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ABSTRACT

Specific components of Public Law 94-142 (Education for All Handicapped Children Act) are reviewed; some issues associated with financing under the law are raised; and some statements of implications at the level of practice are offered. Considered are significant financing difficulties regarding points under the law which include the following: the law calls for free public education for the handicapped; the concept of excess cost is included in the law; and there is a possibility of incentive grants at the rate of up to $300 per handicapped student in areas such as early childhood education. Pointed out is the need for communication, analysis and dissemination of information associated with the law, and clarification of ambiguous terminology to reduce some of the complexity currently associated with the law. (SBH)

FINANCING OF PUBLIC LAW 94-142

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FINANCING OF PUBLIC LAW 94-142

There is evidence that this country has more than 8 million handicapped children. Special education needs of handicapped children have historically not been met. More than 50% of handicapped children are not receiving full equality of educational opportunity. Many handicapped children in regular education have not been identified. Given adequate appropriations, state education and local education agencies can provide appropriate special education services. The federal government can assist state and local education agencies to meet educational needs of children and to insure equal protection rights of children.

Such testimony was a precipitant to Congress passing The Education for All Handicapped Children Act of 1975, Public Law 94-142. The purpose of the law was to: assure that all handicapped children have available to them a free and appropriate public education which emphasizes special education and related services designed to meet their unique needs; assures the children's and parent's rights are protected; assists states and localities; and assures effectiveness of efforts.

To date there have been significant efforts to create a broader understanding of Public Law 94-142, its implications at the level of the state education agency and for the local school system practitioner. The focus of most of these efforts has centered upon some of the more critical elements associated with special education service delivery such as: a free and appropriate education to all eligible students; the individual educational plan and due process procedures for assurance

of rights to children and parents.

Relatively few efforts have centered upon the financial aspects of Public Law 94-142 or in a broader sense, the administration of the law at state and local levels. A partial explanation for this somewhat diminished emphasis upon funding and administration has been that other elements of the law are "nearer and dearer" to the hearts of special educators. That is to say, special educators by inclination and training are better suited to deal with such items as individualized educational plans. However, Public Law 94-142 has some unusual and exceedingly complex aspects related to the financing of special education. Therefore, this particular presentation will focus upon the financial aspects of Public Law 94-142. Specifically, we would hope to: provide a brief and probably incomplete review of specific components of the law dealing with financing; raise some issues or questions associated with financing under the law; provide a conceptual framework to look at implementation of the law relative to finance; and throughout the presentation provide some statements of implications at the level of practice.

The law and/or its regulations mention the following specific aspects with implication for financing:

(1) The law specifically calls for free public education for the handicapped. (Free meaning at public expense.) Free and at public expense does not necessarily imply that all handicapped students must be educated within public schools. For example, the funds can be applied to the education of handicapped students in state supported institutions and in private schools.

(2) Funds made available under the law must be expended according to specific prioritization. That is to say, there are two major priority categories stipulating which funds must be expended first. Specifically, all of the unserved must be the recipients of expenditures under Public Law 94-142 before any other handicapped individual is provided service. Simply stated, no funds associated with Public Law 94-142 may be expended upon any other population than those individuals that currently have no appropriate special education services until such individuals receive appropriate service.

The second priority area is the severely involved within each disability category that is at this time inadequately served. Handicapped within specific designated disability areas that are receiving some service but not adequate service must be the next recipient of the services funded under Public Law 94-142.

Once the two priority areas have been met relative to adequate service, funds available under Public Law 94-142 can then be expended for other service delivery needs of the handicapped. Pragmatically, the law has detailed that the federal monies available under Public Law 94-142 must be used at the level of service delivery to provide services to individuals that are at this time not served at all, next to individuals that are inadequately served, and finally may be used to enrich or to improve the service delivery to all other handicapped individuals.

(3) The concept of excess cost is included in Public Law 94-142. At first blush, the concept of excess cost seems relatively simple, i. e., a determination of regular costs

and the determination of special costs and the difference being excess cost. However, on closer scrutiny and on greater familiarization with the financing of public education, it becomes very clear that excess cost is an extremely complex phenomena having many grey, unknown or questionable areas relative to interpretation or implementation. Current regulations associated with excess cost demand that local and state education agencies maintain appropriate records in order that special education and regular education costs can be determined. Specifically, the regulations require that excess cost calculations be based upon all expenditures of the preceding year, subtracting out capital outlay and debt service. This variable alone introduces tremendous complexity into the process of calculation of excess cost. Many of the record keeping procedures of school districts and state education agencies would not allow the clear defining of capital outlay and debt service relative to expenditures. For example, in the state of Texas alone there are some 1,200 local school systems, each with its own accounting system. Districts in the state that participate in the state minimum foundation program (there are some states in Texas that are sufficiently wealthy based upon oil, etc. that do not participate in the state minimum foundation program), submit a consolidated annual report associated with a variety of demographic and physical features of their district to the state education agency. However, to establish an audit trail that would in fact allow you to delineate and separate out capital outlay and debt service expenditures might be an astronomical task of great complexity.

In addition to subtracting capital outlay and debt service from total expenditures, regulations require that Part B of Title I and Title VII Elementary and Secondary Education Act, be removed from total expenditures. In addition to Title I and VII expenditures, amounts expended for the educationally deprived must also be subtracted. Expenditures for bilingual students and expenditures for programs for the handicapped are subtracted. The intent of such a subtraction is to assure that there be no supplanting of local or state effort with the federal monies made available under the law.

Once these subtractions have been made, the number of students enrolled is divided into this amount. As has been implied in the previous statement, the assumption underlying this particular formula or procedure for delineating excess cost is that cost can be differentiated across the different accounting systems operational in various local and state education agencies and that such cost can be aggregated. In other words, one possible problem associated with the procedure found in the regulations is the aggregating of apples and oranges rather than aggregating common costs.

The fact that special education service delivery does in fact have excess cost has been well documented (Rossmiller, Hale, Frohreich, 1970). The Rossmiller, Hale and Frohreich study, using a weighted index approach (1.0 = regular program cost), found special education costs across ten categorical areas varying from 1.14 to 3.64 in terms of weighted costs. Other studies following the Rossmiller, Hale and Frohreich study have found relatively similar excess cost figures (Bentley, 1970; Clemmons, 1974). Unfortunately these studies are related primarily to historical, traditional handicapping categories and are not related to the emerging more integrated or "mainstreamed" categories.

As a result, these particular systems may not be appropriate given the philosophy and stated intent under the federal law of serving handicapped populations in the "least restrictive alternative possible". An associated problem is the fact that if excess cost procedures reinforce (greater amounts of money attached to handicapping categories) disability areas, systems may choose, rather than complicating accounting procedures, to serve handicapped populations in more restrictive placements. The question being raised here is, "Will the resource allocation system dictate the service delivery system?".

Another concern that emerges under excess cost is the process by which pupil accounting occurs. As can be delineated in the previous disucssion, pupil accounting is a critical element of the allocation formula. The point previously made with regard to individual or unique accounting systems can also be made relative to pupil accounting systems. In existence are methods of pupil accounting related to average daily attendance, average daily membership and full-time teaching equivalency. The systems are not necessarily compatible for the purposes of aggregating pupil data. Pupil accounting, however, becomes critical in determining excess costs, particularly under systems calling for the handicapped to be served in specialized environments as well as served in regular or basic program environments.

A similar concern is the determination of what is "basic program." Once again, the discrepancy in the different systems currently in existence points out one of the problems with determining what is "basic." Some states, for example, would describe K - 6 as basic programs. Other states might have grades 3 - 8 determining the basic programs. Other states might, in fact, have other configurations of grades as the basic program.

When discussion of basic program is initiated other problems in excess cost begin to rear their heads. For example, the giant question of equality or equalization. While equalization is a critical issue in any discussion of school finance, having even been litigated to the level of the Supreme Court (The Rodriguez decision), it is extremely critical in terms of special education finance. In New York State in 1973-74, the average per pupil expenditure was $1,809.00. In contrast, Alabama expended, on an average, $716.00, a discrepancy of nearly $1,100.00 per pupil. Another way to examine such discrepancy in expenditure is to note the difference in local and federal revenue sources. For example, the state of New Mexico in 1975-76 received 20.6% of its revenues for public elementary and secondary school from federal sources. In contrast the state of Michigan received only 3.8% of its revenues from federal sources. These examples merely highlight the tremendous variance geographically in expenditures and sources of revenue per pupil. Therefore, one can quickly see that when excess cost is calculated in New York City it might, in fact, equal total regular and special education expenditures for a state such as Alabama. The inequality and irony of such an approach is the question of need. Where greater revenues might in fact bring some localities more sophisticated services for the handicapped, the largest resources available will be directed toward those states currently spending the most.

Just as inequality can be highlighted between states, the discrepancy within school districts is well known and documented as has been mentioned in the Rodriguez decision. However, under P.L. 94-142, until all of the priorities have been fully served, state education agencies have no

discretion relative to the distribution of funds. In other words, a state education agency could not place larger amounts of monies in a specific geographic location or school district with greater need until those additional monies are freed from other school districts having fully implementing the law. Although equalization is an extremely complex and difficult problem, one that occupies the attention of most state legislatures today, the equalization question has not been addressed in the federal law.

(4) Private school placement is at no cost to parents of handicapped children. Such no cost arrangements also must include room and board should such be required.

(5) A hold-harmless cause exists in the sense that despite any shifts in funding that might result from the implementation of P.L. 94-142, school districts can expect to receive, in 1978, amounts at least equivalent to those received in 1977.

(6) Other finance regulations are: (a) state funds may not be commingled with P.L. 94-142 funds; (b) non-academic and extracurricular activities ordinarily available to regular education students must be provided in special education and may not be counted as special services for the handicapped; (c) state expenditures must at least match federal funds expended for the handicapped; (d) districts consolidating their application for P.L. 94-142 funds must receive, within that consolidated application, funds at least equal to an aggregate of each individual local education agency.

(7) A number of regulations relate to assuring satisfactory performance by SEA and LEA. (a) The Commissioner of Education may, after due process,

withhold payments of P.L. 94-142 funds to state or local education agencies. (b) In addition, the Commissioner may withhold all other federal education monies to both state and local education agencies for noncompliance with this particular law. (c) If a state or local education agency has monies withheld, it must hold a public hearing to inform the public that they have, in fact, lost their funds. (d) Recovery of funds expended on erroneously classified or ineligible pupils may be made by the Commissioner.

(8) Various funding formula and/or procedures from 1978-82 are in effect under P.L. 94-142. Specifically, the formula calls for the number of handicapped to be multiplied times a % of average per pupil expenditures.

Dates	%	$
1978	5%	378 million
1979	10%	775 million
1980	20%	1.2 billion
1981	30%	2.32 billion
1982	40%	3.16 billion

Some specific constraints and regulations associated with expenditures of these monies should be noted: (a) Monies noted are authorized levels; they are not appropriated levels. If history is in any way a predictor, it could be assumed that appropriation levels will not reach authorization levels. That is to say, these figures probably are larger than expected actual appropriations. However, the amount authorized for 1978 represents a sizeable increase from the current funding level for 1977 fiscal year of approximately $100 million. (b) A maximum of 12% of the population between the ages of 5 and 17 can be designated handicapped. In other words, expenditures cannot be made on greater percentages of the

population. (c) Students designated as learning disabled may not comprise more than 2% of the population. (d) Students cannot be recipients of P.L. 94-142 funds if they are counted elsewhere under Elementary and Secondary Education Acts. (e) State education agencies can use 5% or $200,000, whichever is greater, for state education agency administrative costs associated with administering the law. (f) For the year of 1978, state education agencies may keep 50% of the allocation for state education agency programs and 50% must be passed through to local education agencies. (g) After 1978, that is to say 1979 and thereafter, state education agencies may keep 25% of the allocation for state education agency's programs and 75% must be passed through to local education agencies.

It should be noted that although large amounts of money are to be expended for the handicapped on a proportionate basis, relative small amounts will be ultimately provided per pupil. For example, if you assume $1,000 excess cost per pupil expenditures in a school district with 500 handicapped pupils. The following calculations would indicate only some $25 per pupil could be made available to the local education agency.

1978 - 5% 1000
x.05
50.00
x500
2 | 25,000

$12,500 - 50% to SEA
$12,500 - 50% to LEA

500 | 12,500

$25 available on per pupil basis

In addition, if one were to take the testimony indicating 8 million handicapped in the United States with 50% or 4 million currently being served and divide that 4 million into the authorized 378 million dollars available for 1978, one could see that $94.50 per pupil would be available for currently served handicapped students, assuming appropriations would meet the authorization level.

It becomes clear from these two examples that, although Public Law 94-142 does provide sizeable increases in expenditures for the handicapped, the net effect of such expenditures on a per pupil basis may be small. In reality, the system of allocating resources, i.e. pass through based upon the number of handicapped children, limit the effects of the money by diffusing the monies over large areas and numbers of handicapped. The implications of such information are significant in that any assumptions relative to the "carrot" being an inducement for compliance to Public Law 94-142 may be mistaken or misleading. No doubt there are some heavy (heavier than any previous federal legislation) "sticks" available to the Commissioner, such as withholding of all federal monies. However, all are familiar with the time, difficulty and complexity of actually implementing such "sticks".

Yet another way to look at the expenditures would be to note that federal funds account for only approximately 15% of the total expenditures for educational services for the handicapped. Therefore, a large increase in federal funds does not substantially increase the local school district's ability to provide educational services to the handicapped. Even under the most optimum circumstances (i.e., in 1982 all 8 million handi-

capped are receiving appropriate educational services and the entire authorized 3 billion additional dollars are available) the increase would merely be $375 per pupil in addition to currently available amounts. For illustrative purposes, if the 1974-75 national average spent per handicapped pupil ($2,241) were used as a baseline for the additional $375 available in 1982, this would represent only a 16% increase in educational resources. All of us are aware that inflation has been at approximately 7 - 9% in recent years; therefore, inflation alone would produce a net decrease rather than increase in available monies.

(9) A final point under the law related to financing is the possibility of incentive grants at the rate of up to $300 per handicapped pupil in areas such as early childhood education. Such incentive grants would be in addition to the ordinary authorizations available under the law.

While the preceding discussion has been somewhat lengthy and, at times, complex, it does perhaps pinpoint some significant difficulties. Some responses are already being made to the law. For example, the bill's complexity and costly administrative structure has been criticized. There are difficulties with definitions such as: appropriate education, excess cost, least restrictive, due process and so forth. All of these induce heavy costs for administration, monitoring and facilitation. It has been estimated by John Pittenger, Legislative Chairman of the Council of Chief State School Officers, that the bill would increase federal aid to special education by 5% but increase federal regulations in that area

by 50%. Joe Cronin (1976), speaking as a Chief State School Officer, suggested that Public Law 94-142 is a powerful illustration of the increasing trend toward federal government decisioning local education delivery of services. The title of his article clearly states the issue: "Should the Junior Partner Run the Firm?".

An additional response to the difficulties and complexities of the law has been to indicate that the monies were not worth the effort to obtain them; therefore, local or state education agencies might, in fact, not apply for the funds. In reality this would not address the issue as the law has been interpreted as "civil rights" legislation and the option to participate in the funding exists but the option to be in compliance with the law does not exist. Specifically, because this particular law is a "bill of rights for the handicapped" the rights and privileges assured in the law must be met, regardless of participation in federal dollars.

As educational leaders search for ways to successfully address the implementation of P.L. 94-142, the following framework concerned with adoption of innovation suggested by Rogers (1962) might be helpful. The evaluation stages of Rogers' model is the focus for interpreting P.L. 94-142. Specifically, the five characteristics of innovations -- relative advantage, compatibility, complexity, divisibility and communicability -- provide a conceptual framework.

With regard to relative advantage, while many of the specific monetary advantages that might be perceived have been neutralized by the preceding analysis, it should be noted that in aggregate form the per

pupil amounts could be utilized to purchase needed services thus increasing the relating advantage. Specifically, additional personnel materials, etc. might be visualized as a result of the law. Additionally, once the law is fully implemented and districts have made their adjustments to the kinds of changes called for in the innovation, it is conceivable that external pressures upon the system could diminish. For example, litigation, political pressure groups and others external to the system might reduce their pressures as they have been satiated by district compliance with the law. Additional relative advantage might be accrued due to internal pressure on the system being reduced. Specifically, children within the system that have been inadequately or underserved when fully served through compliance with the law may reduce internal pressure and in turn develop a perception of greater relative advantage for the law.

With regard to compatibility, the law is of varying compatibility with existent state law and regulation. For example, some states find relatively little discrepancy between requirements of the law and existent state statute and procedure. In such states, the ability to adopt the innovation will be, no doubt, greater than within those states where relatively few of the component of the law are currently contained in state law or regulation. Such states with large discrepancy, no doubt, will have difficulty coming into compliance with the law. Such difficulties may bring negotiation relative to the standards of appropriate, free, etc.

The preceding sections of the paper have pointed out the great complexity associated with at least the financial aspect of the law.

Greater complexity reduces, of course, the inducement to adopt innovation. However, communication, analysis and dissemination of information associated with the law can, no doubt, reduce a great deal of the complexity that is currently associated with the law. In addition, as definitions are evolved to reduce some of the ambiguity associated with the use of certain terms such as appropriate, etc. the complexity will, once again, be diminished.

Because the law is regulated by the specific number of handicapped individuals and its pass through provision, it is relatively divisible. In addition, the fact that the law is to be gradually implemented, i.e. allowing lead time up to full implementation in 1978, there is the possibility of greater divisibility and/or preliminary trial.

Finally, the characteristic of communicability presents certain difficulties as this particular presentation may graphically illustrate. However, it is assumed that as the law moves to an implementation stage at the level of practice, it will, in turn, be easier to communicate as the exposure and experience with the law will reduce many of the ambiguities and allow a broader communication. In addition, it would appear that the detailed planning and assurances that are required under the law for both state and local education agencies would, in effect, increase the knowledge and/or the communication of the law to a wide variety of participants in the process.

In light of Rogers' five characteristics of adoption of innovation it might be that educational leaders, as they contemplate implementation of the law, could analyze their own situation from the standpoint of ways

to reduce complexity, increase relative advantage and so forth. No doubt the task before us is formidable; however, given the moral and human obligation involved, delay, resistance or the creation of dissonance to the task is dysfunctional.

While much of the discussion and comments might appear to be critical, it should be carefully noted that without such dramatic edge-cutting legislation, many human rights would never have been obtained. For example, had there not been the 1954 Brown decision, one wonders about the rights and privileges of Blacks in today's society. Perhaps in 20 years one could say had it not been for P.L. 94-142, one would wonder about the rights and privileges for the handicapped in today's society. Perhaps the ultimate solution for difficulties associated with P.L. 94-142 is strong moral leadership from educational leaders.

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