



Public Law 94-142 and the Education of Preschool Handicapped Children

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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. (Public Law (P.L.) 94-142, 1975, Section 612 (2) (B))

The handicapped preschooler thus received a mandate of sorts from the Education for All Handicapped Children Act of 1975, the law that is at the base of many of the changes now occurring in public school systems throughout the country. The basic concepts of this law—free appropriate public education, least restrictive environment, due process, nondiscriminatory testing, individualized education program, parent consultation—are transforming the quality as well as quantity of public education for handicapped children. They are also reaching into virtually every school system, most schools, and many classrooms from which handicapped children were excluded in the past. But for the handicapped preschooler this

law is a flawed mandate. Many of these children will not see the inside of a classroom or school until age 5 or 6. Many of them will lose precious time for learning, for overcoming or reducing the limitations that their disabilities impose, because the free appropriate public education mandated in the law is inconsistent with the law or the educational practice in their states for children of their age and thus does not apply to them. In recognition of this situation, the law included an amendment to add additional money for each 3, 4, and 5 year old served and counted by states for their entitlement. This amendment created the preschool Incentive Grant program for which states may apply for the additional funds to initiate, improve, and expand services to these preschoolers.

Historical Perspective

P.L. 94-142 may be less of a mandate for preschool education than early childhood advocates want, but it is only about 10 years since the federal government began to provide any legislative and fiscal support for the education of handicapped preschoolers. The first such support came through the creation of the Handicapped Children's Early Education Assistance Act by Congress in 1968 (Public Law 90-538). This law was designed to establish experimental programs that could serve as models for state and local educational agencies. These demonstration projects were to de-

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velop exemplary practices and materials. This program is currently in operation, with about 200 projects funded at this time.

The Education Amendments of 1974, P.L. 93-380, introduced new requirements supportive of preschool education for handicapped children. One of these was the requirement that each state set a goal for serving all handicapped children from birth through age 21. This goal, along with a detailed timetable for its accomplishment, was to be described in the State Plan submitted to the Bureau of Education for the Handicapped. Thus, this law communicated a federal commitment to the concept of education for handicapped children from birth and demanded that the states support this position. However, the commitment required of the states was essentially a philosophical one. There was no deadline given by which states had to begin serving children from birth on, and there was nothing in the law to prevent states from couching their timelines in terms of the availability of funds and the possibility of changing state education law.

Another mandate of P.L. 93-380 indirectly supportive of preschool education was the requirement that states establish and maintain systematic efforts to find all handicapped children from birth through age 21. Children not in school programs were to be a particular focus of these child find efforts. Once handicapped children from birth through 5 were identified, state and local education systems would have a data base from which they could plan appropriate educational programs. In the process they would also presumably accumulate documentation of need for preschool intervention programs.

The State Implementation Grant program begun in 1974 under the Handicapped Children's Early Education Assistance Act is another federally funded program in support of preschool education for the handicapped. The primary purpose of this program is to encourage and support the implementation of comprehensive early childhood plans by the states. One of its products has been the establishment of interagency coordinating councils within several states and some localities. These councils are responsible for identifying and eliminating duplications, gaps, and other types of weaknesses in providing services to handicapped preschoolers. The state of Massachusetts has developed such an interagency plan, as has the state of Maine. Other products of

state implementation grants include public awareness programs aimed at locating handicapped preschoolers (Kansas); comprehensive preschool personnel development systems (Wisconsin); Regional Technical Assistance Centers (Washington); standards and guidelines for preschool programs (South Dakota); parent training (Idaho); and the provision of information to the state legislature in support of legislation for preschool education (several states) (Maddox, 1978).

Preschool Incentive Grant Program

While federal law requires states to set a goal of serving all handicapped children from birth and to look for unserved handicapped children from birth, it allows states to continue not to serve handicapped children below age 6. If the requirements of P.L. 94-142 for a free appropriate public education are inconsistent with state law or practice, or the order of any court, respecting public education for 3, 4, and 5 year olds, then those requirements are not applicable.

A state is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize the expenditure of public funds to provide education to non-handicapped children in that age group; or (ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that state. (Education of Handicapped Children, 1977, 45 CFR Part 121a.300 (b)(5)(i) and (ii))

There are, however, certain conditions under which the state must provide a free appropriate public education to 3 through 5 year olds:

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

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the

same age who have that disability. (Education of Handicapped Children, 1977, 45 CFR Part 121a.300(b)(i),(2), and (3))

There are two sources of funds for educational services to preschool handicapped children in P.L. 94-142. The first is the state entitlement, which is based upon the number of handicapped children served. Children in the 3 through 5 year old age group can be included in the state's annual report of children served, thus generating the same amount of dollars as children aged 6 and over. The second source of funds is Incentive Grants. At one point before the Education for All Handicapped Children Act of 1975 was passed and signed into law it contained a requirement that full educational services be offered to all handicapped children from age 3. After Congress decided that states would not be required to serve 3 through 5 year olds unless they were already required to do so by state law or practice, an amendment was added as section 619 of the Act, the Incentive Grant program. The Incentive Grant program was established in recognition of the importance and cost effectiveness of early intervention with handicapped children. The purpose of this grant is to enhance and stimulate the expansion of services to 3, 4, and 5 year olds. States may apply for an incentive grant if they have an approved State Plan and serve any handicapped children in this age range. The amount of money a state receives is determined by the number of 3, 4, and 5 year old children included in the count of handicapped children who are receiving a free and appropriate public education. For fiscal year 1978 funding, 196,225 children were counted, based on the child count of October 1, 1976, and February 1, 1977. Although section 619 of P.L. 94-142 authorizes up to \$300 per child, the final Congressional appropriation for fiscal year 1978 fell short of this level. The 12.5 million dollars appropriated amounted to about \$63.00 per child. The appropriation for fiscal year 1979 is \$15 million. For fiscal year 1979 funds, 199,344 children were counted and the per pupil amount is about \$75. Funds for fiscal year 1979 are now available to states with an approved State Plan.

Section 504 and Preschool Children

Section 504 of the Rehabilitation Amendments of 1973 (Public Law 93-112) is the basic civil rights provision dealing with discrimination

against handicapped individuals. Noncompliance jeopardizes all funds administered by the US Department of Health, Education, and Welfare and is expected eventually to jeopardize all federal funds. In order to meet the requirements of Section 504, any state that offers services to nonhandicapped preschool children must offer these services to handicapped children as well. Thus, if a state has kindergarten programs for 5 year old nonhandicapped children, it cannot deny educational services to handicapped 5 year olds. Similarly, a day care program receiving funds from the US Department of Health, Education, and Welfare cannot deny its services to children on the basis that they are handicapped.

State Statutory Responsibility

Table 1 reflects the most recent data available on state mandates for the education of handicapped children below age 6. However, in itself, the figures in this table do not provide an adequate picture of what is happening in this arena. Some states have no mandatory legislation for children below age 6 at the present time but are moving toward the provision of full educational service for 3 through 5 year olds. Some states have permissive legislation and are providing limited services, while other states with permissive legislation are providing extensive educational services. In some states legislation is permissive or absent for some categories of disability, mandatory for others. Although all school age children must have a free appropriate public education by September 1, 1978, timelines for serving preschool children, given in State Plans, can be revised in later State Plans, with the implementation of full service models for 3 through 5 year olds being postponed again. As can be seen from Table 1, only 13 states are currently mandated to provide full educational programming for handicapped children in the 3 through 5 year old age range and not all of these 13 are actually serving all handicapped children in this age category.

Least Restrictive Environment

In most states, services to 3 and 4 year olds have not been provided by public school systems. Head Start and day care have been the primary providers of service to this age group for low income families. Private nursery schools

TABLE 1

State Mandated Special Education for Children Under Six

| State | Ages | State | Ages |
|---------------|---------------------|----------------------|---------------------|
| Alabama | none | Nebraska | age of diagnosis |
| Alaska | 3-5 | Nevada | none |
| Arizona | 5 | New Hampshire | none |
| Arkansas | none | New Jersey | 5 |
| California | none | New Mexico | none |
| Colorado | 5 | New York | 5 |
| Connecticut | 4, 5 | North Carolina | 5 |
| Delaware | 4, 5 | North Dakota | none |
| Florida | 5 | Ohio | none |
| Georgia | none | Oklahoma | 4 |
| Hawaii | 5 | | (deaf 2-5, visually |
| Idaho | 5 | | handicapped 2-5) |
| Illinois | 3-5 | Oregon | none |
| Indiana | none | Pennsylvania | none |
| Iowa | 0-5 | Rhode Island | 3-5 |
| Kansas | 5 | South Carolina | none |
| Kentucky | none | South Dakota | 0-5 |
| Louisiana | 3-5 | Tennessee | 4, 5 |
| | (0-2 if regressive) | Texas | 3-5 |
| Maine | 5 | Utah | 5 |
| Maryland | 0-5 | Vermont | none |
| Massachusetts | 3-5 | Virginia | 2-5 |
| Michigan | 0-5 | Washington | none |
| Minnesota | 4, 5 | West Virginia | 5 |
| Mississippi | none | Wisconsin | 3-5 |
| Missouri | 5 | Wyoming | none |
| Montana | none | District of Columbia | none |

Note: Table based largely on information in the chart "Present Status for Preschool Handicapped Legislation," Technical Assistance Delivery System (TADS), 1978. Permissive legislation is not reflected in this table.

have served middle and upper income families. Handicapped 3 and 4 year olds, when they received services, received them largely from disability specific agency programs. In those states where the basic mandate of P.L. 94-142 for the provision of a free appropriate public education did apply to any portion of the preschool population, the traditional routes to service had to be reexamined. Several varieties of arrangements have resulted. In some states programs have been established in and operated by the public schools, a situation recommended by Edwin Martin, Deputy Commissioner, Bureau of Education for the Handicapped, and strongly advocated by American Federation of Teachers President, Albert Shanker (Martin, 1974). Another alternative selected has been to arrange for services through Head

Start and other agencies already operating programs for handicapped preschoolers. Still a third alternative is cooperative arrangements that closely mesh public school contributions with those of other agencies.

One of the basic tenets of P.L. 94-142 is "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..." (Education of Handicapped Children, 1977, 45 CFR Part 121a.550-556). The difficulty with implementing this particular component of P.L. 94-142 is determining just what this means in relation to preschoolers. Most states do not provide public education for nonhandicapped 3 through 5

year olds. If a state responds to the law by establishing educational programs for handicapped preschoolers in the public schools, it may result in continuing the practice of isolating and segregating handicapped children. However, public schools at least offer some integration with regular education whereas the disability specific agency programs usually offer none. For some of these handicapped preschoolers, special classes may be appropriate and extremely valuable. For others, special arrangements may need to be made in order not to violate the essence of the least restrictive placement clause.

Many handicapped preschool children may need to be educated in integrated settings in order to comply with the least restrictive environment and appropriateness principles as described in P.L. 94-142. Although it is clearly recognized that the boundary conditions for this position have not yet been established, that integrated programs can take many forms, and that each case must be viewed individually, available data support this position. Considerable research data are also available to support the position that integrated preschool programs are feasible within a variety of different educational/developmental models and do not result in increased negative reactions or other adverse effects within the school setting (Guralnick, 1978; Peterson & Haralick, 1977).

Head Start

Head Start is mandated to serve preschool handicapped children.

The Head Start, Economic Opportunity, and Community Partnership Act of 1974 (P.L. 93-644) requires "that for Fiscal 1976 and thereafter no less than 10 percentum of the total number of enrollment opportunities in Head Start programs in each state shall be available for handicapped children . . . and that services shall be provided to meet their special needs." (US Department of Health, Education, and Welfare, 1978, p. 1)

During school year 1976-1977, children diagnosed as handicapped comprised 13% of the total enrollment of Head Start full year programs. This 13% enrollment represents 36,133 children. Efforts are being made by both the Bureau of Education for the Handicapped, which monitors the implementation of P.L. 94-142, and by the Administration for Children, Youth and Families, which administers the

Head Start Program, to resolve issues arising out of overlapping responsibilities for handicapped preschoolers. The major mechanism for establishing cooperative activities at the state and local level is a network of 14 Resource Access Projects funded by the Administration for Children, Youth and Families and established for the most part at sites which also receive funds for outreach activities from the Handicapped Children's Early Education Program. Head Start is a natural resource for providing education to handicapped preschoolers for whom the least restrictive environment appropriate is an integrated setting. Yet, some state and local education agencies appear not to be using this resource for placement. In some cases, P.L. 94-142 has been interpreted to mean that the public school system itself must provide the service. Another issue relates to the training of Head Start teachers. (The regular Head Start teacher need not be certified to meet the requirements of P.L. 94-142, but the teacher who provides the special education services must meet state certification requirements.) And, of course, many families do not meet Head Start's income guidelines.

However, during the past two years much progress has been made in resolving these issues. Almost 90% of Head Start programs now have on their staffs a certified special education teacher who is responsible for the provision and coordination of services to handicapped children in that program. Four states have signed agreements recognizing Head Start as a legitimate placement for handicapped preschoolers, with another 16 states expected to do so this year. Model Head Start/SEA (State education agency) and Head Start/LEA (local education agency) agreements are being developed as an aid to collaborative efforts in other states.

Teacher Training

With the expansion of educational programs for handicapped children below age 6 new questions of how best to train teachers to serve this population have arisen. Early childhood educators argue that education for very young children is not merely a downward extension of education for older children and that different kinds of attitudes and skills are called for in preschool programs. They maintain that the special education teacher who was prepared to teach handicapped children ages 6 to 18 is not

likely to have the skills needed to teach 3 year olds.

Special educators can contend that handicapped preschoolers may need different approaches from traditional early childhood ones and that the generic skills taught in special education teacher training programs (i.e., diagnostic/prescriptive programming, task analysis, behavioral management) are the basic skills needed in preschool programs as well. The most cogent argument, however, appears to be one for a program of integrated training, that is, training that incorporates both early childhood and special education competencies. Recognition of the value of such training is reflected in the rapid expansion in the number of such training programs being offered and in the increasing number of states certifying teachers of preschool handicapped children (Hirshoren & Umansky, 1977).

Continuing Concerns

P.L. 94-142 has opened the door to a host of promising practices for young, handicapped children. More children are being served. There is more coordinated community planning taking place. There is better awareness of the need for special education services for young children. Teacher training for this population is improving. However, some causes of concern have also been added. One of these relates to the labeling of young children as mentally retarded, learning disabled, or severely emotionally disturbed. The practice of assigning disability labels to children of any age raises many problems. However, all of these concerns and criticisms over labeling (i.e., mislabeling, stigmatizing, self fulfilling prophecy) are magnified when one is dealing with children below age 6. Related to the labeling question is concern with placing young children in self contained classes that carry disability assignments.

While interagency planning for the preschool handicapped child is growing, one side effect of P.L. 94-142 in some localities is that agencies formerly serving this population have said in effect, "O.K. You (the public school system) can have the child and serve all of his or her needs. We'll put our resources into the 0 to 2 year old." Public school systems have then found themselves in the position of not only providing educational services, but of trying to provide all of the other services that

this population needs and that the public school system may not be well equipped to provide. One of the questions with which local educational agencies must deal is whether there are operational agencies in the community that can meet the needs of many severely and multiply impaired preschoolers better than the public schools can.

Finally, disappointment has been expressed over the weakness of P.L. 94-142 in not providing timelines by which a free appropriate public education must be made available to all 3 through 5 year olds.

It is too early to foresee exactly what effect P.L. 94-142 will have on services to preschool children. Now is the time, however, for those who care about these children to monitor what is happening and to work to insure that no opportunity is lost.

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