving a free appropriate public education, and the number of handicapped children who are in such institutions and who are not receiving a free appropriate public education;

"(E) the amount of Federal, State, and local expenditures in each State specifically available for special education and related services; and

"(F) the number of personnel, by disability category, employed in the education of handicapped children, and the

estimated number of additional personnel needed to adequately carry out the policy established by this Act; and

"(2) provide for the evaluation of programs and projects assisted under this part through—

"(A) the development of effective methods and procedures for evaluation;

"(B) the testing and validation of such evaluation methods and procedures; and

"(C) conducting actual evaluation studies designed to test the effectiveness of such programs and projects.

"(c) In developing and furnishing information under subclause (E) of clause (1) of subsection (b), the Commissioner may base such information upon a sampling of data available from State agencies, including the State educational agencies, and local educational agencies.

"(d) (1) Not later than one hundred twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b).

"(2) The Commissioner shall include in each such report—

"(A) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities;

"(B) any recommendations for change in the provisions of this part, or any other Federal law providing support for the education of handicapped children; and

"(C) an evaluation of the effectiveness of the procedures undertaken by each such agency or unit to prevent erroneous classification of children as eligible to be counted under section 611, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

In order to carry out such analyses and evaluations, the Commissioner shall conduct a statistically valid survey for assessing the effectiveness of individualized education programs.

"(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"INCENTIVE GRANTS

"SEC. 619. (a) The Commissioner shall make a grant to any State which—

"(1) has met the eligibility requirements of section 612;

"(2) has a State plan approved under section 613; and

"(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 611(a)(1)(A).

The maximum amount of the grant for each fiscal year which a State

may receive under this section shall be \$300 for each such child in that State.

"(b) Each State which—

"(1) has met the eligibility requirements of section 612,

"(2) has a State plan approved under section 613, and

"(3) desires to receive a grant under this section,

shall make an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require.

"(c) The Commissioner shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section.

"(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this part for such fiscal year, the maximum amounts which all States may receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(e) In addition to the sums necessary to pay the entitlements under section 611, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"PAYMENTS

"SEC. 620. (a) The Commissioner shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

"(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary."

(b) (1) The Commissioner of Education shall, no later than one year after the effective date of this subsection, prescribe—

(A) regulations which establish specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability for purposes of designating children with specific learning disabilities;

(B) regulations which establish and describe diagnostic procedures which shall be used in determining whether a particular child has a disorder or condition which places such child in the category of children with specific learning disabilities; and

(C) regulations which establish monitoring procedures which will be used to determine if State educational agencies, local educational agencies, and intermediate educational units are complying with the criteria established under clause (A) and clause (B).

(2) The Commissioner shall submit any proposed regulation written under paragraph (1) to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate, for review and comment by each such committee, at least fifteen days before such regulation is published in the Federal Register.

(3) If the Commission determines, as a result of the promulgation of regulations under paragraph (1), that changes are necessary in the definition of the term "children with specific learning disabilities", as such term is defined by section 602(15) of the Act, he shall submit recommendations for legislation with respect to such changes to each House of the Congress.

(4) For purposes of this subsection:

(A) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(B) The term "Commissioner" means the Commissioner of Education.

(c) Effective on the date upon which final regulations prescribed by the Commissioner of Education under subsection (b) take effect, the amendment made by subsection (a) is amended, in subparagraph (A) of section 611(a)(5) (as such subparagraph would take effect on the effective date of subsection (a)), by adding "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

AMENDMENTS WITH RESPECT TO EMPLOYMENT OF HANDICAPPED INDIVIDUALS, REMOVAL OF ARCHITECTURAL BARRIERS, AND MEDIA CENTERS

SEC. 6. (a) Part A of the Act is amended by inserting after section 605 thereof the following new sections:

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

"GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

"SEC. 607. (a) Upon application by any State or local educational agency or intermediate educational unit the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

"(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary."

(b) Section 653 of the Act (20 U.S.C. 1453) is amended to read as follows:

"CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

"SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

"(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

"(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

"(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

"(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

"(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

"(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress."

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 7. (a) (1) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by inserting "final" immediately before "standard" each place it appears therein.

(2) The third sentence of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) is amended by striking out "proposed" and inserting in lieu thereof "final".

(3) The fourth and last sentences of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) each are amended by inserting "final" immediately before "standard".

(b) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by adding at the end thereof the following new sentence: "Failure of the Congress to adopt such a concurrent resolution with respect to any such final standard, rule, regulation, or requirement prescribed under any such Act, shall not represent, with respect to such final standard, rule, regulation, or requirement, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an ap-

proval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.”

EFFECTIVE DATES

Sec. 8. (a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) shall take effect on July 1, 1975.

(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 shall take effect on the date of the enactment of this Act.

(c) The amendments made by sections 4 and 5(a) shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act as amended by this Act, section 617(a)(1)(D) of the Act, as amended by this Act, section 617(b) of the Act, as amended by this Act, and section 618(a) of the Act, as amended by this Act, shall take effect on the date of the enactment of this Act.

(d) The provisions of section 5(b) shall take effect on the date of the enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JENNINGS RANDOLPH,
ALAN CRANSTON,
HARRISON WILLIAMS,
CLAIBORNE PELL,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
WILLIAM D. HATHAWAY,
ROBERT T. STAFFORD,
ROBERT TAFT, JR.,
DICK SCHWEIKER,
J. GLENN BEALL, JR.,
J. JAVITS,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN BRADEMAS,
PATSY T. MINK,
LLOYD MEEDS,
SHIRLEY CHISHOLM,
WILLIAM LEHMAN,
ROBERT J. CORNELL,
EDWARD P. BEARD,
LEO C. ZEFERETTI,
GEORGE MILLER,
TIM L. HALL,
ALBERT H. QUIE,
ALPHONZO BELL,
PETER A. PEYSER,
JAMES M. JEFFORDS,
LARRY PRESSLER,

Managers on the Part of the House.

**JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Short title

The Senate bill provides that the Act may be cited as the “Education for All Handicapped Children Act”; the House amendments provide that the Act may be cited as the “Education for All Handicapped Children Act of 1975”. The Senate recedes.

Extension of certain provisions

The House provision classifies Puerto Rico as a State for purposes of the Education of the Handicapped Act as of the close of June 30, 1975; the Senate provisions would classify Puerto Rico as a State for such purpose as of the close of September 30, 1976. Existing law would allow Puerto Rico to be classified as a State as of July 1, 1975. The Senate recedes.

The House provisions result in a maximum entitlement of 2 percent of aggregate State entitlement for the territories (including Guam, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific Islands, but not Puerto Rico) and 1 percent of such aggregate entitlements for the Secretary of the Interior (for the benefit of handicapped Indian children) for fiscal years 1976 and 1977, and 1 percent of aggregate appropriations for both the territories and the Secretary thereafter. The Senate provisions provide for a maximum entitlement of 2 percent of aggregate State entitlements for the territories (including Puerto Rico), and 1 percent for the Secretary, for fiscal year 1976; and 1 percent for the territories, and 1 percent for the Secretary for fiscal years 1977 through 1979.

The House recedes with two amendments, deleting Puerto Rico from the jurisdictions considered as territories and reducing the maxi-

imum percentage for the territories from 2 per centum to 1 per centum of aggregate appropriations in order to assure the territories the same allotment as in existing law.

The Senate bill extends provisions of the Education of the Handicapped Act, as in effect during fiscal year 1975, for one fiscal year; the House amendments extend such provisions for two fiscal years.

The conference substitute conforms to the House amendments, but also adopts a limitation on appropriations for the fiscal year ending June 30, 1976, for the period beginning July 1, 1976 and ending September 30, 1976, and for the fiscal year ending September 30, 1977, providing that no more than \$100 million may be appropriated for the fiscal year ending June 30, 1976, providing an authorization of such sums as may be necessary for the transition period, and providing that no more than \$200 million may be appropriated for the fiscal year ending September 30, 1977. The conferees intend that appropriations for fiscal year 1977 shall not be reduced as a result of the transition to the new fiscal year, and have therefore authorized such sums as may be necessary for the period beginning July 1, 1976 and ending September 30, 1976.

The Senate bill provides that for the period previous to the effective date of the new formula (i.e., fiscal year 1976), no State shall receive less than it received in fiscal year 1975. The House amendments provide for that period (i.e., fiscal years 1976 and 1977), no State shall receive less than it received in the preceding fiscal year, or \$300,000, whichever is the greater.

The conference substitute conforms to the House amendments.

Rules relating to grant and allocation provisions

The House amendments require the Commissioner to prescribe regulations, no later than 120 days after the applicable effective date (i.e., July 1, 1975), to carry out the provisions of section 611 of the Act (relating to grants to States for education of handicapped children) and section 612 of the Act (relating to allocations of appropriations). There is no comparable Senate provision.

The Senate recedes with an amendment requiring regulations 120 days after the date of enactment of this Act. The conferees clarify that such regulations cover provisions of existing law extended for fiscal years 1976 and 1977.

Findings and purpose

The Senate bill and the House amendments add a new statement of purpose section in section 601 of the Education of the Handicapped Act.

The House amendments, but not the Senate bill, designate this section as a Statement of *Findings and Purpose*. The Senate recedes.

The Senate bill finds that the special educational needs of such children are being fully met *in only a few school systems*; the House amendments find that the special education needs of such children are *not* being fully met. The Senate recedes.

The Senate bill and the House amendments find that it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children. The Senate bill, not the House amendments, states

that it is in the national interest that the Federal Government assist State and local efforts *in order to assure equal protection of the law*. The House recedes.

The Senate bill states that it is the purpose of the title to *insure* that all handicapped children have available to them *within the time period specified in section 614 of the Act a free appropriate public education*. The House amendments state that it is the purpose of the title to assure that all handicapped children have available to them *special education and related services designed to meet their unique needs*.

The conference substitute provides that it is the purpose of the title to assure that all handicapped children have available to them within the time period specified in section 612(2)(B) of the Act a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

The Senate bill states that the purpose is to *insure* that the rights of handicapped children are protected; the House amendments state that the purpose is to *assure* that the rights of handicapped children are protected. The Senate recedes.

The Senate bill states that the purpose is to *relieve the fiscal burden placed upon States and localities when they provide for the education of all handicapped children*; the House amendments state that the purpose is to *assist States and localities to provide for the education of all handicapped children*. The Senate recedes.

Definitions

The Senate bill restates all the definitions contained in the Education of the Handicapped Act; the House amendments make specific amendments to such definitions. The substantive differences are described below. The conference substitute conforms to the House bill.

The House amendments, but not the Senate bill, amend the definition in existing law of *local educational agency*, to include "public educational agency". The House recedes.

Both the Senate bill and the House amendments amend the definition in existing law to clarify that disabilities that are primarily the result of cultural or economic disadvantage are not included within the definition. In addition, the Senate bill, but not the House amendments—deletes the phrase "which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations"; deletes the term "dyslexia"; and changes the term "disadvantage" to "handicaps".

The Senate recedes.

The Senate bill, but not the House amendments, amends the definition in existing law of *equipment*, to include "telecommunications, sensory, and other technological aids and devices".

The House recedes.

The Senate bill and the House amendments add a new definition to the Education of the Handicapped Act of "*special education*". The definitions are identical, except that the Senate bill requires such education to be provided at no cost to parents or guardians, the House provision additionally specifies that the instruction is to meet the unique needs of the handicapped child *as set forth in the individualized education program of such child*, and specifically includes class-

room instruction, home instruction, and instruction in hospitals and institutions.

The conference substitute combines the provisions of the Senate bill and the House amendments and deletes the phrase "as set forth in the individualized education program of such child" since this phrase also appears in the definition of "free appropriate public education" and is therefore unnecessary. The Conferees point out that while instruction may take place in such locations as classrooms, the child's home, or hospitals and institutions, the delivery of such instruction must take place in a manner consistent with the requirements of law which provide that to the maximum extent appropriate handicapped children must be educated with children who are not handicapped, and that handicapped children should be placed in special classes, separate schooling, or any other educational environment only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and supportive services cannot be achieved satisfactorily.

The Senate bill and the House amendments add a new definition of "related services." The definitions are comparable; however, the House amendments additionally include medical services for diagnostic and evaluation purposes. The Senate bill also includes the early identification and assessment of handicapping conditions in children and the provision of services to such children. The conference substitute adopts both of these additions, but deletes the phrase "and provision of services to such children" relating to early identification and assessment since the services intended are already in the definition.

The Senate bill and the House amendments add to the definitions in the Education of the Handicapped Act a definition of individualized instructional planning for each handicapped child which includes a statement of the child's present level of educational performance, statement of the instructional objectives to be achieved, statement of the specific educational services to be provided to the child, the extent to which the child will participate in the regular educational program, and the projected date for initiation and anticipated duration of such services.

The Senate bill designates this individualized instructional planning as an "individualized planning conference"; the House amendments designate the planning as an "individualized education program". The Senate recedes.

The Senate bill provides that the individualized planning conference is a meeting or meetings for the purpose of developing a written statement; the House amendments provide that the individualized education program is an educational plan. The House recedes.

The Senate bill provides that the written statement shall be developed by a representative of the local educational agency, the teacher, the parents or guardian to the handicapped child and the child when appropriate; the House amendments provide that the educational plan shall be developed jointly by the local educational agency and an appropriate teacher *in consultation with* the parents or guardian of the child, and the child, whenever appropriate. The House recedes.

The Senate bill, but not the House amendments, provides that the representatives of the local educational agency shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the child. The House recedes.

The Senate bill provides for a statement of *short-term* instructional objectives; the House amendments provide for a statement of *desired* objectives.

The conference substitute provides that the individualized educational program shall include a statement of the annual goals and short-term objectives to be achieved by the child. It is intended that each individual handicapped child will have an educational program which states the annual goals as well as including short-term instructional objectives to be achieved within shorter time periods.

The House amendments, but not the Senate bill, provide that the individualized instructional planning shall include objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being met.

The Senate recedes with an amendment specifying that such objective criteria and evaluation procedures shall be "appropriate". The conferees intend that this amendment clarify that any criteria and evaluation procedures used are to be consistent with the requirements regarding testing and evaluation procedures in existing law.

The conferees further clarify that it is not intended that the individualized educational programs be forwarded to the U.S. Office of Education or the State educational agency. The individualized educational programs are intended to be retained in the local educational agency. Where inspection or review of such programs may be useful to the Office of Education or State educational agency for purposes of audit or evaluation, it is intended that such activities take place within the local agency, subject to strict procedures for the protection of confidentiality.

The House amendments, but not the Senate bill, add to the Education of the Handicapped Act, a definition of "*public educational agency*" defining such agency as any State educational agency or any other public agency approved by a State educational agency to provide special education and related services to handicapped children within the State involved. The conference substitute includes a definition of intermediate educational unit, defining such term as any public authority established by State law for the purpose of providing free public education on a regional level within the State which provides special education and related services to handicapped children within that State and which is not a local educational authority but which is under the general supervision of the State educational agency. The conferees include this definition in order to cover certain unique situations in States where public bodies established by State law provide special education and related services for handicapped children, but where the definition of local educational agency does not necessarily apply, e.g., intermediate units in the Commonwealth of Pennsylvania. Generally, the term "intermediate educational unit" is used throughout the conference report wherever the term "local educational agency" is also used.

The House amendments, but not the Senate bill, add to the Education of the Handicapped Act, a definition of "excess costs", defining such costs as those costs which are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting amounts received under this part, under title I or title VII of the Elementary and Secondary Education Act of 1965, and any State, local, or private funds expended for programs which would qualify for assistance under this part or under such titles.

The Senate recedes deleting the reference to private funds.

Formula

Both the Senate bill, and the House amendments, established a new entitlement formula replacing the formula in effect under the Education of the Handicapped Act.

The Senate bill required the new formula to take effect beginning October 1, 1976, and to remain in effect through fiscal year 1979. It set maximum amounts of entitlements to the States, and required that the Commissioner make payments to the States based on such entitlements for the purpose of providing full educational opportunity to all handicapped children. Under the Senate formula each State was entitled to receive an amount equal to the number of handicapped children, aged three to twenty-one, inclusive, receiving special education and related services (based on data from the most recent fiscal year for which satisfactory data are available to the Commissioner), multiplied by \$300.

Under the Senate bill, sums appropriated for each fiscal year were to be made available to States and allocated first in an amount equal to the amount each State had received under the Education of the Handicapped Act in the preceding fiscal year. Funds remaining after such allotments were to be allocated to States based on unsatisfied entitlements created under the new formula, ratably reduced if appropriations were insufficient to fully fund such entitlements.

The Senate bill further required each State to distribute 40% of the funds received by the State to local educational agencies in direct proportion to the number of handicapped children in need of a free appropriate public education in the area served by the local education agency. In order to receive any funds, the local educational agency had to be eligible to receive an allotment of at least \$7,500. The remainder of the funds, including those not distributed to local educational agencies because of the \$7,500 limitation, were required to be distributed by the State educational agency in a manner consistent with meeting the timetables and the priorities of providing a free appropriate public education first, to handicapped children not receiving an education, and second, to handicapped children with the most severe handicaps receiving an inadequate education.

Finally, the Senate bill placed a limitation on the number of handicapped children each State could count for purposes of entitlement, providing that no State could count as handicapped children a number greater than 10 percent of all children aged three to twenty-one, inclusive, in the State. The Senate bill also provided that payments under the Act could be used for the early identification and assessment of children under three years of age.

The House amendments required the new formula to go into effect at the close of September 30, 1977, and to remain in effect permanently thereafter. Under this new entitlement formula, the Commissioner was required to make payments to each State in amounts which the State and local educational agencies were eligible to receive. Under the House formula, the Commissioner was to allot to each local educational agency an amount equal to the product of the number of handicapped children enrolled in programs of free appropriate public education and 50 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

Each State receiving payments was required to distribute payments to local educational agencies in amounts they were eligible to receive, subject to the submission by the local educational agency of an approved application. If, among other requirements, the State educational agency determined the local educational agency was unable to maintain a program of sufficient size and scope, it could disapprove the application and serve the handicapped children within the jurisdiction of the local educational agency directly.

The House amendments entitled each State to a level of funding for any fiscal year which was at least equal to the State's funding for fiscal year 1977, or \$300,000, whichever is greater. Finally, the House amendments provided a limitation on the number of handicapped children counted, such that the Commissioner could not count as handicapped children a number greater than 12 percent of all children aged five to seventeen in the State, and could not count children with specific learning disabilities to the extent that the number counted was greater than 1/6th of the overall percentage of children counted.

The conference substitute provides that the new entitlement formula shall take effect at the close of September 30, 1977, and shall remain in effect permanently thereafter.

The maximum amount of the grant which a State is entitled to receive in any fiscal year is equal to the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services multiplied by a specified percentage of the average per pupil expenditure in public elementary and secondary schools in the United States and such percentage is: 5 percent for fiscal year 1978; 10 percent for fiscal year 1979; 20 percent for fiscal year 1980; 30 percent for fiscal year 1981; and 40 percent for fiscal year 1982 and for each fiscal year thereafter. No State may receive an amount in any fiscal year which is less than the amount such State received for the fiscal year ending September 30, 1977.

The number of handicapped children receiving special education and related services in any fiscal year shall be the average of such children receiving special education and related services on October 1 and February 1 of the preceding fiscal year, and the term average per pupil expenditure shall be defined in the same manner as it is defined in section 403(16) of the Act of September 30, 1950 (Public Law 874, 81st Congress).

The Commissioner may not count handicapped children for purposes of determining the allotment of each State to the extent that the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, within the State (determined by the Commissioner on the basis of the most recent satis-

factory data available to him). Further, the Commissioner may not count, as part of such percentage, children with specific learning disabilities to the extent the number of children is greater than one-sixth of such percentage or children counted pursuant to section 121 of the Elementary and Secondary Education Act of 1965.

Beginning in fiscal year 1979 and for each fiscal year thereafter 25 percent of the funds received by a State may be used by such State in a manner consistent with the priorities and 75 percent of such funds shall be distributed to local educational agencies and intermediate educational units. The distribution of funds to local educational agencies and intermediate educational units shall be based on each such agency's or unit's ratio among all such agencies or units in the State of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in the school district of such agency or such unit.

The conference agreement further provides that no funds shall be distributed to any local educational agency or intermediate educational unit in any fiscal year if the local educational agency or intermediate educational unit would not be serving enough handicapped children so as to be eligible to receive \$7,500 pursuant to the provision for distribution of funds to such agencies or units, or, if such agency or unit has not submitted an application which meets the requirements of section 614 relating to local applications. Funds which are not distributed to local educational agencies and intermediate educational units pursuant to these limitations shall be used by the State educational agency to assure the provision of free appropriate public education to handicapped children residing in the area served by such local educational agencies or intermediate educational units and the provisions with respect to matching State funds (discussed below) shall not apply.

Of the amounts received by a State in any fiscal year, no State educational agency may spend more than 5 percent or \$200,000, whichever is greater, for administration of the provisions relating to eligibility and State plans. Beginning in fiscal year 1979 and for each fiscal year thereafter, with the exception of funds for administration and funds not distributed to local educational agencies or intermediate educational units pursuant to the limitations discussed above, no State may spend from Federal funds available to the State under this part an amount greater than an amount spent by such State from State funds for the education of handicapped children. The conferees do not wish this requirement implemented so as to require accounting on a project-by-project basis. The matching requirement is applicable only to major program areas such as a system of comprehensive personnel development and the development and provision of services for children in sparsely populated areas within the State. At the same time it is not intended that any individual project be exclusively federally funded.

Finally, the conference agreement provides for ratable reduction if sums appropriated are insufficient to satisfy fully the entitlements created, and provides that payments under the Act may be used for the early identification and assessment of handicapping conditions in children under three years of age.

Local reporting dates and reallocation

The House amendments provide that in any fiscal year in which funds have not been available to pay in full the total of the maximum

amounts to which local education agencies are eligible the State shall fix dates before which each local educational agency shall report to it on the amount of funds available which it estimates it will expend. The State educational agency may reallocate such funds, or any amount available to any other local educational agency if it were to submit an approvable plan, which the State determines will not be used during the time it is available. Such amounts shall be allotted to local educational agencies the State determines will need additional funds to carry out approved programs, and such amounts shall be reallocated in the same manner utilized to reduce allotments, but in no case shall a local educational agency be allotted more than the maximum amount it is eligible to receive. There is no comparable Senate provision. The Senate recedes.

Allotment to the Secretary of the Interior

The House amendments provide that the Secretary of the Interior may only receive an allotment after he submits a plan which meets the requirements of the Act relating to State plans, and provide that provisions relating to approval, opportunity for a hearing, and appeals also relate to the plan he would submit. The comparable Senate provision provides that payments may be made to the Secretary based on terms determined by the Commissioner pursuant to criteria he establishes which will best carry out the purposes of the Act.

The conference substitute provides that the Secretary may receive an allotment only after submitting an application which meets the applicable requirements of section 614(a), which is approved by the Commissioner. The requirements of section 616, relating to withholding and judicial review, shall also apply to such application. The conferees intend that all application requirements which apply to local educational agencies relating to the provision of a free appropriate public education to all handicapped children within those jurisdictions in accordance with the priorities established under this part shall be applied to the Secretary of Interior, and that all benefits and protections provided for handicapped children served by local educational agencies shall also be provided by the Secretary of Interior to handicapped children served by the Department of Interior.

The Senate bill provides that such allotments may be made for each fiscal year for which the formula is in effect. The House recedes.

Territorial provisions

The Senate bill provides that Guam, American Samoa, the Virgin Islands and the Trust Territories of the Pacific Islands, shall be entitled to a grant in an amount determined by the Commissioner in accordance with criteria established by him in regulations. The House amendments and existing law provide that the Commissioner shall allot the amount available among such jurisdictions according to their respective needs. The Senate recedes.

Specific learning disabilities regulations

The House amendments direct the Commissioner of Education to prescribe regulations no later than one year from the date of enactment which establish specific criteria for determining whether a learning disorder or condition may be considered a specific learning disability; and establish and describe diagnostic procedures which

shall be used in determining whether a child has a learning disorder or condition which designates him as learning disabled.

Any proposed regulations shall be transmitted to the Committee on Education and Labor and Labor and Public Welfare at least 15 days prior to publication in the Federal Register in accordance with section 431 of the General Education Provisions Act, for review and comment.

Upon the date which the final regulations take effect, the language relating to the counting limitation for specific learning disabilities is struck from the law. There are no comparable Senate provisions.

The Senate recedes with three amendments, directing the Commissioner of Education to recommend any change in the legislative definition of 'specific learning disabilities' which he believes is necessary to carry out the purposes of the Act, directing the Commissioner to include in such regulations the specific monitoring procedures he will use to determine whether State and local educational agencies are adequately implementing the criteria and diagnostic procedures, and striking the language relating to section 431 of the General Education Provisions Act as unnecessary because the General Education Provisions Act covers the Education of the Handicapped Act.

Eligibility requirements and State plan requirements

The Senate bill replaces State plan provisions contained in the Education of the Handicapped Act with eligibility conditions and an annual application to be submitted by any State which desires to participate and has met the eligibility conditions. The House amendments make amendments to existing State plan provisions.

The conference substitute conforms to the Senate bill except that the annual application is redesignated as the State Plan.

Policy. The Senate bill requires that a State demonstrate to the Commissioner that the State has in effect a policy that assures that all handicapped children have the right to a free appropriate public education. There is no comparable House provision relating to the State.

The House recedes.

Timetable. The Senate bill requires that the State, in order to be eligible for assistance, submit a plan as required by the Education Amendments of 1974, and that such plan be amended setting forth in detail the policies and procedures the State will undertake or has undertaken to assure that a free appropriate public education will be available to all handicapped children between the ages of 3 and 18 within the State not later than September 1, 1978, and that a free appropriate public education will be available to all handicapped children between the ages of 3 and 21 within the State not later than September 1, 1980. The Senate bill further provides that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, that the requirement of providing a free appropriate education in accordance with this timetable, shall not be applied in any State if that application would be inconsistent with State law or practice or the order of any court respecting the public education within such age groups in the State.

The House amendments provided that a State must submit a State plan which shall assure that funds will be expended to initiate, expand,

or improve programs which are designed to assure that after September 30, 1978, no handicapped child residing in the State shall be denied appropriate special education and related services.

The House amendments provide that the requirement applies to any handicapped child who is within an age group for which free public education is provided within the State.

The House recedes.

With regard to this timetable adopted in the conference substitute conferees point out that they have provided (in 612(2)(B)) that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, the requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

This exception with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, is intended to exempt States from the provisions of this part establishing a timetable for providing a free appropriate public education in these age groups in the following circumstances:

(1) where State law does not authorize, or expressly prohibits, the expenditure of public funds to provide such an education to any children in these age groups;

(2) where a State does not *in fact* provide or assure the provision of free public education to handicapped children in these age groups; or

(3) where the education of handicapped children in a State is governed by a court order, the terms of which are inconsistent with the requirement contained in new section 614(2)(B). This exception shall not apply in the following circumstances:

(1) where a State does *in fact* provide or assure the provision of free public education to non-handicapped children in these age groups; or

(2) where a State does now *in fact* provide or assure the provision of free public education to handicapped children in these age groups (thus the exception being inapplicable in the case of a State which attempts to abandon the provision of such education services.)

Further, this exception is in no way to be viewed as a statement of Federal policy which discourages or otherwise serves as an obstacle for the provision of services to those handicapped children in the age groups to which this exception is applicable. To the contrary, the conferees intend the timetables established in section 612(2)(B) to be viewed as a whole, thereby specifically encouraging the States to intensify their efforts to serve all handicapped children within the time periods specified in that section.

Priorities. The Senate bill requires that the State demonstrate to the Commissioner that it has established priorities for providing a free appropriate public education which shall meet the timetables (e.g. 1978 and 1980) first, with respect to handicapped children not receiving an education, and, second, with respect to handicapped children with the most severe handicaps who are receiving an inadequate education.

The House amendments required that a local educational agency provide satisfactory assurance that payments under this part will be used for programs which establish the provision of special education and related services to handicapped children, with first priority given to the provision of such education and services to handicapped children who are not receiving such education and services, and second priority given to the provision of such education and services to handicapped children, within each disability, with severe handicaps who are not receiving adequate special education and related services.

The conference substitute conforms to the Senate bill providing that the State as a condition of eligibility must demonstrate to the Commissioner that it has established priorities for providing a free appropriate public education which shall meet the timetables established in the Act first, with respect to those handicapped children presently not receiving service at all, and second, with respect to handicapped children within each category of disability who are not receiving adequate special education and related services.

The conferees wish to make very clear that, with respect to the second priority, it is *not* intended that any one or two categories of disabilities be recognized by the Commissioner or any State or local educational agency as the "most severe" categories, but rather that an attempt must be made to reach and provide appropriate services to children with the most severe handicaps *without regard to disability category*.

Thus, it is not necessary in meeting this priority to assure the provision of appropriate services to *all* the most severely handicapped children in a particular category previous to providing such services to handicapped children in another disability category.

The conference committee did not intend to make a judgment in the legislation as to which disability is most severe. It is cognizant that disability is unique to the individual. It is aware that some multiple handicaps may not be as severe for some individuals as a single disability may be for others. The primary reason for adopting the language of the House amendments was to assure that, as cited above, no *one* disability group be considered the most severe and thus have that group exclusively receive the priority for the Act.

Requirements for individualized planning conference. The Senate bill requires that the State give assurances to the Commissioner that each local educational agency in the State will maintain records of the individualized planning conference, including the written statement developed pursuant to such conference, and that such conference shall be held at least three times each year to develop, review, and, when appropriate, and with the agreement of the parents, revise such statements. The House amendments require the local educational agency in its application to provide satisfactory assurance that it will maintain the individualized program for each child, and will review the program at least annually, and revise its provisions in consultation with the parents or guardians.

The conference substitute requires that the State give assurances as a condition of eligibility that each local educational agency will maintain records of the individualized education program for each handicapped child, and to provide assurances that each local educational agency within the State shall establish, review and revise such program

consistent with requirements on local educational agencies under the local application provisions of the Act.

The conference substitute also requires each local educational agency to provide assurances that it will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, the provisions of such program periodically, but not less than annually. In the initial year of a handicapped child's participation in a program of free appropriate public education the individualized education program shall be established at the beginning of the school year and reviewed at least once during that year. Thereafter, the Conferees intend that this provision requires at least one annual review of the child's individualized education program.

The conferees have defined the individualized education program as a written statement (including the educational status of the child, the annual goals and short-term instructional objectives, and specific educational services to be provided) for each handicapped child which is jointly developed by the local educational agency, the teacher, the parents, and the child, whenever appropriate. It is intended that *all* parties (the local educational agency, the teacher, the parents, and the child, whenever appropriated) will be involved throughout the process of establishment, review and revision of this program.

Responsibility. The Senate bill requires that the State educational agency be responsible for insuring that the provisions of part B are carried out and that all educational programs for handicapped children, including programs administered by other State or local agencies, will be under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency and will meet the educational standards of the State Educational Agency. There are no comparable House provisions.

The House recesses.

Procedures for Consultation and Advice. The Senate bill requires the State to assure that procedures are established for consultation by the general public and interested parties (including handicapped individuals and parents and guardians of handicapped children), that there are public hearings (with adequate notice and an opportunity to comment) prior to adoption of policies, programs, and procedures required pursuant to the State eligibility and application provisions of this part.

There is no comparable House provision.

The House recesses.

State application provisions

Compliance Entity and Advisory Panel. The Senate bill required that a State establish an entity (at least half the members of which are handicapped individuals or parents or guardians of handicapped children) for insuring compliance with the provisions of this part which entity would (1) conduct periodic evaluations to determine whether the State educational agency and local educational agencies within the State are fully complying with the provisions of this part, (2) be empowered to receive complaints with respect to violations of this part, (3) take appropriate action to correct any violations (after notice to the State educational agency and appropriate local educa-

tional agency and providing such agencies an opportunity for a hearing), and (4) upon determination that after a reasonable period of time such violations have not been corrected, inform the Commissioner of Education who shall take action pursuant to his withholding authority under this part.

The House amendments required that the State establish an advisory panel appointed by the Governor (or other official authorized under State law to make such appointments) and composed of interested persons including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials and administrators of programs for handicapped persons. The duties of the panel are (1) to advise the State educational agency of the unmet needs in the State in the education of handicapped children, (2) to comment publicly on rules and regulations proposed by the State to implement this part and on the procedures for distribution of funds under this part, and (3) to assist the State in developing and reporting data and evaluations needed by the Commissioner.

The Senate recedes.

The Conferees emphasize that it is not their intention to require a State with an existing council or panel that is performing or can perform the functions outlined in the Conference agreement to establish another panel. An existing State advisory panel can be modified, if necessary, so that it fulfills the requirements of the Conference agreement.

Other programs. The Senate bill and the House amendments require that each State set forth the policies and procedures by which it will assure that other Federal funds for the education of handicapped children will be used in a manner consistent with this Act (including funds under title I (State operated programs) and title III of ESEA, and the Vocational Education Act).

The House amendments, but not the Senate bill, provide that the funds shall only be used in a manner consistent with the goal of providing a free appropriate public education for all handicapped children. The Senate recedes.

The Senate bill, but not the House amendments, provides that the provisions shall not be construed to limit specific requirements of laws governing such Federal programs.

The House recedes.

The Senate bill, but not the House amendments, includes local educational agency programs under title I of the Elementary and Secondary Education Act, and funds under the Rehabilitation Act of 1973 which are used for the education of handicapped children.

The Senate recedes. The conferees however strongly encourage cooperation and coordination between the state educational agency, the state rehabilitation agency and local educational agencies to assure that there is no duplication of effort and to assure that funds authorized for the education of handicapped children are spent in a way which assures the provision of a free appropriate public education for all handicapped children.

System of personnel development. The Senate bill requires that a State include in its application a description of programs and procedures it will undertake for the development and implementation of a comprehensive system of personnel development, including inservice

training of general and special education, instructional and support personnel, and detailed procedures to assure the appropriate and adequate training of all personnel necessary to carry out purposes of the part. The House amendments do not require the State educational agency to undertake the development of this system, but contain an identical provision required in the local educational agency application.

The House recedes. The Conferees note the importance of the development and implementation of a comprehensive system of personnel development since the accomplishment of the full service objective depends on the availability of skilled personnel. The Conferees also stress that inservice training must play a significant role in preparing general and special educational, instructional and support personnel for their responsibilities in educating handicapped children.

Provisions for handicapped children in private and non-public schools. Both the Senate bill and the House amendments contain a provision requiring that handicapped children placed in a private school or educational agency, by a local educational agency, shall be provided special education and related services at no cost to their parents.

The Senate bill amends existing law to replace "private" with "non-public" with respect to private school children participation. The Senate recedes.

The Senate bill provides that special education and related services will be provided in conformance with an individualized planning conference, and also includes children who are referred to private schools by a State educational agency. The House recedes.

Recovery of funds for children erroneously counted. The Senate bill required the State to seek to recover any funds distributed to a local educational agency and used for a child who was erroneously classified and counted as a handicapped child. There is no comparable House provision. The House recedes.

Nonsupplanting provisions. The Senate bill deleted a provision contained in the Education of the Handicapped Act requiring that Federal funds not supplant private funds. There was no comparable House provision. The House recedes.

The Senate bill provided a waiver with respect to nonsupplanting if the Commissioner determined that a State had provided clear and convincing evidence that all handicapped children in the State have available to them a free appropriate public education. There was no comparable House provision.

The conference substitute contains a provision requiring nonsupplanting of State and local funds, including a provision for non-commingling of Federal funds with State and local funds.

Withholding and judicial review

Both the Senate bill and the House amendments make certain changes in the withholding and judicial review section of existing law. The Senate bill is substantially the same as section 613(d)(2) of the Education of the Handicapped Act.

The House amendments amend existing law to (1) provide notice and opportunity for a hearing to the LEA under the Commissioner's withholding authority, (2) delete the word "substantially" from existing law that reads "failure to comply substantially with any such provision . . .," and (3) provide that funds may be withheld

under other Federal programs within the Commissioner's jurisdiction and control relating to the education of handicapped children. The House amendments further provide that a SEA, after appropriate notice and opportunity for hearing, shall, after a determination of a failure by the local educational agency, make no further payments to the LEA until the SEA is satisfied that the noncompliance has been corrected, and further provide that in any case where funds are withheld, the State or local educational agency involved shall bring such action to the attention of the public within the jurisdiction of such agency.

Finally, the House amendments provide for State educational agency approval of any application submitted by a local educational agency if such application meets the requirements of section 614(a), but prohibited approval before the State plan submitted by the State educational agency is approved by the Commissioner.

The Senate bill provides that wherever the compliance entity finds there has been substantial failure, it shall notify the SEA, the appropriate local educational agencies, the chief executive officers of the State, and the Commissioner (who may provide notice, conduct a hearing, and if he finds a failure, withhold payments).

The conference substitute on withholding and judicial review conforms to the House amendments, with such technical and conforming changes necessitated by other decisions of the conferees.

Local Application

The House amendments required an application to be submitted to the State educational agency by any local educational agency which desires to receive an allotment in any fiscal year, and specified conditions governing State approval of the application.

These provisions required the agency in its application to provide assurances that payments would be used to pay the excess costs directly attributable to programs for the identification, location and evaluation of handicapped children; and for the establishment of procedures to protect the confidentiality of information, for the establishment of a goal of providing full educational opportunities to all handicapped children, a detailed timetable for accomplishing such a goal and the description of facilities, personnel and services necessary to meet such a goal. As part of this goal, local educational agencies were required to establish programs and procedures for the development and implementation of a comprehensive system of personnel development, provision of special education and related services to handicapped children, with first priority given to handicapped children who are not receiving such education services, and second priority given to handicapped children, within each disability, with the most severe handicaps who are not receiving adequate special education and related services, the maintenance of special facilities for handicapped children, participation and consultation of parents or guardians, and the provision of special services to enable handicapped children to participate in regular educational programs. The provisions also required the local educational agency to provide satisfactory assurances that control and administration of funds and title would be in a public agency; that Federal funds would be used only to pay the excess costs directly attributable to the education of handicapped children; that Federal funds would supplement and increase, and in no

case supplant State local and private funds; that State and local funds would be used in the school district of the local educational agency to provide services which are at least comparable to services being provided in areas of the school district which are not receiving Federal funds under this Act; that effective procedures would be established for evaluating at least annually the effectiveness of programs for handicapped children; that an annual report and such other reports and information would be provided to the State educational agency; that records would be kept to assure the correctness and verification of information and reports to the State educational agency; that the application and all pertinent documents would be available to parents and other members of the general public; that the agency would give assurances that it has in effect a policy which assures all handicapped children the right to a free appropriate public education; that the agency would provide satisfactory assurance that it would maintain an individualized education program for each handicapped child, and would review (at least annually) and revise the provisions of this program, whenever appropriate, in consultation with the parents or guardians of the handicapped child; that policies and procedures established and administered would be consistent with the provisions of the State plan; and that the agency would establish and maintain a grievance procedure consistent with the provisions of the Act.

With regard to conditions for approval of a local application, the House amendments provided that the State educational agency could disapprove an application if it determined that the application did not meet the requirements of the part, and provided that when a State educational agency determined that a local agency (after reasonable notice and an opportunity for a hearing) had failed to comply with any requirement set forth in the application, it was required to either make no further payments to the local agency, or take such finding into account in its review of an application from the local agency for an allotment. In a case of such a determination of failure, the local educational agency was required to bring such an action to the attention of the public.

The House amendments further provided that a State educational agency may require local educational agencies to transmit a consolidated application if it determines that any individual application would be disapproved because the agency would be unable to establish and maintain programs of sufficient size and scope. In any case where a consolidated application is required, the State educational agency was required to prescribe rules and regulations to provide joint responsibilities for implementing consolidated applications, and the provisions further required that the allotment for local educational agencies submitting a consolidated application be equal to the sum of the allotments of the individual local educational agencies. The provisions provided, however, that where an intermediate educational unit or other public educational agency was required under State law to carry out provisions of this Act, that the joint responsibilities given to local educational agencies submitting a consolidated application shall not apply to the administration and disbursement of allotments received by such units or agencies.

The House amendment further provided that if a State educational agency determined that a local educational agency was unable or un-

willing to establish programs of free appropriate public education, according to the provisions of the Act or to be consolidated with other local educational agencies to establish such programs, or has one or more handicapped children who can best be served by a regional or State center, the State educational agency could use the allotment which would have been available to the local educational agency to provide special education and related services directly to handicapped children residing in the area served by the local educational agency, in such manner and at such locations as it considered appropriate (including regional or State centers) except that such education must be provided consistent with the requirements of the Act. Finally, the House amendments provided that if a State educational agency determined that a local educational agency was adequately providing special education and related services to all handicapped children in the area it served with State and local funds otherwise available to it, the State educational agency could reallocate the funds made available to such agency to other local educational agencies within the State which were not adequate providing special education and related services to all handicapped children in their areas.

There were no comparable Senate provisions.

The conference substitute conforms to the House amendments with the following noted exceptions, and with technical and conforming amendments.

With respect to the development and implementation of the comprehensive system of personnel development, the conference substitute provides that the local application shall contain procedures for the implementation and use of the system developed by the State educational agency, as required in the State plan.

The Conferees note that the local educational agency has the major responsibility in providing direct services to handicapped children; therefore, it is essential that skilled personnel be available in the local educational agency. Inservice training of general and special educational, instructional and support personnel can play a significant role in attaining the local educational agency's goal of providing a free, appropriate public education to all handicapped children.

With respect to the provision relating to expenditure of funds to pay only the excess cost of programs, the conference substitute provides that the requirement of excess cost applies only to the funds to which the local educational agency is entitled and receives under the pass-through provision. That is, the excess cost requirement applies only to those funds which shall be allotted to the local educational agency under the provision requiring 50 percent to be distributed to the local agencies in fiscal year 1978, and requiring 75 percent to be distributed to the local agencies in fiscal year 1979 and thereafter.

The conference substitute does not contain the House provision relating to the establishment of programs for the maintenance of special facilities.

With respect to the provision relating to the provision of services to handicapped children to enable such children to participate in regular educational programs, the language is amended to conform the provision to provisions of existing law relating to removal of children from the regular educational program.

With respect to the non-supplanting provision, private funds are deleted.

The conference substitute does not contain the House provision relating to evaluation.

With respect to the provision requiring an annual report and such other reports and information as the State educational agencies may require, the specific requirement of an annual report is deleted. The conferees expect that the annual local application can serve adequately for purposes of annual reporting to the State agency, and that such other information as may be required by the State can be required and collected, consistent with this provision, as is needed.

With respect to the provisions requiring assurances that the local educational agency have in effect a policy which assures that all handicapped children have the right to a free appropriate public education, the House recedes. The conferees point out that a comparable provision from the Senate bill was adopted which required the State to have a right to education policy in effect as a condition of State eligibility. Thus, because each local educational agency is a legal arm of the State, each such agency will have to assure the right to education for all handicapped children as a matter of State law or practice and such an assurance in the local application is unnecessary.

With respect to the provision allowing the State educational agency, under specified conditions to use the local educational agency allotment to serve handicapped children directly in such manner and at such location (including State and regional centers) consistent with the provisions of the Act, conferees specifically point out that serving children in State or regional centers must be done consistent with provisions of existing law which require that to the maximum extent appropriate, handicapped children are educated with non-handicapped children, and special classes, separate schooling, or other removal from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

With respect to the provision providing that the State educational agency may reallocate funds if it determines that the local educational agency is adequately providing special education and related services to all handicapped children within its jurisdiction, the conference substitute provides that the local educational agency must be adequately providing a free appropriate public education to all handicapped children residing in its jurisdiction. The conferees note that section 425 of the General Education Provisions Act, which provides an opportunity for a hearing with the State educational agency and an appeal to the Commissioner in cases where a local educational agency is aggrieved by an action of the State educational agency, applies to this reallocation provision.

In addition, the conference substitute provides that where the State directly provides special education and related services to handicapped children or provides funds to a local educational agency which agency does not submit a local application, all provisions (except those relating to excess cost) which would have applied to the local educational agency apply to the State educational agency and the State agency must include the applicable assurances in its State plan.

Certain local educational agency entitlements

The House amendments, but not the Senate bill, provide that any local educational agency which is required to carry out a program for

the education of handicapped children pursuant to State law enacted previous to the date of enactment of this Act shall be entitled to receive an allotment under this Act, whether or not funds have been provided to fully implement such state law. However, the local educational agency may not use its allotment to reduce its expenditures below its expenditures in the previous fiscal year.

The Senate recedes with amendments to delete private funds from the nonsupplanting language, to also apply the provision to States which enact laws after the date of enactment of this Act, and to clarify that any local educational agency must still meet the other requirements of the Act. The Conferees wish to clarify that State and local educational agencies in States which have passed laws requiring services required under this Act are eligible for funding, and that such States may use such funds as long as they are used to carry out the provisions of this Act (even if they are identical to State law) and as long as such funds do not reduce the level of expenditures made by State or local educational agencies in the previous fiscal year.

Incentive grants

The Senate bill provides that the Commissioner shall make grants to any State which meets the eligibility requirements under the Act and provides special education and related services to handicapped children, aged 3-5, inclusive, who are counted under the formula in section 613, in the amount of \$300 for each such child.

An application is required and funds received shall be used for providing educational and related services for handicapped children aged 3-5.

Such sums as may be necessary to carry out the provision in the Senate bill are authorized.

The House amendments do not contain a comparable provision.

The House recedes with two amendments, clarifying that the maximum amount of the grant which a State receives under the section shall be not more than \$300 for each handicapped child eligible under the section, and adding a provision for pro-rata reduction if funds appropriated under the section are not sufficient for full funding of the maximum amount of \$300 per such handicapped child.

Payments for administration and planning

The Senate bill authorizes such sums as may be necessary in addition to the amounts to which States are entitled under section 612 for the purposes of administration and planning and specifically includes regional, interstate, and intrastate technical assistance, and dissemination of necessary materials. Limitation is placed on the amount of payment at 5% of the amounts paid under section 612, or \$200,000 whichever is greater for States; and 5% or \$60,000, whichever is greater for Guam, American Samoa, Virgin Islands, or the Trust Territory of the Pacific Islands. Existing law, which the House amendments do not amend, provides that this amount shall come out of the amount to which States are entitled under section 612 and provides 5% or \$200,000 for States, and 5% or \$35,000 for the territories.

The Senate recedes with an amendment to assure that the limitation for administration of 5% or \$200,000, whichever is greater, for States, and 5% or \$35,000, whichever is greater, for the territories, is retained in the conference substitute.

Due Process Procedures

The Senate bill re-enacts the provisions of existing law relating to procedural safeguards for handicapped children and parents and guardians of handicapped children, requires their establishment as a condition of State eligibility under this part and makes the following changes to these provisions:

(1) parents or guardians will be provided prior notice when the State or local educational agency proposes to *initiate* the educational placement of the child;

(2) the impartial due process hearing will not be conducted by an employee of the State or local educational agency directly involved in the education or care of the child; and

(3) materials and procedures shall be provided and administered in the child's primary home language or mode of communication and that no single procedure shall be the sole criterion for determining an appropriate educational placement for a child.

The House bill retains the provisions of existing law relating to procedural safeguards as part of the State plan and adds the following:

(1) Any local educational agency receiving assistance under this part shall establish a grievance procedure that will offer an opportunity for handicapped children and their parents or guardian to present complaints with respect to the manner in which the handicapped child involved is receiving special education and related services;

(2) Upon receipt of a complaint, the local educational agency shall conduct an investigation, and upon completion of such investigation, transmit a report (including a description of any recommendation or disposition made) to the State educational agency;

(3) The State educational agency, upon appeal by an aggrieved party or on its own motion shall review the action of the local agency and conduct an investigation of the factual circumstances relating to the complaint, attempt to resolve the matter (by informal methods), and, upon a finding (after reasonable notice and opportunity for a hearing) that a local educational agency has failed to comply with any provision of this part, shall take whatever steps necessary to correct such failure;

(4) Any person participating in a hearing conducted by a local educational agency and the State educational agency shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training and skills with respect to handicapped children;

(5) The State educational agency shall take its findings and determinations into account during its review of any application for funds under this part made by the local educational agency involved and shall submit a report of its findings and determinations (and a description of any action taken thereon) regarding any complaint to the Commissioner of Education; and

(6) Actions may be brought in the district courts of the United States to appeal the determinations of the State educational agency and in such actions the findings of fact of the State educational agency shall be conclusive if supported by substantial evi-

dence and the district courts may remand the case to the State agency to take additional evidence.

The following conference substitute is adopted in order to clarify and strengthen the procedural safeguards in existing law.

(1) All of the procedural safeguards are established as a condition of a State's eligibility to receive funds under this part;

(2) The provisions of existing law are retained with respect to the establishment of procedures to insure that handicapped children are educated with children who are not handicapped;

(3) The provisions of existing law are retained with respect to the establishment of procedures to insure non-discriminatory testing and evaluation procedures and language is added (from the Senate bill) which provides that materials and procedures shall be provided and administered in the child's native language or mode of communication (unless it is clearly not feasible to do so) and that no single procedure shall be the sole criterion for determining an appropriate educational placement for a child;

(4) The provisions of existing law are retained with respect to the establishment of procedures providing parents or guardians the opportunity to examine all relevant records with respect to the identification, evaluation, and educational placement of the child and language is adopted to clarify that the parents or guardian shall be able to examine any records relating to the provision of a free appropriate public education (as that term is defined in the Act) to the child. The provisions of existing law with respect to an opportunity for an independent educational evaluation of the child are also retained;

(5) The provisions of existing law are retained with respect to the establishment of procedures to protect the rights of the child when the parents are unknown, unavailable, or the child is a ward of the State, including the appointment of a surrogate for the parents or guardian;

(6) The provisions of existing law are retained with respect to requiring prior notice to the parents or guardian. Language is adopted to clarify that such notice shall be in writing. Such notice shall be provided to the parent or guardian whenever the local educational agency or the State educational agency (when the State agency acts as a provider of direct educational services to the child) *proposes* to initiate or make a change in the identification, evaluation, or educational placement of the child or to initiate or change the free appropriate public education (as that term is defined in the Act) provided or available to such child, or *refuses* to undertake such action (such as the denial of special education and related services to a child). In addition, language is adopted to assure that any such notice shall, to the maximum extent feasible, be in the parents' or guardian's native language (as that term is defined in title VII of the Elementary and Secondary Education Act of 1965) and shall include a full explanation of the procedural safeguards available to the parents or guardian under the Act;

(7) The provisions of existing law are clarified and strengthened with respect to impartial due process hearings and language is adopted to assure that:

(a) any parent or guardian may present a complaint concerning *any matter* regarding the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child.

(b) whenever a complaint is received the parents or guardian shall be afforded an opportunity for an impartial due process hearing, which hearing shall be conducted by the local educational agency or the State educational agency. The conferees do not intend that this provision will require changes in existing arrangements where due process hearings are conducted at the level of the State educational agency rather than at the local level. The only requirement with respect to the level of which such hearings are conducted occurs when the hearing is conducted at the local level and in such cases there is a review required at the State agency level. In addition, the conferees point out that any hearings are not conducted by the agency itself, but rather at the appropriate agency level. The hearing will be conducted by an impartial hearing officer since the State or local agency or intermediate unit will be a party to any complaint presented.

(c) no hearing may be conducted by an employee of the State or local educational agency involved in the education or care of the child. The conferees have adopted this language to clarify the minimum standard of impartiality which shall apply to individuals conducting due process hearings and individuals conducting a review of the local due process hearing;

(d) in the event that the impartial due process hearing is conducted by a local educational agency, any party to such hearing who is aggrieved by the findings and decision rendered in such hearing may appeal to the State educational agency and the State agency shall conduct an impartial review of the hearing and the individual conducting this review shall make an independent decision. The conferees expect that where due process hearings are conducted by the State educational agency or in cases where a review of local educational agency hearings is made by the State educational agency, such proceedings will be conducted at a time and place which is reasonably convenient to the parents or guardian of the child involved.

(e) any party to any hearing conducted by the State or local educational agency and any party to any hearing conducted by the State educational agency as part of an impartial review of a hearing conducted by a local educational agency in that State shall be accorded (1) the right to counsel and to be advised and accompanied by individuals with special knowledge, training or skills with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel attendance of witnesses, (3) the right to have a written or electronic verbatim record of such hearing, and (4) the right to have written findings of fact and decisions. The conferees adopt

this language to reinforce rights already required by the Commissioner of Education pursuant to existing law. Further, it should be emphasized that these rights shall also apply in State reviews of local agency hearings where the reviewing officer determines that a hearing should be conducted for purposes of taking new or additional evidence.

(8) The provisions of existing law with respect to the binding effect of due process hearings and appropriate administrative and judicial review of such hearings are clarified and language is also adopted to require that during the pendency of any administrative or judicial proceedings regarding a complaint, unless the State or local educational agency and the parents or guardian of the child otherwise agree, the child involved in the complaint shall remain in his or her present educational placement, or, if the complaint involves an application for initial admission to public school the child shall, with the consent of the parents or guardian be placed in the public school program until the completion of all such proceedings.

(9) The provisions of existing law with respect to judicial action are clarified and strengthened to assure that any party aggrieved by the findings and decision rendered in the due process hearing or the State educational agency review of such hearing shall have the right to bring a civil action with respect to the original complaint and matters relating thereto. Such action may be brought in any State court of competent jurisdiction or in a district court of the United States and in any such action the court shall receive the records of the due process hearing (and where appropriate the records of the review of such hearing), shall hear additional evidence at the request of any party, shall make an independent decision based on a preponderance of the evidence and shall grant all appropriate relief. A technical clarification is also made assuring that the district courts of the United States have jurisdiction of actions brought pursuant to these provisions without regard to the amount in controversy.

Administration

Both the Senate bill and the House amendments contain provisions relating to the Commissioner's duties with respect to administration.

Certification of Number of Children. The Senate bill requires the Commissioner to insure that each State, within one year from date of enactment, provide certification of the actual number of handicapped children receiving special education and related services. The House amendments contain no comparable provision.

The House recedes.

Uniform Financial Report. The Senate bill provides that the Commissioner shall by regulation prescribe a uniform financial report to be used by State agencies in submitting an application for assistance as soon as practicable after the date of enactment. The House amendments specify uniform categories and accounting procedures to be used by SEA's in submitting State plans in order to assure equity among the States.

The House recedes.

Rules and Regulations. The Senate bill requires the Commissioner to issue, amend and revoke such rules and regulations as may be necessary in carrying out the provisions of the Act and does not authorize any other informal method. The House amendments require the Commissioner to prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions.

The House recedes.

Confidentiality. The Senate bill, but not the House amendments, requires the Commissioner to take appropriate action to assure the protection of confidentiality of a personally identifiable data, information, or records collected or maintained by him and by State educational agencies and local educational agencies under the Act.

The House recedes with an amendment requiring that the Secretary of the Department of Health, Education, and Welfare take appropriate action to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to the provisions of this part, in accordance with the provisions of section 438 of the General Education Provisions Act relating to protection of confidentiality.

Task Force. The Senate bill, but not the House amendments, requires the Secretary to establish a task force to develop guidelines to assure all programs administered by HEW which provide assistance for the education of handicapped children are administered in a manner consistent with the Act and directs the Secretary to be responsible for the guidelines and to assure the cooperation in the implementation of the guidelines by HEW agencies.

The Senate recedes.

Authorization. The Senate bill, but not the House amendments, authorizes such sums (not to exceed one-fourth of one percent of the amounts appropriated under section 612, or \$1 million, whichever is greater) for administration.

The Senate recedes.

Evaluation

Studies, Investigations, and Evaluations. Both the Senate bill and House amendments require the Commissioner to conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this program and to provide for the evaluation of such program through the development of effective methods and procedures for evaluation and the conducting of actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under the Act.

The Senate bill, but not the House amendments, authorizes the Commissioner to validate evaluation methods and procedures. The House recedes.

The Senate bill provides that the Commissioner shall provide for the collection and annual reporting of programmatic information; the House amendments provide that the Commissioner, through the National Center for Education Statistics, shall provide similar information to Congress and the general public at least annually, and shall update such information at least annually. The Senate recedes.

Both the Senate bill and the House amendments require the Commissioner to obtain information on the number of handicapped chil-

dren in each State who need special education and related services, the amount of Federal, State and local expenditures in each of the States for special education, and the number of handicapped children receiving special educational services. The House amendments also permit sampling of data and require that the Commissioner obtain information on the number of handicapped children not receiving a free appropriate public education. The conference substitute combines the House and Senate provisions.

The Senate bill, but not the House amendments, requires that the Commissioner collect information concerning the types of handicaps and the numbers of children with such handicaps who are participating in programs supported by this Act. The House recedes.

The House amendments, but not the Senate bill, require the Commissioner to gather information concerning the number of children in regular classroom settings, separate classrooms, or separate schools, or who have been otherwise removed from the regular education environment; require the Commissioner to obtain information on the number of children in public or private institutional settings who are receiving a free appropriate public education and those who are not receiving such an education; and require the Commissioner to obtain information on the number of personnel, by disability category, who are employed in the education of handicapped children and the estimated number of additional personnel needed. The Senate recedes.

Report to the Congress on Activities and Progress. The Senate bill requires the Commissioner, within 120 days after the close of each fiscal year, to submit to the appropriate committees of the Congress a full and complete report on the activities carried out under the Act. The report is to include an analysis and assessment of the progress being made toward the provision of special education, an evaluation of procedures undertaken by the States to assure that children are receiving an education in the least restrictive environment, and an evaluation of the effectiveness of procedures undertaken by the States to prevent erroneous classification of children.

The House amendments require that the Commissioner, within 120 days after the close of each fiscal year, transmit to the Congress a report on progress being made toward the provision of a free appropriate public education, including detailed descriptions of evaluation activities and an analysis and evaluation of the effectiveness of procedures undertaken to assure education in the least restrictive environment and to improve programs in day or residential facilities. In order to carry out such analysis, the Commissioner may conduct a survey for assessing the effectiveness of the individualized educational programs.

The conference substitute combines the Senate and the House provisions; the conferees also amended the House language relating to the survey on the effectiveness of the individualized educational programs to require such a survey.

Study of Objective Criteria and Evaluation Procedures. The Senate bill directs the Commissioner to submit to the Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services. There is no comparable House provision.

The Senate recedes.

Survey of the Effectiveness of Conferences and Plans. The Senate bill directs the Commissioner to submit to the Congress by December 1, 1977, a survey of the effectiveness of the individualized planning conference.

The Senate recedes although it should be noted that the conference substitute relating to reports to the Congress requires that the Commissioner conduct a survey for assessing the effectiveness of the individualized educational programs in order to carry out the analysis and evaluation required by that provision.

Personnel. The Senate bill, but not the House amendments, provide that the personnel the Commissioner is authorized to hire may carry out his duties under administration.

The House recedes.

Authorization. The Senate bill, but not the House amendments, authorizes appropriations for evaluation activities, providing \$2,500,000 for fiscal year 1976, \$3,500,000 for fiscal year 1977, \$5,000,000 for fiscal year 1976 and \$7,500,000 for fiscal year 1979.

The House recedes with an amendment of "such sums as may be necessary" rather than the authorization levels specified in the Senate bill. The Conferees estimate that expenditures for these purposes will require appropriations as follows: \$2,000,000 for fiscal year 1976, \$3,000,000 for fiscal year 1977, \$5,000,000 for fiscal year 1978 and \$7,000,000 for fiscal year 1979 if the Commissioner is to be able to fully meet his responsibilities in carrying out these provisions.

Rules

The House provisions with respect to rules and regulations require promulgation not later than 120 days after September 30, 1977. The Senate provisions with respect to rules and regulations (section 618(b) of the Education of the Handicapped Act as amended by the Senate bill) require promulgation no later than July 1, 1976.

The conference substitute conforms to the House amendments, but the date, September 30, 1977, has been changed to January 1, 1977.

Centers on Education Media and Materials for the Handicapped

The House amendments, but not the Senate bill, amend section 653 of the Education of the Handicapped Act to authorize the Secretary to enter into agreements with institutions of higher education, State and local educational agencies, or other non-profit agencies for the establishment and operation of centers on educational media and materials for the handicapped. Existing law authorizes a single national center. This House provision also deletes the language which provides a preference to institutions which can serve the educational technology needs of the Model High School for the Deaf.

The Senate recedes with an amendment that the Secretary shall give preference to those which can serve the educational technology needs of the Model Secondary School for the Deaf.

Employment of Handicapped Individuals

The Senate bill provides that the Secretary, as a condition of providing assistance under this Act, shall insure that each recipient of funds shall take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions as set forth in the provisions of the Rehabilitation Act of 1973

relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

There is no comparable House provision.

The House recedes with an amendment. As amended, the provision requires the Secretary to insure that each recipient of financial assistance under the Education of the Handicapped Act is taking such positive efforts to employ and advance in employment qualified handicapped individuals. The conferees deleted the language in the Senate bill making financial assistance conditional upon such Secretarial assurances because section 504 of the Rehabilitation Act of 1973 already establishes, as a matter of federal law, that no qualified handicapped individual in the United States shall be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance. It is clear that qualified handicapped individuals who, because of their handicap, are refused employment by recipients of assistance under the Act are fully covered by the prohibition in section 504 of the Rehabilitation Act of 1973. The conferees expect that the Department of Health, Education and Welfare regulations implementing section 504 will cover employees of such recipients of Federal assistance under this Act. The language of the amendment is designed to underscore the responsibility of the Secretary to pursue vigorously the enforcement of section 504 especially as it relates to the employment of administrators and teachers in programs for the education of handicapped children.

Architectural Barriers Removal

Both the Senate bill and the House amendments authorize such sums as may be necessary for grants to State and local educational agencies for the removal of architectural barriers. The House amendments, but not the Senate bill, provide a definition of State educational agency and local educational agency, defining these terms as defined by the Education of the Handicapped Act.

The House recedes.

Congressional Disapproval of Regulations

The House amendments make changes in section 431 of the General Educational Provisions Act relating to congressional disapproval of regulations. These amendments provide that failure of the Congress to adopt a concurrent resolution disapproving any standard, rule, regulation, or requirement shall not represent an approval or finding of consistency, and shall not be construed as evidence of approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption in any judicial proceeding. The House amendments also clarify that there shall be 45 days following the transmittal of the final regulations for congressional consideration and possible disapproval. There is no comparable Senate provision.

The Senate recedes with an amendment which applies the forty-five day period for congressional consideration and disapproval only to final regulations.

Effective date provisions

The conference report contains technical and conforming changes in the effective date provisions of the bill to reflect the decisions made by the Conferees.

Title

The title of the House amendments, but not the title of the Senate bill, indicates that the Education of the Handicapped Act is being amended. The title of the Senate bill, but not the title of the House amendments, indicates that the legislation provides financial assistance to States to insure the right of an education for all handicapped children.

The conference substitute conforms to the House amendments.

JENNINGS RANDOLPH,
ALAN CRANSTON,
HARRISON WILLIAMS,
CLAIBORNE PELL,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
WILLIAM D. HATHAWAY,
ROBERT T. STAFFORD,
ROBERT TAFT, JR.,
DICK SCHWEIKER,
J. GLENN BEALL, JR.,
J. JAVITS,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN BRADEMAS,
PATSY T. MINK,
LLOYD MEEDS,
SHIRLEY CHISHOLM,
WILLIAM LEHMAN,
ROBERT J. CORNELL,
EDWARD P. BEARD,
LEO C. ZEFERETTI,
GEORGE MILLER,
TIM L. HALL,
ALBERT H. QUIE,
ALPHONZO BELL,
PETER A. PEYSER,
JAMES M. JEFFORDS,
LARRY PRESSLER,

Managers on the Part of the House.

○

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT
OF 1975

JUNE 26, 1975.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

together with additional views, supplemental views, further additional
views and further supplemental views

[To accompany H.R. 7217]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7217) to amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

BRIEF SUMMARY

H.R. 7217, as amended, would—

Extend for 2 additional years the entitlement formula, commonly referred to as "The Mathias Formula" for payments to states for fiscal year 1975 only, which was adopted under the Education Amendments of 1974;

Establish a new formula which would begin in fiscal year 1978 for payments to States and local communities based on the number of handicapped children served, times 50 percent of the average per pupil expenditure;

Establish eligibility and application procedures for local education agencies;

Establish provisions relating to evaluation;

Provide for grievance procedures at the State and local levels;

Provide that all handicapped children must be served as of October 1, 1978;

Provide that an individualized program be developed for each handicapped child;

Provide that State advisory councils be established;

Provide broader authority for the Secretary of Health, Education, and Welfare to enter into agreements with Institutions of Higher Education and State and local agencies, for the establishment and operation of centers of educational media and materials for the handicapped and

Provide for making grants to pay part or all of the cost of altering existing buildings for the removal of architectural barriers.

H.R. 7217 was ordered reported from the Subcommittee on Select Education on June 10 by a unanimous, bipartisan vote of 13-0. Subsequently, on June 17, 1975, the Committee on Education and Labor, by a vote of 37 ayes, no nays, and 2 not voting ordered reported H.R. 7217, with an amendment.

BACKGROUND

In 1966, hearings before an ad hoc Subcommittee on the Education and Labor Committee detailed the need for support of the education of handicapped children. The Subcommittee reported that only about one-third of the approximately 5.5 million handicapped children were being provided an appropriate special education. The remaining two-thirds were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to "drop out." The Subcommittee also learned that Federal programs directed at handicapped children were minimal, fractionated, uncoordinated, and frequently given a low priority in the education community.

In the Elementary and Secondary Education Amendments of 1966, the Congress, acting on the basis of those hearings, added a new title VI, which began a program of grants to the States to assist in the education of handicapped children, established a National Advisory Committee on Handicapped Children, and created within the Office of Education, a Bureau of the Education for the Handicapped.

Public Law 91-230, the Elementary and Secondary Education Amendments of 1970, repealed title VI as of July 1, 1971, and created a separate Act, entitled the Education of the Handicapped Act.

The 1970 Education of the Handicapped Act was divided into 7 parts:

Part A (General Provisions) set forth the title of the bill, the definitions, provided for the Bureau of Education for the Handicapped and the National Advisory Committee on Handicapped Children, and provided for the acquisition of equipment and the construction of necessary facilities.

Part B authorized grants to the States and outlying areas to assist them in initiating, expanding, and improving programs for the education of handicapped children.

Part C authorized grants for regional resource centers, centers for deaf-blind children, experimental preschool and early education programs, and any research, innovation, training, and dissemination activities in connection with these centers.

Part D authorized grants to institutions of higher education to assist in recruiting and training special education personnel, as well as physical education personnel.

Part E established certain research and demonstration projects relating to the education of handicapped children.

Part F authorized the National Center on Educational Media and Materials for the Handicapped to provide for the Bureau of Education for the Handicapped a centralized agency to coordinate the communication system between various aspects of a comprehensive media and materials development and delivery system for making instructional media and technology available to all programs in education for the handicapped.

Part G authorized special programs for children with specific learning disabilities.

The proposed legislation, reflected in H.R. 7217, was originally introduced as H.R. 70 on January 3, 1973. The legislation followed a series of landmark court cases establishing in law the right to an education for all handicapped children.

In 1971, the Federal Eastern District Court of Pennsylvania approved a consent agreement establishing that every school-age mentally retarded child in the Commonwealth of Pennsylvania has a right to a public education. *Pennsylvania Association for Retarded Children (P.A.R.C.) v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972). This case was the first in what has become a nationwide movement in both State and Federal courts establishing the principle that all handicapped children have a constitutional right to a public education.

While *P.A.R.C.* was the first major suit focused solely on mentally retarded children, it was followed in that same year by a court order from United States District Court of the District of Columbia Judge Joseph Waddy in *Mills v. Board of Education of District of Columbia* (348 F. Supp. 866 (D.D.C. 1972)) restating the same principle but extending it to all handicapped children. Specifically, the court said that all children regardless of any exceptional condition or handicap have a constitutional right to a publicly supported education. The court stated that:

The defendants are required by the Constitution of the United States, the District of Columbia Code, and their own regulations to provide a publicly-supported education for these "exceptional" children. Their failure to fulfill this clear duty to include and retain these children in the public school system, or otherwise provide them with publicly-supported education, and their failure to afford them due process hearings and periodical review, cannot be excused by the claim that there are insufficient funds. . . . The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.

Since *P.A.R.C.* and *Mills* there have been 46 cases which are completed or still pending in 28 States. The spirit of the reform that has occurred to date is well indicated by the following decisions of the

Supreme Court of North Dakota on April 30, 1974, the State commissioner of education of New York on November 26, 1973, and the circuit court for Baltimore County in Maryland on May 3, 1974, and in a Kentucky consent order of November 12, 1974, approved by the U.S. District Court for the Eastern District of Kentucky.

We hold that G.H. is entitled to an equal educational opportunity under the Constitution of North Dakota, and that depriving her of that opportunity would be an unconstitutional denial of equal protection under the Federal and State Constitutions and of the Due Process and Privileges and Immunities Clauses of the North Dakota Constitution. (*In the Interest of G.H., A Child v. G.H., B.H., F.H., Williston School District No. 1, et al.*, 1974).

I find that a class appeal is properly brought in this matter, in that there are admittedly numerous children residing within the respondent district whose educational needs are not being adequately served, as required by Section 4404 of the Education Law. . . . (*Reid v. Board of Education of the City of New York*, 1973).

The Court declares that it is the established policy of the State of Maryland to provide a free education to all persons between the ages of five and twenty years, and this includes children with handicaps, particularly mentally retarded children, regardless of how severely and profoundly retarded they may be. (*Maryland Association for Retarded Children, et al. v. State of Maryland, et al.*, 1974).

The Commonwealth of Kentucky has established a comprehensive statutory system of public education for the benefit of children, including those with physical, mental, emotional or learning handicaps, and each child eligible by statute or regulation of the Kentucky State Board of Education for public education has the right to a similar opportunity for inclusion in that system. (*Kentucky Association for Retarded Children v. Kentucky State Board of Education*, 1973).

In 1974, Public Law 93-380 was adopted which extended the Education of the Handicapped Act for 3 years. In that legislation, an emergency one-year authorization provision was adopted which allowed for greatly increased aid to the States for fiscal year 1975. The one-year provision was adopted in order to give the Congress an additional year in which to study what if any additional Federal assistance is required to enable the States to meet the needs of handicapped children. The new provisions of part B (aid to the States) in Public Law 93-380, laid the basis for H.R. 7217 by providing for comprehensive planning and the protection of handicapped children's rights by due process procedures and assurance of confidentiality.

Under the aegis of the Education Amendments of 1974, Public Law 93-380, many significant advances were made in the education of the Nation's handicapped youth: a basic aid-to-States program for the education of handicapped children was significantly expanded in authority and appropriations; Administrative Control and direction by a Bureau of the Education of the Handicapped was strengthened

to insure maximum input and advocacy on behalf of the handicapped; a goal of providing free, full educational opportunities to all handicapped children and a time table for implementation of this goal were established; a plan from the States for the provision of due process guarantees to all children served and their parents was mandated to help insure that handicapped children and their parents or guardians are provided procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children; a priority in the use of Education of the Handicapped Act funds was established for children not now receiving an education program; a plan from the States that would show how all handicapped children with an education in the least restrictive environment was mandated (this plan would insure that to the maximum extent possible handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature of severity of the handicapped is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily); and a plan was mandated which would prohibit the classification of children in a racially or culturally discriminatory manner.

Therefore, the groundwork for H.R. 7217 was adopted overwhelmingly by the 93rd Congress with a clear mandate that the one-year emergency authorization would not be sufficient for the long term purposes of providing adequate support to States and local communities to meet the educational needs of handicapped children.

The intent of H.R. 7217 is primarily to amend part B (grants to States) of the Education of the Handicapped Act in order to provide permanent authorization and a comprehensive mechanism which will insure that those provisions enacted during the 93rd Congress will result in maximum benefits for handicapped children and their families.

LEGISLATIVE HISTORY

Hearings were held by the Subcommittee on Select Education to extend and amend the Education of the Handicapped Amendments of 1974 (Public Law 93-380) and related programs on April 9 and 10, 1975.

Among the witnesses were James A. Harris, President, National Education Association; Carl J. Megel, Director of Legislation, American Federation of Teachers; Frederick Weintraub, Assistant Executive Director, Council for Exceptional Children; George Smith, San Diego School Board; August Steinhilber, Assistant Executive Director of Federal Relations, National School Board Association; Richard Schifter, Vice President, Maryland State Board of Education; Francis X. McIntyre, Assistant State Superintendent for the Division of Special Education, Maryland State Department of Education; Walter Cegalka, National Association of Retarded Citizens; Dudley Koontz, United Cerebral Palsy Foundation; Beverly Rowan, the Joseph P. Kennedy Foundation; and Janet Rhoads, American Occupational Therapy Association.

The Subcommittee on Select Education has been working on a comprehensive special education measure for the last two years. In the 93rd Congress, extensive hearings were held on March 6, 7, 18 and 22, 1974 on H.R. 70. A number of witnesses were heard during those hearings, including the Honorable Clarence D. Long; the Honorable Claude Pepper; the Honorable Ogden Reid; Charles M. Cooke, Jr., Deputy Assistant Secretary for Legislation (Education) Department of Health, Education, and Welfare; Dr. Edwin W. Martin, Associate Commissioner, Bureau of Education for the Handicapped, United States Office of Education; and J. Stanley Pottinger, Assistant Attorney General, Department of Justice.

On May 21, 1975, H.R. 7217, a bill to amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, was introduced by Mr. Brademas, Mr. Bell, Mr. Perkins, Mr. Quie, Ms. Mink, Mr. Peyser, Mr. Meeds, Mr. Jeffords, Ms. Chisholm, Mr. Pressler, Mr. Lehman, Mr. Cornell, Mr. Beard of Rhode Island, Mr. Zeferetti, Mr. Miller of California, Mr. Hall, Mr. Ford of Michigan, Mr. Hawkins, Mr. Thompson, Mr. Dent, Mr. Biaggi, Mr. O'Hara, Mr. Andrews of North Carolina, Mr. Risenhoover, and Mr. Simon.

On June 9, 1975, the Subcommittee held a hearing on H.R. 7217 to hear the following Administration witnesses: the Honorable Terrell H. Bell, United States Commissioner of Education, accompanied by Dr. Edwin W. Martin, Jr., Deputy Commissioner, Bureau of Education for the Handicapped, and Mr. Richard Hastings, Acting Deputy Assistant Secretary for Legislation (Education), Department of Health, Education, and Welfare.

On June 10, 1975, the Subcommittee met in open executive session and unanimously reported H.R. 7217 with amendments, to the Committee on Education and Labor.

On June 17, 1975, H.R. 7217, as amended by the Committee, was ordered reported by the Committee on Education and Labor by a vote of 37 to 0.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 7217.

The Congressional Budget Office has not submitted the analysis required by section 403 of the Congressional Budget Act of 1974.

No specific oversight activities, other than the hearings accompanying the Committee's consideration of H.R. 7217, were made by the Committee, within the definition of Rule XI of the House.

The Committee, however, wishes to include a summary of the data gathered in the hearings to amend and extend the Education of the Handicapped Act.

With the passage of the Education of the Handicapped Amendments of 1974, Congress recognized that it had a responsibility to see that the educational needs of handicapped children were being met. It gave the Executive Branch specific requirements for approving State

plans to provide special education for handicapped children (sections 612 and 615 of the Education Amendments of 1974).

However, the Committee found that there are more than 8 million handicapped children in the United States at this time and that the special education needs of most of these children are not being met.

More than half of all handicapped children in the United States are not receiving an education appropriate to their needs; many children have undiagnosed handicaps which prevent their having a productive educational experience. One million children—usually the most severely handicapped—are receiving no education at all.

The Committee also found that an increasing number of court decisions throughout the Nation are establishing the principle that all children are entitled to a free public education appropriate to their needs, and that State financial resources are frequently inadequate to the task of providing an education for all handicapped children.

EXPLANATION AND DISCUSSION

Who are handicapped children?

Handicapped children have been described as those who deviate from the average in mental, physical, or emotional characteristics to such a degree that they require modifications in school programs or methods in order to develop to their maximum potential.

A definition contained in the model statutes published by the Council for Exceptional Children (1971) describes a handicapped child as follows:

“Handicapped child” means a natural person between birth and the age of 21, who because of mental, physical, emotional, or learning problems, requires special education services.

Federal law presently defines handicapped children in the following manner:

The term “handicapped children” means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services. (Section 602(1), Education of the Handicapped Act.)

The term “children with specific learning disabilities” means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage. (Section 602(15), Education of the Handicapped Act.)

H.R. 7217 amends the definition of "handicapped children" to replace the word "crippled" with the term "orthopedically impaired", and to include children with "specific learning disabilities". No substantive change is intended by using the term "orthopedically impaired". Further, existing law does not prohibit children with "specific learning disabilities" from being served under part B of the Education of the Handicapped Act. The Committee believes that children with "specific learning disabilities" requiring special education and related services should be assured a right to an education and that parents of such children have the right to expect that individually designed instruction to meet these children's specific needs is available. The definition of "specific learning disabilities" is amended by this bill to include only those children whose handicaps are not caused by environmental, cultural, or economic disadvantage. The Committee is aware of the problems in obtaining a precise definition of a learning disabled child and urges the Commissioner of Education fully to study the definition and the population group identified as having a learning disability and to assure that *no* abuses take place with regard to the eligibility for services under this bill.

The definition clearly refers only to children whose handicap will require special education and related services. For example, such term does not include children who may be slow learners.

The Committee adopted an amendment to provide a two-percent limitation on the number of learning disabled children that may be counted under section 612(b)(1) of the Act (relating to local educational agency allotments). The Committee would like to make clear that this amendment is not intended unduly to restrict a State or local education agency from providing adequate services to children with specific and serious learning disorders. The problem, however, as was underscored in the Subcommittee's hearings, is the absence of any clear or acceptable criteria for judging whether a child is significantly handicapped because of a possible learning disability. Testimony received from the Office of Education indicated that the entire lower quartile of any normal class could be classified as having some learning disability. The types of disabilities range from lack of attention by the teacher, readiness, motivation, maturity or other factors that affect the student's ability to keep pace with the class. Falling within this category are those children with identifiable and serious learning disabilities such as dyslexia and autism that the bill is designated to reach. By placing the cap on the number of learning disabled children a State may count for the purpose of Federal assistance we are instructing the States that their principal objective should be directed at assisting these children who are the most severely handicapped.

Thus, this safeguard is necessary to prevent any possible disproportionate allocation of funds to a handicapped category the magnitude of which is not clearly known or understood.

What is special education?

H.R. 7217 defines "special education" to mean specially designed instruction to meet the unique needs of a handicapped child as set forth in the individualized educational program, including physical

education, home instruction, classroom instruction, and instruction in hospitals and institutions. The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. These needs may entail instruction to be given in varying environments, i.e., hospital, home, school, or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place of instruction. No child should be denied an educational opportunity; therefore, H.R. 7217 expands special educational services to be provided in hospitals, in the home, and in institutions.

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandicapped 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.

It has been demonstrated through research and programs such as Special Olympics that the physical functioning of the mentally retarded and other handicapped persons can be significantly improved through physical education, exercise and participation in sports. Although additional research is needed to quantify the gains, there is considerable evidence that increases in basic intelligence, self-concept, motivation and academic achievement are associated with improved physical fitness.

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.

The Committee also sees the value in developing artistic and cultural programs for handicapped children. The Bureau for the Education of the Handicapped, through partial support of the Theater of the Deaf, Gallaudet College Drama and Dance groups and the National Technical Institute on the Deaf Creative Groups, has demonstrated that deaf individuals have the ability to compete in the performing arts.

The use of the arts as a viable teaching tool for the handicapped has long been recognized. The arts have been used to reach children who have otherwise been unteachable. The Committee sees that programs under this bill could include an arts component and urges local educational agencies to include an art program for the handicapped.

Museums and art galleries have proved to be effective tools in teaching handicapped children. The Brooklyn Museum has been a leader in developing exhibits utilizing heightened tactile sensory skill. The cultural development of our society is reflected in art galleries and muse-

ums and the handicapped must not be excluded from exposure to this important aspect of our society.

The Committee would like to see that each handicapped child to the best of his or her ability be able to participate in extracurricular activities to the same extent as nonhandicapped children. These activities often provide children with social development experiences which are so necessary for handicapped children. Therefore, the Committee urges local educational agencies to provide clubs, team projects, such as 4-H, young business clubs, production and selling as part of a handicapped child's educational repertoire.

H.R. 7217 defines "related services" as meaning services for each individual child including medical services for evaluation and diagnostic purposes, transportation, developmental and corrective services and early identification and assessment of handicapping conditions in children.

How many States have legislation mandating availability of public education for handicapped children?

The first mandatory laws establishing programs for handicapped children were enacted in New Jersey in 1911, New York in 1917 and Massachusetts in 1920. In recent years states have increased their efforts to adopt some basic form of mandatory legislation.

In 1971 seven States had adopted mandatory legislation in all categories of exceptionality, in addition to 26 States already having some form of mandatory provisions. Now in 1975, only one or two States remain without mandatory laws for all categories of exceptionality.

However, the essential factor to focus upon in this area of State law is that until quite recently there has been *little* or *no* enforcement of the mandates. Mandatory legislation, which has characteristically lacked meaningful provisions for actual enforcement, has proven to be of limited value.

What is the status of litigation on behalf of handicapped children?

In 1971, the Federal Eastern District Court of Pennsylvania approved a consent agreement establishing that every school age mentally retarded child in the Commonwealth has a right to a public education. This lawsuit, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (334 F. Supp. 1257 (E. D. Pa. 1971) and 343 F. Supp. 279 (E. D. Pa. 1972) was the first in what has become a nationwide movement in both State and Federal courts to establish that all handicapped children have a constitutional right to a public education.

That case was followed in that same year by a court order from United States District Court of the District of Columbia Judge Joseph Waddy in *Mills v. Board of Education of District of Columbia* (348 F. Supp. 866 (D.D.C. 1972)) restating the same principle but extending it to all handicapped children. Specifically, the court said that all children regardless of any exceptional condition or handicap have a constitutional right to a publicly supported education. Since these cases, there have been 46 cases filed which are completed or still pending in 28 states.

How many handicapped children are there in the United States?

Estimates, of course, vary, in part because of the often obviously delicate lines drawn between a handicapped and a nonhandicapped child. However, the best available sources place the number of handicapped children aged 3 to 21 at approximately 7.8 million children, with a prevalence within the overall population of all children aged 3 to 21 of approximately 12 percent. The Bureau of Education for the Handicapped used a number of statistical sources in order to develop the following prevalence chart by diagnostic category for the Committee:

PREVALENCE AND NUMBER OF HANDICAPPED CHILDREN

	Prevalence	Number of children 5 to 17 yrs
Visually handicapped.....	0.1	51,800
Deaf.....	.75	38,900
Hard of hearing.....	.5	259,000
Speech handicapped.....	3.5	1,813,000
Crippled and other health impaired.....	.5	259,000
Emotionally disturbed.....	2.0	1,028,000
Mentally retarded.....	2.3	1,185,400
Learning disabilities.....	3.0	1,554,000
Multiple handicapped.....	.06	31,000
Total.....	12.035	6,218,200

Is there a need for H.R. 7217?

Federal legislative actions and State judicial and legislative actions have brought substantial progress toward the goal of providing each handicapped child with a free, full, public education.

Yet the most recent statistics provided by the Bureau for the Education of the Handicapped estimated that of the more than 8 million children, birth to 21 years of age, with handicapping conditions requiring special education and related services, *only* 3.9 million such children are receiving an appropriate education and 1.75 million handicapped children are receiving *no* educational services at all, and 2.5 million handicapped children are receiving an inappropriate education.

These statistics have both short-range and long-range effects. The short-range implications are that there are over 50 percent of the handicapped children in this Nation who are denied a fundamental educational opportunity. The destiny of these children will continue to depend on a commitment or the lack thereof, of the Federal, State, and local governments to identify these children as a priority among the competing needs of our Nation.

The long-range implications are that taxpayers will spend many billions of dollars over the lifetime of these handicapped individuals simply to maintain such persons as dependents on welfare and often in institutions.

With proper educational services many of these handicapped children would be able to become productive citizens contributing to society instead of being left to remain burdens on society.

UNSERVED BY TYPE OF HANDICAP

	Served 1973-74 ¹	Unserved 1973-74	Total children served and unserved ²
Total age 0 to 19.....	3,800,185	4,085,815	7,886,000
Total age 6 to 19.....	3,550,185	3,148,815	6,699,000
Total age 0 to 5.....	250,000	937,000	1,187,000
Speech impaired.....	1,777,000	516,000	2,293,000
Mentally retarded.....	1,200,000	307,000	1,507,000
Learning disabilities.....	226,725	1,739,275	1,966,000
Emotionally disturbed.....	224,460	1,085,540	1,310,000
Crippled and other health impaired.....	230,000	98,000	328,000
Deaf.....	34,000	15,000	49,000
Hard of hearing.....	58,000	270,000	328,000
Visually handicapped.....	38,000	28,000	66,000
Deaf-blind and other severe and profoundly handicapped.....	12,000	28,000	40,000

¹ Estimated total numbers of handicapped children served—obtained from State educational agency's fall and winter 1975. Information by type of handicap was not available and is projected from data provided by SEA's for school year 1972-73.

² Total number of handicapped children ages 0 to 19 provided on basis of estimates obtained from various source including national agencies and organizations, plus State and local directors of special education. According to these sources the incidence levels by types of handicap are as follows: Speech impaired 3.5 percent, mentally retarded 2.3 percent, learning disabled 3 percent, emotionally disturbed 2 percent, crippled and other health impaired 0.5 percent, deaf 0.075 percent, hard of hearing 0.5 percent, visually handicapped 0.1 percent, deaf-blind and other multihandicapped 0.06 percent. The total number of handicapped children in the above categories represents 12.035 percent of all school age children from 6 to 19 and 6.018 percent of all children age 0 to 5. The population figures to which the incidence rates were applied, were obtained from the Bureau of Census and reflect the population as of July 1, 1974.

What about the costs of educating handicapped children?

It is well established that the average cost of educating handicapped children is well above the national per pupil average for all children, as evidenced by the findings of the National Educational Finance Project (NEFP—Study No. Two, 1970) which reported an average cost index among the various diagnostic categories of handicapping conditions of 1.9 above the average cost for nonhandicapped children, with a range of 1.18 for a child with a speech handicap to 3.69 for a child with a physical handicap.

Are there priorities in the use of the Federal monies generated?

Yes. Existing law, in conformance with the overall goal of ending exclusion, orders a priority in the use of Federal funds for children "still unserved." H.R. 7217 maintains and broadens that priority in the following manner:

First priority to children "unserved."

Second priority to severely handicapped children.

This second priority is addressed to the extensive problem of handicapped children who may be receiving "some sort" of an education but who are not receiving the special education required because of their particular handicapping conditions.

Will this formula encourage over-labeling of children as handicapped?

No. It has been noted previously that the prevalence of children with handicapping conditions is generally agreed to represent approximately 12 percent of the total child population in the Nation. H.R. 7217 stipulates that in the reporting of the number of handicapped children being served for purposes of the formula for allocation, no State may report more than 12 percent of its total population of children aged five to 17.

What age range may benefit from the Federal monies generated?

All handicapped children, aged zero to 21 years, are authorized to benefit from the special education and related services supported by the bill.

Why does this formula not take effect until fiscal year 1978?

For at least three reasons:

(a) to allow the States and localities ample opportunity to prepare to deal with the implications of this major formula alteration, especially the change from a state-based to a locally-based allocation pattern;

(b) to encourage the States and localities to move as rapidly as possible toward "full service" in order to reap the benefits of a formula which generates Federal dollars on the basis of *children served*; and

(c) to permit a logical and appropriate conformance with the timetable for implementation of the additional State plan requirements of Public Law 93-380, which include procedures for child identification and maintenance of confidentiality, a detailed timetable for accomplishing a goal of full educational opportunity, and a description of the kind and number of facilities, personnel, and services necessary to meet the goal.

Can monies under the bill be spent for a handicapped child's entire educational cost in any given year?

No, monies must be directed toward those "excess cost" factors as previously cited. A local school district must determine its average annual per pupil expenditure for all children being served, and then apply the Federal dollars only to those additional cost factors for handicapped children beyond the average annual per pupil expenditure.

Why does the bill provide for prescription of an individualized education program?

The movement toward the individualization of instruction, involving the participation of the child and the parent, as well as all relevant educational professionals, is a trend gaining ever wider support in educational, parental, and political groups throughout the Nation.

Therefore, this legislation would require each local educational agency to develop with a child's teacher in consultation with the parents of the child (and in appropriate instances the child) an individualized education program. Such a prescription responds to 3 fundamental tenets:

(a) each child requires an educational plan that is tailored to achieve his or her maximum potential;

(b) all principals in the child's educational environment, including the child, should have the opportunity for input in the development of an individualized program of instruction;

(c) individualization means specifics and timetables for those specifics, and the need for periodic review of those specifics—all of which produce greatly enhanced fiscal and educational accountability.

Parenthetically, it may be noted that the 93rd Congress, and, more specifically, this Committee, have already expressed their concern about the need for increased individualization in at least 2 public laws: Public Law 93-112, the Rehabilitation Act Amendments of 1973, and Public Law 93-380, the Education Amendments of 1974 (Title I).

What is the nature of the grievance-compliance mechanism contained in H.R. 7217 and why is it mandated?

Though the assurance of a "full-service" goal coupled with a plan for the achievement of such a goal is now required of the State (Public Law 93-380), no congressional legislation has required a precise guarantee for handicapped children, i.e. a basic floor of opportunity that would bring into compliance all school districts with the constitutional right of equal protection with respect to handicapped children and youth as a condition of eligibility for Federal assistance.

Reference has already been made to the still alarmingly high number of handicapped children who do not have an appropriate special education available to them. It is clear that a federally-mandated grievance-compliance mechanism is essential if any further meaningful progress is to be made in serving the needs of handicapped children.

Therefore, this bill would authorize a grievance-compliance mechanism which is three-tiered:

(a) Each school district must adopt uniform procedures to allow parents and guardians, or handicapped children themselves, to bring complaints relative to the maintenance of their educational rights as set forth in section 613 of the Education of the Handicapped Act.

(b) The State educational agency must review the facts of each such case brought, and review the findings of the local school district. Where a State educational agency determines that a local school district has failed to meet the requirements of the Act, the State educational agency shall take appropriate action to correct such failures. In addition, the findings of the State educational agency with respect to such determination may be utilized as evidence in a Court of the United States by any party representing a handicapped child for the purpose of obtaining such remedies as may be appropriate. If the State finds the local district in noncompliance with the rights and guarantees of section 613, the State must take such noncompliance into consideration in any further approval of an application for Federal funding to the local district and must inform the Commissioner of its finding of noncompliance.

It is the Committee's intent that any reviews, investigations or hearings conducted in accordance with Section 617 shall be impartial, that all parties shall have sufficient opportunity to present testimony and evidence, and that such reviews, investigations or hearings be representative of all evidence and testimony presented.

(c) If the Commissioner makes a finding of noncompliance, he must cut off funds for Federal education programs specifically designed for the education of handicapped children going to the local district or the State.

What are the educational rights of section 613 of the Education of the Handicapped Act which this grievance-compliance mechanism has been designed to protect?

(a) every handicapped child consistent with State law has in fact available to him or her a free, public education;

(b) every handicapped child in a public education program is in fact receiving a free education, at no additional cost to parents or guardians;

(c) every handicapped child is in fact being educated in the least restrictive environment;

(d) every handicapped child and his or her parents, guardian, or surrogate are afforded all of the essential due process guarantees in all matters of identification, evaluation, placement, and re-evaluation;

(e) every handicapped child is protected against testing materials and procedures used for classification and placement being selected in such manner as to be racially or culturally discriminatory; and

(f) policies and procedures are established and maintained to insure the confidentiality of all data and information gathered by the State.

Is there a "date certain" in this legislation?

Yes. Though the truism that "justice knows no timetable" cannot be argued with, it is generally agreed that there should be a date beyond which no State or locality may be failing without penalty to guarantee the basic rights of handicapped children, and most especially, a guarantee against outright exclusion. Also, it is felt that the States ought to be given a reasonable—but not lengthy—time period in which to reach "full service." H.R. 7217 establishes a "date certain" of September 30, 1978.

FORMULA

H.R. 7217 extends through fiscal year 1977 the formula (based on the total State population aged 3 to 21) in present law and provides that no State receive less than it received during the previous fiscal year, or \$300,000, whichever is greater.

By extending the present entitlement provision for 2 fiscal years, H.R. 7217 will be serving two purposes: (1) it will allow the States to continue their education of the handicapped programs under the same administrative framework that they are now implementing; and (2) it will allow the States time to gear up for the local educational agency entitlement program provided by this bill for fiscal year 1978 while operating under an authorization level of approximately \$666 million each year (identical to present law). The extension of the present entitlement provide a temporary ceiling which would be high enough to help States and localities prepare for the local educational agency entitlements for fiscal year 1978.

Following the 2-year extension of the 1975 provision, H.R. 7217 establishes a new formula which would provide each local educational agency with funds derived by counting the number of handicapped children served times 50 percent of the average per pupil expenditure

in the United States. In order to discourage mislabeling, the bill establishes a ceiling of 12 percent on the number of children, aged 5 through 17, that a State can count for purposes of receiving its formula allocation under the bill.

This local educational agency allocation approach differs from the present distribution of funds under existing law (presently, entitlements are given to the State educational agency based on the population aged 3-21 times \$8.75 and are then distributed to the local educational agencies on a discretionary project grant basis). It is the Committee's view that a program of this scope must distribute Federal funds on a local allocation basis. Inasmuch as States have established local educational agencies as the units of government to provide educational programs to all school-age children and it is the objective of this legislation to serve all handicapped children in educational programs suited to their needs, it is appropriate that the Federal aid formula to accomplish this be directed to the unit already established by the State for this purpose. As is the case with title I of the Elementary and Secondary Education Act or the Impact Aid program, funds would be distributed to local educational agencies. If the Federal contribution to the education of handicapped children is going to be a major source of funding, a local educational agency will need to have a basic idea of how much money it is going to receive from year to year—especially in light of the requirement that each local educational agency must participate in individualized educational planning for each handicapped child the local allocation approach ensures that the amount which any local educational agency receives will bear some relationship to the cost of educating the children involved.

The local allocation approach also can provide local educational agencies with some degree of certainty which is important in their overall governance responsibilities.

H.R. 7217 provides that local educational agencies be held accountable by requiring adherence to the specifications of a general State plan as well as a local plan. Another step in the accountability required of local educational agencies is contained in the provisions of the Committee bill which require that individualized plans be developed by the local educational agency in consultation with parents and with enforcement of compliance and hearing procedures. Since the needs of the handicapped child who is the beneficiary of Federal funds provided by this legislation are unique to such child, the question of local school district flexibility within a general State plan is a desirable balance of State, local, and parental interests.

STATE PLAN REQUIREMENTS

The bill, H.R. 7217, places increased responsibility upon the States. A target date of September 30, 1978 is established for providing *all* handicapped children with an appropriate special education and related services. In referring to "all" handicapped children, the Committee has reference to the age in each State for which a free public

education is provided. In addition, each State must establish an advisory panel to assist their State education agency in carrying out the provisions of the bill. H.R. 7217 also provides for hearing appeals by the State educational agency in accordance with grievance procedures established in section 10. Federal funds under other Federal programs providing assistance to handicapped children (as stipulated in section 9) are to be utilized only in a manner consistent with the goals of providing a full appropriate public education for all handicapped children. Private schools and facilities to which a child is referred or placed by a local education agency must be provided on the same basis as public facilities, at no cost to parents or guardians, and must meet the same standards as public facilities, and give such students the same rights as those served by public education agencies. In the event that a State educational agency or a local educational agency is found to be in noncompliance with the requirements of H.R. 7217, or the present Education of the Handicapped Act, it must give public notice of impending action.

APPLICATION

H.R. 7217 authorizes local allocation so long as the following requirements are met:

- (a) assurance of extensive child identification procedures;
- (b) assurance of a "full service" goal;
- (c) a guarantee of policies and procedures to protect the confidentiality of data and information;
- (d) maintenance of programs and procedures for comprehensive personnel development;
- (e) the assurance of regular parent or guardian consultation;
- (f) assurance of an effective policy guaranteeing the right of all handicapped children to a free, appropriate public education;
- (g) assurance of the maintenance of an individualized program for all handicapped children; and
- (h) assurance of a special education being provided to all handicapped children in the "least restrictive" educational setting.

The Committee expects that State educational agencies will collect the necessary data on numbers of handicapped children in local educational agencies and report this information to the U.S. Commissioner of Education for purposes of determining State allotments and ratable reductions when necessary. Local educational agencies will submit application to the State educational agency, which will write a State plan specifying allotments to such agencies, taking account of the numbers and location of handicapped individuals in the State, including existing and proposed intermediate and regional facilities; size and scope of local programs, and level of services now provided in each local educational agency under the bill's priorities for reaching individuals not served and severely handicapped.

The State may require consolidation of local educational agency programs into intermediate or regional facilities within the State if necessary to maintain programs of adequate quality, size, and scope. The State may deny funds to a local educational agency under the following circumstances:

- (a) the program is of insufficient size and scope;

(b) the local educational agency is adequately providing special education and related services to all handicapped children residing in the area served by that local educational agency with State and local funds;

(c) the local educational agency has failed to comply with the requirements set forth in its application, the State plan, or other provisions of the Act.

MISCELLANEOUS PROVISIONS

Definitions

H.R. 7217, as amended, also amends section 602 of the Education of the Handicapped Act to add or amend existing definitions of the following terms: "local educational agency", "free appropriate education", "individualized education program", "public educational agency", and "excess cost".

H.R. 7217 amends the definition of "local educational agency" to include the term "any public educational agency". Due to the nature of the distribution formula this amendment will allow a State educational agency and any other public agency approved by the State to be eligible for Federal funds. Therefore, children now residing in State-operated schools would not be neglected since a State agency which is responsible for institutionalized children would be eligible for Federal funds.

H.R. 7217 also defines the term "free appropriate education" as special education and related services provided at public expense which would include appropriate preschool, elementary and secondary school education and which are provided in conformance with an individualized planning program. This term also includes education of handicapped children in private schools and facilities when it is provided at no cost to their parents or guardians when the state or local authorities offer such programs in lieu of public school programming.

The Committee strongly urges that "free appropriate education" be provided to children of preschool age. The Committee heard testimony which indicated strongly that special educational services provided to handicapped children before "normal" school age were often the most beneficial since much more could be done at an earlier age to ameliorate, alter, or develop skills to compensate for certain handicapping conditions. The earlier such conditions can be diagnosed, the less costly the special educational services the child will need during his or her school years. We are cognizant of the States' concern regarding their financial ability to provide full educational services to this group of children. Nevertheless, we feel it is imperative to point out that the benefits of early identification and education are so great as to justify continued emphasis upon preschool education.

H.R. 7217 defines "individualized education program" as an educational plan for each handicapped child developed jointly by the local educational agency and an appropriate teacher, in consultation with the parents. This plan would contain a statement of the present levels of educational performance of the child, desired instructional objectives, a statement of the specific educational services provided the child, and the extent to which the child will be able to participate in regular

educational programs, a projected date for initiation and anticipated duration of such services, and an annual evaluation of the procedures and objectives.

The individualized plan will achieve 2 fundamental goals: (1) each child requires an educational plan tailored to achieve his or her maximum potential, and (2) all principals in the child's educational environment, including the child, should have the opportunity for input in the development of the plan. The Committee feels that in order for this plan to be an effective mechanism without becoming an administrative problem for local educational agencies, it must be reviewed and reevaluated on an annual basis. The Committee feels the plan must contain statements of short-term instructional objectives, projected dates for the initiation and duration of services and must include in every way possible objective criteria and evaluation procedures.

H.R. 7217 defines the term "excess costs" to be those costs which are in excess of the average annual per pupil expenditure in a local educational agency for an elementary and secondary student computed after deducting Federal amounts received under part B of the Act, title I of the Elementary and Secondary Education Act, and State, local, and private funds expended for programs which would qualify for assistance under this part. The Committee intends that Federal funds expended for programs under part B should be used to pay only the excess costs directly attributable to the education of handicapped children.

In the event that a local school district is providing special education and related services to all of its handicapped children residing in the area served by the local educational agency with State and local funds, the State educational agency may redirect Federal funds to other agencies which are not serving all of their handicapped children.

The Committee would like to make clear that there is no prohibition against supplanting State and local monies with Federal assistance in the event that a State has reached the goal of providing quality special education and related services to all handicapped children residing in a State. However, until such time as such full compliance has been obtained, the Committee feels that both State and local efforts should not and must not diminish because of additional Federal support.

Dates for providing services and priorities

Court action and State law throughout the Nation have made clear that the right to education of handicapped children is a present right which must be implemented immediately. The Committee believes that these State laws and court orders must be implemented and that the Congress has the responsibility to assure equal protection of the laws and thus to take action to assure that handicapped children have available to them appropriate educational services. The Committee believes that the provisions and incentives contained in H.R. 7217 will provide State and local educational agencies ample time to fulfill the full services goal for all handicapped children, who are within an age group which is provided free public education under State law, by September 30, 1978.

H.R. 7217 also adopts priorities for the expenditure of Federal funds in that it requires each State to establish priorities on providing a free appropriate public education to all handicapped children and that these priorities meet the fiscal year 1978 timetable—first, with respect to those handicapped children who are not receiving an education, and second, with respect to the most severe handicaps who are not receiving any educational services.

The Committee believes that identifying and providing services to preschool handicapped children is also critical to assuring that these children are assisted in early life so that their handicapping conditions do not delay their educational development.

Evaluation

H.R. 7217 directs the Commissioner of Education to measure the impact of the programs authorized and to evaluate the effectiveness of State efforts to assure the free appropriate public education of all handicapped children. The bill further directs the Commissioner to conduct, either directly or by contract and grant studies, investigations, and evaluations necessary to assure the effective implementation of the Act. The bill directs the Commissioner to provide for such programs through the development of effective measures and procedures for evaluation and for conducting evaluation studies designed to test the effectiveness of activities supported by assistance under this program.

The bill also directs the Commissioner to provide to the public and to the House Committee on Education and Labor and the Senate Labor and Public Welfare Committee on an annual basis information regarding:

- (a) the number of handicapped children who require special education and related services;
- (b) the number of handicapped children receiving a free appropriate public education and the number of handicapped children not receiving a free appropriate public education;
- (c) the number of handicapped children who are participating in regular class room settings and the number of children who have been placed in separate classes or separate schooling, or who have been otherwise removed from the regular education environment;
- (d) the number of handicapped children residing in a public or private institutional setting who are receiving a free appropriate public education, and the number of such children residing in such settings not receiving a free appropriate public education;
- (e) the amount of Federal, State, and local expenditures specifically allotted for special education and related services; and
- (f) the number of personnel, by disability category, employed in the education of handicapped children, and the estimated number of additional personnel needed to adequately carry out the programs established by the bill.

The Committee realizes that the task involved in collecting this detailed data is considerable. However, the Committee also is aware of the lack of and need for such data as a basis for sound legislative decisions. The bill provides that these data can be collected by a sampling method.

H.R. 7217 also requires the Commissioner to submit (within 120 days after the close of the fiscal year) an annual report which shall provide an evaluation of the progress made toward the provisions of a free appropriate public education for all handicapped children, an evaluation of the procedures adopted to assure special education and related services in the least restrictive environment commensurate with the child's needs and to improve programs of instruction for handicapped children in day or residential facilities.

The Committee bill authorizes the Commissioner of Education to hire qualified personnel to conduct data collection and evaluation activities to carry out his duties under the Act. The Committee believes that the Office of Education must provide additional and improved staffing to carry out its implementation efforts relating to the education of the handicapped and has thus authorized the hiring of up to 20 additional staff persons to be assigned to the Bureau of Education for the Handicapped for the duties set forth in the Act.

The Committee believes that these data collection and evaluation efforts which are assigned to the Commissioner of Education through the Act should be conducted or coordinated by the Bureau for the Education of the Handicapped, the Committee recognizes that the Bureau will begin, in 1975, to collect most of the data required by this section through the State plan provisions enacted in Public Law 93-380.

In referring to the National Center for Educational Statistics (N.C.E.S.) in the bill, the Committee does not intend to require the Commissioner to use N.C.E.S. where data are already available from the program bureau, or where data can more efficiently be gathered from that source. The Committee further intends that N.C.E.S. should be responsive to requests by the Commissioner for such information as he may wish the Center to collect. The Committee expects the Commissioner of Education to assign responsibility for these tasks to the Bureau for the Education of the Handicapped so that such data collection and evaluation will be closely coordinated with program administration and technical assistance activities.

Handicapped children in private schools

H.R. 7217 provides that a State plan must include provisions that those handicapped children in private schools or facilities placed or referred there by the local educational agency must be provided educational services at no cost to their parents. This provision reflects the strong feeling that no child or parents of a child who is placed in a private school or facilities by a local educational agency should be financially penalized because the local educational agency does not have adequate facilities to provide this child an education in a public facility. H.R. 7217 also requires that children referred to or placed in private facilities have all the rights they would have if they were in a public facility. The bill also requires that the private facilities meet the standards which apply to public educational agencies.

Children in State-operated institutions

The Committee bill provides through adjustments in the definition of local educational agency for the inclusion of handicapped children who are receiving educational services in state-operated schools and institutions. Children in such schools and institutions will benefit

under the terms of the bill. The state educational agency or any other public educational agency operating such a school will be bound by the same requirements and restrictions as are applicable to local educational agencies.

Centers on educational media and materials for the handicapped

H.R. 7217 amends part F of the Education of the Handicapped Act, to authorize support of media and materials centers and projects, as compared with the present language which authorizes a single national center for such purposes.

Experience gained through the operation of a national center in the past 8 years indicates the Federal Government can receive certain benefits from such a center, for example, coordination of various media activities, the development of information systems, etc., but that a single institution cannot be expected to be the prime national source for each aspect of a complex media program involving such things as planning, development, dissemination, training of personnel, and coordination.

H.R. 7217 allows for multiple bidders for these functions at no increase in sums authorized, thereby allowing the competitive process to work freely.

The Committee recognizes the fine work done by the current center under a contract which will expire in 1976 and would anticipate that the contractor will be a strong competitor for those aspects of the total program where its expertise is most pronounced. Further, the Committee recognizes that the national centers legislation had authorized media and material services to the Model Secondary School for the Deaf (Public Law 89-694).

While the Model Secondary School is not mentioned specifically in the amendment, the new language clearly authorizes such a program. Further, the Committee did not intend to interrupt or terminate these services, and expects that the Bureau of Education for the Handicapped will work directly with the Model Secondary School for the Deaf to assure the provision of such services.

Grants for the removal of architectural barriers

H.R. 7217 includes a provision authorizing the Commissioner to make grants to State and local educational agencies for the purpose of altering existing buildings and equipment to eliminate architectural barriers, consistent with the standards under Public Law 90-480. The Committee believes that the removal of such barriers is necessary to assure certain handicapped children an appropriate public education in the least restrictive environment. Barriers to accessibility should never be the cause or reason that such children are prevented from receiving an education.

COST OF LEGISLATION

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that the following costs will be incurred in carrying out the provisions of H.R. 7217, as amended.

For fiscal year 1976 and fiscal year 1977 the authorizations contained in the bill are identical to those adopted for fiscal year 1975 as pro-

vided in the Education Amendments of 1974 (part B, title VI, Public Law 93-380). This formula would authorize payments to the states for the education of handicapped children. The payment would be a sum determined by multiplying \$8.75 by the number of all children within the state, whether or not handicapped, ages 3 to 21. It is therefore estimated that the bill would authorize appropriations for each of these fiscal years of approximately \$666,000,000.

In fiscal year 1978 the bill provides for a new formula designed to make the amount of the payment depend upon the number of handicapped children actually being served. Thus in fiscal year 1978 and in following fiscal years the bill authorizes payments for each handicapped child actually served multiplied by 60% of the national average per pupil expenditure. If the formula were operative in fiscal year 1975, the authorization would have been approximately \$2.4 billion. For the purposes of the formula it is difficult to estimate the number of handicapped children that will be served in the school year beginning in 1978. For the purposes of the formula, as has already been noted, the bill limits the number of such children that can be counted to 12% of the school age population. If each state actually served a number of handicapped children which represented at least 12% of its school age population, it is estimated that the fiscal year 1978 authorization would amount to \$3.8 billion. It is estimated that authorizations for fiscal years 1979 and 1980 would be comparable to the authorization for fiscal year 1978 and would amount to approximately \$3.8 billion for each year. It should be noted that additional problems are encountered when making 1978-1980 estimates. Not only may the number of handicapped children in a state who are being served not amount to 12% of its school age population, but also the national average per pupil expenditure may increase or decrease.

The most difficult issue that had to be resolved by the committee in the consideration of H.R. 7217 was the matter of authorizations. Basically, the issue before the committee can be stated in the following alternatives: should the committee in some realistic fashion limit the federal payment for each handicapped child being served, or should the committee simply authorize "such sums" as may be appropriated for each handicapped child being served. In rejecting the latter approach, the committee was prompted by several considerations.

The Committee would fail to meet its obligation if it did not assess the full cost of educating a handicapped child and assign some share of that cost as an equitable portion to be borne by the Federal Government in carrying out the national policy and objectives of the legislation. To have failed to set any dollar amount to be paid for each handicapped child would have provided no guidance whatsoever to the budget and appropriations committees. The Committee has in fact exhaustively studied the educational needs of handicapped children and has made an informed determination of what should be an appropriate contribution to State and local educational agencies to help to meet those needs. In making this determination, the Committee has considered the urgent needs of handicapped children and the large burden borne by State and local educational agencies in meeting those needs. The Committee has of course not made judgments that must be made when budget and appropriations decisions are reached. These

considerations include such factors as available revenue and the needs to be met by this program as compared with other programs administered by the Federal Government. It could be rightly argued that to authorize such sums as might be appropriated for each handicapped child being served would permit an excessive contribution for each child. Not only would there be no guidance for the appropriations and budget committees, but there would be no limitation on the amount that could be appropriated.

Section 12 of H.R. 7217 authorizes a program of grants to pay part or all of the costs of altering existing school buildings and equipment for the removal of architectural barriers. The Committee estimates that costs incurred under this new authority will not exceed \$5,000,000 annually.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(1)(4), Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 7217 as amended, will have little or no inflationary impact on prices or costs on the operation of the national economy. The costs of the legislation have been commented on previously in this report. It is estimated that 85% of the funds appropriated pursuant to the authorizations contained in this legislation will be used to defray personnel costs. The labor intensive characteristics of the legislation will contribute to the alleviation of unemployment in the education community. Moreover, the furnishing of the educational opportunities to handicapped children not now being served will provide long-range productivity gains, diminish welfare dependency, and enable many more otherwise unproductive citizens to enter the job market with marketable skills.

SECTION-BY-SECTION SUMMARY OF THE BILL

SHORT TITLE

Section one of the bill provides that the bill may be cited as the "Education for All Handicapped Children Act of 1975".

EXTENSION OF CERTAIN PROVISIONS

Section 2(a)(1) of the bill amends section 611(b)(2) of the Education of the Handicapped Act (hereinafter in this summary referred to as the "Act") to provide that the Commonwealth of Puerto Rico shall be treated as a State under the provisions of section 611(b).

Subsection (a)(2) extends section 611(c)(2) of the Act (relating to grants to Guam, American Samoa, the Virgin Islands, and the Trust Territories) through fiscal year 1977.

Subsection (a)(3) extends section 611(d) of the Act (relating to the provision of assistance to Indian children on reservations) for an additional 2 years through the fiscal year ending September 30, 1977.

Subsection (a)(4) extends section 612(a) of the Act through the fiscal year ending September 30, 1977, and provides that no State would receive less than such State received during the preceding year.

Subsection (b)(1) extends sections 614(a) and (b) of the Education Amendments of 1974 (Public Law 93-380) (provisions in the Act relating to the allocation of appropriations which were effective only for fiscal year 1975) for two additional years through the fiscal year ending September 30, 1977. The Education Amendments of 1974 amended part B of the Act by changing the assistance to the States from a grant program to a program based on entitlement (the number of children in the State 3 to 21 years old, inclusive, is multiplied by \$8.75 to reach individual States' entitlements).

Subsection (c)(1) amends section 615(a) of the Act by striking out paragraph (1) which provided that no State be allotted less than \$300,000 under part B (State Grant Program) of the Act.

The remainder of subsection (c) amends section 615(a) of the Education Amendments of 1974 by changing the effective date to read October 1, 1977, instead of July 1, 1975, and by making certain technical changes necessary for paragraph uniformity with the new amendments.

Subsection (d) amends paragraphs (1), (2), and (3) of section 843(b) of the Education Amendments of 1974 (relating to the treatment of Puerto Rico as a State) by extending the effective date of those provisions to September 30, 1977, from June 30, 1975.

(25)

AMOUNT OF ALLOCATIONS TO STATES

Section 3 of the bill amends section 612(a) of the Act to establish a floor of \$300,000 with respect to the amount of allocations a State may receive in any fiscal year.

RULES

Section 4 of the bill amends section 612 of the Act to require the Commissioner of Education (hereinafter in this summary referred to as the "Commissioner") to prescribe rules to carry out section 611 and section 612 of the Act. Such rules shall be prescribed no later than 120 days after the date of the enactment of the bill.

STATEMENT OF PURPOSE

Section 5(a) of the bill amends section 601 of the Act by redesignating it as section 601(a) and adding the new subsection (b).

Subsection (b) is a statement of findings and purpose which states that—

- (1) there are more than 8 million handicapped children in the United States;
- (2) the special education needs of such children are not being met;
- (3) more than half of the handicapped children in the United States do not receive an appropriate education;
- (4) one million handicapped children are excluded entirely from the public school system;
- (5) many handicapped children who are participating in regular school programs have undetected handicaps that prevent them from having a productive education;
- (6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often a great distance from their residence and at their own expense;
- (7) developments in the training of teachers and diagnostic and structural procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special educational programs for handicapped children;
- (8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate; and
- (9) it is in the national interest to make the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children.

The purpose of the bill is—

- (1) to assure that all handicapped children have available to them special educational and related services designed to meet their unique needs;
- (2) to assure that the rights of handicapped children and their parents or guardians are protected;
- (3) to assist States and localities to provide for the education of all handicapped children; and

- (4) to assess and assure the effectiveness of efforts to educate handicapped children.

DEFINITIONS

Section 6(a) of the bill amends section 602 of the Act to amend the definition of handicapped children in 2 ways: To hereafter refer to children as being "orthopedically impaired", rather than as "crippled", and also to include in the definition of handicapped children, children "with specific learning disabilities". This subsection also adds to the definition of the term "local education agencies" any "public education agency".

Subsection (a) also amends section 602(15) of the Act which defines the term "children with specific learning disabilities", and states who such term does not include. The bill would exclude persons suffering from "cultural or economic" disadvantages.

Subsection (a) also adds 6 new terms for definition:

- (1) The term "special education" is defined to mean specially designed instruction necessary to meet the unique needs of a handicapped child as set forth in an individualized education program, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.
- (2) The term "related services" is defined to mean transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychology, physical and occupational therapy, recreation, and medical and counseling services). Such term also includes the early identification and assessment of handicapped conditions in children.
- (3) The term "free appropriate public education" is defined as meaning special education and related services which have been provided at public expense, supervision, and direction and which meet the standards of the State education agency. It should also include an appropriate preschool, elementary or secondary school education in the State provided in conformity with an individualized education program.
- (4) The term "individualized education program" is defined to mean an educational plan developed jointly by the local education agency and an appropriate teacher in consultation with the parents or guardians, and, whenever appropriate, the child. The plan should include statements of the present level of educational performance, the instructional objectives, the specific services to be provided, and the extent to which the child will be able to participate in regular educational programs, the projected date for initiation and duration of services, and the objective evaluation and criteria procedures and schedules for determining, at least annually, whether such objectives are being achieved.
- (5) The term "public educational agency" is defined to mean any State educational agency or any public agency approved by a State educational agency to provide special education and related services to handicapped children.

- (6) The term "excess cost" is defined to mean those costs which are in excess of the average annual per pupil expenditure in a local education agency during the preceding school year for an elementary or secondary school student and which are computed after deducting any amounts received under the Act or under title I or VII of the Elementary and Secondary Education Act of 1965, and after deducting any State, local, or private funds expended for programs which would qualify for services under the Act or such titles.

PAYMENTS

Section 7 of the bill amends section 611 of the Act to provide that the Commissioner shall make payments to States in amounts which States and local educational agencies of such States are eligible to receive under part B of the Act. Section 611 requires any State receiving payments from the Commissioner to distribute such payments to the local educational agencies of such State in amounts which such local educational agencies are eligible to receive, except that the distribution may be made only after the State educational agency has approved applications of the local agencies involved. Section 611 also provides that payments may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.

ALLOTMENTS TO LOCAL EDUCATIONAL AGENCIES

Section 8 of the bill amends section 612 of the Act to provide that the Commissioner, based on the amount of money appropriated by the Congress, shall allot to each local educational agency an amount equal to the product of the number of handicapped children served in the school district and 50 percent of the average per pupil expenditure in public elementary and secondary schools. The number of handicapped children enrolled in any fiscal year shall be equal to the number of children enrolled between October 1 and February 1 of the preceding fiscal year. Section 612 further provides that no State shall receive less than it received for the fiscal year ending September 30, 1977, or \$300,000, whichever is greater.

In determining the allotment of local educational agencies, the Commissioner may not count handicapped children in excess of 12 percent of the number of all children aged 5 to 17 in the State involved, nor may he count children with specific learning disabilities as more than one-sixth of such percentage.

Section 612 further provides that in the event that sufficient funds are not appropriated, all agencies will be ratably reduced.

Section 612 also provides that in the event a local educational agency cannot use the funds available to it, the State shall reallocate these funds to those local educational agencies which the State determines will need additional funds to carry out approved programs. However, no local educational agency may receive an amount which exceeds its eligible allotment.

The Commissioner is to determine per pupil expenditure costs based on the definition given in section 403 of the General Educational Provi-

sions Act (Public Law 874, Eighty-first Congress). The number of children in each State aged 5 to 17 shall be determined by the most recent data available to the Commissioner.

Section 8 also amends section 612(a) of the Act to provide that the Secretary of the Interior, in order to receive allocations for assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children, shall transmit a plan to the Commissioner which meets the applicable State plan requirements established by section 613(a) of the Act.

STATE PLAN REQUIREMENTS

Section 9(a) of the bill amends section 613(a) of the Act and adds several new State plan requirements. In order to qualify for monies under the Act, the State must show that it will achieve the objective of providing special education and related services to all handicapped children who are within any age group for which free public education is provided in the State by the beginning of fiscal year 1979, that it has a planning and advisory panel, appointed by the Governor or any other official authorized by State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians, State and local educational officials, and administrators of programs for handicapped children.

The panel's function will be to advise the State educational agency on unmet needs and prescribe general policies under which the State will determine priorities for educating handicapped children.

Further, the panel will comment publicly on rules and regulations issued by the State and procedures proposed by the State for distribution of funds, and assist the State in developing and reporting such data and evaluations as may assist the Commissioner.

This section also provides that the State educational agency is required to process complaints received pursuant to the grievance procedures established by section 617 of the Act, as amended by section 10 of the bill.

This section also provides that the State must provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any Federal program which provides assistance for the education of handicapped children, will be utilized by the State, or any of its public subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children.

This section also provides that a State plan must provide that handicapped children in private schools and facilities will be provided special education and related services, on the same basis as handicapped children in public elementary and secondary schools, and at no cost to their parents or guardians if such children are placed in or referred to such facilities, by the local educational agency involved, as a means of carrying out the requirements of the Act or any other applicable law. In all such instances, the State agency shall assure that such schools and facilities meet standards which apply to public educational agencies and that such children are entitled to all of the rights they would have if served in a public educational agency.

Subsection (b) amends section 613(d)(2) of the Act to provide that whenever the Commissioner, after reasonable notice and opportunity for hearing, finds that the State plan is no longer in compliance with the provisions of the Act, he shall notify the agency that further payment will not be made to the State under the Act or under other Federal programs within his jurisdiction and control relating to education of handicapped children.

Section 613(d)(2) is further amended by adding a new sentence which states that any State agency or local agency in receipt of notice shall, by means of public notice, take such measures as may be necessary to bring the pendency of the action involved to the attention of the public within the jurisdiction of such agency.

Subsection (c) amends section 613 of the Act by inserting a new subsection which provides that State educational agencies shall only approve local educational agency applications under section 614(a) if such applications conform to the requirements of section 614(a), and shall only do so after the State plan has been approved.

**APPLICATIONS BY LOCAL EDUCATIONAL AGENCIES; GRIEVANCE PROCEDURES;
OTHER PROVISIONS**

Applications

Section 10 of the bill amends section 614 of the Act to provide that a local educational agency must submit an application to the appropriate State educational agency. Such application shall—

- (1) provide satisfactory assurances that payments under part B will be used for excess costs directly attributable to programs which—
 - (a) provide for identification, location, evaluation, and inclusion of all handicapped children residing within the jurisdiction of the local educational agency;
 - (b) establish policies and procedures to protect confidentiality of data and information developed or obtained on handicapped children; and
 - (c) establish—
 - (i) the goal of providing full educational opportunities to all handicapped children through comprehensive personnel development, setting priorities for those not receiving services and those with severe handicaps;
 - (ii) maintenance of special facilities for priority children;
 - (iii) parental participation and consultation; and
 - (iv) to the maximum extent practicable, the inclusion of priority children in the regular education program;
- (2) provide for policies and procedures which assure that the distribution of funds under part B reflect the excess cost of serving handicapped children in each local educational agency;
- (3) provide for satisfactory assurances that Federal funds will be used to supplement and increase the level of State and local funds, not supplant them;
- (4) provide for satisfactory assurances of fiscal control;

- (5) provide for policies and procedures for annual reports and recordkeeping relating to performances which will be assessable to the public;
- (6) provide for satisfactory assurances of an individualized education program for all handicapped children which is revised when appropriate;
- (7) provide that the policies and procedures of the local educational agency will be consistent with the provisions of the State plan; and
- (8) provide for satisfactory assurances that the local educational agency will establish the grievance procedures required by section 617, as amended by section 10 of the bill.

This section also amends section 614 of the Act to provide that a State educational agency may disapprove the application of a local educational agency if the State educational agency determines that the application does not meet the requirements established by section 614.

This section also amends section 614 of the Act to provide that whenever a State educational agency finds that a local educational agency has failed to comply with any requirement in an application for allotments approved by the State educational agency, the State educational agency shall either stop making payments to the local educational agency until the local educational agency complies with the requirement involved, or take into account its finding of noncompliance during its review of any application for an allotment made by the local educational agency.

This section also amends section 614 of the Act to set requirements for consolidation of local educational agency applications when necessary. Authority of the State in instances when local educational agencies are unwilling or unable to consolidate, is given to the State to serve handicapped children residing in the school district. The section also amends section 614 to provide for the allocation of funds to agencies which have been consolidated, and to provide for allocations to intermediate level educational agencies, where such intermediate level agencies are required by State law to provide education and services to handicapped children.

This section also adds 4 new sections to the Act, each of which is described below.

Administration

Section 615 of the Act cites the duties of the Commissioner in carrying out part B of the Act. These include: cooperating with and rendering technical assistance to the States; providing short-term training programs and institutes; disseminating information; and prescribing a uniform accounting procedure for States in submission of State plans.

Evaluation

Section 616 cites the authority of the Commissioner to either directly or through grants or contracts conduct studies, investigations, and evaluations to assure effective implementation of the amendments made by the bill to provide free appropriate public education to all

handicapped children. The Commissioner is also mandated to provide for the collection and annual reporting of programmatic information regarding the programs and projects carried on under the amendments made by the bill, including such information as, numbers of handicapped children participating in programs, types of handicaps, the number of persons needing the services, and the amount of Federal, State, and local expenditures specifically used for the education of the handicapped. The Commissioner also is given responsibility for the development of effective methods and procedures of evaluation. This section also specifies that the Commissioner submit to the appropriate committees of the Congress a report regarding the progress being made toward the provision of free appropriate public education for all handicapped children.

Grievance procedures

Section 617(a) requires local educational agencies to establish and maintain grievance procedures relating to the provision of special education and related services to handicapped children. Such grievance procedures shall give parents and guardians of handicapped children an opportunity to present complaints relating to the manner in which services are provided to their children.

Subsection (a) also requires local educational agencies to investigate complaints and transmit to the State educational agency a report of the findings of such investigations, together with a description of recommendations or dispositions made by the local educational agency.

Subsection (b) provides that any parent, guardian, or other person disagreeing with any such recommendation or disposition may file an appeal with the State educational agency. The State educational agency shall review the actions of the local educational agency and shall investigate the factual circumstances relating to the complaint involved.

Subsection (b) also provides that the State educational agency may conduct investigations of local educational agency actions upon its own motion.

Subsection (c) provides that persons participating in hearings conducted by local educational agencies or State educational agencies may be accompanied and advised by counsel and by individuals with special knowledge regarding the problems of handicapped children.

Subsection (d) provides that if a State educational agency determines that a local educational agency has failed to provide special education and related services in accordance with the provisions of the Act, the State educational agency shall attempt to correct the failure by using informal methods of conference, conciliation, and persuasion. The State educational agency also is required to establish and maintain a procedure under which it may take such measures as may be necessary to correct any such failure in any case in which the State educational agency cannot correct such failure through informal methods.

Subsection (d) also requires the State educational agency to transmit to the Commissioner a report regarding any determination made by the State educational agency with respect to the failure of a local educational agency to comply with the provisions of part B of the Act.

Subsection (d) also provides that the State educational agency may take into account its determination of noncompliance in reviewing any future funding application made by the local educational agency involved.

Subsection (d) also provides that any findings of fact made by a State educational agency with respect to any determination of such agency under subsection (d) shall be conclusive in any court of the United States if supported by substantial evidence.

Rules

Section 618 requires the Commissioner to prescribe and publish rules to carry out part B of the Act in the Federal Register no later than 120 days after the effective date of the bill.

EDUCATIONAL MEDIA AND MATERIALS CENTERS

Section 11 of the bill amends section 653 of the Act to authorize the Secretary of Health, Education, and Welfare to enter into agreements with higher education institutions, State and local educational agencies, and other nonprofit agencies, for the establishment and operation of educational media and materials centers for the handicapped, and to direct the Secretary to report to the Congress annually on activities under section 653.

GRANTS FOR REMOVAL OF ARCHITECTURAL BARRIERS

Section 12 of the bill authorizes the Commissioner to make grants to State and local educational agencies to pay part or all of the costs of altering existing buildings and equipment to remove the architectural barriers facing handicapped individuals.

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

Section 13 of the bill amends section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) which adds a new sentence concerning congressional disapproval of regulations.

EFFECTIVE DATES

Section 14 of the bill provides that amendments made by sections 4, 5, 6, 7, and 8 are to take effect at the close of September 30, 1977. All other amendments in the sections of the bill are to take effect at the close of June 30, 1975.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman) :

EDUCATION OF THE HANDICAPPED ACT¹

PART A—GENERAL PROVISIONS

SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. (a) This title may be cited as the "Education of the Handicapped Act".

(b) *The Congress finds that—*

(1) *there are more than eight million handicapped children in the United States today;*

(2) *the special educational needs of such children are not being fully met;*

(3) *more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;*

(4) *one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;*

(5) *there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;*

(6) *because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;*

(7) *developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education programs and related services to meet the needs of handicapped children;*

(8) *State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and*

¹The following text shows changes in existing law which shall take effect at the close of June 30, 1975.

(9) *it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children.*

(c) *It is the purpose of this title to assure that all handicapped children have available to them special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.*

* * * * *

PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

GRANTS TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

SEC. 611. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels in order to provide full educational opportunities to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under three years of age.

(b)(1) Subject to the provisions of section 612, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

(A) the number of children aged three to twenty-one inclusive, in that State in the most recent fiscal year for which satisfactory data are available;

multiplied by—

(B) \$8.75.

(2) For the purpose of this subsection, the term "State" does not include [the Commonwealth of Puerto Rico,] Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c)(1) The jurisdictions to which this subsection applies are [the Commonwealth of Puerto Rico,] Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall, for the fiscal [year ending June 30, 1975,] years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977, be entitled to a grant in an amount equal to an amount determined by the Commissioner, in accordance with criteria established by regulations, needed to initiate, expand, or improve programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels, in that jurisdiction, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 2 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding

sentence, to be so needed for any fiscal year exceeds an amount equal to such 2 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 2 per centum limitation.

(d) The Commissioner is authorized for the fiscal [year ending June 30, 1975,] years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977, to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior, and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.

ALLOCATIONS OF APPROPRIATIONS

SEC. 612. (a) Sums appropriated for the fiscal [year ending June 30, 1975] years ending June 30, 1975, and 1976, for the fiscal year ending September 30, 1977, shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the [fiscal year 1974] preceding fiscal year, or \$300,000, whichever is greater.

(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 611 (to the extent that such entitlements are unsatisfied) ratably reduced.

(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.

(d) The Commissioner shall, no later than one hundred and twenty days after the effective date of this subsection, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this section and section 611.

EDUCATION AMENDMENTS OF 1974 ²

STATE ENTITLEMENTS

SEC. 614. (a) Effective for [fiscal year 1975] the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending Septem-

² The following text shows changes in existing law which shall take effect at the close of June 30, 1975.

ber 30, 1977, only, section 611 of the Education of the Handicapped Act is amended to read as follows:

* * * * *

(b) Effective for [fiscal year 1975] the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977, only, section 612 of such Act is amended to read as follows:

* * * * *

(c) Effective for [fiscal year 1975] the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977, only, section 613(a) of such Act is amended by striking out "desires to receive grants" in the first sentence of such subsection and inserting in lieu thereof "is entitled to receive payments".

* * * * *

[(e) (1) Section 611(a) of the Education of the Handicapped Act is amended by inserting before the period the following: "in order to provide full educational opportunity to all handicapped children".

[(2) Subsection (b) of section 611 of the Education of the Handicapped Act is amended to read as follows:

[(b) For the purpose of making grants under this part, there are authorized to be appropriated \$100,000,000 for the fiscal year ending June 30, 1976, and \$110,000,000 for the fiscal year ending June 30, 1977."

[(3) The amendment made by subsection (e) shall become effective and shall be deemed to have been enacted on July 1, 1975.]

[(f) (e) (1) Section 612(a) (1) (B) of such Act is amended by striking out "1973" and inserting in lieu thereof "1977".

(2) The amendment made by this subsection shall be effective on and after July 1, 1973.

ADDITIONAL STATE PLAN REQUIREMENT

SEC. 615. [(a) (1) Effective on and after July 1, 1975, section 612 (a) (2) of the Education of the Handicapped Act is amended by striking out "\$200,000" and inserting in lieu thereof "\$300,000".]

[(2) (a) Effective on and after [July 1, 1975,] October 1, 1977, section 612(a) of such Act is amended by inserting at the end thereof the following new paragraph:

"(3) No State shall, in any fiscal year, be required to expend amounts allotted pursuant to this section to carry out the provisions of paragraph (1) of section 613(b) unless that State receives an amount greater than the amount allotted to that State for the fiscal year ending June 30, 1973."

(b) Section 613(a) (1) of such Act is amended by striking out "\$100,000" and inserting in lieu thereof "\$200,000".

(c) (1) Section 613 of such Act is amended by redesignating subsections (b), (c), and (d) of such section, and all references thereto, as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following:

"(b) (1) Any State which desires to receive a grant under this part for any fiscal year beginning after June 30, 1975, shall submit to the

Commissioner for approval not later than one year after the enactment of the Education of the Handicapped Amendments of 1974, through its State educational agency an amendment to the State plan required under subsection (a), setting forth in detail the policies and procedures which the State will undertake in order to assure that—

“(A) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of 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;

“(B) policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State;

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

“(D) the amendment submitted by the State pursuant to this subsection shall be available to parents and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

For the purpose of this part, any amendment to the State plan required by this subsection and approved by the Commissioner shall be considered, after June 30, 1975, as a required portion of the State plan.

“(2) The requirement of paragraph (1) of this subsection shall not be effective with respect to any fiscal year in which the aggregate of the amounts allotted to the States for this part for that fiscal year is less than \$45,000,000.”

(2) Section 613(e)(1) of such Act (as redesignated by this section) is amended by striking out “subsection (c)” and inserting in lieu thereof “subsection (d)”.

(d) The amendment made by [subsections (a)(1) and] subsection (b) of this section shall be effective in any fiscal year for which the aggregate of the amounts allotted to the States for that fiscal year for carrying out part B of the Education of the Handicapped Act is \$45,000,000 or more.

* * * * *

TREATMENT OF PUERTO RICO AS A STATE

SEC. 843. (a)(1) Section 143(b) of the Elementary and Secondary Education Act of 1965, 202(a)(1), and 302(a)(1) of such Act are each amended by striking out “Puerto Rico.”

(2) Section 202(a)(2), 302(a)(2), 307(b), 502(a)(1), 522(a), 531(c)(1)(A), and 531(c)(1)(B) of such Act are each amended by striking out “the Commonwealth of Puerto Rico,” each time it appears.

(3) Sections 202(a)(1) and 302(a)(1) of such Act are each amended by striking out “3 per centum” and inserting in lieu thereof “1 per centum”. Sections 502(a)(1), 522(a), and 531(c)(1)(A) of

such Act are each amended by striking out “2 per centum” and inserting in lieu thereof “1 per centum”.

(b)(1) Effective after [June 30, 1975] *September 30, 1977*, section 612(a)(1) of the Education of the Handicapped Act is amended by striking out “Puerto Rico.”

(2) Effective after [June 30, 1975] *September 30, 1977*, [sections 612(a)(2) and] section 613(a)(1) of the Education of the Handicapped Act [are each] is amended by striking out “the Commonwealth of Puerto Rico.”

(3) Effective after [June 30, 1975] *September 30, 1977*, section 612(a)(1) of the Education of the Handicapped Act is amended by striking out “3 per centum” and inserting in lieu thereof “1 per centum”.

(c)(1) Section 303(f) of the Adult Education Act is amended by striking out “the Commonwealth of Puerto Rico,” where it occurs, and by inserting “the Commonwealth of Puerto Rico,” after “the District of Columbia.”

(2) Section 305(a) of such Act is amended by striking out “Puerto Rico.”

(3) Section 305(a) of the Adult Education Act is amended by striking out “2 per centum” and inserting in lieu thereof “1 per centum”.

(d) Notwithstanding any provision of part A of title I of the Elementary and Secondary Education Act of 1965, the amount which the Commonwealth of Puerto Rico is eligible to receive under subpart 1 of such part A or under sections 121, 122, or 123 for the fiscal year ending June 30, 1975, shall not exceed 50 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such subpart or section but for this subsection, and for the fiscal years ending June 30, 1976, June 30, 1977, and June 30, 1978, such amount shall not exceed 75 per centum of the full amount the Commonwealth of Puerto Rico would receive (after required ratable reductions) under such subpart or section but for this subsection.

(e) Unless otherwise specifically provided, the amendments made by this section shall be effective on and after July 1, 1974.

SECTION 431 OF THE GENERAL EDUCATION PROVISIONS ACT³

SUBPART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

RULES: REQUIREMENTS AND ENFORCEMENT

SEC. 431. (a) Rules, regulations, guidelines, or other published interpretations or orders issued by the Department of Health, Education, and Welfare or the Office of Education, or by an official of such agencies, in connection with, or affecting, the administration of any applicable program shall contain immediately following each substantive provision of such rules, regulations, guidelines, interpretations, or orders, citations to the particular section or sections of

³ The following text shows changes in existing law which shall take effect at the close of June 30, 1975.

statutory law or other legal authority upon which such provision is based.

(b) (1) No standard, rule, regulation, or requirement of general applicability prescribed for the administration of any applicable program may take effect until thirty days after it is published in the Federal Register.

(2) (A) During the thirty-day period prior to the date upon which such standard, rule, regulation, or general requirement is to be effective, the Commissioner shall, in accordance with the provisions of section 553 of title 5, United States Code, offer any interested party an opportunity to make comment upon, and take exception to, such standard, rule, regulation, or general requirement and shall reconsider any such standard, rule, regulation, or general requirement upon which comment is made or to which exception is taken.

(B) If the Commissioner determines that the thirty-day requirement in paragraph (1) will cause undue delay in the implementation of a regulation, thereby causing extreme hardship for the intended beneficiaries of an applicable program, he shall notify the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate. If neither committee disagrees with the determination of the Commissioner within 10 days after such notice, the Commissioner may waive such requirement with respect to such regulation.

(c) All such rules, regulations, guidelines, interpretations, or orders shall be uniformly applied and enforced throughout the fifty States.

(d) (1) Concurrently with the publication in the Federal Register of any standard, rule, regulation, or requirement of general applicability as required in subsection (b) of this section, such standard, rule, regulation, or requirement shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such standard, rule, regulation, or requirement shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the standard, rule, regulation, or requirement is inconsistent with the Act from which it derives its authority, and disapprove such standard, rule, regulation, or requirement. *Failure of the Congress to adopt such a concurrent resolution with respect to any such standard, rule, regulation, or requirement prescribed under any such Act, shall not represent, with respect to such standard, rule, regulation, or requirement, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.*

(2) The forty-five-day period specified in paragraph (1) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days, or less, the forty-five-day period shall not be deemed to have elapsed earlier than ten days after the end of

such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five-day period shall be deemed to have elapsed after thirty calendar days has elapsed, unless, during those thirty calendar days, either the Committee on Education and Labor of the House of Representatives, or the Committee on Labor and Public Welfare of the Senate, or both, shall have directed its chairman, in accordance with said committee's rules, and the rules of that House, to transmit to the appropriate department or agency head a formal statement of objection to the proposed standard, rule, regulation, or requirement. Such letter shall suspend the effective date of the standard, rule, regulation, or requirement until not less than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this subsection. In no event shall the standard, rule, regulation, or requirement go into effect until the forty-five-day period shall have elapsed, as provided for in this subsection, for both Houses of the Congress.

(e) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the agency which issued such standard, rule, regulation, or requirement may thereafter issue a modified standard, rule, regulation, or requirement to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the proposed standard, rule, regulation, or requirement of general applicability earlier disapproved and how the agency believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(f) For the purposes of subsections (d) and (e) of this section, activities under sections 404, 405, and 406 of this title, and under title IX of the Education Amendments of 1972 shall be deemed to be applicable programs.

(g) Not later than sixty days after the enactment of any part of any Act affecting the administration of any applicable program, the Commissioner shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate a schedule in accordance with which the Commissioner has planned to promulgate rules, regulations, and guidelines implementing such Act or part of such Act. Such schedule shall provide that all such rules, regulations, and guidelines shall be promulgated within one hundred and eighty days after the submission of such schedule. Except as is provided in the following sentence, all such rules, regulations, and guidelines shall be promulgated in accordance with such schedule. If the Commissioner finds that, due to circumstances unforeseen at the time of the submission of any such schedule, he cannot comply with a schedule submitted pursuant to this subsection, he shall notify such committees of such finding and submit a new schedule. If both such committees notify the Commissioner of their approval of such new schedule, such rules, regulations, and guidelines shall be promulgated in accordance with such new schedule.

* * * * *

EDUCATION OF THE HANDICAPPED ACT⁴

PART A—GENERAL PROVISIONS

[DEFINITION] DEFINITIONS

SEC. 602. As used in this title—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, [crippled] *orthopedically impaired*, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any *public educational agency or any other public institution or agency having administrative control and direction of a public elementary or secondary school.*

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, *cultural, or economic disadvantage.*

(16) The term "*special education*" means *specialty designed instruction to meet the unique needs of a handicapped child as set forth in the individualized education program of such child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.*

(17) The term "*related services*" means *transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychology, physical and occupational therapy, recreation, and medical and counseling services, except*

⁴ In the following text, the Education of the Handicapped Act is shown in roman as it shall exist at the close of September 30, 1977, incorporating previously enacted changes which are not currently in effect but shall take effect at that time. The changes in such existing law proposed by the bill shall take effect at the close of September 30, 1977.

that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education. Such term includes the early identification and assessment of handicapping conditions in children.

(18) The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(a)(7).

(19) The term "individualized education program" means an educational plan for each handicapped child developed jointly by the local educational agency and an appropriate teacher involved with the education of such child, in consultation with the parents or guardians of such child, and, whenever appropriate, such child, which includes (A) a statement of the present levels of educational performance of such child; (B) a statement of the desired instructional objectives; (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs; (D) the projected date for initiation and anticipated duration of such services; and (E) objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(20) The term "public educational agency" means any State educational agency or any other public agency approved by a State educational agency to provide special educational and related services to handicapped children within the State involved.

(21) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965; and (B) any State, local, or private funds expended for programs which would qualify for assistance under this part or under such titles.

PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

[AUTHORIZATION

[SEC. 611. (a) The Commissioner is authorized to make grants pursuant to the provisions of this part for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels in order to provide full educational opportunity to all handicapped children.

[(b) For the purpose of making grants under this part, there are authorized to be appropriated \$100,000,000 for the fiscal year ending

June 30, 1976, and \$110,000,000 for the fiscal year ending June 30, 1977.]

PAYMENTS

SEC. 611. (a) *The Commissioner shall make payments to each State in amounts which such State and the local educational agencies of such State are eligible to receive under this part. Any State receiving payments under this subsection shall distribute payments to the local educational agencies of such State in amounts which such agencies are eligible to receive under this part after the State educational agency has approved applications of such local educational agencies for allotments in accordance with section 613(f).*

(b) *Payments under this part may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.*

ALLOTMENT OF FUNDS; LIMITATION ON NUMBER OF CHILDREN COUNTED; REDUCTIONS NECESSITATED BY APPROPRIATIONS

SEC. 612. (a) (1) There is hereby authorized to be appropriated for each fiscal year for the purposes of this paragraph an amount equal to not more than 1 per centum of the amount appropriated for such year [for payments to States under section 611(b)] to make grants under this part. The Commissioner shall allot the amount appropriated pursuant to this paragraph among—

(A) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, according to their respective needs, and

(B) for each fiscal year ending prior to July 1, 1977, the Secretary of the Interior, according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to [such criteria as the Commissioner determines will best carry out the purposes of this part] the provisions of paragraph (2).

[(2) From the total amount appropriated pursuant to section 611(b) for any fiscal year the Commissioner shall allot to each State an amount which bears the same ratio to such amount as the number of children aged three to twenty-one, inclusive, in the State bears to the number of such children in all the States, except that no State shall be allotted less than \$300,000 or three-tenths of 1 per centum of such amount available for allotment to the States, whichever is greater. For purposes of this paragraph and subsection (b), the term "State" shall not include Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.]

(2) *The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Commissioner a plan which meets the applicable requirements of section 613(a) and which is approved by the Commissioner. The provisions of sections 613(c), 613(d), and 613(e) shall apply to any such plan.*

(8) No State shall, in any fiscal year, be required to expend amounts allotted pursuant to this section to carry out the provisions of paragraph (1) of section 618(b) unless that State receives an amount greater than the amount allotted to that State for the fiscal year ending June 30, 1973.

[(b) The number of children aged three to twenty-one, inclusive, in any State and in all the States shall be determined, for purposes of this section, by the Commissioner on the basis of the most recent satisfactory data available to him.

[(c) The amount of any State's allotment under subsection (a) for any fiscal year which the Commissioner determines will not be required for that year shall be available for reallocation, from time to time and on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under subsection (a) for that year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for that year.]

(b) (1) *Except as provided in subsection (c) (1), from the total amount appropriated for any fiscal year, the Commissioner shall allot to each local educational agency an amount equal to the product of—*

(A) *the number of handicapped children in the school district of the local educational agency who are enrolled in programs of free appropriate public education which meet the criteria established in section 614(a) (1); and*

(B) *50 per centum of the average per pupil expenditure in public elementary and secondary schools in the United States.*

(2) *The number of handicapped children enrolled in any fiscal year in programs described in paragraph (1) (A) shall be equal to the average of the number of such children enrolled on October 1 and February 1 of the preceding fiscal year.*

(3) *For purposes of paragraph (1) (B), the term "average per pupil expenditure" has the meaning given it by section 403(16) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress).*

(4) *Notwithstanding any other provision of this part, each State shall be entitled to a level of funding for any fiscal year which is at least equal to the level of funding which such State received for the fiscal year ending September 30, 1977, or \$300,000, whichever is greater.*

(c) (1) *The Commissioner, in determining the allotment of local educational agencies of the same State under subsection (b) (1), may not count handicapped children in such State under subsection (b) (1) (A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State, and may not count, as part of such percentage, children with specific learning disabilities to the extent the number of such children is greater than one-sixth of such percentage.*

(2) *For purposes of paragraph (1), the number of children aged five to seventeen, inclusive, in any State shall be determined by the*

Commissioner on the basis of the most recent satisfactory data available to him.

(d)(1) If the sums appropriated for any fiscal year for making payments under this part are not sufficient to pay in full the total amounts which all local educational agencies are eligible to receive under this part for such fiscal year, the maximum amounts which all such agencies are eligible to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments, for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which local educational agencies are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency shall report to it on the amount of funds available to the local educational agency, under the provisions of subsection (b)(1) and paragraph (1), which it estimates that it will expend in accordance with the provisions of this part. The amounts so available to any local educational agency, or any amount which would be available to any other local educational agency if it were to submit an approvable program, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in the last sentence of paragraph (1), which the State educational agency determines will need additional funds to carry out approved programs, except that no local educational agency may receive an amount under this sentence which, when added to the amount available to it under paragraph (1), exceeds its allotment under subsection (b)(1).

STATE PLANS

SEC. 618. (a) Any State which is entitled to receive payments under this part shall submit to the Commissioner through its State educational agency a State plan (not part of any other plan) in such detail as the Commissioner deems necessary. Such State plan shall—

(1) set forth such policies and procedures as will provide satisfactory assurance that funds paid to the State under this part will be expended (A) either directly or through individual, or combinations of, local educational agencies, solely to initiate, expand, or improve programs and projects, including preschool programs and projects, (i) which are designed to meet the special educational and related needs of handicapped children throughout the State, (ii) which are designed to assure that, after September 30, 1978, no handicapped child residing in such State who is within an age group for which free public education is provided in such State shall be denied appropriate special education and related services, and [(ii)] (iii) which are of sufficient size, scope, and quality (taking into consideration the special educational

needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and (B) for the proper and efficient administration of the State plan (including State leadership activities and consultative services), and for planning on the State and local level: *Provided*, That the amount expended for such administration and planning shall not exceed 5 per centum of the amount allotted to the State for any fiscal year or \$200,000 (\$35,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), whichever is greater;

* * * * *
 (12) (A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education; [and]

(18) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children including, but not limited to (A) (i) prior notice to parents or guardians of the child when the local or State educational agency proposes to change the educational placement of the child, (ii) an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education or care of children) to act as a surrogate for the parents or guardians, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; and (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular 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; and (C) procedures to insure the testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory[.];

(14) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law

to make such appointments, 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, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children; (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 616;

(15) provide that the State educational agency shall (A) hear appeals from any local educational agency, or any parent or guardian of a handicapped child, with respect to the outcome of any hearing held as a result of any complaint presented in accordance with a grievance procedure established under section 617 (a) (1); (B) establish and maintain compliance procedures in accordance with the provisions of section 617; (C) inform the Commissioner under section 617 with respect to the nature of any such appeal and the resolution of such appeal by the State educational agency; and (D) carry out any other requirement established by section 617;

(16) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program (including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2); section 305 (b) (8) of such Act (20 U.S.C. 844a (b) (8)) or its successor authority; and section 122 (a) (4) (B) of the Vocational Education Act of 1963 (20 U.S.C. 1262 (a) (4) (B))) under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children; and

(17) provide that handicapped children in private schools and facilities will be provided special education and related services on the same basis as handicapped children in public elementary and secondary schools and at no cost to their parents or guardians, if such children are placed in or referred to such schools or facilities by the local educational agency involved as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and that in all such instances the State educational agency shall assure that such schools and facilities meet standards which apply to public educational agencies and that children so served have all the rights they would have if served in public educational agencies.

* * * * *

(d) (1) The Commissioner shall not approve any State plan pursuant to this section for any fiscal year unless the plan has, prior to its submission, been made public as a separate document by the State educational agency and a reasonable opportunity has been given by that agency for comment thereon by interested persons (as defined by regulation). The State educational agency shall make public the plan as finally approved. The Commissioner shall not finally disapprove any plan submitted under this section or any modification thereof, without first affording the State educational agency submitting the plan reasonable notice and opportunity for a hearing.

(2) Whenever the Commissioner, after reasonable notice and opportunity for hearing to such State agency (and to any local educational agency affected by any failure described in subparagraph (B)), finds—

(A) that the State plan has been so changed that it no longer complies with the provisions of this part, or

(B) that in the administration of the plan there is a failure to comply [substantially] with any such provision or with any requirements set forth in the application of a local educational agency approved pursuant to such plan,

the Commissioner shall notify the agency that further payments will not be made to the State under this part or under the Federal programs specified in subsection (a) (16) within his jurisdiction and control to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children (or in his discretion, that further payments to the State will be limited to programs or projects under the State plan, or portions thereof, not affected by the failure, or that the State educational agency shall not make further payments under this part to specified local agencies affected to the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, the Commissioner shall make no further payments to the State under this part or under the Federal programs specified in subsection (a) (16) within his jurisdiction and control to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children (or shall limit payments to programs or projects under, or parts of, the State plan not affected by the failure, or payments by the State educational agency under this part shall be limited to local educational agencies not affected by the failure, as the case may be). Any State educational agency or local educational agency in receipt of a notice pursuant to the first sentence of this paragraph shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this paragraph to the attention of the public within the jurisdiction of such agency.

(e) (1) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under subsection (a) or with his final action under subsection (d), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The

Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) *A State educational agency shall approve any application transmitted by a local educational agency under section 614(a) if the State educational agency determines that such application meets the requirements of section 614(a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Commissioner under subsection (c).*

【PAYMENTS

【SEC. 614. From the amounts allotted to each State under this part, the Commissioner shall pay to that State an amount equal to the amount expended by the State in carrying out its State plan.】

APPLICATION

SEC. 614. (a) *A local educational agency which desires to receive an allotment under this part for any fiscal year may transmit an application for such allotment to the appropriate State educational agency. Such application shall—*

(1) *provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—*

(A) *provide that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;*

(B) *establish policies and procedures in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of data and information developed or obtained under subparagraph (A);*

(C) *establish—*

(i) *a goal of providing full educational opportunities to all handicapped children, including (I) programs and*

procedures for the development and implementation of a comprehensive system of personnel development which shall include the in-service training of general and special educational, instructional, and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, and the development of effective procedures for acquiring and disseminating to teachers of, and administrators of programs for, handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; (II) *the provision of special education and related services to handicapped children, with first priority given to the provision of such education and services to handicapped children who are not receiving such education and services, and second priority given to the provision of such education and services to handicapped children, within each disability, with severe handicaps who are not receiving adequate special education and related services;* (III) *the maintenance of special facilities for handicapped children;* (IV) *the participation and consultation of parents or guardians of such children; and* (V) *to the maximum extent practicable, the provision of special services to enable such children to participate in regular educational programs;*

(ii) *a detailed timetable for accomplishing such a goal; and*

(iii) *a description of the kind and number of facilities, personnel, and services necessary to meet such a goal;*

(2) *provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property; (B) Federal funds expended for programs under this part shall be used to pay only the excess costs directly attributable to the education of handicapped children, and shall also provide satisfactory assurance that such funds shall be used to supplement and, to the extent practicable, increase the level of State, local, and private funds expended for the education of handicapped children, and in no case to supplant such State, local, and private funds; and (C) State and local funds will be used in the school district of such local educational agency to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such district which are not receiving funds under this part;*

(3) *set forth effective procedures, including provisions for appropriate objective measurements of educational achievement, for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of handicapped children;*

(4) (A) provide for making an annual report and such other reports to the State educational agency, in such form and containing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

(B) provide for keeping such records, and afford such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such reports;

(5) provide for making the application and all pertinent documents related to such application available to parents and other members of the general public, and provide that all evaluations and reports required under paragraph (4) shall be public information;

(6) provide satisfactory assurance that the local educational agency has in effect a policy which assures all handicapped children the right to a free appropriate public education;

(7) provide satisfactory assurance that the local educational agency will maintain an individualized education program for each handicapped child, and will review (at least annually) and revise its provisions whenever appropriate, in consultation with the parents or guardians of the handicapped child;

(8) provide satisfactory assurance that policies and programs established and administered by the local educational agency shall be consistent with the provisions of the State plan of the State educational agency; and

(9) provide satisfactory assurance that the local educational agency will establish and maintain a grievance procedure in accordance with the provisions of section 617.

(b) (1) A State educational agency may disapprove any application transmitted by a local educational agency under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

(2) (A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency, in the administration of an application for an allotment approved by the State educational agency under section 613(f), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency, shall—

(i) make no further payments to such local educational agency under section 611(a) until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application for an allotment made by such local educational agency under subsection (a).

(B) The provisions of the last sentence of section 613(d) (2) shall apply to any local educational agency receiving any notification from a State educational agency under this paragraph.

(c) (1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to transmit a consolidated application for allotments if such State educational agency determines that any individual application transmitted by any such local educational agency would be disapproved because such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(2) (A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the allotment which such local educational agencies may receive shall be equal to the sum of allotments to which each such local educational agency would be entitled under section 612(b) (1) if an individual application of any such local educational agency had been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications transmitted under this subsection which are consistent with the State plan and which provide participating local educational agencies with joint responsibilities for implementing programs receiving funds under this part.

(C) In any case in which an intermediate educational unit or any other public educational agency is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any allotments received by such intermediate educational unit or by such public educational agency. Such responsibilities shall be carried out exclusively by such intermediate educational unit or by such public educational agency.

(d) In any case in which a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the criteria established in subsection (a) (1);

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the allotment which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

(e) In any case in which a State educational agency determines that a local educational agency is adequately providing special education and related services to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds

(or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 612(b)(1), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

ADMINISTRATION

SEC. 615. (a) In carrying out his duties under this part, the Commissioner shall—

(1) cooperate with, and render all technical assistance necessary (directly or by grant or contract) to, the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

(2) provide such short-term training programs and institutes as may be necessary; and

(3) disseminate information, and otherwise promote the education of all handicapped children within the States.

(b) As soon as practicable after the effective date of this subsection, the Commissioner shall prescribe uniform categories and accounting procedures to be utilized by State educational agencies in submitting State plans under section 613(a) in order to assure equity among the States.

EVALUATION

SEC. 616. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

(b)(1) In carrying out his responsibilities under this part, the Commissioner shall (A) conduct directly, or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part; and (B) provide for the evaluation of such programs through (i) the development of effective methods and procedures for evaluation; and (ii) conducting actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under this part.

(2) In addition to his responsibilities under paragraph (1), the Commissioner, through the National Center for Education Statistics, shall provide to the appropriate committees of each House of the Congress and to the general public, at least annually, and shall update at least annually, the following information: (A) the number of handicapped children in each of the States who require special education and related services; (B) the number of handicapped children in each of the States receiving a free appropriate public education and the number of handicapped children not receiving a free appropriate public education; (C) the number of handicapped children in each of the States who are participating in regular classroom settings, consistent with the requirements of section 613(a)(13)(B), and the number of children who have been placed in separate classes or separate schooling, or who have been otherwise removed from the regular

education environment; (D) the number of handicapped children residing in a public or private institutional setting, in each of the States, who are receiving a free appropriate public education; and the number of such children residing in such settings not receiving a free appropriate public education; (E) the amount of Federal, State, and local expenditures, in each of the States, specifically allotted for special education and related services; and (F) the number of personnel, by disability category, employed in the education of handicapped children, and the estimated number of additional personnel needed to adequately carry out the programs established pursuant to this part in each of the States.

(3) The Commissioner, in providing information under paragraph (2)(E), may base such information upon a sampling of data available from States, State educational agencies, and local educational agencies.

(c)(1) Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b).

(2) The Commissioner shall include in each such report an analysis and evaluation of the effectiveness of procedures undertaken by the States to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities. Such analysis and evaluation shall include any recommendations for change in the provisions of this part, or any other Federal law providing support for the education of handicapped children. In order to carry out such analysis and evaluation, the Commissioner may conduct a statistically valid survey for assessing the effectiveness of individualized education programs.

(d) The Commissioner may hire personnel necessary to conduct data collection and evaluation activities required by subsections (b) and (c) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title, relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

GRIEVANCE PROCEDURE

SEC. 617. (a)(1) Any local educational agency which receives any assistance under this part shall establish and maintain a grievance procedure with respect to the provision of special education and related services to handicapped children by such agency. Any such grievance procedure shall provide parents or guardians of handicapped children, and handicapped children, an opportunity to present complaints with respect to the manner in which the handicapped child involved is being provided special education and related services by the local educational agency.

(2) Any local educational agency which receives a complaint in accordance with the procedure established under paragraph (1) shall conduct an investigation of such complaint. The local educational agency, upon completing such investigation, shall transmit a report of the findings of such investigation to the State educational agency, together with a description of any recommendation or disposition made by the local educational agency.

(b) (1) Any person aggrieved by any recommendation or disposition made by a local educational agency in accordance with subsection (a) (2), may file an appeal with the State educational agency with respect to such action.

(2) The State educational agency, upon receiving any appeal under paragraph (1), shall review the action of the local educational agency involved and shall conduct an investigation of the factual circumstances relating to the original complaint.

(3) In any case in which the State educational agency receives a report from a local educational agency under subsection (a) (2), the State educational agency may, upon its own motion, conduct an investigation in the same manner as any investigation conducted under paragraph (2).

(c) Any person participating in any hearing conducted by a local educational agency or a State educational agency under subsection (a) or subsection (b) shall be accorded the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children.

(d) (1) If a State educational agency determines, as the result of any investigation conducted under subsection (b) and after reasonable notice and opportunity for hearing, that a local educational agency has failed to provide special education and related services in accordance with the provisions of this part, the State educational agency shall endeavor to correct such failure by informal methods of conference, conciliation, and persuasion. The State educational agency shall establish and maintain a procedure pursuant to which such agency may take such measures as may be necessary for the expeditious correction of any such failure in any case in which such agency is unable to correct any such failure through informal methods.

(2) The State educational agency shall transmit to the Commissioner a report with respect to any determination of such agency under paragraph (1). Each such report shall contain a description of any action taken by the State educational agency to correct the failure involved. The State educational agency shall take into account its determination under paragraph (1) in its review of any application for an allotment made by the local educational agency involved under section 614(a).

(3) The findings of fact of a State educational agency with respect to any determination of such agency under paragraph (1) shall be conclusive in any court of the United States if supported by substantial evidence, except that the court involved, for good cause shown, may remand the case to the State educational agency to take further evidence. Any new or modified findings of fact made by the State educational agency shall be conclusive if supported by substantial evidence.

RULES

SEC. 618. The Commissioner shall, no later than one hundred and twenty days after the effective date of this section, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this part, as amended by the Education for All Handicapped Children Act of 1975.

PART F—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

[NATIONAL CENTER ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

[SEC. 653. (a) The Secretary is authorized to enter into an agreement with an institution of higher education for the establishment and operation of a National Center on Educational Media and Materials for the Handicapped, which will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing and developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in the agreement. Such agreement shall—

[(1) provide that Federal funds paid to the Center will be used solely for such purposes as are set forth in the agreement;

[(2) authorize the Center, subject to the Secretary's prior approval, to contract with public and private agencies and organizations for demonstration projects; and

[(3) provide for an annual report on the activities of the Center which will be transmitted to the Congress.

[(b) In considering proposals from institutions of higher education to enter into an agreement under this subsection, the Secretary shall give preference to institutions—

[(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

[(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).]

CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

(2) authorize such center, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped.

(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.

ADDITIONAL VIEWS

EDUCATION OF THE HANDICAPPED ACT

We, as Members of the Committee, whole heartedly support this legislation which we consider to be the most meaningful and beneficial step ever taken by the Congress in behalf of this nation's handicapped citizens. While we each voted to report the bill from the Committee, we believe that when it comes before the full House a change ought to be made in the authorization levels.

AUTHORIZATION LEVELS

If one reads the bill and the report and studies the potential levels of expenditure called for, you will see that they, fully funded, amount to \$680 million, \$680 million for fiscal 1976 and 1977 and \$2.4 to \$3.9 billion each year thereafter depending on the number of handicapped served and using 1974 public education costs totaling over \$13 billion over five years. In 1975 we appropriated \$100 million for these programs. The kindest thing that we can say about such authorization levels is that it is *unrealistic*. To expect or even suggest that it can be reached, given the restrictions and limitations of the Federal budget today and in the future is pure folly. This is not to say that considerable dollars are not needed today to help states provide full and appropriate education to handicapped children, but it is simply irrational to suggest that figures such as these will be achieved from the Federal government over the next five years. These figures represent a dream which we feel is an empty promise for the handicapped and their parents.

Realistically, given the best of all worlds, if this bill were signed into law as written and with these entitlement levels, it is highly unlikely that there would be appropriated more than \$200 million in 1976 with a budget request of \$50 million. We believe that authorizations more in line with what is achievable would be a more honest way to proceed with this legislation.

So that our colleagues can better understand what the issue is, the following is a brief explanation of how the formula in the bill for distributing funds works.

First, it extends the so-called "Mathias" formula for two fiscal years. This formula authorizes funding at \$680 million per year by multiplying children age 3 to 21 by \$8.75. In the third year and all of the years thereafter, the bill contains a formula distributing appropriated funds on the basis of the number of handicapped children in Local Education Agency (LEA) who are enrolled in programs, and 50 percent of the national average for student expenditures in elementary and secondary schools.

Presently 3.8 million children were served last year and 50 percent of the national average per pupil expenditure is \$625, totaling \$2.38

billion. The Bureau of Education for the Handicapped estimates that \$4.1 billion might be the figure this year which would total \$2.56 billion.

The net effect of the formula is the more handicapped children are served, the more a state and LEA will be eligible to receive. If sufficient funds are not available to fully fund all of the eligible children, then funding for each state will be *ratably* reduced as in the existing law.

Although the bill sets up an incentive for the states to serve more children, an effort to reduce the incentive for a state to mislabel children as handicapped is through the limit in the bill that the number of handicapped claimed could not exceed 12 percent of all children age 5 to 17 within each state. If all handicapped children were served, however, the total authorization for appropriation would be \$3.9 billion, at \$625 per child. Of course, the average expenditure per public school child will be higher by 1976.

We have problems with the fact that the *entitlement* or the target established by the formula forces the Congress to play the numbers game even though the bill contains a *ratable reduction* provision. We recognize that figures vary, but whatever estimate is used, we must project several billion dollars in authorizations. To us, even talking about those figures as a goal at this time is impossible in the light of present Federal budgetary problems.

The concept of distributing money to encourage states to serve more handicapped children may be a very positive one. Therefore, we suggest and intend to offer an amendment when the bill is considered by the full House to have no specific authorization levels and distribute the money on an "equal" basis per handicapped child served to each state.

The House has already set \$110 million as the 1976 figure in its appropriations bill, and it is clear it could not agree on a firm figure as to specifically how much should be authorized over ensuing years. Therefore, it is our judgment that no specific entitlement or authorization be included and that the Congress allow its regular Appropriation and Budget Committee processes to work in determining the actual level of funding by placing no limit on the authorization.

Once again we stress that this bill is a good bill, has totally bipartisan support, and was passed unanimously by the Full Committee on Education and Labor. All Members of the Committee have worked cooperatively in developing it, and we believe that if the change in the dollar level is made by the full House, this bill would truly represent one of the finest Acts ever produced by Congress. We urge all of our colleagues to support us in our efforts to make these desirable modifications.

ALBERT H. QUIE.
ALPHONZO BELL.
JOHN N. ERLNBORN.
JOHN BUCHANAN.
LARRY PRESSLER.
BILL GOODLING.

SUPPLEMENTAL VIEWS OF JOHN M. ASHBROOK

AUTHORIZATION LEVELS

I voted in favor of reporting this bill out of Committee. I did so because I believe that education of handicapped children is an important area, an area that merits our assistance.

I strongly disagree, however, with the authorization levels provided for in this legislation. If fully funded, expenditures could run as high as \$680 million for fiscal 1976 and 1977 and \$2.4 billion to \$3.9 billion for each year thereafter.

This is in sharp contrast to the \$100 million we appropriated in 1975. Furthermore, it is totally unrealistic.

I repeat, it is totally unrealistic to hold out to the education community that we can spend from \$2 to \$4 billion yearly on this program. One of the objections I have always had to many federal aid programs is that false hopes are held out and appropriations do not match the authorizations.

There is no way we can have greatly increased appropriations at a time our budget deficit is running in the \$70 to \$80 billion range. This would be the height of fiscal irresponsibility. In fact, across the board there must be some cuts in federal spending. While funding for a few areas such as education of handicapped children should be moderately increased, the tendency of Congress is to increase everything without thought to where the money will come from.

JOHN M. ASHBROOK.

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FURTHER ADDITIONAL VIEWS

EDUCATION OF THE HANDICAPPED ACT

SPECIFIC LEARNING DISABLED

We, as Members of the Committee, whole heartedly support this legislation which we consider to be the most meaningful and beneficial step ever taken by the Congress in behalf of this nation's handicapped citizens.

There is another area of concern for us which, although it does not involve money, could result in the exclusion of hundreds of thousands or possibly a million children from participation in educational programs that would be formed under this legislation. These are children with specific learning disabilities. They will be affected as a result of the language in the bill that places a cap of 1/6 of the State's total number of handicapped children counted under this bill which may be specific learning disabled. The reason for the 12 percent cap is to help prevent mislabeling as we have already stated. This cap on SLD is contrary to the stated intention of the legislation as well as the actual requirements that will be imposed on state and local education agencies in carrying out the Act.

In reviewing the bill, you will see that in the Statement of Findings it declares in Sec. 5(b) "(1) there are more than seven million handicapped children in the United States today; (2) the special educational needs of such children are not being fully met; (3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity; (4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;". Later in the Findings Section 5(c) it states, "It is the purpose of this title to assure that *all* handicapped children have available to them special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children." When discussing handicapped children throughout the bill the word "*all*" is always used. There is never a suggestion or an implication that types of handicaps will be treated differently in any place, so we see no reason for the 1/6 cap relating to the specific learning disabled. The intention is clearly that "*all*" handicapped children will be beneficiaries of the education and related services authorized by this bill.

Furthermore, through this legislation we have established in Sec. 614(c) II that "first priority given to the provision of such education and services to handicapped children who are not receiving such

education and services." In addition Sec. 9(a)(2) states that there is a requirement that applies to all children, "after September 30, 1978, no handicapped child residing in such State . . . shall be denied appropriate special education and related services." It is totally inconsistent to establish a requirement that every handicapped child must be served and then single out one group and limit their participation in these programs.

One of the arguments for the limitation may be that there are estimated to be 1,966,000 learning disabled children throughout the country and this figure constitutes 24 percent of the total handicapped population. Yet children who are speech impaired constitute 29 percent of the total number of handicapped children, the mentally retarded, 19 percent, and the emotionally disturbed, 16 percent. If there is to be a limit on one group, why should it be the learning disabled and not some other disability? The reasonings as far as we have been able to determine is that out of the total number of handicapped children who are unserved, almost 44 percent have learning disabilities and the proponents of this limitation argue that a good portion of the money would have to be spent on providing education to these children, and might not go to the other disability groups. This would not necessarily be the result even though the first priority is to provide special education for the unserved. The determination as to how the money spent under this legislation will be used, we want to point out, is left up to the local education agency after approval by the State. Another way it may be viewed by those who want to discriminate against SLD is that 88 percent are not now being served, but it must also be pointed out that 82 percent of the emotionally disturbed and 82 percent of the hard of hearing are also not being served.

Most important in this argument is that although specific learning disabled children are estimated to make up 24 percent of the handicapped population in the country, it is essential to recognize that these prevalence figures are not necessarily reflected in every State and do in fact vary drastically when comparing one State to another.

We recognize that many have difficulty in understanding what a SLD is because it is difficult to visualize. If we wanted to describe blindness, we would merely say, "put your hands over your eyes and that is blindness." If we wanted to describe deafness, one could merely move the lips, but not make a sound and thereby at least transmit the notion of deafness. A mongoloid is usually identified as retarded, but the term specific learning disability does not conjure up any particular image.

Specific learning disabilities take many forms. Some children are hyperactive to the extent that they literally cannot sit still or concentrate for more than a few seconds. Some are unable to discriminate between certain shapes of sounds or get their hands to do what the brain tells them to do; still others may reverse letters, for example, the word "cat" may be spelled by a SLD child as "tac." Another child may recognize the word on the blackboard when he sees it, but may not be able to recognize it when spoken aloud. Another may be able to write it but not say it aloud. Still another might recognize the word when it is by itself but not when it is a list with other words.

A SLD child, to the average person, looks completely normal. Their troubles do not usually result from emotional or cultural roots but are assumed to be a result of some physical defect. It is clear, however, that many of these children can be trained to lead normal independent lives if given an appropriate special education.

Because children with specific learning disabilities have just as many needs and just as many rights as any other handicapped child, or any normal child, we hope the full House will join with us in removing this limitation.

ALBERT H. QUIE.
 PETER A. PEYSER.
 JOHN BUCHANAN.
 JAMES M. JEFFORDS.
 LARRY PRESSLER.
 BILL GOODLING.

FURTHER SUPPLEMENTAL VIEWS

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

SPECIFIC LEARNING DISABLED

The title of this legislation, "The Education of All Handicapped Children Act", leaves little to one's imagination, and it will certainly be perceived by the American public to mean exactly what it says and to do exactly that. Indeed, throughout the legislation, as the additional views so amply illustrates, reference is always made to education for *all* children who can be considered handicapped.

Yet, in truth, this act contains one provision which is the antithesis of its avowed intentions. This provision could exclude up to one million children, and perhaps even more when one considers the fact that all our school-aged children who are experiencing some difficulty have not had diagnosis, from participation in educational programs that would be formed under this legislation. These are the children with special learning disabilities. They will be affected as a result of the language of the bill that places a cap of $\frac{1}{6}$ of the State's total number of handicapped children counted under this bill which may be specific learning disabled.

The purpose of the Education for All Handicapped Children Act, as with any other education program offered in the United States, must be to provide the proper environment, teaching techniques, and guidance that will assist each child in utilizing and developing his or her potential to the maximum extent possible. To discriminate against those with specific learning disabilities would be an abrogation of the underlying principle of education, would unnecessarily and flagrantly deny children with average or above average intelligence from becoming productive and satisfied members of society and from being integrated into the public school classroom.

Beyond this, it has frequently been established that children with learning disabilities who do not receive the proper diagnosis and education often develop behavioral problems out of their frustration at their inability to cope with these misunderstood learning difficulties or to compete with their peers. Their exclusion from full coverage under the Act will perpetuate this tragedy, will stymie the development of their potential, and will cause untold sadness and confusion for their parents, families and friends.

If Congress does not act now to alter this misdirected provision, only one choice remains. If we are to be truly honest, the House must change the title of our bill to read, "The Education of Some Handicapped Children Act".

RONALD A. SARASIN.

(67)

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EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

JUNE 2, 1975.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Labor and Public Welfare,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 6]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 6) to provide financial assistance to the States for improved educational services for handicapped children having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

BRIEF SUMMARY OF COMMITTEE BILL

S. 6, as reported from Committee, extends the entitlement formula for payments to States for Fiscal Year 1975 under the Education of the Handicapped Act for one additional fiscal year; adds Congressional findings and a statement of purpose section; adds definitions of certain new terms under the Education of the Handicapped Act necessary to implement the provisions of the Committee bill; establishes a new entitlement formula for payments to States for fiscal years 1977 through 1979; establishes eligibility and application provisions related thereto; establishes provisions relating to administration and evaluation responsibilities of the Commissioner of Education; and adds two new sections to the Education of the Handicapped Act relating to the employment and advancement in employment of qualified handicapped individuals and to grants for the removal of architectural barriers.

SECTION 2—EXTENSION OF ENTITLEMENT FORMULA

The Committee bill extends through fiscal year 1976 the entitlement formula (based on the total State population aged three to twenty-one) in present law and operating for fiscal year 1975 only, and provides that in fiscal year 1976 the States will be assured the amount they actually received in the previous fiscal year under that formula.

SECTION 3—CONGRESSIONAL FINDINGS; PURPOSE; DEFINITIONS

This section of the Committee bill sets forth the Congressional findings, the statement of purpose, and definitions of certain new terms included under the Act. Those terms which are added to existing law or are changed from existing law are the following: "handicapped children" (amended to replace the term "crippled" with the term "orthopedically impaired" and to include "children with specific learning disabilities"); "children with specific learning disabilities;" "equipment" (amended to include telecommunications, sensory, and other technological aids and devices); "free appropriate public education": "individualized planning conference"; "related services", and "special education".

SECTION 4—ENTITLEMENT FORMULA FOR PAYMENTS TO STATES;
ELIGIBILITY AND APPLICATION; ADMINISTRATION AND EVALUATION

This section, effective July 1, 1976, replaces Part B of the Education of the Handicapped Act with a new Part B to establish an entitlement formula for payments to States for fiscal years 1977 through 1979. Further, it establishes provisions relating to eligibility and application (which incorporate certain existing provisions of the Education of the Handicapped Act) and relating to administration and evaluation by the Commissioner of Education. These may be summarized as follows:

(A) Entitlement Formula

Effective July 1, 1976, the Committee bill establishes an entitlement formula for payments to the States through fiscal year 1979 providing that the maximum amount to which a State is entitled is equal to \$300 multiplied by the number of handicapped children, aged three to twenty-one, who are receiving special education and related services in the State. The Committee bill provides that each State, in each succeeding fiscal year, will be assured a minimum base payment equal to the amount it received in the prior fiscal year. This same concept applies to each succeeding fiscal year, thus assuring each State the amount it received in the prior year plus an additional amount based on the number of handicapped children actually served. If sufficient funds are not appropriated to satisfy the full entitlement for each State, the bill provides that those funds appropriated will be allocated to the States on a ratably reduced basis. The Committee bill also provides that no State may count, for the purposes of payment, more handicapped children than a number equal to 10 percent of the total population of all children in the State aged three to twenty-one,

and that the Commissioner of Education shall seek from each State, within one year from the date of enactment, certification of the actual number of handicapped children receiving an education within the State.

(B) Eligibility

In order to assure that full educational opportunities are available to all handicapped children, the Committee bill establishes eligibility provisions for assistance under the Act which clarify, amend and replace provisions of existing law. In so doing, the bill replaces present State plan provisions with requirements for eligibility and an annual application. Amendments enacted in Public Law 93-380 established basic due process procedures and protections, a priority for service to handicapped children who are not receiving an education, a prohibition on discrimination in testing, and provision of educational services in the least restrictive environment appropriate to the needs of the handicapped child. Those amendments further required the States to submit to the Commissioner of Education within one year from date of enactment (i.e., August 21, 1975) policies and procedures to ensure that all handicapped children within the State would be identified, located and evaluated; that a goal of providing full educational opportunities would be established, including a timetable for delivery of full services to all handicapped children; and that a description of the facilities, personnel and services necessary to meet such a goal be included.

In order to carry these planning provisions into actual delivery of services, the Committee bill adopts provisions to assure the right to education for handicapped children, to set a date by which handicapped children and their parents will be assured that they in fact have a right to education, and to establish a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children. Thus, the Committee bill provides that a State, in order to be eligible for funding, must have a "right to education" policy for all handicapped children, that all handicapped children aged three to eighteen will have available to them by September 1, 1978 a free appropriate public education, and that all handicapped children aged three to twenty-one will have available to them by September 1, 1980, a free appropriate public education. With respect to handicapped children, aged three to five and aged eighteen to twenty-one, inclusive, the Committee bill provides that such requirement shall not be applied in any State if the application of such requirement would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State. To assure that funds under the Act are appropriately targeted to accomplish this goal, the bill provides that the State must establish priorities for services, first to handicapped children not receiving an education, and second, to handicapped children with the most severe handicaps receiving an inadequate education.

The Committee bill further extends the protections afforded under amendments adopted last year assuring that handicapped children and their parents would be guaranteed procedural safeguards in any

decisions affecting the education of such children. The bill provides for an individualized planning conference, to be held at least three times a year, involving the parents or guardian, an individual representing the local educational agency qualified to provide special education, the child's teacher and the child when appropriate who will meet jointly to develop and review a written statement describing the educational services to be provided and, when appropriate, to revise such statement with the agreement of the parents.

The Committee bill also establishes a process for accountability within the States for the expenditure of funds. In order to accomplish this goal, the Committee bill rests final responsibility upon the State Educational Agency for assuring that all handicapped children within the State receive a free appropriate public education. Further, the State educational agency is responsible for assuring that funds for the education of handicapped children under other Federal laws will be utilized in such a way which is consistent with the priorities under this Act, but which shall not limit the requirements of other Federal laws. The bill provides that the State must establish procedures for consultation with interested persons, including handicapped individuals and parents, for the purpose of assisting in the development of the State plan and programs for expenditure of funds under the Act. The bill also provides that the State establish an entity for assuring compliance with the Act, which shall conduct periodic evaluations and receive complaints with respect to violations and erroneous classification.

(C) Application

The bill provides that an annual application be submitted which describes the policies and procedures for expenditure of funds under the Act (including the expenditure of funds under other Federal programs which provide assistance for the education of handicapped children), and for inservice training of personnel. This provision requires that of the funds distributed under the new Part B, 40 percent shall be distributed to local educational agencies within the State in direct proportion to the number of handicapped children who are in need of a free appropriate public education, and 60 percent of such funds shall be distributed in a manner which is consistent with priorities for providing a free appropriate public education, first, with respect to handicapped children who are not receiving an education, and second, with respect to handicapped children with the most severe handicaps who are receiving an inadequate education.

(D) Administration and Evaluation

The Committee bill includes provisions designed to strengthen the administration and evaluation process provided by the Office of Education, requiring the Commissioner to assure certification by the State of the actual number of handicapped children receiving an education in each State previous to July 1, 1976 and in each fiscal year thereafter and to prescribe that a uniform financial report be used by the State in submitting an application which will assure accurate data on children served. The Commissioner is also required to carry out evaluations of

the effectiveness of programs funded under the Act and evaluations of State efforts to provide a free appropriate public education. He is required to submit annually a report to the Congress on such evaluations.

SECTION 5—EMPLOYMENT OF HANDICAPPED INDIVIDUALS; GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

The Committee bill provides that all recipients of funds under the Education of the Handicapped Act shall take affirmative action to employ and advance in employment qualified handicapped individuals. Finally, it provides new authority to the Commissioner of Education to make grants to State and local educational agencies for the removal of architectural barriers.

BACKGROUND

In 1966, the Congress added a new title VI to the Elementary and Secondary Education Act, Public Law 89-750. Prior to that time, the Federal Government had done little to assist in the education of handicapped children, and the effectiveness of existing programs was dissipated by the lack of a single strong administrative body. The Bureau of Education for the Handicapped was established by this law in order to provide the leadership necessary in this field.

On April 13, 1970, the amendments to the Elementary and Secondary Education Act, Public Law 91-230, were signed into law. Public Law 91-230 repealed title VI, E.S.E.A. as of July 1, 1971, and created a separate act, the Education of the Handicapped Act. Part B of that Act authorized grants to the States and outlying areas to assist them in initiating, expanding and improving programs for the education of handicapped children.

During the first session of the 93d Congress, the Senate passed S. 896, the Education of the Handicapped Amendments of 1973. The purpose of S. 896 was to extend all the provisions of the Education of the Handicapped Act (Public Law 91-230) for 3 years beginning July 1, 1973, to insure the continued targeting of funds and resources to handicapped children. Funds under the state grant program were used to assist States through non-matching formula grants to initiate, expand, and improve preschool elementary, and secondary educational and related services to handicapped children. Rather than providing full support, the Federal Government continued its function as a catalyst to local and State program growth. Joint planning with the States increased the number of available programs for handicapped children by coordinating services offered by various Federal programs and local resources, for example, Elementary and Secondary Education, Titles I and III, and Vocational Education, et cetera.

Since the House companion bill to S. 896 was made part of the Elementary and Secondary Education Amendments of 1974 in the House Education and Labor Committee, the Subcommittee took the text of S. 896 and made it title VI of S. 1539, the Senate Elementary and Secondary Education Amendments of 1974. Increased awareness of the educational needs of handicapped children and landmark court decisions establishing the right to education for handicapped children pointed to the necessity of an expanded Federal fiscal role.

Therefore, a floor amendment was introduced that greatly increased the authorizations under part B (Aid to the States) for fiscal 1975 in order that the States would be able to meet the mandate set forth in this legislation to identify, locate and evaluate all handicapped children, to establish a policy of providing full educational opportunities for all handicapped children, and to establish a timetable for accomplishing this goal. At full funding, approximately \$660,000,000 would be made available to the States to meet their mandates. The Elementary and Secondary Education Amendments of 1974 were signed into law as Public Law 93-380. The new provisions in Part B of Public Law 93-380 laid the basis for comprehensive planning, the delivery of additional financial assistance to the States, and the protection of handicapped children's rights by due process procedures and assurance of confidentiality.

This legislation was originally introduced as S. 3614 on May 16, 1972. It followed a series of landmark court cases establishing in law the right to education for all handicapped children. Since those initial decisions in 1971 and 1972 and with similar decisions in 27 States, it is clear today that this "right to education" is no longer in question.

In 1954, the Supreme Court of the United States established the principle that all children be guaranteed equal educational opportunity. The Court stated: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms." (*Brown v. Board of Education*)

More recently the Federal cases of *Pennsylvania Association for Retarded Children v. Pennsylvania* and *Mills v. Board of Education of District of Columbia* were decided. These court rulings guarantee the right to free publicly-supported education for handicapped children and have resulted in similar court actions in the State and Federal courts throughout our Nation.

The Court in *Mills* ordered that:

"No child eligible for a publicly-supported education in the District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided:

(a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants and,

(b) a Constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."

S. 3614 was reintroduced in the 93rd Congress on January 1, 1974, as S. 6, the "Education for All Handicapped Children Act" and was again reintroduced in the 94th Congress on January 15, 1975. The intent to S. 6 is to amend Title VI, Part B, and to establish in law a comprehensive mechanism which will insure that those provisions enacted during the 93d Congress are expanded and will result in maximum benefits to handicapped children and their families.

S. 6 was ordered reported from the Subcommittee on the Handicapped on May 12, 1975. On May 20, 1975, the full Committee on

Labor and Public Welfare unanimously ordered favorably reported S. 6 with amendments in the nature of a substitute and a title amendment.

HEARINGS

The Subcommittee on the Handicapped has heard extensive testimony on S. 6. Hearings were held on April 9, 1973, in Newark, N.J., with testimony being presented by representatives from the States of New Jersey, New York, Pennsylvania, Delaware, and Maryland; on May 7, 1973, in Boston, Mass., with testimony being presented by representatives from the States of Massachusetts, Vermont, New Hampshire, Connecticut, and Maine; on May 14, 1973, in Columbia, S.C., with testimony being presented by representatives from the States of South Carolina, North Carolina, Georgia, Florida, and Alabama; on October 19, 1973, in St. Paul, Minn., with testimony being presented by representatives from the States of Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa; on March 18, 1974, in Harrisburg, Pa., with testimony being presented by representatives from the State of Pennsylvania in order to review the implementation of the Pennsylvania Association for Retarded Citizens (PARC) Consent Decree that resulted from *PARC v. the State of Pennsylvania*; on June 17 and 24, 1974, in Washington, D.C., with testimony being presented by representatives from the Administration, from the general education associations, and from the States of California and Oklahoma. Further hearings were held on S. 6, S. 1256 and S. 1264 (S. 1256 and S. 1264 are, respectively, one and two year extensions of the funding formula in effect for fiscal year 1975) on April 8, 9 and 15, 1975, in Washington, D.C., with testimony being presented by representatives from the States of Massachusetts and Maryland; representatives from major education associations, the Administration, handicapped individuals representing organizations of handicapped persons and handicapped individuals themselves. Overall, the Committee has heard in excess of one hundred individuals representing legislators, parents, parent organizations, consumers, education associations and educators from the local, State and National level.

The views presented in this testimony have been carefully reviewed and provide the basis for the changes made by the Committee in this legislation. These individuals and organizations were generally unanimous in their testimony on the following points: (1) support for the basic thrust of S. 6; (2) recognition of the need for a final date in legislation by which time all handicapped children are to be provided a free appropriate public education; (3) support for Federal assistance to assure that the rights of handicapped children are protected; and (4) awareness of the need for expansion of Federal assistance and responsibility in the area of education for handicapped children.

NEED FOR LEGISLATION

In recent years decisions in more than 36 court cases in the States have recognized the rights of handicapped children to an appropriate education. States have made an effort to comply; however, lack of financial resources have prevented the implementation of the various decisions which have been rendered.

The Education Amendments of 1974 incorporated the major principles of the right to education cases. That Act added important new provisions to the Education of the Handicapped Act which require the States to: establish a goal of providing full educational opportunities to all handicapped children; provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children; establish procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped; and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature of severity of the handicapped is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and, establish procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Whereas the actions taken at the State and national levels over the past few years have brought substantial progress, the parents of a handicapped child or a handicapped child himself must still too often be told that adequate funds do not exist to assure that child the availability of a free appropriate public education. The courts have stated that the lack of funding may not be used as an excuse for failing to provide educational services. Yet, the most recent statistics provided by the Bureau of Education for the Handicapped estimate that of the more than 8 million children (between birth and twenty-one years of age) with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education, 1.75 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education. (Table 1 contains the estimated number of handicapped children served and unserved, by type of handicap.)

TABLE 1.—ESTIMATED NUMBER OF HANDICAPPED CHILDREN SERVED AND UNSERVED BY TYPE OF HANDICAP, 1974-75

	1974-75 served (projected)	1974-75 unserved	Total handicapped children, served and unserved	Percent served	Percent unserved
Total age 0 to 19.....	3,947,000	3,939,000	7,886,000	50	50
Total age 6 to 19.....	3,687,000	3,062,000	6,749,000	55	45
Total age 0 to 5.....	260,000	927,000	1,187,000	22	78
Speech impaired.....	1,850,000	443,000	2,293,000	81	19
Mentally retarded.....	1,250,000	257,000	1,507,000	83	17
Learning disabilities.....	235,000	1,731,000	1,966,000	12	88
Emotionally disturbed.....	230,000	1,080,000	1,310,000	18	82
Orthopedically and other health impaired.....	285,000	93,000	378,000	72	28
Deaf.....	35,000	14,000	49,000	71	29
Hard of hearing.....	60,000	268,000	328,000	18	82
Visually handicapped.....	39,000	27,000	66,000	59	41
Deaf-blind and other multi-handicapped.....	13,000	27,000	40,000	33	67

Source: Bureau of Education for the Handicapped, U.S. Office of Education (Note that the term "orthopedically impaired" is used in place of "crippled" to conform with legislative change made by S. 6)

The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society.

There is no pride in being forced to receive economic assistance. Not only does this have negative effects upon the handicapped person, but it has far-reaching effects for such person's family.

Providing educational services will ensure against persons needlessly being forced into institutional settings. One need only look at public residential institutions to find thousands of persons whose families are no longer able to care for them and who themselves have received no educational services. Billions of dollars are expended each year to maintain persons in these subhuman conditions. This Nation has long embraced a philosophy that the right to a free appropriate public education is basic to equal opportunity and is vital to secure the future and the prosperity of our people. It is contradictory to that philosophy when that right is not assured equally to all groups of people within the Nation. Certainly the failure to provide a right to education to handicapped children cannot be allowed to continue.

Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead meaningful lives. However, over the past few years, parents of handicapped children have begun to recognize that their children are being denied services which are guaranteed under the Constitution. It should not, however, be necessary for parents throughout the country to continue utilizing the courts to assure themselves a remedy. It is this Committee's belief that the Congress must take a more active role under its responsibility for equal protection of the laws to guarantee that handicapped children are provided equal educational opportunity. It can no longer be the policy of the Government to merely establish an unenforceable goal requiring all children to be in school. S. 6 takes positive necessary steps to ensure that the rights of children and their families are protected.

DISCUSSION

DEFINITIONS

The Committee bill amends section 602 of the Education of the Handicapped Act to add new definitions or amend existing definitions of the following terms: "handicapped children", "children with specific learning disabilities", "individualized planning conference", "related services", and "special education". All other definitions contained in section 3(b) of the Committee bill are unchanged from existing law.

The Committee bill amends the definition of handicapped children to replace "crippled" with the term "orthopedically impaired", and to include "children with specific learning disabilities." No substantive change occurs by using the term orthopedically impaired. At present,

existing law does not prohibit children with specific learning disabilities from being served under Part B of the Education of the Handicapped Act. The Committee believes that children with specific learning disabilities who by reason of their disability require special education and related services (as defined in this bill) should be ensured a right to education and that parents of such children have the right to expect that individually designed instruction to meet their children's specific needs is available. Thus, the Committee has included these children within the definition of children eligible for services under the bill. The definition clearly refers only to children whose handicaps will require special education and related services, and not to children whose learning problems are caused by environmental, cultural or economic disadvantage. For example, such term does not include children who may be slow learners. The Committee urges the Commissioner of Education to examine closely this definition and the population group identified as having this disability to assure that no abuse takes place with regard to the provision of services under this Act.

The Committee bill amends the definition of "equipment" to include telecommunications, sensory, and other technological aids and devices in order to assure that new developments in technological applications may be provided for the education of handicapped children.

Telecommunications devices or device means those aids which can expand, or transform sensory signals so that they may be used to enhance the handicapped individual's participation in society. Such devices may include hearing, visual or tactile aids, teletypewriters or other numerical acoustical coupled devices which allow deaf people to use the common telephone, technical aids and devices which allow blind, auto or sensory calculators for use by the blind, and which allow physically handicapped people to use the typewriter devices.

The Commissioner is directed to solicit proposals for the development and demonstration of telecommunications or sensory aid devices which show promise for assisting the handicapped individual to participate in common communication media such as print, telephone, television, radio, and other common carriers.

The Committee bill defines the term "free appropriate public education" as special education and related services provided at public expense which shall include an appropriate preschool, elementary, or secondary school education in the applicable State and which is provided in conformance with an individualized planning conference.

The Committee emphasizes that, in requiring that a free appropriate public education be available for all handicapped children, a State remains responsible for providing an appropriate education designed to meet the specific needs of the handicapped child at no cost to that child's parent. State or local educational agencies are encouraged to utilize existing preschool services available in the community through other public or private nonprofit agencies as long as such services meet the unique needs of the child, at no cost to parents, and are provided in conformance with the requirements of the Act.

The Committee bill defines "individualized planning conference" as a meeting or meetings to be held at least three times a year for the pur-

pose of developing, reviewing, and when appropriate and with the agreement of the parents or guardian, revising a written statement of appropriate educational services to be provided for each handicapped child. The planning conference shall be conducted with the joint participation of the parents or guardian, the child (when appropriate), the child's teacher and a representative of the local educational agency who is qualified to provide or supervise the provision of special education.

In reviewing the testimony on this bill and after consultation with professionals in the field, the Committee recognizes that in order to derive any benefit to the child, parent, and teacher an individualized planning conference must be held a minimum of three times per year. The frequent monitoring of a handicapped child's progress throughout the year is the most useful tool in designing an educational program for not only the child but those who are responsible for his management in school and at home.

There is evidence that an individualized planning conference on an annual basis is insufficient. It is the Committee's intent in requiring that individualized planning conferences be provided for each handicapped child that these conferences be utilized as an extension of the procedural protections guaranteed under existing law to parents of handicapped children, and that they be the logical extension and the final step of the evaluation and placement process.

They are not intended to be the evaluation process itself. Thus, it is the intent of this provision that local educational agencies involve the parent at the beginning of and at other times during the year regarding the provision of specific services and short-term instructional objectives for the special education of the handicapped child, which services are specifically designed to meet the child's individual needs and problems. The Committee views this process as a method of involving the parent and the handicapped child in the provision of appropriate services, providing parent counseling as to ways to bolster the educational process at home, and providing parents with a written statement of what the school intends to do for the handicapped child.

It is not the Committee's intention that the written statement developed at the individual planning conferences be construed as creating a contractual relationship. Rather, the Committee intends to ensure adequate involvement of the parents or guardian of the handicapped child, and the child (when appropriate) in both the statement and its subsequent review and revision. The Committee has included a requirement that any revision of the statement be done only with the agreement of the parents or guardian in order to ensure that services to the child are not arbitrarily curtailed or modified.

During the hearings on this bill, the Committee received testimony that the individualized written educational plan (as contained in the bill introduced in January) would require school systems to develop an expertise and ability to provide services guaranteed to assure educational progress. The Committee recognizes that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome. By changing the language of this provision to emphasize the process of

parent and child involvement and to provide a written record of reasonable expectations, the Committee intends to clarify that such individualized planning conferences are a way to provide parent involvement and protection to assure that appropriate services are provided to a handicapped child. The Committee has deleted the language of the bill as introduced which required objective criteria and evaluation procedures by which to assure that the short term instructional goals were met. Instead it has required the Commissioner of Education to conduct a comprehensive study of objective criteria and evaluation procedures which may be utilized at a later date in conjunction with individualized data available through the individualized planning conference to determine the effectiveness of special education and related services being provided.

The Committee further points out that it intends that a copy of the statement thus developed be retained on file within the school district with copies provided to parents and others involved subject to strict procedures for protection of confidentiality. While it believes that such statements may be useful to a State educational agency for purposes of audit and evaluation, it does not intend that such records be forwarded to the State agency, but be available for inspection.

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.

Finally, the Committee bill provides a definition of "special education" as specially designed instruction including physical education at no cost to parents or guardians to meet the unique needs of a handicapped child. The Committee points out in addition that a handicapped child has a right to receive all services normally provided a nonhandicapped child enrolled in a public elementary or secondary school. Thus, he or she has a right to physical education services, health screening, transportation services and all other services which are provided to all children within the school system, and a right to as many options in curricula as are available to all children.

The Committee is concerned that although physical education services are available to and, in most instances, are required of, all children within a school system, the provision of physical education services, which are highly important to the physical development and well-being of handicapped children, are often seen as services to be provided only as a luxury for handicapped children. While in some instances such services need to be specially designed for handicapped children, these services should be provided as a matter of course, and the Committee expects the Commissioner of Education to take such action as may be necessary consistent with his responsibilities under section 504 of the Rehabilitation Act of 1973 to assure that physical education and all other services normally provided to all children are made available for handicapped children. Therefore, the Committee included physical education specifically within this definition to make clear that it expects such services to be provided.

Handicapped individuals have a normal probability of being creative and talented. The Bureau of Education for the Handicapped,

through partial support of the Theatre of the Deaf, Gallaudet College Drama and Dance groups and the National Technical Institute for the Deaf creative groups have demonstrated that deaf individuals have the ability to compete in the world of performing arts. Examples of creative careers by blind performers such as Ray Charles, Little Stevie Wonder, Ann Adams, Eric Klaus, and others have demonstrated success in the musical world. Physically handicapped people have often developed unusual and creative talents in graphic arts.

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool *per se*.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally-supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

ASSISTANCE TO STATES FOR THE EDUCATION FOR ALL HANDICAPPED CHILDREN

Effective July 1, 1976, section 4 of the Committee bill amends and replaces the language of existing Part B of the Education of the Handicapped Act in order to provide an entitlement formula for fiscal years 1977 through 1979 and to establish eligibility criteria and annual application requirements. This section is designed to establish basic minimum procedures governing the distribution of Federal funds for assistance to the States for the education of all handicapped children, to establish priorities for service, to establish a timetable for assuring a free appropriate public education as provided in this Act for all handicapped children throughout the United States, and to establish within the States a process for discovering and correcting violations of rights of handicapped children and abuses in the use of these Federal funds. It is the intent of the Committee to establish and protect the right to education for all handicapped children and to provide assistance to the States in carrying out their responsibilities under State law and the Constitution of the United States to provide equal protection of the laws. The bill does, however, provide a degree of flexibility to the States in carrying out these responsibilities.

The Committee bill has been designed to meet the following purposes: (1) to focus the distribution of funds to the States based on an incentive formula related to the actual delivery of services by a

time certain to all handicapped children; (2) to assure a priority in delivery of services to handicapped children most in need, i.e., those handicapped children who are not receiving educational services and those handicapped children with the most severe handicaps currently receiving an inadequate education; (3) to provide an orderly process in the extension of service delivery, placing emphasis on providing early identification and assessment; (4) to provide and reinforce procedural protections for parents and children in all matters relating to the educational process; (5) to focus directly on the problem of erroneous classification and labelling of children by setting a limitation on the population of children who may be counted as eligible for services, strengthening procedural guarantees, and providing a mechanism for compliance evaluation and investigation of complaints; and (6) to assure sole responsibility for the education of all handicapped children by the State educational agency.

Entitlement Payments to States

The Committee bill extends the present entitlement formula for payments to States under the Education of the Handicapped Act for one additional fiscal year through June 30, 1976, and further establishes, effective July 1, 1976, a new entitlement formula for payments to States based on the number of handicapped children aged three to twenty-one who are receiving special education and related services within a State multiplied by \$300. The operation of this formula is limited, however, by two additional conditions. First, no State may count, for purposes of the entitlement for the education of handicapped children, more than 10 percent of its total population aged 3 to 21. And second, a "base year" approach is adopted for the length of the bill providing that in each year a State is assured the amount it received in the prior fiscal year. Therefore, in any current fiscal year only funds appropriated above the amount appropriated in the prior fiscal year would be distributed to States on the basis of the new entitlement formula.

The Committee points out that it has authorized the Commissioner to make payments to the Secretary of Interior for the education of handicapped children on reservations serviced by elementary and secondary schools for Indian children by the Department of the Interior, providing that such payments may not exceed 1 percent of the aggregate amounts to which States are entitled in a fiscal year. In this regard, it is the intent of the Committee that all requirements applied to States and local educational agencies respecting eligibility and application shall apply to the Department of the Interior, and that all benefits and protections provided for handicapped children served by State and local educational agencies shall also be provided to handicapped children served by the Department of Interior.

The Committee has adopted this formula in order to provide an incentive to States to serve all handicapped children and to assure that the entitlement is based on the number of children actually receiving special education and related services within the State and for whom the State or the local educational agency is paying for

such education. It has, however, adopted a formula which assures stability in payment to States so that funds in each succeeding fiscal year will at least be equal to those received in the prior fiscal year.

S. 6 as introduced contained a funding formula based on the excess cost of providing an education for a handicapped child. This formula was rejected by the Committee as too complicated to administer or to assure equity based on presently available data. At the same time, however, the Committee wished to develop a formula which would target funding and eligibility for funding on the population of handicapped children for whom services would be provided. The formula in existing law, the Education of the Handicapped Act, distributes Federal funds to the States on the number of all children, aged three to twenty-one within such State. The Committee has developed a formula which generates funds on the basis of the handicapped children receiving an education within the State.

Other provisions of the Committee bill direct that these funds be spent on a priority basis, first with respect to children not receiving an education, and second with respect to children with the most severe handicaps receiving an inadequate education.

In addition, the Committee wished to provide, on a per-handicapped child basis, a reasonable dollar amount which relates to actual dollars spent on handicapped children, and which could assist the State in paying for part of the cost of educating each child. Studies done by the National Education Finance Project estimated that the actual cost of educating a handicapped child is on the average, double the cost of educating a non-handicapped child. While this estimate may vary by State, the dollar level of \$300 in the Committee bill represents an amount approximately equal to 25 percent of such additional cost, and will provide an amount per handicapped child which will assist States and local educational agencies in providing appropriate education for handicapped children.

Within State Distribution Formula

The Committee bill provides an entitlement to States for the education of handicapped children, a concept contained presently in existing law. The Committee believes that the States must target funds on handicapped children most in need of services if the States are to indeed meet their goal of providing full educational opportunity for all handicapped children within the timetables prescribed in this Act.

The Committee was concerned, however, by testimony presented by the Council of Great City Schools, the National School Boards Association and other individuals and organizations representing local school districts which indicated that present distribution of funds under existing law may not reflect the substantial population in urban and other school districts in need of services. The Committee believes that the simple "pass-through" of all funds based solely on the population of the local educational agency fails to provide an adequate incentive for serving all children within the total time period specified in the bill. Further, such a "pass-through" reduces the ability of a State to target funds in such a way as will assure all handicapped children a free appropriate public education.

The Committee has therefore adopted a within-State distribution mechanism which it believes combines both (1) needed flexibility for State educational agencies, and (2) assurance of a base level of assistance to local educational agencies to meet their own unserved and severely handicapped children. Under this provision, the bill provides that (1) 40 percent of the funds distributed under this part shall be distributed by the State Educational Agency to local educational agencies within the State in direct proportion to the number of handicapped children in need of a free appropriate public education within the area served by each local educational agency, and (2) 60 percent of such funds shall be distributed by the State educational agency in a manner consistent with priorities required to meet the specific timetables of the bill, first with respect to handicapped children not receiving an education, and second, with respect to handicapped children with the most severe handicaps receiving an inappropriate education. The Committee points out that with respect to payments to local educational agencies required to be made in direct proportion to the number of handicapped children in need of a free appropriate public education, "in need" shall include both handicapped children receiving such an education, and handicapped children who are not receiving, but require such an education.

It should be clear, however, that the goal of providing a free appropriate public education to all handicapped children, aged three to eighteen, by September 1, 1978, and aged three to twenty-one, by September 1, 1980, remains paramount to the Committee. Local educational agencies shall be required by the State to adopt such policies and procedures as are necessary to assure that funds received under this Act are expended in such a way that the priorities of the bill (with respect to handicapped children not receiving an education and handicapped children with the most severe handicaps receiving an inappropriate education) are met in accordance with the timetable established. The Committee also wishes to point out that it encourages arrangements such as the combination of local educational agencies, or the creation of special school districts in order to meet the special needs of handicapped children. Local educational agencies should not look to this assistance as general revenues or generalized assistance to mitigate their own responsibilities with regard to providing a free appropriate public education for all handicapped children. The primary purpose of funds under this Act is to assure all handicapped children an appropriate education. It is expected that necessary arrangements to achieve this goal will be made by local educational agencies.

ELIGIBILITY

The Committee bill provides that in order to qualify for assistance in any fiscal year commencing on or after July 1, 1976, a State shall demonstrate that certain conditions are met. These conditions are designed to ensure that a State shall undertake the necessary steps to carry out its responsibilities under the Act.

Thus, the Committee bill requires that the State have in effect a policy that assures all handicapped children the right to a free appro-

priate public education. Second, the bill requires that the State will undertake or has undertaken policies and procedures to assure that a free appropriate public education will be available (1) to all handicapped children aged three to eighteen by September 1, 1978, and (2) to all handicapped children aged three to twenty-one by September 1, 1980. With respect to handicapped children, aged three to five and aged eighteen to twenty-one, inclusive, such requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State. It should be noted, however, that a State which is not providing an education to such handicapped children shall not count such children for purposes of entitlement. Third, the bill requires that the State establish priorities for providing a free appropriate public education which shall meet the timetables established (relating to the provision of services by September 1, 1978 and September 1, 1980) first, with respect to handicapped children not receiving an education, and second, with respect to handicapped children with the most severe handicaps receiving an inadequate education.

Fourth, it requires that the State assure that local educational agencies provide and maintain records of the individualized planning conference for each handicapped child including the written statement developed from the conferences, and that such conferences will be conducted at least three times a year to develop, review and, with the agreement of the parents or guardian, revise the statement. Fifth, the bill requires that the State educational agency be responsible for insuring the implementation of and compliance with provisions of the Act, and for the general supervision of educational programs for handicapped children within the State, including all such education programs administered by any other State or local agency. Finally, to assure orderly due process with regard to carrying out the provisions of the Act and to assure compliance with provisions of the Act, the Committee bill provides that the State shall establish policies and procedures to provide consultation with persons involved in or concerned with the education of handicapped children including handicapped individuals and parents of handicapped children. Further, in this regard, the State shall establish an entity to assure compliance with the provisions of the Act which shall conduct periodic evaluation and be empowered to receive, and take such necessary steps as are required, to resolve complaints of violations of the requirements of the Act.

Dates for Providing Services and Priorities

Court action and State laws throughout the Nation have made clear that the right to education of handicapped children is a present right, one which is to be implemented immediately. The Committee believes that these State laws and court orders must be implemented and that the Congress of the United States has a responsibility to assure equal protection of the laws and thus to take action to assure that handicapped children throughout the United States have available to them appropriate educational services. The Committee believes that the pro-

visions it has adopted in S. 6 reinforce this right to education, while still providing States and local educational agencies ample time to fulfill the full services goal. It points out that the Office of Education has adopted a goal of providing full educational opportunities for all handicapped children from birth to twenty-one by 1980.

In recent information submitted to the Bureau of Education of the Handicapped, forty-six states have indicated that they will provide full educational services to all handicapped children from birth to twenty-one by 1980. Further, 31 of these states have stated that they will have met this goal before 1980. The Committee bill provides an orderly and flexible timetable for the provision of these services and priorities for expenditure of Federal funds.

It provides that the State establish policies and procedures to assure that all handicapped children aged three to eighteen are provided services by September 1, 1978 and that all handicapped children aged three to twenty-one be provided services by September 1, 1980.

In order to assure that States take action to implement these dates, the Committee bill further adopts priorities for the expenditure of Federal funds geared to reaching the goal of providing services to all handicapped children. Thus, the bill requires that States establish priorities for providing a free appropriate public education to all handicapped children and that these priorities shall meet the timetables of the bill, first with respect to handicapped children who are not receiving an education and second with respect to handicapped children with the most severe handicaps who are receiving an inadequate education. The Committee stresses that the first priority must be given to meeting the timetable for handicapped children who are currently not receiving any educational services. This group of children is by far the most neglected in the educational process and must be the first priority for State and local educational agencies.

The Committee further believes that identifying and providing services to preschool children who are handicapped is critical to assuring that these children are assisted early in life so that their handicapping conditions do not delay their educational development. It is for this reason that the Committee specifically included the three to five year old age group within the timetable for providing services by September 1, 1978. While the Committee does not include children from birth up to three within the priority or within the timetable for services, it points out that funds under the Act, as in existing law, may be spent for providing services to these children. The Committee wishes to encourage the provision of such services to such children, and points out that early identification, screening and assessment, and parent counselling are specifically included within the definition of "related services" which should be appropriately provided to handicapped children for this purpose.

With regard to the timetable adopted in the Committee bill the Committee points out that it has provided (in new section 614 (2) (B)) that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, the requirements shall not be

applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

This exception with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive is intended to exempt states from the provisions of this Act establishing a timetable for providing a free appropriate public education in these age groups in the following circumstances:

(1) where State law does not authorize, or expressly prohibits, the expenditure of public funds to provide such an education to any children in these age groups;

(2) where a State does not *in fact* provide or assure the provision of free public education to handicapped children in these age groups; or

(3) where the education of handicapped children in a State is governed by a court order, the terms of which are inconsistent with the requirement contained in new section 614(2) (B). This exception shall not apply in the following circumstances:

(1) where a State does *in fact* provide or assure the provision of free public education to non-handicapped children in these age groups; or

(2) where a State does now *in fact* provide or assure the provision of free public education to handicapped children in these age groups (thus the exception being inapplicable in the case of a State which attempts to abandon the provision of such education services.

Further, this exception is in no way to be viewed as a statement of Federal policy which discourages or otherwise serves as an obstacle for the provision of services to those handicapped children in the age groups to which this exception is applicable. To the contrary, the Committee intends the timetables established in new section 614(2) (B) to be viewed as a whole, thereby specifically encouraging the States to intensify their efforts to serve all handicapped children within the time periods specified in that section. In this regard it should be noted that each State's entitlement to financial assistance under this Act is based on the actual number of handicapped children aged three to twenty-one, inclusive, who are receiving special education and related services in that State. Thus, this entitlement formula has the effect of providing a bonus to those States which assure that within the specified timetables special education and related services are available to handicapped children between the ages of three and five and between the ages of eighteen and twenty-one, inclusive.

Table 2 shows the type of State laws or other legal requirements relating to the education of handicapped children by State, and includes the scope of each law, the date the law is to be implemented and the date of enactment), and the ages of eligibility for handicapped children covered by such law.

TABLE 2.—STATE STATUTORY RESPONSIBILITIES FOR THE EDUCATION OF HANDICAPPED CHILDREN * * *

State	Type of mandate	Date of passage	Compliance date	Ages of eligibility	Categories of children not included in mandate
Alabama	Full planning and programming	1971	1977	6 to 21	Profoundly retarded.
Alaska	Full program	1974		From age 3	
Arizona	Selective planning and programming	1973	9/1/76	5 to 21	Emotionally handicapped.
Arkansas	Full planning and programming, ¹ selective	1973	1979-80	6 to 21	
California				6 to 18 ²	"Educationally handicapped" (emotionally disturbed, learning disabled).
Colorado	Full planning and programming	1973	7/1/75	5 to 21	
Connecticut	do	1966		4 to 21 ³	
Delaware	Full program "wherever possible"			4 to 21	Severely mentally or physically handicapped.
District of Columbia	No statute: Court order: Full program	1972	1972	From age 6	
Florida	Full program		4 1973	3-no maximum (13 years guaranteed)	
Georgia	Full planning and programming	1968	1975-76	3 to 20	Profoundly retarded.
Hawaii	Full program	1949		5 to 20	
Idaho	do ⁴	6 1972		Birth to 21	
Illinois	do	6 1965	7/1/69	3 to 21 ⁶	
Indiana	Full planning and programming	1969	1973	6 to 18 ³⁰	
Iowa	Full program "if reasonably possible"	1974		Birth-21	
Kansas	Full planning and programming	1974	7 1979	Birth-21	
Kentucky	Full planning and programming	1970	1974	(⁹)	
Louisiana	Court order—Orleans Parish only: Selective for mentally retarded. Otherwise, mandatory.	1972	1972	3 to 21 ⁹	Other than trainable mentally retarded. Other than mentally retarded.
Maine	Full planning and programming	1973	10 1975	5 to 20	
Maryland	do	1973	11 1979	(¹²)	
Massachusetts	do	1972	9/1/74	3 to 21	
Michigan	do	1971	1973-74	Birth-25	
Minnesota	Full program		12 7/2/72	4-21, except mentally retarded: 5-21 and emotionally disturbed: 6-21.	
Mississippi	Permissive			Birth-21	
Missouri	Full planning and programming	1973		5 to 21	
Montana	Full program ¹⁴	1974	7/1/79	6 to 21	
Nebraska	Full planning and programming	1973	15 10/1/76	5 to 18	
Nevada	Full program	1973		5 to 18 ¹⁶	
New Hampshire	do			Birth to 21	
New Jersey	do	17 1954		5 to 20	
New Mexico	Full planning and programming	1972	1976-77	6 to 21 ¹⁸	
New York	Full program	1973	1973	5 to 21	
North Carolina	Full planning	1974	(¹⁹)	Birth-21	Profoundly, retarded.
North Dakota	Full planning and programming	1973	21 7/1/80	5 to 21 ³²	
Ohio	Permissive				Other than crippled or educable mentally retarded.
Oklahoma	Full program	1971	9/1/70	4 to 21 ²³	Trainable or profoundly mentally retarded.
Oregon	do	1973		EMR: 6 to 21. Others: Birth to 21	
Pennsylvania	Court order: Selective (mentally retarded only).	1971-72	9/72	6 to 21 ²⁴	Other than mentally retarded.
	Full planning and programming	1956	1956	6 to 21	
Rhode Island	Full program		25 1964	3 to 21 ²⁵	
South Carolina	Full planning and programming	1972	1977	6 to 21 ²⁶	
South Dakota	Full program	1972		Birth to 21	
Tennessee	Full planning and programming	1972	1974-75	4 to 21	
Texas	Full program ²⁷	1969	27 1976-77	3 to 21	
Utah	do	1969		5-21	
Vermont	Full program ²⁸	1972		Birth to 21	
Virginia	Full planning	1972	(²⁹)	2 to 21	
Washington	do	1971		6 to 21 ³³	
West Virginia	do	1974	1974	5 to 23 ³⁴	
Wisconsin	Full planning and programming	1973	8/74	3 to 21	
Wyoming	Full program	1969		6 to 21	

¹ Current statute is conditional: 5 or more similarly handicapped children in district. However, a 1973 Attorney General's opinion stated that the law mandating full planning and programming was effective July, 1973. If the State activates a kindergarten program for 5-year-old children, ages of eligibility will be 5 to 21.

² Permissive for children 3-21, except mentally retarded: 5 yrs. 8 mos. -21.
³ 3 to 21 for hearing impaired. Lower figure applies to age of child as of January 1 of the school year.

⁴ 1973 law did not include profoundly retarded; however, a 1974 amendment brought these children under the provisions of the mandatory law. Compliance date for full services to these children is mandated for 1977-78.

⁵ Earlier (1963) law was mandatory for all handicapped children except trainable mentally retarded.

⁶ 5 to 21 for speech defective.

⁷ "Developmentally Disabled" means retardation, cerebral palsy or epilepsy. For other disabilities, the State board is to determine ages of eligibility as part of the State plan. Compliance date is July 1, 1974 for DD programs.

⁸ Permissive: 3-6.

⁹ Residents over age 21 who were not provided educational services as children must also be given education and training opportunities.

¹⁰ In cases of significant hardship the Commissioner of Education may waive enforcement until 1977.

¹¹ Court order sets deadline in September 1975.

¹² Services must begin as soon as the child can benefit from them, whether or not he is of school age but at least birth-21.

¹³ Date on which trainable mentally retarded were included under the previously existing mandatory law.

¹⁴ Statute now in effect is selective and conditional: at least 10 educable mentally retarded, 7 trainable mentally retarded, or 10 physically handicapped in school district. Full mandation becomes effective July 1, 1979.

¹⁵ Acoustically handicapped: October 1, 1974.

¹⁶ Aurally handicapped and visually handicapped: birth to 18.

¹⁷ Date of original mandatory law, which has since been amended to include all children.

¹⁸ Child must be 6 years old by January 1 of school year.

¹⁹ Implementation date to be specified in preliminary state plan to be submitted to 1975 general assembly.

²¹ All children must be served as soon as they are identified as handicapped.

²² 2 to 21 for blind, partially blind, deaf, hard of hearing.

²⁴ When programs are provided for pre-school age children, they must also be provided for mentally handicapped children of the same age.

²⁵ For mentally retarded or multiply handicapped. Others, as defined in regulations. Compliance date established by regulations.

²⁶ 4 to 21 to hearing handicapped.

²⁷ The Texas Educational Agency is operating under the assumption that the law is mandatory, and has requested an opinion from the state Attorney General on this question. Compliance date is as established by State policy if the law does not specify a compliance date.

²⁸ Within the limits of available funds and personnel.

²⁹ September 1, 1976 established by regulations.

³⁰ Permissive: 3-5 and 19-21.

³¹ Permissive: Below 3 years old.

³² Deaf children to be served at age 4.

³³ Permissive: Below 6 years old.

³⁴ Permissive: 3-4.

*** Compiled by the Committee on Labor and Public Welfare from "Digest of State and Federal Laws: Education of Handicapped Children", 3rd edition, The Council for Exceptional Children.

Notes:
 Definition of the kinds of mandatory legislation used by states:
 Full Program Mandate: Such laws require that programs must be provided where children meet the criteria defining the exceptionality.
 Planning and Programming Mandate: This form includes required planning prior to required programming.
 Planning Mandate: This kind of law mandates only a requirement for planning.
 Conditional Mandate: This kind of law requires that certain conditions must be met in or by the local education district before mandation takes effect (this usually means that a certain number of children with like handicaps must reside in a district before the district is obliged to provide for them).
 Mandate by Petition: This kind of law places the burden of responsibility for program development on the community in terms of parents and interested agencies who may petition school districts to provide programs.
 Selective Mandate: In this case, not all disabilities are treated equally. Education is provided (mandated) for some, but not all categories of disabilities.

Testimony before the Committee in April of this year raised several questions with regard to the language in existing law providing that the priority in expenditure of funds shall be given to handicapped children not receiving an education. It is for this reason that the Committee has provided that States shall provide second priority in meeting the timetable for service to handicapped children with the most severe handicaps who are receiving an inadequate education. It is the intent of the Committee that States follow this priority by providing services to handicapped children who, within each disability group, (including the multihandicapped as a disability group) have the most severe handicaps. Priority must be given to multihandicapped children who are the most severely disabled, children with the most severe orthopedic handicaps who require special education and related services, children with the most severe hearing impairments, and so on. While this provides some flexibility in the use of funds under the second priority for expenditure of funds by the States, it should be clear that the priority does not extend to children with minimal handicaps, and that other sources of State or local funds should be used to provide services to such children.

Furthermore, while the Committee has provided that the State educational agency is to be the final responsible authority for assuring that all handicapped children have available to them free appropriate public education, it does not intend that State and local educational agencies must be the sole providers of such services. Particularly with respect to preschool services, while the local educational agencies are responsible under the Act for making available educational services to handicapped children, the Committee believes that these funds should be deployed wisely, and public and private non-profit agencies currently providing preschool services should be utilized to meet the full services mandate. The Committee points out, however, that services provided in this fashion are required to meet all requirements of the Committee bill including provisions relating to the least restrictive environment. In this sense, the local educational agency becomes the lead agency for assuring that educational services are appropriate for the handicapped child and that all rights under this Act and other applicable law extend to such children. The Committee further understands that, especially in providing preschool services, parent involvement in the services provided and in assisting the development of a school program is very important. School programs should provide an ongoing process for consultation and parent involvement and parent education, similar to that provided under such programs as Head Start.

The Committee rejects the argument that the Federal Government should only mandate services to handicapped children if, in fact, funds are appropriated in sufficient amounts to cover the full cost of this education. The Committee recognizes the State's primary responsibility to uphold the Constitution of the United States and their own State Constitutions and State laws as well as the Congress' own responsibility under the 14th Amendment to assure equal protection of the law. As specifically stated by Judge Waddy in the Memorandum Opinion, Judgement and Decree (*Mills v. Board of Education of the District of Columbia, 1972*):

The defendants are required by the Constitution of the United States, the District of Columbia Code and their own regulations to provide a publicly-supported education for these "exceptional" children. Their failure to fulfill this clear duty to include and retain these children in the public school system or otherwise provide them with publicly-supported education and their failure to afford them due process hearing and periodical review, cannot be excused by the claim that there are insufficient funds. . . . the District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources. *If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expanded equitably in such a manner that no child is entirely excluded from a publicly-supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.* [Emphasis added.]

Further, the Committee points out that there are local and State funds and other Federal funds available to assist in this process. Any funds available from the Federal Government are clearly in addition to funds provided under this Act and are available to States to assist them in carrying out their responsibilities under State laws, State Constitutions, and the U.S. Constitution, and should be so utilized. The Federal sources which exist and which can assist in this process include approximately \$85 million expressly set aside under Title I of the Elementary and Secondary Education Act in addition to the funds available under part A of that Act for handicapped children, \$51 million under the set-aside in the Vocational Education Act, \$25.7 million under title III of the Elementary and Secondary Education Act, and additional funding available under the Rehabilitation Act, the Head Start Program, social services, and the Developmental Disabilities Act.

The Committee intends that all such Federal funds shall be spent in a way which will assist the States in meeting the priorities and timetables under this Act. The Committee bill requires that a State, in its application for assistance under the Act, shall set forth a description of programs and procedures by which the State or any of its political subdivisions will utilize funds under other Federal programs (including Title I, Title III and IV of the Elementary and Secondary Education Act, the Vocational Education Act, the Rehabilitation Act, other parts of the Education of the Handicapped Act, the Developmental Disabilities Act, and Head Start) in a manner which is consistent with the priorities and timetables and other provisions of the Committee bill. The Committee does not intend to limit or change the specific requirements relating to purposes, administration and expenditure of funds under such laws. However,

under each of these laws funds are received by States and their political subdivisions to provide for the education of and educational services for handicapped children, and, in each case, these funds can be used to assist the States to carry out the priorities and provisions of this Act.

State Educational Agency

The Committee bill requires that the State educational agency be responsible for insuring that all requirements of the Act are carried out, and that all education programs for handicapped children within the State, including all such programs administered by any other State or local agency, must meet State educational agency standards and be under the general supervision of persons responsible for education of handicapped children. This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency. Under other provisions of the Committee bill, funds paid to a State for other Federal programs which provide assistance for the education of handicapped children are required to be utilized by the State in a way which is designed to meet the timetables under this Act and the priorities established for serving handicapped children. The Committee expects that the chief State school officer of the State will take all steps necessary to assure the cooperation of other State educational agency personnel in carrying out this requirement.

The Committee considers the establishment of single agency responsibility for assuring the right to education of all handicapped children of paramount importance. Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency.

Consultation Procedures

The Committee bill deletes the provision requiring a planning and advisory panel appointed by the Governor (as previously required in S. 6 as introduced), and replaces that provision with a requirement that the State establish procedures for consultation with individuals involved in or concerned with the education of handicapped children, stipulating that such procedures must assure consultation with handicapped individuals and parents of handicapped children. In addition, the provision requires that public hearings be conducted to provide the opportunity for comment from the general public on procedures proposed with regard to the consultation process, applications for assistance under this Act, and on any rules and regulations the State proposes to adopt to carry out its responsibilities under this Act. The Committee intends that such procedures for consultation should provide for an ongoing process of consultation and comment by interested

individuals and organizations throughout the State in all matters with respect to the implementation of provisions of this Act at both the State and local educational agency level.

The State in carrying out this provision should assure that procedures are adopted that will provide a mechanism to receive comment and counsel from a broad cross-section of individuals interested in the education of handicapped children (but particularly with regard to handicapped individuals themselves and parents of handicapped children), and that in any public hearings held, arrangements should be made to assure representative input, including making such arrangements with respect to accessibility and communication which will assure the ability for comment by handicapped individuals.

Compliance

S. 6, as introduced, provided a three-fold mechanism for compliance: (1) ongoing evaluation and review (including review of a State's eligibility and its annual application) by the Commissioner of Education with regard to progress or failure to comply with provisions of the Act; (2) standard withholding and judicial review mechanisms upon a finding by the Commissioner of substantial failure to comply with provisions of the Act on the part of a State educational agency or local educational agencies; and (3) review of State and local educational agency actions by the planning and advisory panel, which panel was to report any findings of substantial failure to comply with the provisions of the Act to the Commissioner of Education. Testimony before the Committee on these provisions raised a series of questions with regard to the effectiveness of such procedures in seeking compliance with various provisions of the Act.

Specifically, these questions centered on: (1) whether the annual application review mechanism was an effective means by which the Commissioner of Education could base a withholding of funds on substantial failure; (2) whether the relationship between local, State, and Federal education agencies is sufficiently close and whether the number of State and local educational agencies is too large to assure effective compliance through a series of orderly steps established and monitored by the Federal Government on an ongoing basis and; (3) whether a basically Federal compliance mechanism results in an adversary rather than a cooperative relationship. Testimony from interested organizations and groups strongly supported the need for a compliance mechanism which could serve both as a focal point for complaints and conflict resolution and as a review mechanism for the procedural protections contained within existing law as well as those additional safeguards proposed in S. 6. In reviewing this testimony, the Committee considered three basic methods for achieving compliance: (1) the provisions of the bill as introduced which provided a broad review mechanism; (2) the possibility of a Federal Government compliance mechanism separate and distinct from the application review and fund distribution mechanism; and (3) a State level mechanism which would permit greater flexibility in the process of seeking compliance with various provisions of the bill.

In view of the substantial responsibilities placed upon the States for assuring the right to education for handicapped children, the

Committee determined that a State compliance mechanism represented a way of achieving this compliance.

The Committee bill provides that as a condition of eligibility there be established in the State an entity for insuring compliance with the provisions of the Act. Under the provisions of the Committee bill, such entity shall (1) conduct periodic evaluations in all areas of the State to determine whether the State educational agency and local educational agencies are in full compliance, (2) be empowered to receive complaints with respect to alleged violations of the requirements of the Act and provide notice and an opportunity for hearings with respect to such complaints, (3) make determinations with respect to alleged violations, and, upon finding that a violation has occurred, notify the State educational agency and the appropriate local educational agency of such finding, and (4) take appropriate steps to assure that such violations are corrected. Such steps taken by the entity to correct violations may include, for example, negotiations, conciliation and mediation with a non-complying local educational agency. If after a reasonable period of time, adequate steps have not been taken to correct such violations, the compliance entity must provide notice to the State educational agency, the appropriate local educational agency, and the State's chief executive officer and inform the Commissioner of Education who shall take appropriate action with regard to his withholding of payments under this Act.

The Committee bill provides some flexibility to each State in setting up or establishing such an entity. The State may utilize an existing mechanism if it meets the requirements of the Act, or may alter an existing mechanism to meet such requirements. The Committee bill stipulates that at least half of the membership shall be individuals who are handicapped or who are parents or guardians of handicapped children. The Committee bill further provides that all members must be qualified by training or experience to carry out the responsibilities of the entity. The Committee believes that the entity must be composed of individuals who have an expertise in the education of handicapped children, have familiarity with the legal requirements of due process protections, or have knowledge of methods of evaluating progress of local and State educational agency efforts to provide a free appropriate public education to all handicapped children. The Committee wishes to clarify, however, that it does not intend the existence of such an entity to limit the right of individuals to seek redress of grievances through other avenues, such as bringing civil action in Federal or State courts to protect and enforce the rights of handicapped children under applicable law.

Classification Procedures

The Committee is deeply concerned about practices and procedures which result in classifying children as having handicapping conditions when, in fact, they do not have such conditions. These practices have been brought to the Committee's attention at hearings and in recently published studies (notably the report of the Children's Defense Fund entitled, *Children Out of School in America*.)

At least three major issues are of concern with respect to problems of identification and classification: (1) the misuse of appropriate

identification and classification data within the educational process itself; (2) discriminatory treatment as the result of the identification of a handicapping condition; and (3) misuse of identification procedures or methods which results in erroneous classification of a child as having a handicapping condition.

In all of these cases abuses have occurred, and the child suffers as a result. Yet, each of these abuses are distinct, and must be effectively dealt with in different ways. In the educational process, the appropriate identification of handicapping conditions must take place in order to assure that a child receives appropriate services designed to meet his or her needs. Such identification must also take place in order that a State or local educational agency may plan for the provision of appropriate services to meet the child's unique needs.

In the absence of this process and without the provision of appropriate services, the educational process for a handicapped child is totally inadequate and inappropriate. There is nothing in this process, however, which justifies or necessitates the carrying over of these classification "labels" into the classroom educational process itself such that the child becomes thereby labelled as having a particular "handicap" which for that reason, sets the child apart as being "different". In this regard, the Committee believes that the greatest possible care must be taken to assure that the identification and classification process is utilized solely for designing an individually tailored educational program for each handicapped child. The Committee directs the Commissioner and each State educational agency to assure that information required for the planning and provision of special education and related services, and the administration of such services, does not get carried over into the educational process in a way which results in distinguishing handicapped children as having lesser rights. The Committee has designed the individualized planning conferences as one method to prevent labelling or misclassification. Furthermore, the Committee points out that due process requirements in existing law were designed specifically to protect against this abuse, and should be examined by the Commissioner and the State educational agency to assure that they are effective in this regard.

Central to this issue is the discriminatory treatment which results from the identification of handicapping conditions. Disabled witnesses testifying before the Committee made this point absolutely clear. They testified to the fact that they recognized the need for the identification and labelling of their handicapping conditions, if that identification and label meant that appropriate educational services would be forthcoming. Speaking to the problems of labelling children as "handicapped," they pointed out that children with visible handicaps carry with them, throughout their lives, a condition which cannot be disguised and which, in the eyes of some people, may set them apart. As they also pointed out, such classification and identification has too often meant separation, discriminatory treatment, and a reason for failing to provide any services at all. The problem is not the classification itself, since that classification is a necessary tool for designing appropriate instruction. The problem is the stigma that such classification carries with it, and the resulting discriminatory treatment and exclusion which occurs. It is this discriminatory treatment and ex-

clusion which Court cases, State and Federal laws are designed to remedy.

In earlier legislation adopted by this Committee and enacted into law, strong positive action was taken to prohibit discrimination on the basis of handicapping conditions in all programs receiving Federal funds. Regulations implementing this program (section 504 of the Rehabilitation Act of 1973) are in draft form at this time. The Committee takes further steps in this legislation to provide that positive action be taken against erroneous classification of poor, minority and bilingual children and against the invalid use of testing.

In order to prevent the erroneous classification of children for the purposes of receiving funds under this Act, the Committee has taken the following specific actions in the bill.

(1) A limitation is established on the number of children a State may count for purposes of the entitlement. This limitation has been set at 10 percent of a State's population of all children aged three to twenty-one.

(2) A priority is established for providing a free appropriate public education first to handicapped children who are not receiving an education and second to handicapped children with the most severe handicaps who are receiving an inadequate education.

(3) The Commissioner is required within 1 year from the date of enactment to assure certification of data by the State with regard to the number of handicapped children for whom the State is actually providing an education.

These three provisions taken together provide protection against the erroneous classification of children as having handicapping conditions and being counted for the purpose of receiving Federal funds.

Furthermore, the Committee specifically requires the compliance entity to be empowered to receive complaints with regard to erroneous classification and to take all appropriate steps necessary to correct such violations of the Act. As a part of carrying out its responsibilities in this regard, the entity should review all procedures adopted by the State and local educational agency with a view toward eliminating any discriminatory testing and evaluation procedures; and, it should assure that procedural safeguards guaranteed to parents under existing law provide adequate protection against erroneous classification. Further, the Committee bill requires the State to set forth in its annual application the policies and procedures it will take to recover any funds distributed to local educational agencies on the basis of erroneous classifications made or erroneous data supplied by the local educational agency.

Finally, the Committee bill requires the Commissioner, in his annual report to the Congress on the implementation of this Act, to provide the results of his evaluation of the effectiveness of procedures undertaken by the States to prevent erroneous classification of children as eligible to be counted under this act and to report to the Congress on the actions undertaken by him to eliminate misclassification.

The Committee strongly emphasizes that when an erroneous classification is determined to have been made by a local educational agency or State Education agency, all necessary steps to correct that violation shall be taken by the compliance entity including the removal of

the child from the agency count, the expunging of any information relating to that misclassification from the child's school records, and the resulting determination by the entity that the educational agency has taken all necessary steps to provide an appropriate educational program for the child (including any additional educational services which may be needed).

Amendments to Due Process Requirements

The Committee bill makes a number of changes in the provisions of existing law relating to procedural safeguards provided to parents in decisions regarding the identification, evaluation, and educational placement of handicapped children. These amendments: (1) clarify that prior notice shall be given to the parents or guardian of the child when the local or State educational agency proposes to initiate the educational placement of the child; (2) clarify that the impartial due process hearing is not to be conducted by an employee of the State or local educational agency directly involved in the education or care of the child; and (3) provide additional requirements with regard to testing and evaluation procedures and materials utilized for the purposes of evaluation and placement of a child.

The Committee bill provides that testing and evaluation materials and procedures shall be provided and administered in the child's primary home language or mode of communication (i.e., manual communication) and provides that no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

The Committee is alarmed about the abuses which occur in the testing and evaluation of children, and is concerned that expertise in the proper use of testing and evaluation procedures falls far short of the prolific use and development of testing and evaluation tools. The usefulness and mechanistic ease of testing should not become so paramount in the educational process that the negative effects of such testing are overlooked. The Committee bill provides that the Commissioner shall, in carrying out the provisions of this Act, issue, amend, and revoke such rules and regulations as may be necessary and that no other less formal method of implementing the provisions is authorized. Specifically in this regard, the Committee directs the Commissioner to issue regulations which assure that State and local educational agencies shall establish procedures to ensure that certain conditions are met with regard to testing and evaluation.

These regulations should assure that: (1) tests and other materials used for placement have been properly and professionally evaluated for the specific purpose for which they are being used; (2) no single test or type of test or procedure is used as the sole criterion for placement and that all relevant information with regard to the functional abilities of the child is utilized in the placement determination; and, (3) tests and other evaluation procedures include assessment of specific areas of educational need so that provision of special education and related services can be limited to areas directly related to the child's need, so that broad and unspecific classifications of handicapping conditions do not occur. In particular, such regulations should assure that test selection and administration provide absolute protection that a test administered to a student with a sensory, motor, speech,

hearing, visual, or other communicative disability, or to a student who is bilingual, accurately reflects the child's ability in the area tested and not the child's impaired communication skill or the fact that the child is not skilled in English.

APPLICATION PROCESS

The Committee bill provides that an eligible State shall submit an annual application, setting forth a description of the programs and procedures by which the State will carry out the provisions of the Act and expend funds.

This application shall contain, or be accompanied by, information relating to how funds will be spent to meet the priorities and timetables established, how other Federal funds under other programs providing assistance for the education of handicapped will be spent, procedures undertaken by the State for the development and implementation of a comprehensive in-service training program for general and special education personnel, the method by which States will distribute funds to local educational agencies within the State, and how the State will meet its responsibilities to handicapped children within private schools.

Within State Distribution

As discussed earlier with respect to "within-State" distribution of funds under this Act, the Committee bill provides for a two-fold approach: (A) 40 percent of the funds distributed by a State educational agency shall be distributed to local educational agencies in the State in direct proportion to the number of handicapped children who are in need (i.e., requiring and receiving) of a free appropriate public education within the area served by each such local educational agency, and (B) 60 percent of the funds shall be distributed by a State educational agency in a manner consistent with the priorities for meeting the specified timetables first with respect to handicapped children who are not receiving an education and, second, with respect to handicapped children with the most severe handicaps who are receiving an inadequate education. The Committee bill further provides that in its annual application the State shall set forth policies and procedures which shall demonstrate how such distribution of funds will be accomplished within the State.

The Committee believes that this within-State distribution formula will assure a necessary degree of stability to each local educational agency in providing special education and related services for all handicapped children in the area served by each such agency. At the same time, however, this mechanism assures that each State will have adequate funds available in order to target funds to meet its overall responsibilities in meeting the timetables and priorities established under the Committee bill. In this regard the Committee notes that any State desiring to make an annual application for assistance must meet the eligibility requirements of new section 614 of the Act. These conditions of eligibility clearly specify the timetables and priorities herein discussed and apply throughout the State and govern the activities of the State and local educational agencies (albeit that it is the State which must demonstrate that such conditions are met). Therefore, the

Committee expects and intends that all funds distributed to local educational agencies (both pursuant to the 40 percent proportional distribution method and pursuant to the 60 percent to be distributed by the State agency to meet the timetables and priorities of the bill) will be utilized by such agencies to carry out the timetables and priorities specified in new section 614.

The Committee believes that regulations which the Commissioner shall promulgate under this Act should provide criteria on the basis of which States may allocate funds to localities consistent with the priorities and timetables of the Act. The Committee expects that the States will provide technical assistance in the development of procedures to guide the local educational agencies in identifying, locating and evaluating handicapped children residing in the jurisdiction according to due process and evaluation standards set forth by the Office of Education and the States. Further, these procedures should provide guidelines for identifying and certifying the actual number of handicapped children currently receiving educational services, and identifying and certifying the number of handicapped children in need of appropriate educational services. On the basis of this information, the State will be able to determine if the local educational agency is eligible, within the priorities of this Act, for additional funds to meet the timetables and priorities of the Act. It is expected that the local agency would provide a plan with a timetable which will demonstrate how it will achieve full educational opportunities for all handicapped children in its jurisdiction, including a description of the nature of programs and services it will establish, the personnel and personnel training needed to provide the services, and procedures established for the involvement of parents in the planning and provision of services, including steps it will take to employ and advance in employment qualified handicapped individuals, and steps it will take to remove architectural barriers. Finally, the Committee expects that the State will set forth procedures to assist the local educational agencies in evaluating the effectiveness of services, and should specifically require assurances for non-supplanting and comparability in the use of funds under the Act.

As previously stated, the Committee intends that all funds be utilized within the State in such a way as assures that the timetables are met, and that appropriate educational programming is provided for all handicapped children. The Committee, by adopting the mechanism for within State distribution, intends to encourage arrangements between local educational agencies which are directed toward providing appropriate and effective services for handicapped children. Local educational agencies, the State educational agency and the Commissioner of Education should assure that combination of school districts and other special arrangements are encouraged when such arrangements would more effectively meet the needs of handicapped children.

Private School Children

The Committee bill provides that the State shall, in the annual application, set forth policies and procedures to assure that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools, provision is made for the participation of such

children in special education and related services. The Committee has further provided that a State may count for purposes of receiving payments to which it is entitled all handicapped children, aged three to twenty-one, who are receiving special education and related services within the State. If the State is providing, under section 615(a)(4)(A), or has provided, under a similar provision of existing law, special education and related services (in the fiscal year for which the count is being made) to a child or children enrolled in non-public schools, such child or children are to be counted under the entitlement formula under section 612.

Furthermore, the Committee bill stipulates that special education and related services should be available to all children within the State as a matter of public responsibility. Thus, the bill requires that if a State or local educational agency has placed or referred the child to a private school or to another school or facility inside or outside of the State or local jurisdiction because the State or local educational agency did not have an appropriate program for the child, then the State or local educational agency remains financially responsible for that child's education. The Committee points out that all provisions of the Act including those requiring due process protections, the provision of individualized planning conferences, and the provision of services in the least restrictive environment extend to children so served by a State or local educational agency. If a parent contends that he or she has been forced, at that parent's own expense, to seek private schooling for the child because an appropriate program does not exist within the local educational agency responsible for the child's education and the local educational agency disagrees, that disagreement and the question of who remains financially responsible is a matter to which the due process procedures established under section 614(5) applies.

Under the Committee bill a State's application shall provide that special education and related services shall be provided at no cost to the parents of a handicapped child. This provision is designed to insure that students served by private facilities are treated equally with those in public schools and is not to be construed to prohibit charges by the educational agency to insurers, public programs, and others for hospital care, health services, rehabilitation, and other non-educational services. States are encouraged to utilize all sources of support for comprehensive services for handicapped students. It should be emphasized, however, that in no case should such charges result in cost to the parents or guardian, or the denial or diminution of services to the child.

Nonsupplanting

The Committee bill requires the State to provide assurance, satisfactory to the Commissioner, that Federal funds available under the Act will be used to supplement and increase the level of State and local funds expended for the education of handicapped children, and in no case, shall funds under this Act be used to supplant such State and local funds. However, the bill also provides authority to the Commissioner to waive, in part, the requirement of nonsupplanting if the

State provides clear and convincing evidence that all handicapped children within the State have available to them a free appropriate public education. This waiver authority is included consistent with the intent of the bill to provide an entitlement per handicapped child of \$300. Clear and convincing evidence in this instance shall include: (1) a determination by the Commissioner that all data and evidence presented by the State to demonstrate that all handicapped children are receiving a free appropriate public education is accurate, based on an audit done by the Commissioner; (2) a determination that the location and identification procedures utilized by the State were valid and enabled the State to discover all handicapped children within the State; (3) a determination that all handicapped children within public and private residential schools and institutions have available to them a free appropriate public education; and (4) that the State has met all requirements of the Act in full.

Inservice Training

In reviewing the testimony of hearing on this bill, it was pointed out that in order to pursue a goal of least restrictive environment for handicapped children, the concept of mainstreaming must be clearly understood. If the integration of handicapped children into the classroom is to be accomplished, several important changes must take place in that classroom. A most important element is the teacher, who will be responsible for the management of the handicapped children in that classroom. The fact can be well documented that appropriate educational services to handicapped children must be delivered by qualified personnel trained for that specific purpose.

The Committee is aware that there is a shortage of fully qualified personnel trained to serve all handicapped children in educational programs. Therefore, the Committee has determined that a program of continuous inservice training be undertaken to provide general and support personnel with the basic requirements needed to serve handicapped children in the classroom.

High quality educational services for all handicapped children will require a greater number of support personnel, as well as teachers. The supportive services should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

The Committee bill requires that a State submit in its annual application a description of the programs and procedures to develop and carry out a comprehensive system of personnel development which shall include the inservice training of general and special education instructional and support personnel and to assure that appropriately trained personnel are available to carry out the purposes of the Act.

The Committee heard testimony presented by the California State Department of Education with regard to an in-State system of inservice training it has adapted to be carried out by the State educational agency. This system of personnel training is important in upgrading skills of personnel already providing services for handi-

capped children, and in providing training to general educational personnel in school systems where "mainstreaming" of handicapped children is taking place. Whereas the preservice training of personnel may not be the responsibility of State educational agencies, the Committee believes that inservice training is clearly a necessary component of long-range planning for a State.

The additional State plan requirements adopted last year in amendments to the Education of the Handicapped Act required the States, in setting forth their long-range plan for the education of all handicapped children, to describe the number of and kind of personnel necessary to meet this goal. This plan, which is to be submitted by August 21, 1975, should provide the base of data necessary for States to begin their inservice training system.

The Committee bill does not provide a separate authorization of appropriations to carry out this inservice training requirement. However, funds are available under the Committee bill from the State administrative set-aside to carry out this requirement. Furthermore, in order to reach the timetable of the bill and to satisfy priorities under the bill for serving handicapped children who are not receiving an education and for serving handicapped children with the most severe handicaps, the inservice training of personnel may be a necessary component of local educational agency programs. The Committee therefore believes that where inservice training of school personnel may substantially contribute to meeting the overall goals of providing education for all handicapped children by the dates contained in the Committee bill and to meeting the priorities for service in the bill, then funds may be provided for inservice training as an integral component of an overall application from a local educational agency. The Committee points out that funds for preservice training of special education personnel are available under the authority of Part D of the Education of the Handicapped Act and that funding for preservice training of other personnel is available under other provisions of education law. The Committee therefore does not intend funds under Part B to be used for preservice training.

Payments

Consistent with existing law, the Committee bill provides that 5 percent of the total of the amounts paid under the Act for any fiscal year to the State or \$200,000 (whichever is greater) may be paid to the States for administration and planning. For Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, the Committee bill provides such 5 percent or \$60,000, whichever is greater. This dollar figure is an increase from \$35,000 in existing law. The Committee believes that such an increase is necessary to assist the territories in carrying out their responsibilities under the Act.

ADMINISTRATION AND EVALUATION

Administration

The Committee bill establishes new sections of the Education of the Handicapped Act relating to administration and evaluation by the Commissioner of Education. These provisions require the Commis-

sioner to render all necessary technical assistance to provide short-term training and institutes as necessary, to disseminate information, to conduct evaluations of efforts of the State to provide a free appropriate public education and to comply with the provisions of this Act. The Commissioner is directed to collect such information as he may need to carry out such evaluation (including specific information he is directed to collect by the Committee) and to conduct specific evaluations related to provisions of the Act.

With regard to administration, the Committee bill directs the Commissioner to insure that within one year from date of enactment each State shall provide certification of the actual number of handicapped children receiving an education. It further directs the Commissioner to prescribe, through regulations, a uniform financial report to be utilized by the States in submitting annual applications under the Act. The Committee believes that such reports are necessary to assist the Commissioner in assuring that funds are spent in such a way which meets the priorities and timetables under the Act. The Committee further points out that it has directed the Commissioner to collect programmatic information and data, specifically with regard to the number of handicapped children participating in programs assisted under this Act, their handicapping conditions, the number of children with no education or in need of improved educational services, and the amount of Federal, State and local expenditures specifically used to provide special education programs. In order to protect against erroneous classification and to provide adequate program review to prevent such misclassification, the Committee directs the Commissioner to work directly with the Director of the Office of Civil Rights to assure such program information is available for adequate programmatic review and evaluation.

The Committee bill, in addition, directs the Commissioner to issue, amend, and revoke such rules and regulations as may be necessary to carry out the provisions of the Act and specifically prohibits the use of any less formal method of implementing these provisions. This directive is included to assure that regulations are written to carry out the Act so that State and local educational agencies and other interested individuals and organizations have available to them a formal method of comment on proposed implementation and in order to provide a legal basis for actions taken by the Commissioner to carry out the Act. The Committee further notes that all provisions of section 431 of the General Education Provisions Act (relating to comment periods, a schedule for regulations, and a time period for implementing provisions of an applicable law) apply in full to this Act.

The Committee bill further provides a general provision requiring regulations to protect the confidentiality of personally identifiable data, information and records collected or maintained by the Commissioner and State and local educational agencies. Existing law provides a similar provision relating to additional State plan requirements. Because the Committee bill will require additional data collection and record keeping on the part of all educational authorities,

this provision has been included to assure that the confidentiality of such information is protected. The Committee further points out that all provisions relating to the protection of rights and privacy of parents and students under section 438 of the General Education Provisions Act apply in full to this Act.

The Committee bill requires each State in its annual application to submit a description of the programs and procedures by which other Federal funds received by the State for the education of handicapped children will be utilized by the State or its political subdivisions in a manner which is consistent with the purpose of this Act. In order to assure that such provision can be effectively implemented by the States and to provide additional cooperation of Federal officers responsible for the administration of such laws, the Committee bill directs the Secretary of the Department of Health, Education, and Welfare to establish a task force to develop guidelines which shall be implemented by him. Task force members as designated include representatives of the Office of Education, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office of the Assistant Secretary of Health, and the Office of Civil Rights. The Committee expects these representatives to develop guidelines which will be useful to the Office of Education and to the States in implementing the provisions of this Act relating to the use of other Federal funds providing assistance to the State or any of its political subdivisions for the education of handicapped children in order to assure the provision of a free appropriate public education for all handicapped children, consistent with the priorities and timetables established in this Act.

Evaluation

The Committee bill directs the Commissioner to provide for evaluation of programs administered under this Act, and further directs him to conduct (directly, or by grant or contract) such studies, investigations and evaluations as necessary for the effective implementation of the provisions of the Act. Specifically, the Committee bill requires the Commissioner to submit (within 120 days after the close of the fiscal year) an annual report which shall provide an evaluation of progress made toward the provision of a free appropriate public education for all handicapped children, an evaluation of the procedures adopted to assure special education and related services in the least restrictive environment commensurate with the child's needs, and an evaluation of the effectiveness of the procedures undertaken by the States to prevent erroneous classification of children as eligible under the Act (including any actions he has taken to carry out his responsibilities to prevent erroneous classification). The Committee intends to very and progress being made by a State to provide a free appropriate public education for all handicapped children.

Furthermore, the Committee directs the Commissioner to undertake a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services provided to handicapped children. Such criteria and procedures shall

be designed in order that they may be utilized in conjunction with the individualized data available through the individualized planning conferences.

S. 6 as introduced required that State and local educational agencies carry out such evaluations. The Committee deletes this language from the section relating to the individualized planning conference and directs the Commissioner, in consultation with State and local educational agencies, to develop criteria procedures by which more individualized evaluation may be done to assess the effectiveness of special education and related services provided to handicapped children.

The Committee understands that projects currently being funded by the Bureau of Education for the Handicapped, and other projects are underway which are operating individualized planning conferences with evaluation procedures. The Committee is very interested in the possible use of data which may be available through such conferences which could be used to assist in the evaluation of special education and related services for handicapped children, and has directed the Commissioner to provide a comprehensive study of objective criteria and evaluation procedures which could be utilized by State and local educational agencies.

The Committee bill authorizes the Commissioner to hire qualified personnel to conduct data collection and evaluation procedures and to carry out his duties under the Act. The Committee believes that the Office of Education must provide additional and improved staffing to carry out its implementation efforts relating to the education of all handicapped children, and has thus authorized the hiring of up to twenty additional staff persons to be assigned to the Bureau of Education for the Handicapped to carry out these purposes. In carrying out the data collection, investigation, and evaluation required by this Act, the Committee expects the Commissioner to assign responsibility for these tasks to the Bureau of Education for the Handicapped, so that such data collection and evaluation will be closely coordinated with program and technical assistance. In order to provide sufficient funds to carry out the necessary evaluations under the Act, the Committee authorizes the appropriations of \$2.5 million for fiscal year 1976, \$3.5 million for fiscal year 1977, \$5 million for fiscal year 1978, and \$7.5 million for fiscal year 1979. The Committee directs the Commissioner to consult with the States with regard to all of his evaluation responsibilities under this Act, and expects the Commissioner to provide technical assistance to the States to develop and improve their own evaluation capabilities.

Affirmative Action

Section 5(a) of the Committee bill provides that each State agency and other recipient of assistance under the Education of the Handicapped Act shall take affirmative action to employ and advance in employment qualified handicapped individuals who are covered under section 503 of the Rehabilitation Act of 1973 and on the same terms

and conditions as set forth in such section 503 (relating to the affirmative action requirement under Federal contracts and subcontracts).

The Committee notes with respect to the affirmative action program required of each Federal department, agency, and instrumentality in section 501 of the Rehabilitation Act of 1973, that those agencies which administer programs affecting handicapped individuals (including the Department of Health, Education and Welfare, the Department of Labor, the Civil Service Commission, and the Architectural and Transportation Barriers Compliance Board) must bear a special responsibility to provide exemplary affirmative action programs to employ and advance in employment qualified handicapped individuals, especially in those administrative units responsible for these programs. Their programs should set a high standard which can be emulated by agencies which are not so directly and intimately involved in the provision of services to, or the protection of, handicapped persons.

Similarly, those State agencies which administer programs for handicapped individuals, along with local educational agencies and other public and private agencies and facilities which provide services through grants under the Education of the Handicapped Act, are expected to adopt strong affirmative action programs which are at least equivalent to those now being developed for Federal agencies. Moreover, these State and local agencies and organizations should be held to the same exemplary standard for affirmative action required of the Federal agencies with particular responsibilities for programs affecting handicapped individuals, in order to serve as a model for compliance with the affirmative action that is required of all Federal contractors and all Federal subcontractors under section 503 of the Rehabilitation Act.

Grants for the Removal of Architectural Barriers

The Committee bill includes a provision authorizing the Commissioner to make grants to State and local educational agencies for the purpose of altering existing buildings and equipment to eliminate architectural barriers, consistent with standards under Public Law 90-480. No other provision of existing law specifically provides such authority to the Commissioner. The Committee believes that the removal of such barriers is necessary to assure certain handicapped children a free appropriate public education in the least restrictive environment and that barriers to accessibility should not be the cause which prevents appropriate education of such children with their non-handicapped peers. Thus, the Committee directs the Commissioner to request sufficient funds in his budget to provide authority to make such grants. In carrying out his authority under this section with regard to publishing regulations for applications for grants and in approving such grants, the Committee directs the Commissioner to consult with the Architectural and Transportation Barriers Compliance Board, established pursuant to Public Law 93-112, the Rehabilitation Act of 1973.

COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510, 91st Congress), the Committee estimates that if all funds authorized were appropriated during fiscal year 1976 and the succeeding four fiscal years, the five year costs occasioned by S.6, as reported, would be as follows:

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (AS REPORTED)

[In millions of dollars]

	Fiscal years--				
	1976	1977	1978	1979	1980
State entitlements for education of handicapped children.....	\$666	¹ \$1,172	¹ \$1,810	¹ \$2,129
Payments to States for administration and planning.....	(²)	² 53.4	² 90.5	² 106
Administration.....	4.1	4.1	4.1	4.1
Evaluation.....	2.5	3.5	5	7.5
Grants for removal of architectural barriers.....	(³)	(³)	(³)	(³)
Total.....	669.5	1,229.9	1,906.5	2,243.5

Note: Grand total, \$6,117.

¹ The formula is based on an entitlement of \$300 per each handicapped child who is receiving an education. The figures for each fiscal year assume full funding of full amount (\$300) per each child served. The committee has estimated the number of children served for fiscal year 1977 on the basis of the most recent available data (for school year 1974-75). In the succeeding fiscal years, the committee has estimated the number of children to be served by assuming an equal increment of number of children served based on the timetable contained in the legislation. Each figure for each fiscal year assumes that all funds thus authorized will be appropriated.

² States may use 5 percent or \$200,000 (or 5 percent or \$35,000 for territories) whichever is greater, for administration and planning from the amounts the State receives under payments to States.

³ S. 6 authorizes such sums, up to 5 percent or \$200,000 (or 5 percent or \$60,000 for territories) for payments to States for administration and planning.

⁴ Such sums, not in excess of one-quarter of 1 percent of the amounts appropriated for payments to States, or \$1 million, whichever is greater.

⁵ Such sums.

TABULATION OF VOTES CAST IN COMMITTEE

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Members of the Committee on Labor and Public Welfare on a motion to report favorably to the Senate S. 6, as amended by Committee substitute and title amendment, (adopted: 15 yeas, 0 nays), as follows:

Yeas	Nays
Mr. Williams	0
Mr. Randolph	
Mr. Pell	
Mr. Kennedy	
Mr. Nelson	
Mr. Mondale	
Mr. Eagleton	
Mr. Cranston	
Mr. Hathaway	
Mr. Javits	
Mr. Schweiker	
Mr. Taft	
Mr. Beall	
Mr. Stafford	
Mr. Laxalt	

SECTION-BY-SECTION ANALYSIS OF S. 6 AS REPORTED

Section 1

Establishes the title of the proposed Act as "The Education for all Handicapped Children Act."

Section 2

Subsection (a) amends subsection (a) of section 614 of the Education Amendments of 1974, which added a new section 611 to the Education of the Handicapped Act (hereafter in this analysis referred to as "the Act") effective for the Fiscal Year 1975 only, to extend the provisions of that section 611 through Fiscal Year 1976.

Subsection (b) amends subsection (b) of section 614 of the Education Amendments of 1974, which added a new section 612 to the Education of the Handicapped Act effective for the Fiscal Year 1975 only, to extend the provisions of that section 612 through Fiscal Year 1976.

Subsection (c) amends subsection (c) of section 614 of the Education Amendments of 1974, which inserted in the first sentence of present section 613(a) of the Education of the Handicapped Act the clause "is entitled to receive payments" in lieu of "desires to receive grants" effective for the Fiscal Year 1975 only, to extend the insertion of that clause in present section 613(a) through Fiscal Year 1976.

Subsection (d) Paragraph (1) amends paragraph (2) of subsection (c) of present section 611 of the Education of the Handicapped Act as added by section 614(a) of the Education Amendments of 1974 effective for the Fiscal Year 1975 only, to extend the entitlement to grants under that paragraph (2) of subsection (c) of that section 611 through Fiscal Year 1976.

Paragraph (2) amends subsection (d) of present section 611 of the Education of the Handicapped Act, as added by section 614(a) of the Education Amendments of 1974 effective for the Fiscal Year 1975 only, to extend the authorization for the Commissioner to make certain payments under that subsection (d) of that section 611 through Fiscal Year 1976.

Paragraph (3) amends subsection (a) of present section 612 of the Education of the Handicapped Act as amended by the Education Amendments of 1974, effective for Fiscal Year 1975 only, to extend that subsection through fiscal year 1976 and to add a new sentence at the end of that subsection providing that sums appropriated for Fiscal Year 1976 shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 611, which section was added by section 614(a) of the Education Amendments of 1974 and which section is extended by the Committee bill through Fiscal Year 1976, in an amount equal to the amount each such State received from the appropriation for Part B in Fiscal Year 1975.

Section 3

Subsection (a) Paragraph (1) redesignates present section 601 of the Education of the Handicapped Act (which establishes the short title of that Act) as section 600.

Paragraph (2) adds to the Education of the Handicapped Act after section 600 as redesignated by paragraph (1) of this subsection, a new section 601, entitled "Statement of Purpose," as follows:

Subsection (a) of the new section 601. Outlines the findings of the Congress that (1) there are more than eight million handicapped children in the United States today, (2) only a few school systems fully meet the special educational needs of these children, (3) more than half of these estimated eight million handicapped children do not receive services which will provide them equal educational opportunity and more than one million of these children are excluded entirely from the public school system, (4) inadequate educational services force families of handicapped children to seek such services outside the public school system at substantial cost to those families, (5) developments in the field of special education have advanced to the point that public school systems can, if adequately funded, provide equal educational opportunity for handicapped children, (6) present financial resources of state and local educational agencies are inadequate to meet the special educational needs of all handicapped children, and (7) in order to assure the equal protection of the laws the Federal Government must assist State and local educational agencies in fulfilling their responsibility to meet the educational needs of all handicapped children.

Subsection (b) of new section 601 states that the purpose of this title is to insure that all handicapped children have a free appropriate public education (as that term is defined in paragraph (8) of the new section 602 of the Act as amended by subsection (b) of section 3 of the Committee bill) available to them within a specified time period (which time period is specified in clause (B) of paragraph (2) of new section 614 added to the Act by section 4 of the Committee bill and requires, with certain exceptions, that a free appropriate public education be available to all handicapped children between the ages of three and eighteen in a State no later than September 1, 1978 and to all handicapped children between the ages of three and twenty-one in a State no later than September 1, 1980), to insure the protection and the rights of handicapped children and their parents or guardians, to relieve the fiscal burden placed on the States and localities when they provide for the education of all handicapped children, and to assess and assure that the efforts made by the States (as required in the Committee bill) to educate all handicapped children are effective.

Subsection (b). Amends present section 602 of the Act which defines certain terms. The terms "Advisory Committee", "construction", "Commissioner", "elementary school", "institution of higher education", "local educational agency", "nonprofit", "research and related purposes", "secondary school", "Secretary", "State", and "State educational agency" are defined identically as in present section 602. Additional terms are defined in new section 602, as follows:

(1) "handicapped children," which is defined as in present section 602 but replaces the term "crippled" with the term "orthopedically impaired" and adds the term "children with specific learning disabilities" (which term, "children with specific learning disabilities", is added to the present section 602 by this new section 602 and is strictly defined in this new section);

(2) "children with specific learning disabilities," which is defined as children having a disorder in one or more basic psychological processes involved in understanding or using spoken or written language but specifically excluding those children having learning problems from visual, hearing or motor handicaps, from mental retardation, from emotional disturbances, or from economic, cultural, or environmental deprivation;

(3) "equipment", which is defined identically as in present section 602 of the Act but adding the term "telecommunications, sensory, and other technological aids and devices";

(4) "free appropriate public education", which is defined as special education and related services (which terms, "special education" and "related services" are added to the present section 602 by this new section 602 and which are specifically defined in this new section) to be provided at public expense, without charge to the parents or guardian of a handicapped child, under public supervision and direction, which education includes an appropriate pre-school, elementary or secondary school education in the applicable State and meeting the standards of the State educational agency, and which education is provided in conformance with an individualized planning conference (as such individualized planning conference is a specifically defined term added to present section 602 by the new section 602 and required to pursuant to paragraph (4) of new section 614, as added by section 4 of the Committee bill);

(5) "individualized planning conference", which is defined as a meeting or meetings specifically for the purpose of developing a written statement of (A) a handicapped child's present level of educational performance, (B) the short term instructional objectives which are expected and sought to be achieved in the education of the handicapped child, (C) the specific educational services to be provided to the handicapped child and the extent to which such child is to be integrated into the regular classroom and school program of non-handicapped children, and (D) the expected date for the initiation and duration of educational services for the handicapped child. Such written statement shall be developed with the joint participation of a local educational agency representative who must be qualified to provide or supervise specially designed instruction which meets the unique needs of handicapped children, the teacher (or teachers) of the child, the handicapped child's parents or guardian, and, where appropriate, the handicapped child himself;

(6) "related services", which is defined as transportation, developmental, corrective, and supportive services (specifically including at least speech pathology and audiology, psychological services, counseling services, physical and occupational therapy, and recreation) necessary for a handicapped child to fully benefit from special education, and including early identification and assessment of handicapping conditions in children and provision of such services to such children;

(7) "Special education," which is defined as specially designed instruction (including physical education) which will meet the unique needs of a handicapped child and is provided at no cost to parents or guardian of a handicapped child.

Section 4

Substitutes a new Part B in the Education of the Handicapped Act for the existing Part B (Assistance to States for Education of Handicapped Children), which by virtue of section 6 of the Committee bill, generally, does not take effect until July 1, 1976. The new Part B, as substituted by this section of the Committee bill and entitled "Assistance to States for the Education of All Handicapped Children", is explained as follows:

New section 611 establishes the duration of the new Part B program from July 1, 1976 and ending September 30, 1979 and, for that time period, requires the Commissioner to make payments to State educational agencies for grants on the basis of entitlements (established under new section 612) for the purpose of assisting States in providing full educational opportunity for all handicapped children. This new section 611 also specifically states that payments made may be used for the early identification and assessment of handicapping conditions in children between the ages birth to three years.

New section 612 establishes a new State entitlement grant formula which replaces the entitlement grant formula in present section 611 (as in effect for fiscal years 1975 and 1976 by virtue of the amendments made by section 2 of the Committee bill).

Subsection (a) of this new section 612 requires the Commissioner to make payments to States pursuant to the provisions of new Part B and for the purposes set forth in new section 611, as added by this section 4 of the Committee bill, to assist the States in providing full educational opportunity for all handicapped children.

Paragraph (1) of subsection (b) of new section 612 establishes a new formula (on an entitlement basis) for grants to each State. The maximum grant to which each State shall be entitled shall be the product of—

(A) the number of handicapped children aged three to twenty-one in that State who are actually receiving special education and related services, which number shall be based on the most satisfactory data available for the most recent fiscal year:

multiplied by—

(B) \$300.

Paragraph (2) of subsection (b) of new section 612 places a limitation on the number of handicapped children each State may count for purposes of determining its basic entitlement under clause (A) of paragraph (1) of this subsection. Under this limitation, as part of determining its entitlement pursuant to clause (A) of paragraph (1) of subsection (b) of the new section 612, no State may count as handicapped children aged three to twenty-one, inclusive, more than ten percent of all children aged three to twenty-one, inclusive, in that State for the applicable fiscal year.

Paragraph (3) of subsection (b) of new section 612 specifies that the term "State" as used in subsection (b) of this new section 612 does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Paragraph (1) of subsection (c) of new section 612 specifies that the jurisdiction to which the entire subsection (c) applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Paragraph (2) of subsection (c) of new section 612 entitles each of the jurisdictions specified in paragraph (1) of subsection (c) of new section 612 to a grant (subject, however, to an aggregate limitation for all such specified jurisdictions) in any fiscal year for the purposes stated in new section 611 in an amount to be determined by the Commissioner of Education, according to criteria established by him through regulations. This paragraph (2) also establishes a limitation on the aggregate amount to which all such jurisdictions are entitled which amount is not to exceed 1 percent of the total to which all States are entitled for that fiscal year under subsection (b) of new section 612. Further, paragraph (2) provides that to the extent that the amounts for each jurisdiction, as determined by the Commissioner pursuant to the first sentence of this paragraph (2), exceed the 1 percent limitation on the aggregate amounts for all such jurisdictions, the entitlement for each jurisdiction shall be proportionally reduced to meet the 1 percent limitation on the aggregate amount.

Subsection (d) of new section 612 authorizes the Commissioner of Education, upon terms and pursuant to such criteria he determines will best carry out the purposes of the new part B, to make payments, not to exceed 1 percent of the aggregate amounts to which States are entitled in the applicable fiscal year under subsection (b) of new section 612, to the Secretary of the Interior in accordance with the need for assisting in the education of handicapped children on reservations serviced by Department of the Interior elementary and secondary schools which are operated for Indian children.

New section 613 establishes the method by which the sums appropriated pursuant to the new Part B shall be made available to States and allocated to each State.

Subsection (a) of new section 613 provides that sums appropriated under the new Part B for each fiscal year shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under new section 612, in an amount equal to the amount each State received from appropriations for Part B for the preceding fiscal year. Thus, from the sums appropriated in any fiscal year under the new Part B, each State will receive in each such fiscal year at least the amount it received in the prior fiscal year.

Subsection (b) of new section 613 provides that any sums appropriated to carry out the new Part B which remain after allocations are made under subsection (a) of this new section shall be made in accordance with the entitlements are unsatisfied ratably reduced. Thus, after each State has received, from the sums appropriated in any fiscal year under the new Part B, the amount it received in the prior fiscal year, each State will receive the amount to which it is entitled under new section 612, ratably reduced (if the sums appropriated will not fully satisfy such entitlement).

Subsection (c) of new section 613 provides that in the event funds become available for making payments under the new Part P for any fiscal year, after allocations of previously available funds have

been made under new subsections (a) and (b) of this new section for that year, the amounts reduced under subsection (b) of this new section shall be increased on the same basis as they were reduced (and shall be paid to each State on that basis).

New section 614 establishes the conditions which each State must meet in order to qualify for assistance in any fiscal year under the new Part B.

Paragraph (1) of new section 614 establishes the condition that each State must have a policy in current effect which assures that *all* handicapped children have the right to a free appropriate public education.

Paragraph (2) of new section 614 establishes the condition that each State has developed a plan as required by present section 613(b) of the Act, as in effect prior to the enactment of the Education for All Handicapped Children Act, which plan will be submitted not later than August 21, 1975, and will be amended to comply with the provisions of this paragraph (2).

Clause (A) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that the State has established a goal to provide full educational opportunity to all handicapped children, with a detailed timetable specifying when such goal will be accomplished and describing the kind and number of facilities, personnel, and services which are necessary throughout the State to meet the required goal. (This clause (A) is identical to clause (C) of present section 613(b) (1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Clause (B) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that a free appropriate public education (as such term is specifically defined in new section 602, as added by section 3 of the Committee bill) will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978 (which date is intended to be substantially coterminous with the beginning of the 1978-79 school year in each State) and such free appropriate education will be available for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980 (which date is intended to be substantially coterminous with the beginning of the 1980-81 school year in each State). The requirements of this clause (B) are subject to the specific exception that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, such requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

Clause (C) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that all handicapped children, regardless of the severity of their handicap, residing in the State and who are in need of special education and related services are identified, located, and evaluated. Further, such policies and procedures

shall set forth a practical method to determine which handicapped children are in fact currently receiving special education and related services and which handicapped children are not in fact receiving such services. (This clause (C) is identical to clause (A) of present section 613(b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.) Clause (D) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that it adheres to specific detailed criteria prescribed by the Commissioner of Education to protect the confidentiality of any data or information collected or caused to be collected by the State pursuant to its responsibilities under this new section 614. (This clause (D) is identical to clause (B) of present section 613(b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Clause (E) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that each such amended plan shall be available (for review and comment) to parents and other members of the general public at least thirty days prior to the time the amended plan is submitted to the Commissioner of Education for his approval. (This clause (E) is identical to clause (D) of present section 613(b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Paragraph (3) of new section 614 establishes the condition that the State has established certain priorities for providing a free appropriate public education to all handicapped children in the State which priorities shall be adhered to in meeting the timetables required by clause (B) of paragraph (2) of new section 614. The priorities require the States to assure first, that a free appropriate public education will be available for all handicapped children in the State who are not receiving an education (i.e. who are without any educational services) and second, that a free appropriate education will be available for all handicapped children in the State with the most severe handicaps who are receiving an inadequate education (i.e. those most severely handicapped children for whom the educational services available to them are not adequately designed to meet their unique needs). This paragraph (3) further provides that the State must show that it has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of new section 614 (thus assuring that these overall timetables are being met and that the priorities established in this paragraph will be carried out as part of complying with the overall timetables).

Paragraph (4) of new section 614 establishes the condition that the State will assure that each local educational agency in the State will maintain the records of each handicapped child's individualized planning conference which conference is to be held at least three times each year. The records to be maintained must include the written statement developed pursuant to the individualized planning conference (the contents of which statement are specified in clauses (A) through (D) of paragraph (9) of new section 602). Further, this paragraph requires that as part of the conference to be held at least three times each

year the written statement developed for the handicapped child must be reviewed and, when appropriate, revised, and any such revision of the written statement must be with the agreement of the parents or guardian of the child.

Paragraph (5) of new section 614 establishes the condition that the State shall have established certain procedural safeguards for handicapped children and their parents or guardian with respect to the identification, evaluation, and educational placement of handicapped children. (The provisions of this paragraph are substantially identical to the provisions of paragraph (13) of present section 613(a) of the Act, as added to the Act by section 614(d) of the Education Amendments of 1974.)

Clause (A) of the paragraph (5) requires that such safeguards include notice to the parents or guardian of a handicapped child when the State or local educational agency proposes to initiate or change the educational placement of such child; an opportunity for the parents or guardian of such child to obtain an impartial due process hearing (which hearing may not be conducted by any State or local educational agency employee who is directly involved in the education or care of that child); an opportunity to examine the relevant records with respect to the child's classification and placement; an opportunity to obtain an independent educational evaluation of the child; the establishment of procedures to protect a handicapped child whose parents or guardian are unknown, unavailable, or where the child is a ward of the State and such procedures shall provide for the assignment of an individual to act as a surrogate for the parents or guardian (which individual may not be a State or local educational agency employee directly involved in the care or education of the child); and provision to insure that decisions rendered as a result of the due process proceedings required by this clause (A) shall be final and binding subject only to appropriate administrative or judicial review. Clause (B) of this paragraph (5) requires that safeguards further include procedures which insure that, to the maximum appropriate extent, all handicapped children (including those children in public or private institutions or other care facilities) are provided education services together with children who are not handicapped, and provision must be made to insure that any special education or other services which necessitate the removal of a handicapped child from the regular educational environment will occur only when the nature or severity of a child's handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. Clause (C) of this paragraph (5) requires that additional procedures are established to insure that any testing and evaluation materials and procedures which are utilized in the evaluation and placement of handicapped children will be utilized and administered in a manner so as not to be racially or culturally discriminatory. This clause (C) is further clarified to require that any testing and evaluation materials or procedures utilized by the State or local educational agency must be provided and administered to the child in his primary home language or other mode of communication (such as braille or sign language) and no single test or evaluation

procedure may be the sole criterion to determine an appropriate educational program for a child.

Paragraph (6) of new section 614 establishes the condition that the State educational agency shall be responsible for insuring that the requirements set forth in new Part B are carried out, and, further, that persons in the State educational agency who are responsible for education programs for handicapped children shall generally supervise all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, and all such education programs shall meet the education standards of the State educational agency.

Paragraph (7) of new section 614 establishes the condition that the State will assure that (A) in carrying out the requirements of this section 614, procedures are established by the State for consultation with handicapped individuals, parents or guardians of handicapped children, and other individuals involved in or concerned with the education of handicapped; (B) prior to the adoption of any of the policies, programs, and procedures required pursuant to the new sections 614 and 615 of the Act there are public hearings, adequate notice of such hearings, and an opportunity for comment by the general public (with respect to the policies, procedures, and programs proposed to be adopted by the State); and (C) prior to the issuance of any rules and regulations by the State for the purpose of implementing the requirements of the Education for all Handicapped Children Act the State shall assure an opportunity for comment by the general public with respect to such proposed rules and regulations.

Paragraph (8) of new section 614 establishes the condition that an entity has been established in the State for the purpose of assuring compliance with the provisions of new Part B. At least half of the members of such entity must be handicapped individuals or parents or guardians of handicapped children and all of the members of such entity must be qualified by training and experience to carry out the purposes of this paragraph (8).

Clause (A) of this paragraph (8) requires such entity to conduct periodic evaluations throughout the State for the purpose of determining whether the State and local educational agencies within the State are fully complying with the requirements of the Education for all Handicapped Children Act so as to insure that all handicapped children are receiving the services therein required. Clause (B) of this paragraph (8) empowers such entity to receive individual complaints respecting alleged violations of the requirements of this Act, including complaints that a child has been erroneously classified as a handicapped child who is eligible to be counted for purposes of the State's entitlement pursuant to new section 612. This clause (B) further provides that there shall be notice and an opportunity for a hearing with respect to such complaints.

Clause (C) of this paragraph (8) requires such entity to make determinations with respect to such alleged violations and, upon a finding (after appropriate notice and opportunity for a hearing has been provided) that a violation has occurred, such entity shall so notify the State and appropriate local educational agency and take

appropriate steps to assure (either directly, through conciliation and mediation, or by other means) that such violations are corrected.

Clause (D) of this paragraph (8) requires that upon a determination that, after a reasonable period of time, the State or appropriate local educational agency has not taken adequate steps to correct a violation, such entity shall inform the Commissioner of Education who is directed thereupon to take appropriate action pursuant to his authority under new section 616 of the Act.

New section 615 provides that any State which meets the eligibility requirements set forth in new section 614 and which State desires to participate in the program under the new Part B shall submit to the Commissioner an annual application at such time, in such manner, and containing or accompanied by such information as the Commissioner deems necessary. Such annual application shall set forth certain programs, policies, and procedures to be undertaken by such State.

Clause (1) of subsection (a) of new section 615 provides that each application shall set forth a description of programs and procedures for the expenditure of funds to be paid to the State educational agency in the fiscal year for which such application is made. Such expenditure of funds must be made in conformance with the timetables, priorities, and other requirements established under paragraphs (2) and (3) of new section 614.

Clause (2) of subsection (a) of this new section 615 provides that each application shall set forth a description of programs and procedures by which funds received by the State or any of its political subdivisions under other Federal programs which expressly provide or set aside financial assistance for the education of handicapped children (including, but not limited to, such programs as Part A of Title I of the Elementary and Secondary Education Act, Titles III and IV of the Elementary and Secondary Act, and the Vocational Education Act of 1963) and funds received by the State or any of its political subdivisions under the Rehabilitation Act of 1973 which are utilized for the education of handicapped children will be utilized by the State or its political subdivisions only in a manner consistent with the purposes of the Education for all Handicapped Children Act. The requirement of this clause (2) shall not, however, be construed to limit or otherwise modify the specific requirements of the laws which govern such Federal programs.

Clause (3) of subsection (a) of this new section 615 provides that each application shall, consistent with the purposes of the Education for all Handicapped Children Act, set forth a description of the programs and procedures to develop and implement a comprehensive personnel development system specifically including in-service training for general and special education instructional and support personnel; shall set forth detailed procedures to assure that all personnel necessary and utilized to carry out the purposes of the new Part B are adequately and appropriately prepared and trained; shall set forth effective procedures to acquire and disseminate teachers and administrators of programs for handicapped children and to acquire and disseminate information derived from educational research and demonstration (and similar) projects; and shall set forth effective procedures for appropriately adopting promising educational practices and mate-

rials which are developed through such educational research and demonstration projects.

Clause (4) of subsection (a) of this new section 615 provides that each application shall set forth certain policies and procedures with respect to the education of handicapped children in non-public and private schools and facilities.

Subclause (A) of this clause (4) provides that each application shall set forth policies and procedures to assure that to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools there will be provision made for such children to participate in program services which are assisted or carried out under this new Part B (by providing for such children special education and related services).

Subclause (B) of this clause (4) provides that each application shall set forth policies and procedures to assure that, if handicapped children are placed in or referred to private (non-public) schools or facilities by the State or a local educational agency within the State in order for the State or local agency to meet the requirements of this Act or other applicable law, the special education (which shall be in conformance with an individualized planning conference) and related services provided to such children in private schools or facilities shall be at no cost to their parents (or guardians). Further, this subclause (B) provides that the handicapped children placed in or referred to private schools and facilities shall have all the rights (under the Act or any other applicable law) to which they would be entitled if served (directly) by the State or appropriate local education agency and such State agency shall assure that the private schools and facilities shall meet the same standards that apply to State and local educational agencies.

Clause (5) of subsection (a) of this new section 615 provides that each application shall set forth certain policies and procedures with respect to the distribution of funds received by the State under the new Part B.

Subclause (A) of this clause (5) provides that each application shall set forth policies and procedures which assure that (1) forty percent of the funds distributed under the new Part B shall be distributed by the State educational agency to local educational agencies in the State in direct proportion to the number of handicapped children in need of a free appropriate public education in the area served by each such local agency and (2) sixty percent of the funds distributed under the new Part B shall be distributed by the State educational agency in a manner which is consistent with the requirements of paragraph (3) of new section 614 (relating to priorities for providing a free appropriate public education for handicapped children and progress made toward meeting the timetables established in paragraph (2)(B) of new section 614).

Subclause (B) of this clause (5) provides that each application shall set forth policies and procedures which assure that upon a determination by the compliance entity (established pursuant to new section 614(8)) that a child has been erroneously classified by the local educational agency as a handicapped child between the ages of 3 and 21, inclusive, and actually receiving special education and related services, the State shall seek to recover any funds distributed to a local educa-

tional agency for services to a child who is so erroneously classified as a handicapped child.

Clause (6) of subsection (a) of new section 615 provides that each application shall set forth satisfactory assurance that a public agency will administer and control the funds provided under the new Part B for the purposes and uses provided therein and that title to (and administration of) any property derived from such funds shall be in a public agency for such purposes and uses.

Clause (7) of subsection (a) of new section 615 provides that each application shall contain assurances (A) that the State will make provision for making such reports as the Commissioner may require to carry out his functions under the new Part B and (B) that the State will keep such records (and afford access thereto) as the Commissioner may require to assure the accuracy of such reports and proper disbursement of Federal funds under the Act.

Clause (8) of subsection (a) of new section 615 provides that each application shall contain assurances that Federal funds made available under the new Part B shall be used to supplement and increase State and local funds expended for the education of handicapped children and in no case shall supplant such State and local funds. There is an exception to this requirement, in part, if the Commissioner determines that the State has provided clear and convincing evidence that *all* handicapped children (in the State) have available to them a free appropriate public education.

Clause (9) of subsection (a) of new section 615 provides that each application shall contain assurances (consistent with new section 617 (a) (2) of the Act relating to uniform financial reports) that the State will make provision for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to any State under the Act, including any such funds paid to local educational agencies by the State.

Clause (10) of subsection (a) of new section 615 provides that each application shall, in accordance with criteria prescribed by the Commissioner pursuant to new section 618, establish procedures for the evaluation (at least annually) of the effectiveness of programs (in the State) in meeting the educational needs of handicapped children. The evaluation of such programs shall include an evaluation of individualized planning conferences.

Subsection (b) of new section 615 provides that the Commissioner shall approve any State annual application (and any modification thereof) if (1) the State has met the eligibility requirements of new section 614, and (2) the State meets the application requirements of subsection (a) of this new section 615. The Commissioner must disapprove any application which does not meet such eligibility and application requirements except that such disapproval shall not be final until the State has been given reasonable notice and opportunity for a hearing.

New section 616 establishes certain procedures with respect to withholding by the Commissioner of Education of Federal funds paid under the new Part B and judicial review of any such withholding.

Paragraph (1) of subsection (a) of new section 616 provides that whenever the Commissioner finds (after reasonable notice and opportunity for a hearing) that a State educational agency has failed to

comply substantially with any of the provisions of new sections 614 or 615 he shall notify such agency that payments under the new Part B will no longer be made to the State (or, in his discretion, that the State agency shall no longer make payments to specified local educational agencies whose actions or omissions have caused or involve such failure) until he is satisfied there is no longer any such failure to comply. No payments shall be made to the State (or by the State educational agency to local agencies whose actions or omissions have resulted in non-compliance) until the Commissioner is satisfied that there is no longer any such failure to comply.

Paragraph (2) of subsection (a) of new section 616 provides that whenever a compliance entity (established under new section 614(8)) in any State finds that there has been substantial failure to comply with the requirements of any provision of the Act such entity shall notify the State educational agency, the appropriate local educational agencies, the chief executive officer of the State, and the Commissioner. Upon such notification, the Commissioner may provide notice and an opportunity for a hearing and, if he finds a failure such as described in paragraph (1) of this subsection, he shall then withhold payments pursuant to this subsection.

Subsection (b) of new section 616 sets forth the judicial review procedures available to a State which is dissatisfied with the final action of the Commissioner with respect to an application submitted by such State under new section 615.

New section 617 provides that the Commissioner of Education and the Secretary of Health, Education, and Welfare shall carry out certain specific duties and functions in the administration of the new Part B.

Subsection (a) of new section 617 provides that in carrying out his duties under the new Part B, the Commissioner shall (1) cooperate with and render all necessary technical assistance (directly or by grant or contract) to the States with respect to the education of handicapped children and the execution of the provisions of the new Part B, (2) provide any necessary short-term training programs and institutes, (3) promote the education of all handicapped children in the States and disseminate information with respect thereto, and (4) insure that, within one year from the date of enactment of the Education for all Handicapped Children Act, each State shall certify (to the Commissioner) the actual number of handicapped children who are receiving special education and related services in such State (in order to assure that there is accurate data with respect to the number of handicapped children eligible to be counted for purposes of each State's entitlement under new section 612). Further, this subsection (a) provides that, as soon as practicable after the date of enactment, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting an application for assistance under the new Part B.

Subsection (b) of new section 617 provides that the Commissioner shall issue, amend, and revoke such rules and regulations as may be necessary to carry out the provisions of new Part B. Further, this subsection specifically provides that the Commissioner, in carrying out the provisions of new Part B, is not authorized to use any less formal method of implementation than by rules and regulations.

Subsection (c) of new section 617 provides that the Commissioner shall take whatever action is necessary and appropriate to assure the protection of the confidentiality of any personally identifiable data, information, or records collected or maintained by him and by State and local educational agencies pursuant to the provisions of the Act.

Subsection (d) of new section 617 provides that the Secretary shall establish a task force which shall develop guidelines to assure that all programs administered by the Department of Health, Education, and Welfare which provide assistance for the education of handicapped children will be administered in a manner consistent with the provisions of the Act (as the Act is amended by the Committee bill). The Secretary shall be responsible for enforcing such guidelines and for assuring maximum cooperation by the agencies in the Department in the implementation of such guidelines. The task force established by the Secretary shall be composed of representatives of the Office of Education, the Bureau of Education for the Handicapped, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office for Handicapped Individuals, the Office of the Assistant Secretary for Health and the Office of Civil Rights.

Subsection (e) of new section 617 authorizes to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums, not to be in excess of one-quarter of 1 percent of the amounts appropriated pursuant to new section 612, or \$1,000,000, whichever is greater, as are necessary to administer the provisions of new Part B.

New section 618 provides that the Commissioner of Education shall conduct certain evaluations of and make certain reports with respect to the program authorized under the new Part B and with respect to the education of handicapped children generally.

Subsection (a) of new section 618 provides that the Commissioner shall measure and evaluate the impact of the program authorized under the new Part B and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

Subsection (b) of new section 618 provides that in carrying out his responsibilities under the new Part B the Commissioner shall (directly or by grant or contract) conduct such studies, investigations, and evaluations as are necessary to assure the effective implementation of the new Part B. Under clause (1) of this subsection the Commissioner shall provide for the collection and annual reporting of information concerning programs and projects carried out with financial assistance under the new Part B and under other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies (and other appropriate sources) as is necessary for the implementation of the new Part B specifically including such information as (A) the numbers of handicapped children participating in programs supported under the new Part B, (B) the types of handicaps and the numbers of children with such handicaps participating in such programs, (C) the numbers of children needing such services, and (D) the amount of Federal, State, and local expenditures specifically used to provide such special education programs. Under clause (2) of this subsection the Commissioner shall provide for the evaluation of such programs through (A) the develop-

ment of effective methods and procedures for such evaluation, (B) the testing and validating of such evaluation methods and procedures, and (C) conducting actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under the Act.

Paragraph (1) of subsection (c) of new section 618 provides that, not later than 120 days after the close of each fiscal year, the Commissioner shall submit to the appropriate Congressional committee a full and complete report on the activities carried out under the Act. The second sentence of this paragraph (1) provides that such annual reports shall include (A) a full and detailed analysis and assessment of the progress being made toward the provision of a free appropriate public education to all handicapped children, (B) an evaluation of the effectiveness of the procedures undertaken by States to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs, along with any recommendations for change in the provisions of the new Part B or other Federal law providing assistance for the education of handicapped children, (C) an evaluation of the effectiveness of the procedures undertaken by States to prevent erroneous classifications of children as eligible to be counted under new section 612, including actions undertaken by the Commissioner to carry out provisions of new section 612 relating to such erroneous classification.

Paragraph (2) of subsection (c) of new section 618 authorizes and directs the Commissioner to develop, prepare and submit to the appropriate committees of Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures which may be utilized in conjunction with individualized data available through the individualized planning conferences required pursuant to new section 614(4) in order to determine the effectiveness of special education and related services provided to handicapped children. In conducting such study, the Commissioner is authorized to make grants and contracts to public and private individuals and organizations to assist in developing such objective criteria and evaluation procedures, except that such grant or contract shall not be entered into with any individuals or organizations who have any financial or other direct interest in any programs or services being evaluated pursuant to this paragraph.

Paragraph (3) of subsection (c) of new section 618 provides that the Commissioner shall (directly or by grant or contract) develop and prepare a statistically valid survey of the effectiveness of the individualized planning conferences (required pursuant to new section 614(4)) and such survey shall be submitted by him to the appropriate committees of Congress by December 1, 1977.

Subsection (d) of new section 618 authorizes the Commissioner to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b) and (c) of this new section 618 and to carry out his duties under new section 617(a)(1) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any one time.

Subsection (e) of new section 618 authorizes certain appropriations for fiscal year 1976 through fiscal year 1979 for the purposes of carrying out the provisions of this new section.

New section 619 relates to payments under the new Part B by the Commissioner of Education to the States.

Subsection (a) of new section 619 provides that the Commissioner shall, subject to the provisions of new section 614 relating to eligibility, pay to each State the amount which that State is entitled to receive under the new Part B.

Paragraph (1) of subsection (b) of new section 619 authorizes the Commissioner to pay to each State amounts equal to the amounts expended by each such State for administration and planning under the new Part B (which may include regional, interstate and intrastate technical assistance, and dissemination of necessary materials).

Paragraph (2) of subsection (b) of new section 618 places overall limitations on payments to States and specified jurisdictions for administration and planning in any fiscal year. The total of such payments shall not exceed (A) 5 per cent of the total of the amounts of the grants paid under the new Part B for that year to the State educational agency, or \$200,000, whichever is greater, and (B) in the cases of Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, 5 per cent of the total of the amounts of the grants paid under the new Part B for that year in such jurisdictions, or \$60,000, whichever is greater.

Paragraph (3) of subsection (b) of new section 618 authorizes to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

Subsection (c) of new section 619 provides that payments under the Act may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary. Section 5. Amends Part A of the Education of the Handicapped Act to add after present section 605 two new sections relating to employment of handicapped individuals and grants for the removal of architectural barriers as follows:

New section 606 provides that the Secretary of Health, Education, and Welfare, as a condition of providing financial assistance under the Act, shall insure that each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in, the applicable provisions (i.e. sections 501 and 503) of the Rehabilitation Act of 1973 (87 Stat. 355), as amended, relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

New section 607 provides that, upon application by any State or local educational agency, the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by an Act approved August 12, 1968 (P.L. 90-480), relating to architectural barriers. This section 607 further provides that there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Section 6. Establishes that the effective date of sections 3 and 4 of the Education for all Handicapped Children Act shall be on and after July 1, 1976, *except that* (1) clauses (A), (C), (D) and (E) of paragraph (2) of new section 614 of the Act shall take effect on and after August 21, 1975, (2) subsection (a) (1) (D) and subsections (d) and (e) of new section 617 of the Act and subsection (a) and subsection (c) (2) of new section 618 of the Act shall be effective upon the date of enactment of the Committee bill and, (3) the Commissioner may prior to July 1, 1976, issue such regulations and make such determinations as he determines necessary to carry out the amendments to the Act made by sections 3 and 4 of the Committee bill.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as repeated are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law which no change is proposed is shown in roman):

EDUCATION OF THE HANDICAPPED ACT

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. **[601.]**600.¹ This title may be cited as the "Education of the Handicapped Act".

STATEMENT OF PURPOSE

SEC. 601. (a) *The Congress finds that—*

(1) *there are more than eight million handicapped children in the United States today;*

(2) *the special educational needs of such children are being fully met in only a few school systems;*

(3) *more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;*

(4) *one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;*

(5) *there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;*

(6) *because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;*

¹ New sections 600, 601, and 602 shall take effect after July 1, 1976.

(7) *developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special educational programs and related services to meet the needs of handicapped children;*

(8) *State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and*

(9) *it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.*

(b) *It is the purpose of this title to insure that all handicapped children have available to them within the time period specified in section 614 of this Act a free appropriate public education, to insure that the rights of handicapped children and their parents or guardians are protected, to relieve the fiscal burden placed upon the States and localities when they provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.*

DEFINITION

[SEC. 602. As used in this title—

[(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

[(2) The term "Commissioner" means the Commissioner of Education.

[(3) The term "Advisory Committee" means the National Advisory Committee on Handicapped Children.

[(4) The term "construction"; except where otherwise specified, means (A) erection of new or expansion of existing structures; and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

[(5) The term "equipment" includes machinery, utilities, and built in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

[(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands.

[(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

[(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

[(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

[(11) The term "institution of higher education" means an educational institution in any State which—

[(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

[(B) is legally authorized within such State to provide a program of education beyond high school;

[(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

[(D) is a public or other nonprofit institution; and

[(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological

fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

[(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

[(14) The term "Secretary" means the Secretary of Health, Education, and Welfare.

[(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.]

DEFINITIONS

Sec. 602. As used in this title—

(1) "*handicapped children*" means *mentally retarded, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children, or children with specific learning disabilities who by reason thereof require special education and related services;*

(2) "*Advisory Committee*" means *the National Advisory Committee on Handicapped Children;*

(3) "*construction*", *except where otherwise specified, means (A) erection of new or expansion of existing structures, and the*

acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of foregoing;

(4) "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychologically processes involved in understanding or using language, spoken or written, including such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, and developmental aphasia, but excluding children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic handicaps;

(5) "Commissioner" means the Commissioner of Education;

(6) "elementary school" means a day or residential school which provides elementary education, as determined under State law;

(7) "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials;

(8) "free appropriate public education" means special education and related services which shall be provided at public expense, under public supervision and direction and without charge, and meeting the standards of the State educational agency, which shall include an appropriate preschool, elementary, or secondary school education in the applicable State and which is provided in conformance with an individualized planning conference required by this Act;

(9) "individualized planning conference" means a meeting or meetings for the purpose of developing a written statement for each handicapped child, developed by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardians of the child and the child when appropriate, which statement shall include (A) a statement of the child's present levels of educational performance, (B) statements of the short-term instructional objectives to be achieved, (C) a statement of the specific educational services to be provided to such child, and the extent or integration into the regular classroom, and (D) the projected date for initiation and anticipated duration of such services;

(10) "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited except that in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards; and for the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered;

(11) "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, and such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

(12) "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(13) "related services" means transportation and developmental, corrective, and other supportive services (including, but not limited to, speech pathology and audiology, psychological, services, counseling services, physical and occupational therapy, and recreation) as required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children and provision of services to such children;

(14) "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools;

(15) "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12;

(16) "Secretary" means the Secretary of Health, Education, and Welfare;

(17) "special education" means specially designed instruction (including physical education) at no cost to parents or guardians to meet the unique needs of a handicapped child;

(18) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands; and

(19) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

* * * * *

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

SEC. 605. (a) In the case of any program authorized by this title, if the Commissioner determines that such program will be improved by permitting the funds authorized for such programs to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title the facility constructed ceases to be used for the purposes for which it was con-

structed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC. 606. As a condition of providing financial assistance under this Act, the Secretary shall insure that each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in the applicable provisions of the Rehabilitation Act of 1973 (87 Stat. 355), as amended, relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

SEC. 607. (a) Upon application by any State or local educational agency the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by an Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

[PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

[GRANTS TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

[SEC. 611. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels in order to provide full educational opportunities to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under three years of age.

[(b) (1) Subject to the provisions of section 612, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

[(A) the number of children aged three to twenty-one inclusive in that State in the most recent fiscal year for which satisfactory data are available;

multiplied by—

[(B) \$8.75.

[(2) For the purpose of this subsection, the term "State" does not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.]

[(c) (1) The jurisdictions to which this subsection applies are the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.]

[(2) Each jurisdiction to which this subsection applies shall, for [the fiscal year ending June 30, 1975,] *fiscal years 1975 and 1976*, be entitled to a grant in an amount equal to an amount determined by the Commissioner, in accordance with criteria established by regulations, needed to initiate, expand, or improve programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels, in that jurisdiction, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 2 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 2 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 2 per centum limitation.]

[(d) The Commissioner is authorized for [the fiscal year ending June 30, 1975,] *fiscal years 1975 and 1976*, to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior, and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.]

[ALLOCATIONS OF APPROPRIATIONS]

[SEC. 612. (a) Sums appropriated for the fiscal year ending June 30, 1975, shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the fiscal year 1974. *Sums appropriated for the fiscal year ending June 30, 1976, shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the fiscal year 1975.*]

[(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 611 (to the extent that such entitlements are unsatisfied) ratably reduced.]

[(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.]

[STATE PLANS]

[SEC. 613. (a) Any State which desires to receive grants under this part shall submit to the commissioner through its State educational agency a State plan (not part of any other plan) in such detail as the Commissioner deems necessary. Such State plan shall—

[(1) set forth such policies and procedures as will provide satisfactory assurance that funds paid to the State under this part will be expanded (A) either directly or through individual, or combinations of, local educational agencies, solely to initiate, expand, or improve programs and projects, including preschool programs and projects, (i) which are designed to meet the special educational and related needs of handicapped children throughout the State, and (ii) which are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and (B) for the proper and efficient administration of the State plan (including State leadership activities and consultative services), and for planning on the State and local level: *Provided*, That the amount expended for such administration and planning shall not exceed 5 per centum of the amount allotted to the State for any fiscal year or \$200,000 (\$35,000 in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), whichever is greater;

[(2) provide satisfactory assurance, that to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision will be made for participation of such children in programs assisted or carried out under this part;

[(3) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

[(4) set forth policies and procedures which provide satisfactory assurance that Federal funds made available under this part will be so used as to supplement and, to the extent practical, increased the level of State, local, and private funds expended for the education of handicapped children, and in no case supplant such State, local and private funds;

[(5) provide that effective procedures, including provision for appropriate objective measurement of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of, and providing related services for, handicapped children;

[(6) provide that the State educational agency will be the sole agency for administering or supervising the administration of the plan;

[(7) provide for (A) making such reports, in such form and containing such information, as the Commissioner may require to carry out his functions under this part, including reports of the objective measurements required by clause (5) of this subsection, and (B) keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

[(8) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies;

[(9) provide satisfactory assurance that funds paid to the State under this part shall not be made available for handicapped children eligible for assistance under section 103(a)(5) of title I of the Elementary and Secondary Education Act of 1965;

[(10) provide satisfactory assurance that effective procedures will be adopted for acquiring and disseminating to teachers of, and administrators of programs for, handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects;

[(11) contain a statement of policies and procedures which will be designed to insure that all education programs for the handicapped in the State will be properly coordinated by the persons in charge of special education programs for handicapped children in the State educational agency;

[(12) (A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education; and

[(13) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children including, but not limited to (A) (i) prior notice to parents or guardians of the child when the local or State educational agency proposes to change the educational placement of the child, (ii) an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education

or care of children) to act as a surrogate for the parents or guardians, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; and (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular 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; and (C) procedures to insure the testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

[(b) (1) Any State which desires to receive a grant under this part for any fiscal year beginning after June 30, 1973, shall submit to the Commissioner for approval not later than one year after the enactment of the Education of the Handicapped Amendments of 1974, through its State educational agency an amendment to the State plan required under subsection (a), setting forth in detail the policies and procedures which the State will undertake in order to assure that—

[(A) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of 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;

[(B) policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State;

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

[(D) the amendment submitted by the State pursuant to this subsection shall be available to parents and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

For the purpose of this part, any amendment to the State plan required by this subsection and approved by the Commissioner shall be considered, after June 30, 1975, as a required portion of the State plan.

[(2) The requirement of paragraph (1) of this subsection shall not be effective with respect to any fiscal year in which the aggregate of the amounts allotted to the States for this part for that fiscal year is less than \$45,000,000.

[(e) The Commissioner shall approve any State plan which he determines meets the requirements and purposes of this part.

[(d) (1) The Commissioner shall not approve any State plan pursuant to this section for any fiscal year unless the plan has, prior to its submission, been made public as a separate document by the State educational agency and a reasonable opportunity has been given by that agency for comment thereon by interested persons (as defined by regulation). The State educational agency shall make public the plan as finally approved. The Commissioner shall not finally disapprove any plan submitted under this section or any modification thereof, without first affording the State educational agency submitting the plan reasonable notice and opportunity for a hearing.

[(2) Whenever the Commissioner, after reasonable notice and opportunity for hearing to such State agency, finds—

[(A) that the State plan has been so changed that it no longer complies with the provisions of this part, or

[(B) that in the administration of the plan there is a failure to comply substantially with any such provision or with any requirements set forth in the application of a local educational agency approved pursuant to such plan.

the Commissioner shall notify the agency that further payments will not be made to the State under this part (or in his discretion, that further payments to the State will be limited to programs or projects under the State plan, or portions thereof, not affected by the failure, or that the State educational agency shall not make further payments under this part to specified local agencies affected to the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, the Commissioner shall make no further payments to the State under this part (or shall limit payments to programs or projects under, or parts of, the State plan not affected by the failure, or payments by the State educational agency under this part shall be limited to local educational agencies not affected by the failure, as the case may be).

[(e) (1) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under subsection (a) or with his final action under subsection (d), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

[(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(3) The court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[PAYMENTS

[SEC. 614. From the amounts allotted to each State under this part, the Commissioner shall pay to that State an amount equal to the amount expended by the State in carrying out its State plan.]

PART B—ASSISTANCE TO STATES FOR THE EDUCATION OF ALL HANDICAPPED CHILDREN¹

DURATION OF ASSISTANCE

SEC. 611. During the period beginning July 1, 1976, and ending September 30, 1979, the Commissioner shall, in accordance with provisions of this part, make payments to State educational agencies for grants made on the basis of entitlements created under this part for the purpose of assisting such States in providing full educational opportunity to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under the three years of age.

STATE ENTITLEMENTS FOR EDUCATION OF HANDICAPPED CHILDREN

SEC. 612. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purposes set forth in section 611.

(b) (1) Subject to the provisions of paragraph (2) of this subsection and section 613, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

(A) the number of handicapped children aged three to twenty-one, inclusive, in that State, who are receiving special education and related services for the most recent fiscal year for which satisfactory data are available;

multiplied by—

(B) \$300.

(2) Notwithstanding any other provision of this subsection no State may count for the purpose of clause (A) of paragraph (1) of this subsection more than 10 per centum of the children aged three to twenty-one, inclusive, in that State for that year.

(3) For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c) (1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 611 in an amount equal to an amount determined by the Commissioner in accordance with criteria established by regulations, except that the aggregate of

¹ This new Part B shall take effect on and after July 1, 1976, except clauses (A), (C), (D), and (E) of paragraph (2), of section 614 of the Education of the Handicapped Act, as amended by this Act, shall take effect on and after August 21, 1975, (2) subsection (a) (1) (D) and subsections (d) and (e) of section 617 of the Education of the Handicapped Act, as amended by this Act, and subsection (a) and subsection (c) (2) of section 618 of the Education of the Handicapped Act, as amended by this Act, shall be effective upon the date of enactment of this Act, and (3) Commissioner may prior to such date issue such regulations and make such determinations to carry out the amendments made by sections 3 and 4 of this Act as he determines necessary.

the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(d) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.

ALLOCATIONS OF APPROPRIATIONS

SEC. 613. (a) Sums appropriated for each fiscal year shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 612, in an amount equal to the amount it received from the appropriation for this part for the fiscal year preceding the fiscal year for which the determination is made.

(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 612 (to the extent that such entitlements are unsatisfied) ratably reduced.

(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.

ELIGIBILITY

SEC. 614. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

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

(2) The State has developed a plan pursuant to section 613(b) of this Act in effect prior to the enactment of the Education for All Handicapped Children Act which will be submitted not later than August 21, 1975, and will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

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

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

(C) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of 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;

(D) policies and procedures are established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State; and

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

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

(4) Each local educational agency in the State will maintain records of the individualized planning conference for each handicapped child, including the written statement developed pursuant to such conference, and such conference shall be held at least three times each year to develop, receive and, when appropriate and with the agreement of the parents or guardian of the handicapped child, revise such statement.

(5) The State has established procedures to insure that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children including, but not limited to (A)(i) prior notice to parents or guardians of the child when the local or State educational agency proposes to initiate or change the

educational placement of the child, (ii) an opportunity for the parents or guardian to obtain an impartial due process hearing (not to be conducted by an employee of the State or local educational agency directly involved in the education or care of the child), examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardian are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency directly involved in the education or care of the child) to act as a surrogate for the parents or guardian, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and (C) procedures to insure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's primary home language or mode of communication, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for insuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children including handicapped individuals and parents or guardians of handicapped children, (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 615 of this Act, and (C) there is opportunity for comment by the general public on any rules or regulations proposed for issuance by the State pursuant to this Act.

(8) The State has established an entity for the purpose of insuring compliance with the provisions of this part, at least half of the members of which shall be handicapped individuals or parents or

guardians of handicapped children and all of whom shall be qualified by training or experience to carry out the purposes of this paragraph, which entity shall (A) conduct periodic evaluations in all areas of the State in order to determine whether the State educational agency and all local educational agencies within the State are in full compliance with the provisions of this Act to insure that all handicapped children within the State are in fact receiving the services required by this Act; (B) be empowered to receive complaints (including complaints that a child has been erroneously classified as eligible to be counted under section 612 of this Act) from individuals with respect to alleged violations of the provisions of this Act and shall provide notice and an opportunity for a hearing with respect thereto; (C) make determinations with respect to such alleged violations and, upon a finding that a violation has occurred, notify the State and appropriate local educational agencies of such finding and take appropriate steps to assure that such violations are corrected; and (D) upon a determination that, after a reasonable period of time, adequate steps have not been undertaken to correct such violations, so inform the Commissioner who shall take appropriate action pursuant to section 616 of this Act.

APPLICATION

SEC. 615. (a) Any State meeting the eligibility requirements set forth in section 614 and desiring to participate in the program under this part shall submit to the Commissioner an annual application at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such application shall—

(1) set forth a description of programs and procedures for the expenditure of funds paid to the State agency in the fiscal year for which such application is made, in conformance with the requirements of section 614 (2) and (3) of this part;

(2) set forth a description of programs and procedures by which funds received by the State or any of its political subdivisions under other Federal programs (including, but not limited to, part A of title I of the Elementary and Secondary Education Act; title III and title IV of the Elementary and Secondary Education Act, or its successor authority; and the Vocational Education Act of 1963) which expressly provide, or set aside, financial assistance for the education of handicapped children, and funds received by the State or any of its political subdivisions under the Rehabilitation Act of 1973 which are utilized for the education of handicapped children, will be utilized by the State or any of its political subdivisions only in a manner consistent with the provisions of this Act, except that nothing herein shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) Consistent with the purposes of this Act, set forth a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the

purposes of this part are appropriately and adequately prepared and trained, and that effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children, significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through such projects;

(4) set forth policies and procedures to assure (A) that to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

(B) that handicapped children in private schools and facilities will be provided special education (in conformance with an individualized planning conference as required by this Act) and related services at no cost to their parents, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this title or other applicable law requiring the provision of special education and related services to all handicapped children within such State and that in all such instances the State educational agency shall assure that such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure (A) that of the funds distributed under this part, 40 per centum of such funds shall be distributed to local educational agencies in the State in direct proportion to the number of handicapped children who are in need of a free appropriate public education within the area served by each such local educational agency and 60 per centum of such funds shall be distributed in a manner which is consistent with the requirements of section 614 (3), and (B) that the State shall seek to recover any funds distributed to a local educational agency for services to any child who is determined by the entity required pursuant to section 614(8) to be erroneously classified as eligible to be counted under section 612 of this Act;

(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this Act;

(8) provide satisfactory assurance that Federal funds made available under this part will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case supplant such State and local funds; except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(9) provide, consistent with procedures prescribed pursuant to section 617 (a) (2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this Act to the State, including any such funds paid by the State to local educational agencies; and

(10) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized planning conferences), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 618.

(b) The Commissioner shall approve any State annual application and any modification thereof which—

(1) is submitted by a State eligible in accordance with section 614 of this Act, and

(2) meets the requirements of subsection (a) of this section.

The Commissioner shall disapprove any application which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State application except after reasonable notice and opportunity for a hearing to the State.

WITHHOLDING AND JUDICIAL REVIEW

SEC. 616. (a)(1) Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any provisions of section 614 or 615, the Commissioner shall notify the agency that payments will not be made to the State under this part (or, in his discretion, that the State educational agency shall not make further payments under this part to specified local educational agencies whose actions or omissions caused or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no payments shall be made to the State under this part, or payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

(2) Whenever an entity established pursuant to section 614(8) in any State finds that there has been substantial failure to carry out the requirements of any provision of this Act, it shall notify the State educational agency, the appropriate local educational agencies, the chief executive officer of the State and the Commissioner who may provide notice, conduct a hearing and, if he finds a failure described in paragraph (1), withheld payments pursuant to this subsection.

(b) (1) If any State is dissatisfied with the Commissioner's final action with respect to its application submitted under section 615, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

ADMINISTRATION

SEC. 617. (a) (1) In carrying out his duties under this part, the Commissioner shall—

(A) cooperate with, and render all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) insure that each State shall within one year of the effective date of the Education for All Handicapped Children Act provide certification of the actual number of handicapped children receiving special education and related services in such State.

(2) As soon as practicable after the enactment of this Act, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State agencies in submitting an application for assistance under this part in order to assure equity among the States.

(b) In carrying out the provisions of this part the Commissioner shall issue, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) The Commissioner shall take appropriate action to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by him and by State and local educational agencies pursuant to the provisions of this Act.

(d) The Secretary shall establish a task force composed of representatives of the Office of Education, the Bureau of Education for the

Handicapped, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office for Handicapped Individuals, the office of the Assistant Secretary for Health, and the Office of Civil Rights, which shall develop guidelines to assure that all programs administered by the Department of Health, Education, and Welfare which provide assistance for the education of handicapped children will be administered in a manner consistent with the provisions of this Act. The Secretary shall be responsible for enforcing such guidelines and for assuring maximum cooperation in the implementation of such guidelines by the agencies referred to herein.

(e) There are authorized to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums, not in excess of one-quarter of 1 per centum of the amounts appropriated pursuant to section 612, or \$1,000,000, whichever is greater, as are necessary to administer the provisions of this part.

EVALUATION

SEC. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

(b) In carrying out his responsibilities under this part, the Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part and (1) shall provide for the collection and annual reporting of programmatic information concerning programs and projects carried out with financial assistance under this part and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part, including such information as (A) the numbers of handicapped children participating in programs supported under this part, (B) the types of handicaps and the numbers of children with such handicaps participating in such programs, (C) the numbers of children needing such services, (D) the amount of Federal, State, and local expenditures specifically used to provide such special education programs; and (2) provide for the evaluation of such programs through (A) the development of effective methods and procedures for evaluation, (B) the testing and validating of such evaluation methods and procedures, and (C) conducting actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under this Act.

(c) (1) Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall submit to the appropriate committees of Congress a full and complete report on the activities carried out under this Act. Such annual reports shall include (A) a full and detailed analysis and assessment of the progress being made toward the provision of a free appropriate public education to all handicapped children, (B) an evaluation of the effectiveness of the procedures undertaken by States to assure that handicapped children

receive special education and related services in the least restrictive environment commensurate with their needs, along with any recommendations for change in the provisions of this part or other Federal law providing assistance for the education of handicapped children, (C) an evaluation of the effectiveness of the procedures undertaken by States to prevent erroneous classification of children as eligible to be counted under section 612 of this Act, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

(2) The Commissioner is authorized and directed to develop, prepare and submit to the appropriate committees of Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services provided to handicapped children. Such criteria and procedures shall be designed in order that they may be utilized in conjunction with individualized data available through the individualized planning conferences required pursuant to section 614 of this part. In conducting such study, the Commissioner is authorized to make grants and contracts to public and private individuals and organizations to assist in developing objective criteria and evaluation procedures, except that such grant or contract shall not be entered into with any individuals or organizations who have any financial or other direct interest in any programs or services being evaluated pursuant to this paragraph.

(3) The Commissioner shall, directly or by grant or contract develop, prepare, and submit to the appropriate committees of Congress by December 1, 1977, a statistically valid survey of the effectiveness of the individualized planning conferences.

(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b) and (c) of this section and to carry out his duties under section 617 (a) (1) of this Act without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(e) There are authorized to be appropriated for carrying out the responsibilities of this section \$2,500,000 for fiscal year 1976, \$3,500,000 for fiscal year 1977, \$5,000,000 for fiscal year 1978, and \$7,500,000 for fiscal year 1979.

PAYMENTS

SEC. 619. (a) The Commissioner shall, subject to the provisions of section 614 relating to eligibility, pay to each State the amount which that State is entitled to receive under this part.

(b) (1) The Commissioner is authorized to pay to each State amounts equal to the amounts expended for administration and planning under this part which may include regional, interstate and intrastate technical assistance, and dissemination of necessary materials.

(2) The total of such payments in any fiscal year shall not exceed—

(A) 5 per centum of the total of the amounts of the grants paid under this Act for that year to the State educational agency, or \$200,000, whichever is greater; and

(B) in the cases of Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, 5 per centum of the total of the amounts of the grants paid under this Act for that year in such jurisdictions, or \$60,000, whichever is greater.

(3) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this subsection.

(c) Payments under this Act may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.

* * * * *

SEC. 614. (a) Effective for fiscal year 1975 and fiscal year 1976 only, section 611 of the Education of the Handicapped Act is amended to read as follows:

* * * * *

(b) Effective for fiscal year 1975 and fiscal year 1976 only, section 612 of such Act is amended to read as follows:

* * * * *

(c) Effective for fiscal year 1975 and fiscal year 1976 only, section 613(a) of such Act is amended by striking out "desires to receive grants" in the first sentence of such subsection and inserting in lieu thereof "is entitled to receive payments".

ADDITIONAL VIEWS OF SENATORS STAFFORD, JAVITS,
KENNEDY, SCHWEIKER, AND HATHAWAY

This Committee has a longstanding commitment to the welfare of preschool children. That commitment has been backed up in other legislation developed by the Committee and we do not feel that it should be diluted in such an important area as the education of handicapped children. If it is the Congress' intent that all children should receive an appropriate education it seems clear that such a commitment must include the requirement that services be provided at the most appropriate time—when the child is at the earlier stages of development and will thus benefit most; *not* when it happens to be convenient.

This Act deals with a *special* group of children who need special educational services. It provides assistance for these services at Federal expense. To delay the delivery of those services because of restrictions of State law or practice is neither reasonable nor wise.

We, therefore, disagree with the action taken during full Committee consideration of this bill, which dropped the mandate for 3 to 5 year olds, and restate our firm belief in the principle of requiring special education services for those children with handicapping conditions who are younger than mandated school age.

During consideration of S. 6, testimony from parents, teachers, and experts in special education specifically emphasized the need for the earliest possible identification, evaluation, and service to children prior to their entry into the normal educational process.

The Committee heard testimony which indicated strongly that special educational services provided to handicapped children before "normal" school age were often the most beneficial, since much more could be done at an earlier age to ameliorate, alter, or develop skills to compensate for, certain handicapping conditions. The earlier such conditions can be diagnosed, in the long run, the less costly the special educational services the child will need during his or her school years.

We are cognizant of the concerns of the States regarding their financial capacity to provide a full educational services to this group of children. Nevertheless, we feel that it is imperative to point out that the benefits of early identification and education, both in terms of prevention of future human tragedy, and in the long-term cost effectiveness of tax dollars, are so great as to justify continued emphasis upon preschool education for handicapped children.

According to information the Committee has received, 35 states have laws which provide services to children with handicaps at an age less than six years old. There are 15 states and the District of Columbia then where services are not required for at least some group of handicapped children below school age, but even some of these states have laws which permit such services to such handicapped children.

The bill as reported to the full Committee from the Subcommittee on the Handicapped provided for such services to the age group 3 to 5 years of age. As reported to the full Committee, S. 6 reflected the commitment to service for preschool children that was adopted in P.L. 93-380 last year. This position was consistent with present law.

Therefore, we do not agree with the full Committee action which makes such service permissive for those states who are not providing services or whose laws prohibit or do not authorize the provision of such services. We think that the action taken by the Committee unwisely moves the Congress away from the policy in present law which emphasizes the earliest possible service to handicapped children.

ROBERT T. STAFFORD.

EDWARD M. KENNEDY.

WILLIAM D. HATHAWAY.

RICHARD SCHWEIKER.

J. K. JAVITS.

EDUCATION OF HANDICAPPED CHILDREN

NOVEMBER 14, 1975.—Ordered to be printed

Mr. PERKINS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 6]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

EXTENSION OF EXISTING LAW

SEC. 2. (a) (1) (A) Section 611 (b) (2) of the Education of the Handicapped Act (20 U.S.C. 1411 (b) (2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(B) Section 611 (c) (1) of the Act (20 U.S.C. 1411 (c) (1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(2) Section 611 (c) (2) of the Act (20 U.S.C. 1411 (c) (2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "2 per centum" each place it appears therein and inserting in lieu thereof "1 per centum".



Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To amend the Education of the Handicapped Act to provide educational assistance to all handicapped children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

EXTENSION OF EXISTING LAW

SEC. 2. (a) (1) (A) Section 611(b)(2) of the Education of the Handicapped Act (20 U.S.C. 1411(b)(2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(B) Section 611(c)(1) of the Act (20 U.S.C. 1411(c)(1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico,".

(2) Section 611(c)(2) of the Act (20 U.S.C. 1411(c)(2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "2 per centum" each place it appears therein and inserting in lieu thereof "1 per centum".

(3) Section 611(d) of the Act (20 U.S.C. 1411(d)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977".

(4) Section 612(a) of the Act (20 U.S.C. 1412(a)), as in effect during the fiscal years 1976 and 1977, is amended—

(A) by striking out "year ending June 30, 1975" and inserting in lieu thereof "years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977"; and

(B) by striking out "fiscal year 1974" and inserting in lieu thereof "preceding fiscal year".

(b) (1) Section 614(a) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1975" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(2) Section 614(b) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(3) Section 614(c) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977."

(c) Section 612(a) of the Act, as in effect during the fiscal years 1976 and 1977, and as amended by subsection (a) (4), is amended by inserting immediately before the period at the end thereof the following: ", or \$300,000, whichever is greater".

(d) Section 612 of the Act (20 U.S.C. 1411), as in effect during the fiscal years 1976 and 1977, is amended by adding at the end thereof the following new subsection:

"(d) The Commissioner shall, no later than one hundred twenty days after the date of the enactment of the Education for All Handicapped Children Act of 1975, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this section and section 611."

(e) Notwithstanding the provisions of section 611 of the Act, as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated \$100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and \$200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act, as in effect during such fiscal years.

STATEMENT OF FINDINGS AND PURPOSE

SEC. 3. (a) Section 601 of the Act (20 U.S.C. 1401) is amended by inserting "(a)" immediately before "This title" and by adding at the end thereof the following new subsections:

"(b) The Congress finds that—

"(1) there are more than eight million handicapped children in the United States today;

"(2) the special educational needs of such children are not being fully met;

"(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

"(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

"(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

"(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

"(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

“(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

“(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

“(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2) (B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.”.

(b) The heading for section 601 of the Act (20 U.S.C. 1401) is amended to read as follows:

“SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE”.

DEFINITIONS

SEC. 4. (a) Section 602 of the Act (20 U.S.C. 1402) is amended—

(1) in paragraph (1) thereof, by striking out “crippled” and inserting in lieu thereof “orthopedically impaired”, and by inserting immediately after “impaired children” the following: “, or children with specific learning disabilities,”;

(2) in paragraph (5) thereof, by inserting immediately after “instructional materials,” the following: “telecommunications, sensory, and other technological aids and devices,”;

(3) in the last sentence of paragraph (15) thereof, by inserting immediately after “environmental” the following: “, cultural, or economic”; and

(4) by adding at the end thereof the following new paragraphs:

“(16) The term ‘special education’ means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

“(17) The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

“(18) The term ‘free appropriate public education’ means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a) (5).

“(19) The term ‘individualized education program’ means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

“(20) The term ‘excess costs’ means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under this part or under such titles.

“(21) The term ‘native language’ has the meaning given that term by section 703(a)(2) of the Bilingual Education Act (20 U.S.C. 880b-1(a)(2)).

“(22) The term ‘intermediate educational unit’ means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.”

(b) The heading for section 602 of the Act (20 U.S.C. 1402) is amended to read as follows:

“DEFINITIONS”.

ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

SEC. 5. (a) Part B of the Act (20 U.S.C. 1411 et seq.) is amended to read as follows:

“PART B—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

“ENTITLEMENTS AND ALLOCATIONS

“SEC. 611. (a)(1) Except as provided in paragraph (3) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

“(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;

multiplied by—

“(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

“(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

“(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

“(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

“(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

“(2) For the purpose of this subsection and subsection (b) through subsection (e), the term ‘State’ does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

“(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average of the number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceding the fiscal year for which the determination is made.

“(4) For purposes of paragraph (1)(B), the term ‘average per pupil expenditure’, in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

“(5)(A) In determining the allotment of each State under paragraph (1), the Commissioner may not count—

“(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State;

“(ii) as part of such percentage, children with specific learning disabilities to the extent the number of such children is greater than one-sixth of such percentage; and

“(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

“(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

“(b) (1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

“(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

“(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

“(2) Of the funds which any State may use under paragraph (1) (A)—

“(A) an amount which is equal to the greater of—

“(i) 5 per centum of the total amount of funds received under this part by such State; or

“(ii) \$200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613;

“(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

“(c) (1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

“(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

“(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

“(2) (A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1) (A)—

“(i) an amount which is equal to the greater of—

“(I) 5 per centum of the total amount of funds received under this part by such State; or

“(II) \$200,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

“(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

“(B) The amount expended by any State from the funds available to such State under paragraph (1) (A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

“(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

“(4) (A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

“(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than \$7,500 for such fiscal year; or

“(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

“(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2) (B) shall not apply to the use of such funds.

“(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b) (1) (B) or subsection (c) (1) (B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b) (1) (B) or subsection (c) (1) (B), as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part.

“(e) (1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

“(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Commissioner in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

“(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or \$35,000, whichever is greater.

“(f) (1) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this part for that fiscal year.

“(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Commissioner an application which meets the applicable requirements of section 614(a) and which is approved by the Commissioner. The provisions of section 616 shall apply to any such application.

“(g) (1) If the sums appropriated for any fiscal year for making payments to States under this part are not sufficient to pay in full the total amounts which all States are entitled to receive under this part for such fiscal year, the maximum amounts which all States are entitled to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

“(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d), which it estimates that it will expend in accordance with the provisions of this part. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

“ELIGIBILITY

“SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

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

“(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

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

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

ments would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

“(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

“(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

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

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

“(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

“(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

“(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

“(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

“STATE PLANS

“SEC. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

“(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

“(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8)) or its successor authority, and section 122(a)(4)(B) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

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

“(4) set forth policies and procedures to assure—

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

“(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

“(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

“(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

“(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

“(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

“(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

“(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

“(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

“(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, 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, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

“(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

“(c) The Commissioner shall approve any State plan and any modification thereof which—

“(1) is submitted by a State eligible in accordance with section 612; and

“(2) meets the requirements of subsection (a) and subsection (b).

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

“APPLICATION

“SEC. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

“(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

“(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

“(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

“(C) establish a goal of providing full educational opportunities to all handicapped children, including—

“(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

“(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

“(iii) the participation and consultation of the parents or guardian of such children; and

“(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

“(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

“(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

“(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

“(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

“(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subclause (A);

“(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

“(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

“(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

“(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

“(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Commissioner under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

“(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

“(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

“(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

“(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

“(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

“(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible

to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

“(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

“(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

“(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

“(d) Whenever a State educational agency determines that a local educational agency—

“(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

“(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

“(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

“(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

“(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

“PROCEDURAL SAFEGUARDS

“SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

“(b)(1) The procedures required by this section shall include, but shall not be limited to—

“(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

“(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

“(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

“(i) proposes to initiate or change, or

“(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

“(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

“(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

“(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

“(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

“(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

“(e) (1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

“(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

“(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

“(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

“WITHHOLDING AND JUDICIAL REVIEW

“SEC. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

“(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

“(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Commissioner (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Commissioner withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

“(b)(1) If any State is dissatisfied with the Commissioner’s final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

“(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

“(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

“ADMINISTRATION

“SEC. 617. (a) (1) In carrying out his duties under this part, the Commissioner shall—

“(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

“(B) provide such short-term training programs and institutes as are necessary;

“(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

“(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

“(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this part in order to assure equity among the States.

“(b) In carrying out the provisions of this part, the Commissioner (and the Secretary, in carrying out the provisions of subsection (c)) shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

“(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part.

“(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out his duties under subsection (a) (1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

“EVALUATION

“SEC. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

“(b) The Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part. In carrying out his responsibilities under this section, the Commissioner shall—

“(1) through the National Center for Education Statistics, provide to the appropriate committees of each House of the Congress and to the general public at least annually, and shall update at least annually, programmatic information concerning programs and projects assisted under this part and other Federal programs

supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part, including—

“(A) the number of handicapped children in each State, within each disability, who require special education and related services;

“(B) the number of handicapped children in each State, within each disability, receiving a free appropriate public education and the number of handicapped children who need and are not receiving a free appropriate public education in each such State;

“(C) the number of handicapped children in each State, within each disability, who are participating in regular educational programs, consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv), and the number of handicapped children who have been placed in separate classes or separate school facilities, or who have been otherwise removed from the regular education environment;

“(D) the number of handicapped children who are enrolled in public or private institutions in each State and who are receiving a free appropriate public education, and the number of handicapped children who are in such institutions and who are not receiving a free appropriate public education;

“(E) the amount of Federal, State, and local expenditures in each State specifically available for special education and related services; and

“(F) the number of personnel, by disability category, employed in the education of handicapped children, and the estimated number of additional personnel needed to adequately carry out the policy established by this Act; and

“(2) provide for the evaluation of programs and projects assisted under this part through—

“(A) the development of effective methods and procedures for evaluation;

“(B) the testing and validation of such evaluation methods and procedures; and

“(C) conducting actual evaluation studies designed to test the effectiveness of such programs and projects.

“(c) In developing and furnishing information under subclause (E) of clause (1) of subsection (b), the Commissioner may base such information upon a sampling of data available from State agencies, including the State educational agencies, and local educational agencies.

“(d) (1) Not later than one hundred twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b).

“(2) The Commissioner shall include in each such report—

“(A) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities;

“(B) any recommendations for change in the provisions of this part, or any other Federal law providing support for the education of handicapped children; and

“(C) an evaluation of the effectiveness of the procedures undertaken by each such agency or unit to prevent erroneous classification of children as eligible to be counted under section 611, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

In order to carry out such analyses and evaluations, the Commissioner shall conduct a statistically valid survey for assessing the effectiveness of individualized educational programs.

“(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

“INCENTIVE GRANTS

“SEC. 619. (a) The Commissioner shall make a grant to any State which—

“(1) has met the eligibility requirements of section 612;

“(2) has a State plan approved under section 613; and

“(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 611 (a) (1) (A).

The maximum amount of the grant for each fiscal year which a State may receive under this section shall be \$300 for each such child in that State.

“(b) Each State which—

“(1) has met the eligibility requirements of section 612,

“(2) has a State plan approved under section 613, and

“(3) desires to receive a grant under this section,

shall make an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require.

“(c) The Commissioner shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section.

“(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this part for such fiscal year, the maximum amounts which all States may receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

“(e) In addition to the sums necessary to pay the entitlements under section 611, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

“PAYMENTS

“SEC. 620. (a) The Commissioner shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments

to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

“(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.”

(b) (1) The Commissioner of Education shall, no later than one year after the effective date of this subsection, prescribe—

(A) regulations which establish specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability for purposes of designating children with specific learning disabilities;

(B) regulations which establish and describe diagnostic procedures which shall be used in determining whether a particular child has a disorder or condition which places such child in the category of children with specific learning disabilities; and

(C) regulations which establish monitoring procedures which will be used to determine if State educational agencies, local educational agencies, and intermediate educational units are complying with the criteria established under clause (A) and clause (B).

(2) The Commissioner shall submit any proposed regulation written under paragraph (1) to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate, for review and comment by each such committee, at least fifteen days before such regulation is published in the Federal Register.

(3) If the Commissioner determines, as a result of the promulgation of regulations under paragraph (1), that changes are necessary in the definition of the term “children with specific learning disabilities”, as such term is defined by section 602(15) of the Act, he shall submit recommendations for legislation with respect to such changes to each House of the Congress.

(4) For purposes of this subsection:

(A) The term “children with specific learning disabilities” means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage.

(B) The term “Commissioner” means the Commissioner of Education.

(c) Effective on the date upon which final regulations prescribed by the Commissioner of Education under subsection (b) take effect, the amendment made by subsection (a) is amended, in subparagraph (A) of section 611(a)(5) (as such subparagraph would take effect on the effective date of subsection (a)), by adding “and” at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

AMENDMENTS WITH RESPECT TO EMPLOYMENT OF HANDICAPPED INDIVIDUALS, REMOVAL OF ARCHITECTURAL BARRIERS, AND MEDIA CENTERS

SEC. 6. (a) Part A of the Act is amended by inserting after section 605 thereof the following new sections:

“EMPLOYMENT OF HANDICAPPED INDIVIDUALS

“SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

“GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

“SEC. 607. (a) Upon application by any State or local educational agency or intermediate educational unit the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

“(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.”.

(b) Section 653 of the Act (20 U.S.C. 1453) is amended to read as follows:

“CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

“SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

“(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

“(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

“(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

“(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

“(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

“(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.”.

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 7. (a) (1) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by inserting "final" immediately before "standard" each place it appears therein.

(2) The third sentence of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) is amended by striking out "proposed" and inserting in lieu thereof "final".

(3) The fourth and last sentences of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) each are amended by inserting "final" immediately before "standard".

(b) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by adding at the end thereof the following new sentence: "Failure of the Congress to adopt such a concurrent resolution with respect to any such final standard, rule, regulation, or requirement prescribed under any such Act, shall not represent, with respect to such final standard, rule, regulation, or requirement, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding."

EFFECTIVE DATES

SEC. 8. (a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) shall take effect on July 1, 1975.

(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 shall take effect on the date of the enactment of this Act.

(c) The amendments made by sections 4 and 5(a) shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act, as amended by this Act, section 617(a)(1)(D) of the Act, as amended by this Act, section 617(b) of the Act, as amended by this Act, and section 618(a) of the Act, as amended by this Act, shall take effect on the date of the enactment of this Act.

(d) The provisions of section 5(b) shall take effect on the date of the enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have approved S. 6, the "Education for All Handicapped Children Act of 1975."

Unfortunately, this bill promises more than the Federal Government can deliver and its good intentions could be thwarted by the many unwise provisions it contains. Everyone can agree with the objective stated in the title of this bill -- educating all handicapped children in our nation. The key question is whether the bill will really accomplish that objective.

Even the strongest supporters of this measure know as well as I that they are falsely raising the expectations of the groups affected by claiming authorization levels which are excessive and unrealistic.

Despite my strong support for full educational opportunities for our handicapped children, the funding levels proposed in this bill will simply not be possible if Federal expenditures are to be brought under control and a balanced budget achieved over the next few years.

There are other features in the bill which I believe to be objectionable, and which should be changed. It contains a vast array of detailed, complex and costly administrative requirements which would unnecessarily assert Federal control over traditional State and local Government functions. It establishes complex requirements under which tax dollars would be used to support administrative paperwork and not educational programs. Unfortunately, these requirements will remain in effect even though the Congress appropriates far less than the amounts contemplated in S. 6.

Fortunately, since the provisions of this bill will not become fully effective until fiscal year 1978, there is time to revise the legislation and come up with a program that is effective and realistic. I will work with the Congress to use this time to design a program which will recognize the proper Federal role in helping States and localities fulfill their responsibilities in educating handicapped children. The Administration will send amendments to the Congress that will accomplish this purpose.

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November 20, 1975

Dear Mr. Director:

The following bill was received at the White House on November 20th:

S. 6

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.

