

TESTIMONY OF
ALBERT SHANKER, PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO SENATE SUBCOMMITTEE ON THE HANDICAPPED
ON P.L. 94-142

July 31, 1980

I am Albert Shanker, president of the American Federation of Teachers, AFL-CIO. On behalf of the 550,000 teachers, paraprofessionals and other members of the AFT, I would like to thank you for this opportunity to offer our views before this Committee on P.L. 94-142, the Education for All Handicapped Children Act.

Since its original support of passage of P.L. 94-142 in 1975, the AFT has often reaffirmed its belief in the goals of this legislation, namely the equal right of all handicapped persons to a free appropriate public education. On the other hand, we have continuously expressed reservations about certain aspects of this law and its regulations where we felt their effect on children to be negative. It is probable that in the course of these hearings, you will hear conflicting stories -- one side extolling the virtues of P.L. 94-142, the other its vices. Such a debate is healthy unless, of course, one of these groups is ultimately judged exclusively right or wrong. Either judgment, in our opinion, is irresponsible. Yet, failure to hold P.L. 94-142 up to careful scrutiny could result in exactly this, an assessment that the law is all good or all bad. Inaction on the part of Congress in resolving the problems of P.L. 94-142 would be as grave a mistake as any efforts undertaken to negate its intent.

You no doubt are aware of the position espoused by some representatives of the former Bureau of Education for the Handicapped, as well as others, that despite its faults, P.L. 94-142 must not be opened to change for fear that this might occasion the loss of all its key provisions. Incumbent in this philosophy, whether it is conscious or not, is a belief that the law itself -- and not its goal -- is sacrosanct. It allows the well-being of any number of children to be sacrificed to what is supposed by this group of theorists, to be the future "common good." Our members work in day-to-day classroom contact with the individual children upon whom the law impacts injuriously. They have

little understanding of proponents of the above philosophy who counsel that there inevitably are bugs in any new system which time should be allowed the chance to work out. Originally it was argued that two to three years should be allowed to elapse before further government intervention. Now that we are two and a half years into P.L. 94-142's implementation, a further extension of time needed for the law to begin to work to significantly benefit children and education is requested of us. How long are we to wait before considering how we might better adapt P.L. 94-142 to accomplish its stated goals -- five, ten, twenty years or more? We will shortly review why neither our members, nor hopefully this Committee, can afford or indeed condone the disinterested and dispassionate viewpoint outlined above.

Before doing so, we would like to mention a second stance on P.L. 94-142, which would be equally nonsensical. This amounts to abolishing the protections provided by P.L. 94-142 altogether and returning to the status quo prior to its implementation. While we believe that the state of the art and conditions of special education prior to 1975 were evolving impressively, we cannot ignore the abuses that still existed. These included placement in special education for the purpose of segregation, inappropriate evaluation methods, dead-end tracking and misdirection of funds. Additionally, we might mention the large numbers of handicapped children who were either turned away from the schools entirely or placed in classrooms only to be ignored. It seems clear that, if nothing else, P.L. 94-142 has exposed the seamier side of special education to public scrutiny. For this reason, we feel a positive purpose has been served. We make this judgment on the basis that only if problems are allowed to surface can they be dealt with forthrightly and solutions found.

Looming before us, and particularly before this Committee, is the question of what should be our next step toward institutionalizing the right of handicapped persons to a free appropriate public education.

There are some who would have you believe that this indeed is what is happening in the schools as a result of P.L. 94-142, with only minor difficulties. Yet, reports from the field and conferences we have held with teachers, para-professionals and other school employees in urban, suburban and rural school systems throughout the country tell another story: it is one of confusion, abuse and massive non-compliance with law in relation to Section 504 of the Rehabilitation Act and P.L. 94-142. To an even greater extent than teacher rights issues, although these are just as important, our members question how a law which is meant to help assure children's rights can result in the following:

- o less instructional time for each child;
- o placement of children in new settings before staff has been trained to work effectively with them;
- o children being in settings with no resources or materials adapted to their needs;
- o inability to remove handicapped students from the premises as rapidly as any other child in an emergency.
- o parental loss of confidence in the schools, in some instances, as a result of educators asking them for their opinions on their child's placement and program;
- o an apparent dismantling of special education promulgated not in the interest of individual children but rather in the interest of stretching ever-shrinking dollars.

These are just a few of AFT members' concerns which are catalogued in more detail in our testimony on P.L. 94-142 given before the House Subcommittee on Select Education on October 9 of last year. As nothing has changed in the situation in the schools depicted in that testimony, we hope you will consider it as an addendum to these remarks. A copy is attached.

Although P.L. 94-142 has had some positive effects, several of its provisions have done great harm and must be revised or eliminated immediately. We maintain, moreover, that the only way P.L. 94-142 will ever work in its present form is with a massive infusion of additional federal funds totaling several billions of dollars.

Evidence of this can and will be pieced together from various sources. But first let us raise a concern about research on P.L. 94-142 conducted by BEH which you may want to take steps to correct in the new Office of Special Education. From our perspective, it appears that BEH was increasingly restrictive not only in the type of research it allowed on implementation of P.L. 94-142 but even more so in the use and exposure of any data which did not support its basic premise that with minor exceptions, implementation of P.L. 94-142 is progressing smoothly with great benefits accruing to all concerned. The hard data, we believe, which would support or negate our reports were not sought by BEH which, to the best of our knowledge, has consistently avoided research on school, classroom and student outcomes as affected by aspects of the P.L. 94-142 mandate. Even its data collection from the states on monitoring efforts, enforcement and compliance is less than adequate as recently reported by the Education Advocates Coalition made up of 13 advocacy organizations. To date, for example, we have not been able to get data on the number of teachers and other staff who have received inservice education related to their responsibilities under this legislation and their knowledge of special education. Such data, we believe, would prove that inservice training is so minimal as to have the law potentially result in a dismantling of special education because educators have not been trained adequately, or in most instances, at all, to assume new roles required of them as a consequence of P.L. 94-142. Instead, BEH offered us figures only on numbers of persons "projected" by states to be targeted for training and dissemination activities. Most SEAs will tell you that they were ill-equipped to assume their 94-142 monitoring and enforcement function and consequently have been forced to give inservice training a low priority. Misgivings about the lack of inservice education, as well as other problems associated with P.L. 94-142, are expressed in a report entitled,

"A Study of Teacher Concerns with P.L. 94-142," completed under the auspices of BEH in 1978. Again, to the best of our knowledge, the findings of this report and its five major recommendations of steps BEH could take (see Appendix 1) to alleviate teacher concerns were buried and ignored. Another report, "Case Study of the Implementation of P.L. 94-142," done by Education Turnkey Systems for BEH and dated May 31, 1979 was mysteriously reported in the press (e.g., Education Daily) as finding that P.L. 94-142's implementation is progressing nicely. Yet, a close reading reveals the following facts:

- o "In all sites, moderate to large numbers of students had to wait for assessment and placement because of the large amount of staff time needed for 'processing' students."
- o "In most sites, particularly during the school year 1978-79, regular education teachers became more hesitant to refer students with suspected learning problems, because of the 'processing' burden or because of their perception that such children would not be placed before the end of the school year."
- o "During the 1978-79 school year...virtually all IEPs written for transition students (e.g., those transferring from middle schools to high schools) had to be revised when the students moved; these revisions involved large numbers of teachers and other staff."
- o "In most instances, parental involvement in IEP meetings is limited to attendance and approval, with limited interaction concerning the development of specific instructional programs."
- o "Many parents who attend central office or building meetings feel intimidated by the presence of large numbers of LEA staff or feel the process is too complex."
- o "The IEP meeting has become essentially a formal mechanism for complying with the law rather than for involving and informing parents."
- o "In sites where formal due process hearings were conducted, the impact of the hearings upon the LEA staff involved and, to a lesser extent, upon the parents was traumatic, regardless of the outcome. The threat of hearings generated an enormous amount of paperwork and documentation of the special education process, as staff developed coping strategies to protect themselves from legal reprisals."

Implicit in the tone of these findings is an indication that although a bureaucratic process is clumsily being put in place, proof of its positive effects on education is less than obvious.

Finally, let us mention a third BEH study which we feel it most important that this Committee have the opportunity to examine carefully. Its original title was "Local Implementation of P.L. 94-142." This was a four-year study designed as an in-depth examination of local school systems and incidentally is, we believe, the only longitudinal study of the law's implementation in public schools. In April of this year the first report of findings was submitted to BEH describing the status of implementation in 22 LEAs in nine states during the 1978-79 school year. In the draft report which we were asked to review last winter, we saw that the situation we have reported in the schools was confirmed. Yet here again the data has not been released by BEH or OSE. We hope that it will be cited extensively and copies provided this Committee during these hearings. If not, serious questions should be raised as to why this evidence has not been reported. Our suspicions concerning the fate of this study's findings were raised as a result of several factors. It was said that submission of the draft report in December, 1979 raised a flurry of concern in some quarters at BEH because it exposed the weaker side of the law and that one remedy suggested for diluting its effect would be to rename it, "Case Studies of Implementation of P.L. 94-142 in Selected Sites." The difference between this and what was intended to be a fairly generalizable study of "Local Implementation of P.L. 94-142" is not difficult to see. In addition, anyone who reads the body of the report carefully will see that the summaries and conclusions have been muted somewhat, although they too reveal problems. The study was carried out with great integrity but it would seem that these researchers were aware that the "kid glove approach" would be required to keep their findings from being totally buried at BEH.

Consequently, it appears that serious problems have arisen from the fact that BEH has been responsible for both implementation and evaluation of P.L. 94-142, given that the agency has persistently clung to the position that the law in

its present form must be made to work at all costs and that any evidence to the contrary endangers the rights of handicapped persons. It is our understanding, by the way, that the focus of the longitudinal study mentioned above has now been changed. Future studies are to be descriptive rather than analytical or interpretive. Instead of a continuation of in-depth studies of LEA implementation of P.L. 94-142, we will get technical assistance documents on "boundary crossers," which is a fine idea few schools will be able to afford, and service delivery related to medical/educational needs. For the most part, BEH sought descriptive data which it evaluated for itself. The evaluator, we suggest, has been much less than objective.

We believe that empirical studies critical of the effects of P.L. 94-142 or its implementation were suppressed by BEH and that studies which have the potential to produce such results are being assiduously avoided. We hope that this Committee will look into this matter and insist that the research orientation of the new Office of Special Education be different. We are willing to put our reports of serious problems growing out of 94-142 in the schools to the test of empirical research and feel OSE must do the same.

Finally, we must discuss our problems and our options. At the root of all these problems is money. With the infusion of several billions more federal dollars to support continuous inservice training; appropriate support personnel and services; adequate equipment, resources and materials, with adaptations when necessary; additional record-keeping, planning and reporting time; additional staff to handle the administration of the law and so forth, P.L. 94-142 could be made to work (see pp. 4-5 of attached House testimony for details of what would be required to make P.L. 94-142 operate effectively in the schools). The AFT would make this option its first choice because it could not help but foster the goal of an appropriate education for all handicapped children. If, on the other hand, Congress feels an increased appropriation

of several billion dollars for P.L. 94-142 would not suit the mood of the country, it cannot turn its back on state and local governments who face this same public sentiment. Let us consider the prospects of Congress ignoring the serious financial restraints the SEAs and LEAs are already operating under.

The **general** financial condition of the schools, particularly our urban schools where the majority of handicapped students are, is well-known. Frequent school closings, loss of tax bases, rising inflation, mismanagement of funds, and local governments on the verge of bankruptcy all contribute to weakening the institution of public education. As reported by the National School Boards Association in "A Survey of Special Education Costs in Local School Districts," released in June, 1979:

- o Local school district budgets for special education are rising at the rate of 14 percent per year, or twice as rapidly as instructional and operating budgets (7 and 8 percent per year);
- o The cost of placing a handicapped student in a non-residential setting outside the district's facilities is four times the average per pupil expenditure for all students and in a residential setting is eight times the average per pupil expenditure;
- o The cost ratio between education of the handicapped and so-called regular education is at least two to one nationwide and this is likely to be a conservative estimate because districts often do not calculate all costs, such as transportation, related to education of the handicapped;
- o Out of an average per pupil cost of \$3,638 annually for handicapped students, the federal government will be contributing only slightly over \$200 per child;
- o The nationwide cost of special education for the 1978-79 school year was projected to be \$5 billion--if one adds the need for better services to reach compliance and the costs of inflation, you can get some idea of the financial resources which would be required to give P.L. 94-142 a chance to work.

In New York State alone, the education department recently estimated the cost of educating children with handicapping conditions for the 1980-81 school year at close to \$1 billion, with the state contributing \$415 million, local districts \$472 million and the federal government \$60 million. Again,

we offer the reminder that if the mandate were fully met, these costs would have to be much higher. In January, 1980, the Institute for Research on Educational Finance and Governance at Stanford University published a report on "Policy Effects of Special Education Funding Formulas" in which the major reasons for the greater costs of educating handicapped children are outlined as:

- o Additional and related special education services--the majority of handicapped children receive special education programs and services in addition to being enrolled in a regular education program. As a result, the total cost of their education includes both the cost of the regular program and the cost of special education programs and services.
- o Special classes--with smaller student/teacher ratios, the bulk of the classroom costs (i.e., teacher salary and benefits, operation and maintenance expenses) do not vary with the number of students in the room, which greatly increases the cost per student.
- o Multiple special education services.
- o Residential programs--not only are educational services needed, but a complete set of housing, feeding, self-help skill training, vocational and recreational services may also be required, and it is not uncommon for the annual cost per student in these programs to reach \$25,000.
- o Identification, assessment and educational planning--this is often a lengthy and expensive step not required for non-handicapped children.
- o Newly mandated procedures--child-find; IEP development; due process; local planning, record-keeping, and reporting requirements involve additional costs not required for non-handicapped children.
- o Additional staff support and training--specialized staff to provide direct and indirect assistance to handicapped children, then parents, teachers and other students and school personnel and to conduct inservice training are additional cost factors.
- o Greater age span--P.L. 94-142 and similar state legislation mandate special education programs for children ages three to twenty-one, a larger age range than regular education.

In enumerating these costs, our purpose is certainly not to begrudge these additional responsibilities but to emphasize the significant expenditures required in special education, over and above regular education. New York City's

fiscal crisis is by now legendary. A federal district court ruled in Lora vs. Board of Education that the city's financial plight, however, provides no excuse for violating the statutory and constitutional rights of emotionally disturbed students. In discussing this case, a recent American School Board Journal article reports:

"The court objected to the school system procedures for placing such students in its 'special day schools,' which are largely segregated. Lack of money is no reason for these practices, even though the court acknowledged 'the inescapable fact that to spend substantially more on this pupil population may well necessitate a sacrifice in services now afforded children in the rest of the system' /emphasis added/. The price tag that comes with the court's decree has begun to mount, and this includes notifying the children's parents and the New York City school system's entire professional staff of students' rights, conducting an inservice training program in the 'bias free mainstreaming' of these children, and providing an advocacy or ombudsman system for affected parents and children.

In addition to this type of court decree and others which, for example, require school systems to provide year-round education for handicapped students when needed, schools' non-compliance with P.L. 94-142 is resulting in numerous suits being filed against them which will likely mean the loss of added billions of dollars. One city school system in New York State is being sued for program deficiencies on behalf of 65 trainable mentally retarded youngsters, and the award being sought is \$1 million in compensatory damages and \$3 million in punitive damages. In urban areas particularly, excessive amounts of staff time are being spent in court-related activities. Such court cases will continue to deplete schools' already meager resources. Compounding funding problems is the fact that the elimination of state revenue sharing has had the effect of reducing federal aid to education by somewhere in the neighborhood of \$750 million. In some states, such as Pennsylvania, half of the funds received through state revenue sharing were used for education of the handicapped. Because of this, we now not only have no growth in the federal contribution to special education, we actually have a reduction.

This Committee surely knows the irrationality of expecting local and state school systems in today's economy to come up with billions of dollars in new monies to support widely expanded services in special education. We certainly wish as much as anyone that it could be done. But holding out false hopes and failing to address rights of handicapped students realistically would, we feel, be a cruel hoax. To the chagrin of theorists and social thinkers through the ages, life does not always coincide with reason or dreams. Nor has any institution been changed overnight. If the federal government is not prepared to rush substantial life-giving dollars to the P.L. 94-142 mandate, several serious consequences are possible. First, we fear that the number of disabled children whose education is actually being diminished as a result of some 94-142 provisions will continue to grow to alarming proportions. They will lose many benefits won within special education over the last three-quarters of a century, ironically in the name of their own civil rights (see attached House testimony, October, 1979 for specific examples). As courts expand their interpretations of an already broad legislative mandate, schools will either be unable to meet the costs or will be forced to draw from regular operating budgets. Arguments will be made that services to handicapped children need only match those offered non-handicapped. Within the current financial trend, both regular and special education could sink to such levels that public education itself could be undermined.

To those who do not want to address problems in the context of the real world of the schools, who prefer to let the pot simmer, we offer reminders that a backlash could seriously damage rights of the handicapped. That the simmering pot could explode is evidenced by a New York Times editorial on July 21, 1980 entitled "Going Wrong with Handicapped Rights" (see Appendix 2). It maintains that in relation to P.L. 94-142 the federal government has promised more than it can deliver and that since states and cities must bear the major portion of the cost, they should be allowed to balance the needs of the handicapped against the compelling claims of all children. It goes on to say:

"It is only right to remedy a pattern of neglect. But it is perverse for Congress and the courts to define an 'appropriate' education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.

If the New York Times is prepared to take this stance, consider the emotions and frustrations fermenting throughout the country. It is this situation and its likely reaction which makes us so strongly oppose resistance to opening P.L. 94-142 to close examination. If Congress cannot back up this mandate with adequate resources, it should be exploring ways of preserving its intent and perhaps cutting back on unnecessary bureaucratic processes. Rights need guarantees but guarantees must not be allowed to masquerade for rights. We feel it is safe to open P.L. 94-142 because of the back-up of Section 504 and precedents set through various judicial decisions. To begin with there should be at least a six-month moratorium on penalties for non-compliance with P.L. 94-142 to allow SEAs and LEAs to report the true impact of this legislation. Documentation could be given as to exactly what the schools had been able to accomplish with their present resources and what requirements they had not been able to meet and why. Out of such an examination could come a synthesis which would provide assurances of rights for handicapped and non-handicapped as well which could be implemented in the schools without undermining the very foundations of education. Many forces are operating in the special education arena -- often with conflicting purposes. Only Congress has the ability to remove emerging roadblocks to progress and establish sensible means of achieving quality education for handicapped and non-handicapped students alike.

To begin this process, we believe the IEP requirement should be eliminated as it has resulted primarily in a reduction of child-teacher contact time. The cost of this process in terms of education dollars and staff and parental

time is in no way justified by the research reports showing it surrounded by confusion and resentment. More importantly, it has been shown not only to be basically unproductive but even detrimental to children's education. In general, the only parents who seem to benefit from involvement in the IEP process were those who always have actively pursued their rights in the school system. In suspending this requirement, studies might be undertaken to explore reasonable means of assuring individualized educational programs.

At the same time, some steps must be taken to prevent least restrictive environment placements from being used as a cost-saving device without insuring that the placement is truly in the best interest of the child, that the receiving teacher is adequately trained to work effectively with the child and that the receiving classroom is adequately prepared and equipped. Inservice training should be required by law for teachers and other school personnel assuming new roles and responsibilities as a result of least restrictive environment (LRE) placements. This training must be completed prior to placement. The many abuses of LRE placements are indicative of the fact that this concept has little chance of working unless the law is expanded to detail the circumstances under which a less restrictive placement is appropriate. We refer you to pp. 9-10 of the attached House testimony for suggestions on what such guidelines might entail. Furthermore, much more research is needed on how the least restrictive environment concept is being implemented in schools throughout the country and the impact this is having on both handicapped and non-handicapped children.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt that neither the parents or LEA have acted in the best interest of the child, nor can they be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due

process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

Finally, we call your attention to a glaring loophole in P.L. 94-142. Although deadlines are affixed to most of its provisions, no mention is made of a time limit which cannot be exceeded between the time a child is referred for evaluation and the time that evaluation actually takes place. Not all states have such time restrictions, and in those that do, they are rarely enforced. As a result, large numbers of children are lost in the limbo of referral waiting lists.

In conclusion, we urge Congress to support the rights of handicapped persons espoused in Section 504 of the Rehabilitation Act of 1973 by increasing appropriations under P.L. 94-142 to several billion dollars. We recommend close examination of all provisions of P.L. 94-142 and their effects on handicapped students, non-handicapped students, school and local and state finances, and public education itself. A utopian outlook which makes no attempt to find realistic means of plugging theory into actuality must necessarily collapse in upon itself. That handicapped persons are entitled to a free appropriate public education need not be utopian or theoretical. It should be fact. The theoretical premises which must be scrutinized and experimented with are the avenues by which we can best accomplish this goal. Responsible action will resolve emerging problems; neglect could make our present problems seem trivial.

TESTIMONY OF
WALTER TICE, VICE PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO HOUSE SUBCOMMITTEE ON SELECT EDUCATION
ON P.L. 94-142

10/9/79

I am Walter Tice, a classroom teacher in Yonkers, New York and vice president of the American Federation of Teachers, AFL-CIO. On behalf of the 520,000 teachers, paraprofessionals and other education personnel who are members of AFT, I would like to thank you for the opportunity to offer our views before this Committee on P.L. 94-142, The Education for All Handicapped Children Act.

Because we believe strongly in the right of all handicapped persons to a free appropriate public education, we supported passage of P.L. 94-142 in 1975. Yet, reservations we expressed at that time about certain aspects of this law have proven to be well-founded. We would like to use this opportunity to point out how several sections of the law designed to protect handicapped student's rights in reality result in just the opposite.

The root problem underlying the negative effects P.L. 94-142 has had is insufficient funding. If there were billions of dollars available to the schools through this legislation, problems arising from various requirements of the law would be overcome. But obviously this is not the case. In its "Survey of Special Education Costs in Local School Districts: An Assessment of the Local Impact of the Education for All Handicapped Children Act," the National School Boards Association in June, 1979 reported that local school district budgets for special education are rising by 14 percent a year as compared to only a 7 percent per year raise in the instructional and operating budgets. The Committee is no doubt aware that many school systems were besieged with severe financial problems prior to implementation of P.L. 94-142. Likewise, you know the public mood is one of maintaining or cutting back on spending, including education dollars, at both the state and local levels. This leaves most school systems with one choice — new monies needed for special education must come, at least partially, from the

regular instructional or operating budget. These budgets, especially in urban areas where the majority of handicapped students are and where special education costs are the greatest, in many cases were already pared to the bone.

While the annual per pupil expenditure for regular education in FY 1980 will average \$1,819, the same for handicapped pupils is \$3,638. The excess cost contribution to be made by the federal government in fiscal 1980 will be \$218 per child or slightly less. This leaves the LEA to find, on the average, an extra \$1600 per handicapped student. These averages don't take into consideration the added costs of due process hearings, transportation, and additional staff time.

Here we want to point out very clearly that we are not suggesting that full educational services as mandated by P.L. 94-142 should be withdrawn from handicapped persons. On the contrary, we want to maintain such services but eliminate requirements which serve to diminish the quality of education provided both handicapped and non-handicapped students.

As you will see from the policy resolution attached which was passed at our 1979 convention, the 2500 delegates who attended called for modifications in P.L. 94-142 which would first provide adequate federal monies to meet the new mandate; second, eliminate the IEP process which has only resulted in further reducing child-teacher contact time; and third, prevent least restrictive environment placements from being used as a cost-saving device without insuring that the receiving teacher is adequately trained or informed or the receiving classroom adequately prepared and equipped. We would like to expand on these last two problems.

IEP

A 1978 AFT convention resolution calls for legislation that will remove the "onerous mandate" of individualized education programs and "allow teachers,

as professionals, to plan appropriate educational activities for the children in their classes." Does this mean teachers do not want to teach handicapped children or that they do not want to individualize instruction or that they do not want parents to know whether their children are receiving appropriate services? Of course not. The IEP is a very fine sounding proposal which looks nice on paper but when actually implemented in the schools becomes a nightmarish disaster.

If you so desired, we could submit an extensive list of problems associated with development of IEPs. But let us refer you to the IEP section in the "Case Study of the Implementation of P.L. 94-142" prepared for BEH by Charles L. Blascke at Education Turnkey Systems, Inc. This study reported that IEPs for the most part are developed around learning activities which can be most easily provided; the time teachers spend writing IEPs is significant, as is the time the teacher spends in revising the IEP when, as is often the case, the teacher who implements the IEP is not the one who wrote it; parental involvement in most instances is limited to attendance and approval, with little interaction on the development of specific instructional programs; many parents feel intimidated by LEA staff or feel the process is too complex; and the IEP meeting has become essentially a formal mechanism for complying with the law rather than for informing and involving parents.

If schools could hire as much personnel as needed, the IEP process might create no problem. But it is usually teachers who must make the parental contacts (this may involve numerous phone calls and even visits to their homes), who usually must write up a tentative IEP prior to the meeting, who often have to leave their classrooms to attend such meetings, and who then write up the final IEP. The effect on instructional contact time with children, teacher planning time and teacher morale is devastating. Consider a speech and hearing therapist. This teacher used to have an average caseload

of 60 to 80 students. With increasing numbers of handicapped children being identified but a shortage of funds for necessary personnel, this caseload may now go over 125. The teacher therefore is involved in developing and/or reviewing IEPs for 125 children. It is not hard to imagine how all of the duties associated with getting an IEP ready for even one child involves substantial time but now multiply this by 125 or even 60. Yes, this is certainly difficult for the teacher but imagine how much time the teacher actually has to work with children. They receive the least and the worst from the IEP process, no matter how ironic this may seem.

We must therefore recommend that the present IEP process be deleted from P.L. 94-142 or at least suspended until Congress can conduct a thorough investigation into the effect it is actually having on the education of handicapped children.

There possibly is an alternative which would allow the IEP process to work but it would be expensive and those funds would have to be provided by the federal government. The IEP process might accomplish its goal if it were required by law that:

- 1) All parental contacts required to set up IEP meetings were to be made by administrators and not by teachers, counselors, psychologists or other support personnel whose time should be devoted to working with children;
- 2) Special personnel be hired to attend IEP meetings and write up the individualized programs agreed to by the participating parties;
- 3) Teachers be provided with an additional preparation period during which IEP meetings can be held so as not to have these meetings keeping teachers out of the classroom and lessening the time they

spend in instruction (teachers could also use this time for consultation with support personnel and inservice education which are so sorely needed);

- 4) Administrators may not discourage teachers from listing on the IEP services, resources or equipment needed by a child simply because of their cost;
- 5) Teachers may challenge the effectiveness or appropriateness of an IEP for a child through the due process mechanism;
- 6) Every teacher will be guaranteed inservice education by the LEA on how to write an IEP;
- 7) IEPs clearly do not hold teachers liable if students do not attain the established goals;
- 8) The IEP is to be a brief, general statement of annual goals for a child, outlining various developmental skills or levels which the child will hopefully accomplish or reach. (Short-term instructional objectives should be deleted from the IEP as these must be flexible and should not require reassembling the IEP planning group each time a minor change is determined to be needed in a child's programs).

If the above conditions were to be established by law and supplemented by appropriate funding, the IEP process would be workable. Otherwise, it will continue simply to deprive children of instructional time, and the time they do have with the teacher will, despite the window dressing of the IEP, be much more poorly planned. Although our list of eight conditions frequently mentions teachers and support personnel, a careful reading will show each of these affects the quality of services provided children, not the self-interest of teachers.

Finally, we reiterate on this topic that we are asking for a suspension, deletion or revision of the IEP section in P.L. 94-142 because our members, regardless of the size of their school system, have consistently and with great concern reported that the IEP process is simply resulting in less education for handicapped children and increasing frustration for parents and school personnel.

Least Restrictive Environment Placements

Confusion over the meaning of this concept, as well as scarce dollars in a time of rapidly expanding special education costs, has led to abuse of least restrictive environment placements. Here again, AFT fully supports the concept of the least restrictive environment placement (often referred to as mainstreaming) for some children when done under the proper conditions. Despite the fact that there is no research to show that such placement is effective (see latest comprehensive study on this subject done for BER by Wynne Associates in 1975), we support the idea on philosophical grounds. It makes sense that if a child can function effectively in a less restrictive environment, he or she should be able to go on to live a fuller, more normal life.

Yet the desperate financial condition of the schools has made a Dr. Jekyll and Mr. Hyde out of this requirement also. We have already cited in this testimony the fact that the average cost of special education is at least twice that of regular education. Normally, the more "restrictive" the education, the more expensive. Couple a situation of too few dollars with a law encouraging placement of handicapped children in least restrictive environments which just happen to be successively less expensive and imagine what is happening out there in the schools.

Not only are the parties involved in the IEP process usually totally ignorant of what the IEP is and how to do one, but the LRE requirement has

created many new roles for school personnel and in an overwhelming majority of cases, no inservice education has been provided. You may be startled to know that in almost all workshops related to P.L. 94-142 which we do around the country for teachers, paraprofessionals, counselors and psychologists, it is the first and only inservice they have received.

Can this be said to be those educators' self-interest also — that they should be crying for inservice education? Here too it is children who are suffering. The special education teacher's role has changed; they are shifted to new responsibilities as more and more handicapped children are identified and enrolled in the schools. That the special education teacher can teach any handicapped child is a misconception. They specialize in various areas and the teacher who has been working with educable mentally retarded children may need extensive inservice training before being competent to work with trainable mentally retarded children. There are many other examples, all of which are evidenced by the growing divisions and strictures on certification within areas of special education. Also, as larger numbers of children are "mainstreamed," special education teachers are increasingly assigned to resource rooms. Two problems are common in this instance. Often the number of children the resource room teacher works with has risen to the point where the teacher can hardly give the individualized instruction intended, let alone help other teachers plan activities, lessons, and materials to be used with mainstreamed children. Even when there is time for this type of consultation, the resource room teacher who has not been trained to work with adults and received no inservice for this new role often is therefore ineffective. Regular teachers suffer even more by the lack of inservice training and the almost total lack of accessibility to support personnel.

Once more it is children who suffer. By the mid-1970s when P.L. 94-142 was implemented, there were many flaws in special education which led us all to support this law in the hope they would be corrected. Part of this goal has been accomplished. Testing procedures are improving, although the schools still do not have nearly enough testing specialists, diagnosticians, psychologists or counselors and although there is still no law or regulation which prevents an inordinate amount of time to go by between the time of referral and actual testing and diagnosis. Children should now have a better chance of "graduating" from the special education program into the regular one because of the reevaluation required at least once every three years. Yet despite its faults, special education in the mid-70s was a highly developed, specialized field, and the sophistication of services to handicapped children was growing by leaps and bounds. Now, after implementation of P.L. 94-142, you have a situation in which most teachers feel inadequately trained to work with children given to their care or feel that they cannot do so effectively in the environment or setting or with the insufficient resources provided them. If teachers and other school personnel were an insensitive and uncaring lot, we could ignore this situation, stick these children in a corner somewhere and go about our business. Indeed the attitude of BEH and some advocacy groups has been that the law should not be touched for at least three or four years in the hopes that its bugs will work themselves out. But we who see these children's faces day in and day out, who know their dreams, their joys, their setbacks, we can not in good conscience sit back and see these hundreds of thousands of children used as guinea pigs. We implore this Committee not to be drawn down this avenue.

Instead, the least restrictive environment placement provision of P.L. 94-142 should be expanded to allow placement of a child in a less restrictive environment only if:

- 1) Receiving personnel, including teachers and paraprofessionals in special or regular education, have been informed of such placement and provided inservice training to enable them to work effectively with the child prior to placement;
- 2) The child's emotional, social and physical well-being are considered in addition to cognitive benefits in determining the placement of the child;
- 3) The LEA has assured availability of adapted resources; instruction on how to use them, if necessary; and access to support personnel, as needed;
- 4) The child's health and safety are guaranteed in the new placement situation;
- 5) School personnel are free of all liability which might result from a less restrictive environment placement which requires them to perform new or non-educational tasks;
- 6) Transitional programs are available to handicapped children, non-handicapped children or school personnel whenever needed, prior to placement;
- 7) Children can perform within the normally expected ranges of achievement within the placement setting;
- 8) Certified special education teachers and support personnel are available in ample numbers to assure that "special attention" can follow the handicapped child into the less restrictive setting;
- 9) Teachers have regularly scheduled release time for consultations with support personnel, whenever needed;

- 10) Scheduling of the educational program and buses conforms to individual needs of handicapped children and not vice-versa;
- 11) Assurances are given that regular class sizes will be reduced if special education students are assigned to them, that no more than three handicapped children will be placed in any one regular classroom to prevent potential for abuse, and that special education maximum class sizes not be exceeded;
- 12) It is recognized by all SEAs and LEAs that a less restrictive environment for many students, as opposed to a traditional setting, would be unproductive;
- 13) Safeguards exist to assure that funds designated for special education follow the child, even if in a less restrictive environment.

If the above mandates cannot be set by law, the present practice in growing numbers of school systems of "wholesale mainstreaming" could eventually progress to the point that we have accomplished little more than tearing down a system of special education it took this entire century to build, without replacing it with anything better. Perhaps we should keep in mind Horace Mann's warning that "one former is worth a thousand reformers."

We suggest that in this case also Congress would benefit from a careful investigation of how the least restrictive environment requirement is being implemented in schools throughout the country and the impact this is having on handicapped and non-handicapped children alike.

Reports to us from our membership in the schools indicate that the schools have been unable to obtain the monies needed to meet P.L. 94-142's mandate, that consequently there are extensive abuses of the law and a massive cover-up

of these abuses by school boards and administrators. It must be remembered, however, that if they were to come forward with the true but tragic picture of what is going on in the schools as a result of P.L. 94-142, they would open themselves up to innumerable law suits, as well as to a cut-off of desperately needed federal funds. Perhaps a 6-month moratorium on non-compliance penalties should be called to allow SEAs and LEAs to report to Congress the true impact of this legislation. If the consequences of P.L. 94-142 are not seriously studied and its strengths and weaknesses documented, many children -- handicapped and non-handicapped -- will be denied a decent education. In these times, this is hardly a viable option. Congress must also reevaluate its commitment to education of handicapped children in terms of the paucity of funding offered to back up this much needed commitment.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt the parents or LEA have not acted in the best interest of the child and cannot be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

We could give many more examples of problems associated with P.L. 94-142 but this would involve submitting testimony of excessive length. For this reason, we ask for a thorough investigation of the law's impact in the schools and an opportunity to meet with committee staff at some future time to discuss various aspects of the law and how they are actually affecting children in the schools.

We have discussed here the major weaknesses of P.L. 94-142 in the hope that they can be overcome so that our mutual goal, the provision of a free appropriate public education to all handicapped children, can become a reality -- not a paper pipedream. Thank you for this opportunity to express our views.

PL 94-142

WHEREAS, the AFT supports the objective of providing effective educational services to handicapped children contained in PL 94-142, and

WHEREAS, PL 94-142 (The Handicapped Children's Act) and the federal regulations created by H.E.W. to enforce it have created federal mandates on state and local school districts which have required the expansion of expensive services to handicapped children without supplying adequate funding thereby frequently necessitating serious cut-backs in services to non-handicapped children, and

WHEREAS, the complicated and time-consuming processes required by PL 94-142 have increased paper-work time for teachers, counselors and paraprofessionals and have resulted in the reduction of child-contact time, and

WHEREAS, the "least restrictive environment" mandate has resulted in the wholesale mainstreaming of handicapped children . . . without insuring that teachers into whose classes the students are placed are adequately informed regarding the placement or adequately trained prior to the placement, and

WHEREAS, the wholesale mainstreaming of handicapped children created by PL 94-142 has been beneficial to some children it has been educationally and emotionally harmful to other handicapped and non-handicapped children, and

WHEREAS, such serious harm is being done at this time by the improper implementation of PL 94-142 and its regulations;

RESOLVED, that the AFT, while continuing to support the objective of providing effective educational services to handicapped children, works to modify the provisions of PL 94-142 and its regulations in order to end the serious problems stated above, and

RESOLVED, that the AFT notify the above agencies of government that immediate investigation of these conditions and action to correct them should be taken within a short period of time, and

RESOLVED, that, in the event that corrective action is not taken within a short period of time, the American Federation of Teachers shall seek federal legislation to suspend immediately further implementation of the mandates of PL 94-142, in respect to the matters stated above, while local school programs for handicapped children and the federal moneys adhering to these programs continue, until:

1. The federal government provides every dollar of new monies needed to implement the federal mandates.
2. All teachers and paraprofessionals who are or will be teaching mainstreamed students have the opportunity to complete the necessary professional in-service training.
3. A study on the full effects of PL 94-142 on handicapped students and non-handicapped students and its impact on the structures of state and local school district financing be conducted and made available to Congress before it acts to restore the PL 94-142 mandates. (1979)

Draft Final Report

For A Study of Teacher Concerns
With PL 94-142

Prepared For:

Bureau For Education of the Handicapped
(State Program Studies Branch)
DHEW

Prepared By:

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October 6, 1978

V. Lessons Learned and Recommendations

Before attempting to summarize some of the lessons learned by this study and formulate recommendations for the future, our own role and perspective needs to be clarified. Several points may serve to explain the role we adopted in undertaking this study, at first pointing out the position we did not adopt and finally stating the position we have chosen.

- We have not attempted to be the advocates of the teachers themselves.
- Nor have we attempted to be advocates of the law and its formulators, or of maintaining the law in any given form.
- And we have not been the agents of BEH attempting to insure compliance with PL 94-142.

Our study was not a part of any auditing process emanating from BEH. At the same time, we have avoided being the advocates of teachers and their problems with "management" at any level -- since, if for no other reason, the problems and organized political positions of teachers are quite diverse around the country. What, then, has been our orientation and our role in this action-oriented study?

- We have attempted to be the advocates of having teachers' concerns with PL 94-142 heard, listened to, and thoughtfully considered as further efforts at implementation proceed.

Thus if it appears that our reporting is biased from the teachers' viewpoint, and often seems to come down harshly on "management" (without giving the latter "equal time"), we admit to this fault -- because the purpose of the study was to discover and air "teacher concerns." It should also be pointed out that what we

have reported are the perceptions of situations expressed by teachers, and no effort has been made (except almost incidentally at times) to "correct" those perceptions on the basis of other information.

Moreover, it should be pointed out that we did not have to be advocates of the new law or of mainstreaming and improved educational services for the handicapped. Many of the teachers contacted were strong advocates of that law, even more were in favor of mainstreaming, and almost all favored improved education for the handicapped (although not all put the same -- or highest -- priority on that goal).

Finally, our own position on changes in the law is entirely neutral. PL 94-142 is the law under which BEH now administers funds; but our function was not to defend or justify the law's provisions, nor conversely to probe for problems with a view to undermining the law.

With this position stated, it should then be noted (in anticipating the form of our recommendations) that we are avoiding suggesting specific changes in the law. In truth, far more important at present are clarifications and the examination of allowable variations.

We obtained many recommendations from the teachers contacted. In some instances these were systematically spelled out -- for example, by the discussion group in Eastern Metropolis -- and came close to representing a position on the law by political spokespersons. In our own recommendations we have avoided, for the most part, the type of specific suggestions proposed by such teacher groups. Instead, we have attempted to speak to strategies and future lines of action that can begin to ex-

periment with the specific kinds of changes advocated by those groups. However, in a few instances we have found specific recommendations of teachers to be insightful enough and of such general applicability that we have incorporated them into our recommended strategies.

Important Lessons

None of the members of the research team has been a practicing educator in the public schools of the United States in recent years. None is an expert in the education of the handicapped, in mainstreaming, or in the provisions of PL 94-142 and their rationale. Therefore, some of the lessons learned by the team may be common knowledge among those more expert and experienced. Nevertheless we present them as a backdrop to our recommendations.

- Priorities of teachers are heavily weighted by their sense of professional values and knowledge of professional practices. Bargaining for time and assistance to cope with new responsibilities is partly -- if not totally -- a matter of this identification with a value system. As in any institution and profession, of course blinders and recalcitrance to change are to be expected. But cooperation, not coercion, is most frequently cited by teachers as the key to fostering mandated change. This approach proceeds from the assumption that professionals do not have to be forced to change their ways if groups of people are working together to achieve professional goals.

- Information about PL 94-142 has spread with great unevenness, not only across different States and LEAs, but within LEAs. And even where information has been provided and assimilated, there are many unanswered questions being asked and many requests for interpretations of the law being posed.

- LEAs vary greatly in their facilitation of communication and in their support of teams of teachers working together on educational problems at the building level. And schools -- buildings -- also vary greatly in this regard.
- LEAs vary - as do schools - in the ways they facilitate working relationships between regular ed and special ed teachers. Some have sub-district arrangements for crucial services; some are highly centralized in coordinating special ed personnel and services; others are highly decentralized in emphasizing organization of special ed services and relationships between regular and special ed at the building level.
- Priorities for, and experiences with, educating the handicapped, and experience with mainstreaming, vary greatly across States and LEAs in the country -- and within LEAs, across schools. Some States have laws which predate PL 94-142 and which mandate educational rights of the handicapped and efforts to provide their education in nonsegregated settings. Other States are only beginning to draft such legislation, under impetus provided by PL 94-142.
- In the first year of implementation, there was tremendous variability in the involvement by teachers -- and in the pressures they felt -- in assisting their LEAs and their schools to achieve compliance with PL 94-142. Even more, there was great variability in the pressures felt by special ed and regular ed personnel; and for the most part special ed felt the greatest impact on their day-to-day functioning in the first year of implementation.
- An audit process, always necessary in some form where financial accountability is involved, can generate forces that (at least in the eyes of the teachers feeling the greatest impact) can hinder and weaken resources for education of the

handicapped. Moreover, "audit" and "compliance" have different meanings and priorities for LEA administrators (worrying about program budgets) than for teachers attempting to deliver in the educational process while prompting themselves to question old ways and try new ones. The impact of an audit on the service-delivery level (i.e., "on the line") needs to be strongly considered as its requirements and procedures -- and time dimensions -- are defined.

- o (A "lesson" based on our own judgment as professional action-researchers.)

A law which defines rights of a target group and which also calls for new and far-reaching responsibilities from another group, should speak to the rights of all responsible parties. Teachers are not sure what "rights" go along with their responsibilities under PL 94-142. In the first year of implementation, their questions in this regard were not being answered to their satisfaction.

Recommendations

During the course of the field work a number of interesting ideas were uncovered on future steps for implementing PL 94-142. The recommendations on future strategy we are presenting have in common the assumptions that:

- o Beyond our present airing of "Voices from the Classroom," teachers should continue to be heard and called upon for their knowledge and experience as planning and action proceed.
- o Future steps should be conducted in the spirit of, and with procedures that permit, continued learning about educating the handicapped in the "least restrictive environment" and the application of this knowledge in buildings and classrooms around the country.

1. Create a Forum for Building Knowledge and Sharing Experiences

Teachers manifested a great desire, not only to be heard, but to hear from others like themselves -- to learn what is happening among their peers as problems of mainstreaming are addressed. They felt strongly that most orientation workshops on PL 94-142 had not gotten to the teacher level. But this complaint was only the tip of the iceberg. For many teachers wanted to be called upon in the future to share more than their concerns. They wanted to share lessons they are learning through classroom and building - level experiences with mainstreaming and with meeting the requirements of PL 94-142.

We recommend that a project be instituted by BEH which would: (1) identify (on a regional basis) exemplary classroom/building experiences with mainstreaming; (2) invite up to 30 teachers from a region to appear and share their experiences at a 2- or 3-day regional workshop or retreat; (3) conduct 4 such regional workshops around the country; (4) document the workshops and disseminate this documentation; (5) instruct participants to follow through in their LEAs by making efforts to share the workshop experience with their peers. In various LEAs, we heard the following additional thoughts on this basic idea:

- Call on several people from the same building to attend -- so that exemplary total-school programs are represented.
- But be sure to include individual teachers, making exemplary contributions, who teach in less exemplary schools.
- And don't overlook individual teachers in most difficult and isolated settings who have a strong desire to learn how to meet the requirements of PL 94-142.

The specific next-step project proposed would be only a first building-block in the development of an ongoing network of forums for developing and disseminating grass-roots knowledge regarding mainstreaming among teachers, schools and LEAs across the country.

2. Create a Teachers' Review Body at The LEA Level

In the implementation of the law, a condition has developed which fosters largely administrative interpretations of compliance requirements. At the same time, State and LEA administrators are not clear what the law implies or requires in many areas; but as local policies are established and effected, the teachers' perspectives are not adequately considered. We recommend that BEH sanction and support be given to the creation of a teachers' review committee, addressing problems of implementation, in every LEA. A Teacher Review Body (committee or board) need not have dictatorial or policy-veto powers in order to have a positive influence on the climate for implementation in LEAs. It can ensure that as policies are formed on IEPs, record-keeping, diagnosis... -- all areas of policy impacting on special and regular teacher roles, and especially on existing teams in buildings -- the teachers' perspectives and professional values are recognized.

Even military organizations have instituted procedures for grass-roots inputs on problems of morale etc. -- procedures which ensure that information on perceived problems is delivered from company level to corps level (in spite of the implied threat to commanders in between).* And educational institutions should be far less command-control systems than military organizations are.

* At least this was true during Korean War days, when one of the authors of this report served on a "feedback" body -- providing information which, admittedly, "blew the minds" of battalion and regimental commanders, since, of course, there could be no problems in their units.

We recommend that each building in an LEA have a representative to such a body. However, an elected executive committee of the Teacher Review Body might be the smaller group actually meeting to review pressing issues (while building reps would be responsible for delivering information to the smaller body).

3. Create Regional Assistance Teams

We recommend that a national effort be undertaken to provide substantive assistance on a regional basis in specific problem areas identified with PL 94-142. Because of existing, and potential future, unevenness in State efforts at disseminating information, preparing for training etc., we believe this assistance should be organized on a regional basis. It may benefit from, and tap the resources of, the effort proposed under Recommendation #1; but a separate effort to provide regional assistance in crucial problem areas should be instituted by BEH. Assistance should be directed to both State and LEA levels but should be concentrated on the LEAs. Problems addressed should include:

- Training regular ed teachers for new responsibilities in mainstreaming (developing curriculum and/or delivering training).
- Re-training special ed teachers...(developing curriculum and/or delivering training).
- Assisting with IEP procedures (and assisting LEA efforts to develop efficient and effective IEP procedures).

4. Develop and Disseminate Guidelines on Documentation and IEP Procedures

While technical assistance with the concrete problems of implementation is provided at the regional level, we recommend that BEH proceed at the national level

to develop materials (which may be applied and delivered by regional personnel, as well as otherwise disseminated) to guide LEAs in facing the formidable problem of the IEP and its documentation. This effort should not be dictatorial or lead to a standard federal package. In fact, many LEAs have record-keeping systems and procedures for IEPs which they may wish to share as contributions to national guidelines; and any external guidelines must be compatible with State and local systems. But many more LEAs doubtless would welcome an effort by outsiders to give structure to IEP procedures with a view to making them efficient, effective and minimally time-consuming.

5. Create a Review Office at the National Level

A law once on the books means whatever judges and courts -- right up to the highest tribunal -- say it means. But this does not mean that the administrators of a law should abdicate their responsibilities for continuing to interpret its mandates. At present, many teachers feel they are being abandoned by fellow educational professionals, at the local, State and Federal levels, as administrative imperatives, along with the rulings of judges, dominate the drama of implementation. In Eastern Metropolis the feeling was strong that the professional knowledge and experience of teachers was given no consideration whatsoever as implementation of PL 94-142 proceeded. They felt that teachers "on the line" could not find a sympathetic professional ear at BEH since that agency currently was allowing the law to find its course in legal actions.

We recommend that a National Review Office be established by DEH to continue to weigh implications of the law, consider important issues and ongoing controversies, and publish current positions regarding interpretations. Although this office need

not be a part of BEH itself, it should be supported by that agency and sanctioned to develop positions that will be used by BEH in monitoring compliance. This National Review Office should be continually informed by the information and knowledge being developed and shared through the network advocated in Recommendation #1.

Reviewing some of the specific problem areas cited by teachers, and especially by the teacher discussion group in Eastern Metropolis, some of the priority problems this office should review in early implementation phases are:

- The definition of "least restrictive" (developing guidelines for permissible variability).
- Necessary staff development and staff supplementation (developing guidelines for this requirement).
- Optional approaches to meeting problems of increased workloads.
- Teacher participation in the IEP (guidelines for permissible variability).
- Due process for teachers: a national professional position from BEH regarding the rights of teachers under PL 94-142.

The Review Office should not, in our view, be constituted to receive and formulate interpretations of State and local problems of compliance on a case by case basis. But it should prepare for wide distribution interpretive guidelines which will be used when audits do take place; and these periodically updated guidelines should be informed constantly by what is happening in implementation (the priority problems; the varied local interpretations) in LEAs throughout the country.

Our Federal system sanctions tremendous flexibility as national laws are enacted and then catalyze varied actions in the diverse states and localities of our nation. In effect, properly functioning, our system allows us to learn from one another as the general mandates of laws are translated into myriad experiments in achieving common goals. Therefore, we are not proposing future actions that will standardize and rigidify the requirements for implementing PL 94-142. We are recommending procedures that will promote a rich and open learning process with regard to mainstreaming in education of the handicapped. And we are also recommending procedures that will promote the development and exercise of responsible leadership in this pursuit. Finally, we wish to see teachers from the classroom drawn into that open learning process and into that exercise of leadership.

Going Wrong With Handicapped Rights

It sounds humane for a Federal Appeals Court to rule that the schools in Peekskill, N.Y., are legally obliged to provide a personal sign-language interpreter for a bright partly deaf 8-year-old pupil. But even the judges who so read the Education for All Handicapped Children Act of 1975 recoiled from the precedent; they were not yet saying *all* deaf children, they insisted. Maybe not. The trend, however, is alarmingly clear. A humane Federal benefit is turning into a constitutional right and into a state and local educational obligation, with no sign that the Federal Government means to pay for what it decrees.

Federal laws and court decisions have not only endowed the handicapped with a right to free schooling. They have gone a long way toward prescribing the kind of education that this right entails. Under Federal mandates, New York City's outlays for special education have already doubled, to \$300 million a year; special education's share of Georgia's annual budget has jumped from 7 to 12 percent. The financial problem is compounded when the Federal courts, as in New York, also block state attempts to tighten the definitions of handicapped.

The education system has long neglected handicapped children. A study by the Carnegie Council on Children, "The Unexpected Minority," found youngsters with learning disabilities to be woefully misclassified as ignorant or unable to learn. It found most traditional special education courses to be unsuitable or inadequate.

In the early 1970's, the Federal courts held that handicapped children had a right to the same public education as the nonhandicapped. In 1975, Congress enlarged that right by requiring education for the handi-

capped to be free and "appropriate." To qualify for public education aid, school districts had to devise individual programs of instruction for disabled youngsters and to arrange, to the extent possible, for them to be taught alongside their "normal" peers.

In reluctantly signing that bill, President Ford warned that it "promises more than the Federal Government can deliver." And he was right. The legislation contemplated that by now Washington would be paying nearly 40 percent of the added costs; actual appropriations cover only 12 percent. The fact that actual Federal expenditures for the handicapped rose from \$100 million in 1975 to \$862 million in 1980 is little consolation to financially strapped local governments.

Obviously, handicapped children are entitled to the best possible public instruction. But the nature of that instruction, like that of all children, ought to be determined locally. States and cities bear the major portion of the cost and they must balance the needs of the handicapped against the compelling claims of all children, including medically sound youngsters who nonetheless have problems with learning, alienated youngsters who drop out, high school students who are ill-prepared for jobs. They, too, could use individual attention, small classes, more guidance, better textbooks.

It is only right to remedy a pattern of neglect. But it is perverse for Congress and the courts to define an "appropriate" education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.