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ABSTRACT

The report examines Illinois mandates affecting special education, as part of a five part study to eliminate unnecessary or unproductive mandates and increase local decision making, while still safeguarding equal educational opportunity. The first section outlines the major study assumptions, mandate questions, and research methodology. Legislative histories of both state and federal special education are reviewed. The next section, the main part of the document, examines five major questions (sample subtopics in parentheses): Should there be a mandate for special education? (arguments concerning costs and benefits, uncontrollable programs, and social consciousness); Who should be served by special education? (ages, categories, expulsion, and suspension); What special education services should be provided? (continuum of program options, least restrictive environment); Who should be responsible for providing special education services? (joint agreements, state board of education); and How should the state regulate its interest in special education? (class size, age range groupings, due process, individualized education programs). Findings and conclusions offered include that the mandate for special education reflects a compelling state interest in equal opportunity; that clarification is needed for the concept of related services; and that the State Board of Education's current regulations and procedures are in need of immediate simplification. Recommendations are made for increasing local decision making and reducing paperwork requirements. (CL)

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SPECIAL EDUCATION MANDATES: A PRELIMINARY REPORT

ILLINOIS STATE BOARD OF EDUCATION

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Springfield, Illinois

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SPECIAL EDUCATION MANDATES: A PRELIMINARY REPORT

I. INTRODUCTION

In September, 1981, the Illinois State Board of Education adopted, and directed State Superintendent Donald G. Gill to implement, a plan for the careful and deliberative study of the mandates placed on elementary and secondary education in the State. This plan grew out of the increased concern at all levels of government for eliminating unnecessary or unproductive mandates and for increasing decision-making at the level nearest the delivery of educational service. However, its emphasis on a deliberative analysis of mandates reflected the Board's commitment to guarding equal educational opportunity from indiscriminate and precipitous removal of regulations.

The plan adopted by the Board called for three phases of study, with the first and part of the second to concentrate on program mandates. The following report on special education mandates is the first of five reports to be considered during Phase I; the others, to be submitted to the Board through the Planning and Policy Committee in January and February, will address curriculum, physical education, driver education and bilingual education mandates.

The report which follows provides the staff analysis and preliminary recommendations regarding those mandates requiring and shaping special education in this State. It is presented in sections dealing with the major assumptions and methodology for the study, the Illinois legislative history and federal statutory authority for special education, the current State Board of Education policy statement, the staff analysis by major issue and concept, a summary of findings and conclusions, and the preliminary recommendations for action by the State Board of Education. Following a period of public comment and Board discussion, final recommendations will be presented to the Planning and Policy Committee for action and submission to the full Board.

II. MAJOR ASSUMPTIONS AND METHODOLOGY

Assumptions

Six major assumptions were made which affected either the scope or conclusions of this study.

First, since mandates are essentially solutions to perceived problems, it was assumed that the special education mandates represent the State response to certain implicit issues. These issues have been identified by staff and posed as questions, as follows.

1. Should there be a mandate for special education?
2. Who should be served by special education?
3. What special education services should be provided?
4. Who should be responsible for providing special education services?
5. How should the State regulate its interests in special education?

A second assumption underlying this study concerned the relationship of the State statute and regulations to federal statute and regulations. Because the task force did not want to be inhibited in its analysis, evaluations, and recommendations; because the federal statute and regulations are also currently under review; and because Illinois has traditionally taken a leadership role regarding special education, the task force took the position that the current status of the federal mandate should not direct or influence the direction of this study. Therefore, it was assumed that if changes were needed in a State mandate, and this mandate was reflective of a federal mandate, then Illinois policy makers and opinion leaders would work towards making necessary changes at the federal level. In this way, potential violation of applicable federal statutes could be avoided, but areas for needed changes could be identified.

A third assumption limiting this study was that confidentiality of student records is applicable to all Illinois students and not exclusively to handicapped students. Therefore, the analysis of testimony and other documentation concerning problems with student records was deferred until the Board considers the Illinois School Student Records Act.

Fourth, it was assumed that funding mechanisms should flow from policy, rather than direct policy. Since the programmatic policies to be adopted by the Board as a result of its study of mandates may well have implications for funding, it was considered premature to discuss and make recommendations regarding funding at this time. Further, since there is a separate study which is to specifically address funding policy and mechanisms (The Illinois Public School Finance Study), this important dimension was eliminated from the study.

A fifth assumption concerned the extent and quality of evidence available to support the analysis and evaluation of special education mandates. Since education is an imprecise science, and since special education in particular is a relatively new field of inquiry, it was assumed that the evidence needed for analysis might be inconsistent in quality and accessibility. In those areas in which substantive data were insufficient, it was agreed tha analysis and recommendations could be based on the current best professional judgment and that these areas should be identified as a potential research and development agenda.

A sixth major assumption related to the State's role in regulation. It was assumed that mandates should be the final recourse used by the State to solve a problem and/or achieve a desired condition. The extension of this assumption means that the burden of proof is on the State to show that other less restrictive means have been unsuccessful and that a certain condition can be created or a problem solved only through State statute or regulations. Where that proof was not shown, there was assumed to be no supportable basis for the State mandate to be maintained in its current form.

State Board of Education Mandate Questions

The study plan approved by the State Board of Education directed staff to apply the following questions in the analysis of the mandates:

1. What desirable condition or outcome is called for by the mandate?

   An essential step in determining the necessity of a requirement is being able to determine that it is purposeful, seeks to improve an existing condition, or creates a new and desirable condition. A mandate should be clearly directed towards an end which is stated in such a manner that its achievement can be reasonably assessed.

2. Is there evidence that in the absence of the mandate the condition or outcome will not be achieved?

   In this context, evidence may consist primarily of historical or trend data or comparisons with other states in order to determine the likelihood of success in the absence of the requirement. One major factor for consideration would be the amount of time available for implementation, that is, whether the condition needs to be met by a certain date or whether it is of such a nature that time is not the driving factor.

3. As presently defined does (can) the mandate yield the desired result?

   While measuring results may be a relatively straight-forward proposition, the more complex but necessary task of determining -- or attributing -- cause/effect must also be undertaken. The need is to be reasonably assured that it is the mandate which yields the desired result and not other uncontrolled factors.

4. Could the mandate be defined and/or implemented differently and yield the desired result?

   The nature of the mandate and any required administrative mechanisms should be consistent with the most current and accepted research and professional experience. Regulations should be as simple and direct as possible and allow for efficient and effective use of resources.

5. Does the mandate reflect a compelling State interest?

   The State's interest in mandates can be based on such principles as equality, equity, efficiency, compliance with higher authority or health and safety. There can also be compelling interests that reflect the State's values in terms of required activities, experiences or settings. The maintaining or establishing of mandates should be tied directly to an identifiable need of the state to cause the required activity.

Sources of Evidence

Evidence on which to respond to these questions came from six primary sources:

1. Staff review of the current statutes and official rules and regulations on special education;

2. Analysis of written testimony prepared for special hearings on mandates conducted by the School Problems Commision during the summer of 1981;

3. Analysis of written material already available in the agency;

4. Letters and recommendations regarding desirable changes in special education regulations, including correspondence from Dr. Robert M deville, Director, Bureau of the Budget, and proposals from the Illinois Advisory Council on the Education of Handicapped Children;

5. Published and unpublished reports on special education research and policy; and

6. Data compiled by the State Board of Education.

Selection of Concepts for Study

The analytic method used by staff was shaped in large part by the magnitude of the task. Given the number and specificity of the special education mandates (both in law and regulations), it was neither feasible nor desirable to consider each one. Instead, the staff task force assigned to this project focused its attention on those major concepts which embodied or characterized the spirit and intent of the mandate. The following concepts were analyzed:

Due Process
Child Find
Individualized Education Plan
Related Services
Expulsion/Suspension
Nondiscriminatory Assessment
Ages Served
Parent Participation

Diagnosis & Evaluation
Placement
Continuum of Program Options
Categories
Age Range Groupings
Class Size
Summer School
Least Restrictive Environment

Personnel
Free Education
Joint Agreement
District
State Education Agency
Advisory Boards and Councils
Other State Agencies

Specific citations of related State and federal statutes and regulations for each of these concepts are presented as a part of the analysis of each concept.

III. BACKGROUND OF CURRENT MANDATES

Illinois Legislative History

The Illinois General Assembly has frequently enacted laws related to handicapped children, beginning in the late 1800's with state-level services (i.e., the Illinois School for the Deaf). In 1911, HB 460 was enacted, which enabled boards of education to establish and maintain classes in public schools for deaf and dumb and blind children. Another bill enacted that year enabled the establishment of classes for delinquent children committed to court jurisdiction.

In 1923, HB 325 was enacted to allow boards of education to establish and maintain classes for crippled children. Other bills were passed during the 1930's which included services for children with visual and hearing defects. Payments of tuition and transportation services for handicapped children were provided for in 1941.

In 1943, the General Assembly enacted legislation which was designed to help school districts provide special education services for handicapped children (ages 5-21). Psychological services were established and programs authorized for the following types of handicapped children: physically handicapped (including orthopedically handicapped, cardiac persons, epileptic persons, those with lowered vitality, homebound, hospitalized or in sanitoriums); "EMH"; speech defective; socially maladjusted; blind and visually handicapped; and deaf and hard of hearing.

In 1945, The School Code of Illinois as known today was adopted. All laws regarding handicapped children were codified under Article XII. By 1947, standards were established for the operation of special education classes. Standards of special preparation for teachers working with handicapped children were developed. In that year, provisions were also made to provide educational services for students who were physically handicapped, deaf or with defective hearing, blind or with defective vision, socially maladjusted, and "EMH".

In 1955, a law was enacted to include special education services for "TMH" pupils. In 1957 the Legislature included multiply handicapped students as a group eligible for special education services. This was the result of a two-year study conducted by the Special Legislative Committee of the School Problems Commission and is significant because it provided a formula based on "professional workers", created the formation of joint agreements, provided for the quadrennial (now annual) census, and provided an improved pattern for special education transportation reimbursement.

Provision for special education services in the State statutes was changed from Article XII to Article XIV of The School Code of Illinois in 1961 In 1964-65, approximately 800 school districts out of 1,386 in Illinois provided some type of special education services on this permissive basis. Many school districts had acknowledged the need for special services but had programs that served only one or two types of handicapped children. Other districts in this era of permissive legislation did not acknowledge a commanding moral or ethical responsibility for providing any educational program for handicapped children. In 1965, the landmark "House

Bill 1407" was enacted. This legislation mandated the provision of special education by all districts by 1969. After 22 years of permissive legislation, an estimated 25% of the handicapped children in Illinois who needed services were receiving them.

Between 1965 and 1978, numerous laws were enacted which did the following: provided additional funds for the delivery of special education services; established local/county advisory councils; lowered the handicapped child service age of required educational services from 5 to 3 years of age; required payment of tuition for eligible handicapped children placed in nonpublic facilities; provided for State reimbursement for the cost of extraordinary public school special education services; required school districts to determine child eligibility within sixty school days of referral; provided for the establishment and operation of a center for deaf/blind pupils; provided for proportionate reimbursement for home or hospital for physically handicapped children, and established the rights and privileges with respect to all student records among other changes in the State statutes.

During the late 1970's, many procedural protection laws were enacted which specified the following: provided handicapped children with a free, appropriate public education; delineated the right to an individualized education program (IEP); clarified due process protection; stated the right to an appropriate education in the least restrictive environment; and afforded protection in evaluation procedures. These laws aided in bringing Illinois in compliance with federal legislation.

Federal Statutory Authority For Special Education

Illinois' landmark legislation in special education occurred prior to that of the federal government. When Title I of the Elementary and Secondary Act of 1965 was passed, a set-aside for services for handicapped pupils in state-supported settings was created (Title I, 89-313). Title VI, B, of the Education of the Handicapped Act was the second major funding source from the federal level. Public Law 93-380 established the initial major requirements on school districts in terms of outlining prerequisites for services in order to receive funding.

Due to failure of many states in this nation to meet the high Illinois standards for mandated services in serving handicapped children and youth of school age, the Congress passed and President Ford enacted P.L. 94-142 in 1975. This federal law further expanded on the base of P.L. 93-380 and required a detailed plan of action from each State. In concert with Section 504 of the Rehabilitation Act of 1973, essentially a civil rights law for the handicapped, states and districts found themselves facing requirements for compliance, whether or not federal funding was available or the state chose to participate in federally sponsored programs. Later regulatory requirements under P.L. 94-142 solidified the federal role and state mandated actions.

State Board of Education Policy on Special Education

In February, 1978, the Illinois State Board of Education adopted a policy on special education, addressing both the State and federal intent up to that point. The policy follows:

"The State Board of Education endorses the basic tenets of Public Law 94-142, the 'Education for All Handicapped Children Act, 1975,' and states the components of that endorsement to be as follows:

1. A free appropriate public education for every handicapped child in Illinois; ages 3-18 by September, 1978, ages 3-21 by September, 1980.

2. A right-to-education policy for all children; education provided at no cost to parents when placed by the SEA or LEA.

3. Education in the least restrictive environment.

4. Guarantee of procedural safeguards, confidentiality of records, and nondiscriminatory (racially or culturally) testing.

5. Individualized educational programs for every identified handicapped child.

6. A comprehensive articulated personnel preparation program.

7. SEA supervision of all education programs for handicapped children offered within the State of Illinois.

8. Rights and guarantees applying to children in private or State agency schools as well as public schools.

9. An intensive and continuing search for handicapped children."

IV. STUDY ANALYSIS

The analysis of major concepts incorporated or reflected in special education mandates are displayed in terms of their relationship to the major issues identified previously. Although each of the concepts could be related to more than one issue, this presentation discusses the concepts within the most relevant issue.

1. Should there be a mandate for special education?

The task force concluded that this basic question could only be answered if the major criticisms of the special education mandate were identified and evaluated. The following five arguments, which the task force feels represent the most significant concerns, were considered.

a. Costs and Benefits. While the costs of education can be stated quite precisely, the benefits are difficult to quantify. Critics argue that the high cost of special education during the school years outweighs the potential economic and social contributions that society can expect from recipients of special education, particularly those with the most profound handicapping conditions. Since there have been very few followup studies of students who have been provided special education, there is little evidence on which to base the benefit argument, and there are some who would suggest that handicapped students may benefit as much, if not more, by being in the regular program. Finally, as available funding resources become scarce, critics charge that special education money could be better spent on gifted or regular education pupils. These critics argue that the economic conditions of Illinois schools require a reprioritization of educational programs and urge the elimination of the mandate.

b. Uncontrollable Program. Critics argue that special education has grown so fast, and evolved into such an unwieldly system, that it is out of control and should be eliminated. The argument cites the lack of precision in determining who is eligible for special education. The increase in the number of learning disabled children (See Table 1) is given as evidence of this imprecision. Opponents and proponents have both charged that special education has been used as program for students with alcohol, drug, and truancy problems which have little relationship to handicapping conditions. Other critics state that the highly prescriptive nature of the regulations -- occasionally unrelated to the students -- reflect bureaucratic arbitrariness and not legislative intent. Also, the highly specific nature of the regulations implies the inablility of local officials to make decisions about the appropriate instruction for children. Such over-prescription then results in the inability of local schools to have sufficient flexibility in making educationally-sound and cost-effective decisions.

Table 1 demonstrates that there has been an increase of only 2.69% children served but a 28.7% increase in State costs between the time periods of 1977-78 and 1980-81. Further, the dramatic increase in the counts of learning-disabled children (23,811 children) and subsequent decrease in the more obvious physical handicaps (deaf, hard of hearing, visually impaired, orthopedically handicapped, deaf-blind, multiply handicapped) by 4,407 children suggests problems with eligibility definitions. Even the counts of the mentally impaired children declined by 8,000 over the 4 year period. This suggests that the learning disabled categories now include children formerly categorized as having mental or physical impairments.

Table 1: ILLINOIS SPECIAL EDUCATION CHILD COUNTS AND STATE AID APPROPRIATIONS

	1977-78*	1980-81*	% Change
Mentally Impaired	48,353	40,532	-16.17%
Hard of Hearing or Deaf	5,137	3,451	-32.80%
Speech Impaired	74,165	74,420	+ 0.34%
Visually Impaired	1,938	1,442	-25.59%
Emotionally Disturbed	29,369	27,899	- 5.01%
Orthopedically Impaired	4,407	3,637	-17.4 %
Other Health Impaired	5,778	1,773	-69.3 %
Learning Disabled	61,276	85,087	+38.86%
Deaf/Blind	131	47	-64.0 %
Multiply Handicapped	2,208	774	-64.95%
Total	232,763	239,062	+ 2.69%
State Appropriations**	$182,250,000	$234,548,000	+28.7 %

Note: *The counts include both P.L. 94-142 and P.L. 89-313 children. The 1977-78, 89-313 count is the October, 1977 count, and the 89-313 count is the October, 1980 count. The 1977-78, 94-142 count is the average of October and February counts, and the 1980-81, 94-142 count is the December 1, 1980 count. Both 89-313 and 94-142 counts are those submitted to the U.S. Department of Education.

**State dollars are the State appropriations for 1978-79 and 1981-82, which serve the 1977-78 and 1980-81 special education children, respectively. Appropriations exclude capital funds.

c. Nature of Schooling. This criticism focuses on what constitutes schooling. Critics of special education oppose what they perceive as a non-educational burden, namely in the area of related services.

They cite the identification of over thirty different related services as evidence that special education no longer concentrates on instruction. Instead it has become an administrative mechanism for providing a full panoply of social, health, and other services that are only tangentially related to a conventional understanding of education.

Critics believe that to include as a special education responsibility those services which are primarily medical, quasi-medical or physiological in nature, means that schools must be primarily responsible for all human services - a clearly unacceptable premise. Eliminating the mandate would free the schools of this non-instructional burden.

d. Social Consciousness and Policy. This argument asserts that special education legislation was introduced in response to specific deficiencies in education policy but that these deficiencies have been eliminated (i.e., handicapped students are now being served). It would appear to some that the mandate is no longer needed. The argument assumes that society has developed a strong sense of fairness that would predominate even in the absence of a mandate. Further, since representatives of handicapped children are well-organized, highly visible, and politically effective special interest groups, they would assure that special education would continue without a mandate.

e. Fragmentation of Education. This criticism points to the fact that as the courts and legislatures in this country have acted to ensure access to an appropriate education for various groups of children who were previously served inadequately or not at all, education has become fragmented. Arbitrary distinctions now exist between and among these groups, and between each of these groups and those students in "regular education." The regulatory process has been used to label students, and separate educational programs have been developed for each type of problem (e.g., bilingual education, gifted education, compensatory education). Further, in an effort to ensure equality of opportunity, rights and opportunities have been afforded to each of these groups, again through the rule-making procedure, which have further emphasized the differences between them. For example, the process by which parents may object or complain about an educational decision differs significantly, depending on what label has been applied to the student. While these differentiations may have been essential to the evolution of services for students with special needs, many concerned educators now believe that it is important that such arbitrary and artificial distinctions be eliminated.

The task force believes that these criticisms and arguments for elimination of the special education mandate have some merit. There is particular concern about the issues of fragmentation of education and nature of schooling. However, these criticisms are not compelling enough to justify a recommendation for eliminating the basic mandate.

The benefit argument is weak for several reasons. Available data show that long-term welfare costs for institutionalizing or failing to provide services for the handicapped far exceed the cost of special education. Further, there is no clear cause and effect between any direct program services and later social and economic productivity of individuals receiving those services.

Certainly, it is inappropriate to hold higher standards for proving worth or effectiveness of special education than those proving the worth of regular education.

In any case, the task force believes that cost should not be a sole criterion in judging the appropriateness of a particular education program.

Second, rather than concluding that because of the growth of special education in recent years the program is out of control, one must consider that the the expansion of special education services was the expected and desired outcome of the mandate. During the period referred to, children with learning disabilities were first made eligible for special education, and programs of all types were expanded to serve secondary level students. The task force acknowledges several serious problems implicit in this argument, but they can be addressed by less drastic measures than eliminating the mandate.

Third, there is clear evidence that without the mandate at least some handicapped students would be denied an educational opportunity. From 1911, when the first special education legislation was passed, to 1969, when the special education mandate became effective, the State attempted to provide for handicapped children via permissive statutes (i.e., school districts were authorized to spend tax dollars for programs for handicapped children) and incentive funding.

During this period, the number of handicapped children served by the public schools grew from virtually zero to over 150,000, and approximately two-thirds of Illinois districts provided some type of program. However, these same statistics indicate that after many years of permissive legislation, only 25% of the handicapped children in Illinois who needed services were receiving them.

It would not be expected that the absence of a mandate for special education would result in total exclusion of handicapped children from access to a public education. However, given the severe fiscal contraints which are causing school districts to make reductions in their programs, and given the fact that some citizens would not place a priority on the education of handicapped children, it is inevitable that if special education were permissive, some programs - and service to some children - would be eliminated. If the State wishes to ensure access to education for handicapped students, the task force believes a mandate is necessary.

This raises the question of a compelling State interest - i.e., is the education of handicapped children of sufficient importance to require that the State be involved? For the following reasons, the task force believes that it is:

-- The Illinois Constitution asserts that "a fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities."

-- The right-to-education of handicapped children was affirmed and elaborated in several significant court cases: Pennsylvania Association for Retarded Children v. Pennsylvania; Mills v. D.C. Board of Education; Maryland Association for Retarded Children v. Maryland. In these cases, the right to an equal educational opportunity based on Fourteenth Amendment grounds, as first articulated in Brown v. Board of Education -- i.e., education is essential to enable a child to function in society and is therefore a fundamental interest protected by the Constitution -- was applied to the handicapped. These cases also applied constitutional due process guarantees to the handicapped and used the doctrine of equal access as the basis for requiring that the education provided to handicapped children be "appropriate" to their individual needs. Collectively, this case law provided the framework within which Congress enacted Section 504 of the Civil Rights Act and P.L. 94-142, the Education of All Handicapped Children Act.

-- The State Board of Education has consistently demonstrated its commitment to the right to equal educational opportunity for all children. This commitment is based on a series of beliefs which are implicit and explicit in American culture -- i.e., that education makes a difference in people's lives; that education is of universal benefit for all people; that governmental benefits should not be allocated or denied on the basis of unalterable characteristics of the recipients; and that all persons are essentially the same, worthy of constitutional protection and statutory benefits.

2. Who should be served by special education?

The identification of those students who should be served by special education has traditionally been accomplished through mandates establishing eligibility. Currently, a student may receive special education services if he or she is (or has):

- -- A resident in the local district;
- -- Within the established age range;
- -- Enrolled in the public school, even though attending a parochial or nonpublic school;
- -- Demonstrated the exceptional characteristics defined as handicapping, regardless of level of severity; and,
- -- Not been graduated.

Mandates related to these criteria were analyzed through the following concepts: ages served, categories, and suspension and expulsion.

Ages Served refers to the age range of children to be served through special educational services. The range is currently stipulated as ages 3-21.

Citations on ages served are in:

State Law: Section 14-1.02 of The School Code of Illinois
State Regulation: Article 2.02
Federal Law: 20 USC 1412 (2) (3)
Federal Regulation: P.L. 94-142 Section 121a.200

The age range for providing special education for handicapped children extends beyond the ages normally served through regular education. This extension of the age range recognizes that the provision of an appropriate education for a handicapped child generally requires a longer span of time because of the interference of the handicap. Beginning school earlier than normal for handicapped children increases the chances that they may be able to move into regular education sooner than if their schooling begins at the normal age. Extending the period of education through age 21 emerges from the recognition that, in the case of handicapped children, particularly in the case of students with more severe handicaps, educational development proceeds more slowly than normally. When the child is not ready to graduate, an additional two or three years of education may be significant in preparation for adulthood. The desirable condition sought through this mandate is that education be provided to enable students to ameliorate the negative effects on learning produced by their handicap, to participate sooner in the less costly regular education programs, and to gain certain adult and/or work skills more quickly gained by non-special education students.

In general, the State's compelling interest in education requires establishment of mandatory school attendance between specified ages in order to provide an appropriate education. Since efficiency is also a principle which reflects a State interest, providing education for handicapped children beyond the normal range may be viewed as yielding greater efficiency over time.

Approximately 6?,000 children outside the mandatory school attendance age range of 7-16 were served in 1980-81. About 8,000 of these students were 3-4 years of age and about 3,200 were beyond the age of 18. Almost 5% of all children receiving special education fall into age ranges beyond the normal school attendance age range of 5-18. There is no information available to determine the number of children aged 3-4 and 19-21 who may be eligible for special education but who are not being served.

The only public testimony on ages served was to encourage early childhood intervention at ages 0-3. Since it has been well-established that early identification and intervention can minimize the long-term effects the handicapping condition will have on the child, the task force believes that it is in the State's interest to continue the provision of special education services to the handicapped students from the age of three. Further, the task force recommends that the feasibility of lowering the age range from 3 to one year, or the point of first identification, and requiring increased screening efforts, be examined.

There is less conclusive evidence regarding the additional benefits accruing to handicapped children who remain in public school education programs past the age of 19 or which might accrue to those students after the age of 21.

Since the upper limit to which a handicapped student may remain in a public school special education program now corresponds to the age limitation for non-handicapped students (Section 10-20.12 of the School Code and Section 4-7.1 of the State Board Document #1), the task force believes that, despite the absence of data regarding the benefits to students, this age limit should be maintained. However, research should be conducted regarding the educational benefits accruing to students at the upper end of the age range, and this question should be reconsidered when the general issue of school age mandates is studied.

Categories refers to the system for classifying types of handicapping conditions and children in need of special education services.

Citations on categories appear in:

State Law: Sections 14-1.02; 14-1.02a; 14-1.03; 14-8.02(2); 14-11.02; 14-13.01 of The School Code of Illinois
State Regulation: Articles 3.01; 4.01; 4.04; 9.09-23
Federal Law: 20 USC 1401-(a)1; 20 USC 420 4A
Federal Regulation: P.L. 94-142 Section 121a5 (a), (b)

The desirable condition to be achieved through classification is the establishment of eligibility for special education and the designation of an appropriate learning environment. There appear to be many problems with using classification by categories as a means to attain the goal. Some categories are not sufficiently precise and cause confusion. Particularly, at the mild end of the continuum of learning problems, there is evidence to suggest that whether a student is classified as requiring special education depends on the availability of other alternatives to respond to the learning difficulties. The disproportionate representation of children among the categories suggests that the specific classification which is assigned to a student is related to social and cultural factors instead of educational factors. The recent study of categories conducted by the State Board of Education demonstrated that placement in "cross-categorical" (e.g., learning disabilities and behavior disabilities) student groupings was equally as effective as placement in a "categorical" group. Further, since other States use different categorical systems, the task force has no evidence to indicate that any one system is more appropriate than another.

Criticisms gleaned from public testimony include:

- Clarification is needed in the classification of "BD" and "EH" students;

- The category of educationally handicapped should be deleted;

- The definition of "LD" should include "attention deficit disorder";

- The definition of physically handicapped should be changed; and,

- Problems solely due to drugs, alcoholism, and truancy are not the responsibility of special education.

There appears to be no compelling State interest served in the categorization system. Assuming that it is necessary and desirable to establish a student's need for specialized assistance and/or to design an appropriate learning environment, an alternative emphasizing the diagnostic and IEP processes would appear to be preferable for achieving these goals. Alternatives would also be available for meeting any State interest in reporting and monitoring. Since no compelling State interest is served by the categories mandate, and since other options are available, it is recommended that the regulations specifying categories be eliminated, and provisions ensuring appropriate instructional placement be included in the mandated continuum from diagnosis to placement.

Expulsion and Suspension is defined as a principle requiring that children continue to receive specialized education services when behavior normally constituting grounds for suspension or expulsion is attributable to the handicap exhibited by the child.

Citations on expulson and suspension are found only in State law and regulation:

State Law: Section 10-22.6 of The School Code of Illinois
State Regulation: Article 2.04

Children who are handicapped are to be provided an appropriate education regardless of the behavioral consequences of the handicap. The desirable condition sought under this concept can only be attained when: (1) it is possible to determine that a specific act or behavior pattern results directly from the handicap; and, (2) expulsion is permitted on the basis of behavior not directly attributable to a handicap, provided that due process is provided as required by law.

The State's compelling interest lies in having an educated citizenry, handicapped or not. Expulsion, or extended suspension, from school inevitably prevents realizing this interest. When the grounds for expulsion or suspension is behavior attributable to a handicap, the State's interest is best protected not through expulsion or suspension, but placement of the child in another program where the behavior is controllable or its damaging consequences reduced.

Relative to evidence on whether this mandate yields the desired result, an analysis of the types of complaints received in 1980 regarding expulsion and suspension indicated that there were 15 such complaints. While numerically few in number, such complaints, if affirmed as legitimate, are indicative of serious actions repudiating a student's right to an education.

There have been criticisms made of the expulsion/suspension requirements. These are:

-It should be made clear that students already in special education can be suspended following due process procedures;

-Students who have been in a special education program but are no longer eligible for special education should be subject to the regular suspension process; and,

-Handicapped students whose behavior warrants expulsion should not be exempted unless it can be clearly shown that their behavior is directly related to the handicap.

As to whether the expulsion and suspension regulations can be defined differently to yield the desired results, the current rules and regulations appear to require maximal efforts on the part of school districts to avoid suspending or expelling students. The severity of such a sanction -- and its implication for the student -- merit such maximal efforts. Such sanctions should never become so routinized as to be the rule rather than the exception.

The general finding of the task force is that the expulsion and suspension regulation as presently constructed is defensible in its intent. However, given the nature of the complaints, schools appear to need additional technical information in the area, especially as to determining whether a specific act or pattern of behavior is or is not directly related to or caused by the handicapping condition.

3. What special education services should be provided?

Mandates which respond to the issue of the services to be provided were analyzed through the following concepts: continuum of program options, least restrictive environment, related services, and summer school.

Continuum of program options is defined as the range of possible placements available for handicapped students. The continuum ranges from regular class placement with teacher consultant, to individual and small group supportive services (for 50% or less of the school day), to special education instructional programs (for 50% or more of the school day), to special day schools -- both public and nonpublic -- and up to residential, hospital, or State-operated programs.

Citations for the continuum of program options can be funded in:

State Law: Section 14-1.08; 14-4.01; 14-7.02; 14-7.03; 14-8.01; 14-8.02 of the The School Code of Illinois
State Regulation: Articles 1.01b; 1.08b; 1.12; 1.13; 1.14; 2.02; 3.02; 6.01; 7.01; 8.; 15.
Federal Law: 20 USC 1401-16
Federal Regulation: P.L. 94-142 Sections 121a305; 121a306; 121a455; 121a551

The desirable condition called for by the program options mandate is to have a range of instructional alternatives available so that a child can have access to an appropriate education. Whether the specificity within the range of program options is a compelling State interest is questionable. There are Illinois students in each of the possible placements in the continuum of options. However, with the evidence now available it is impossible to determine if the scope of possible placements does or does not provide an appropriate education for handicapped students in Illinois.

There are a significant number of criticisms about the regulations and statutes on the continuum of program options. These include:

On home and hospital services,

-The provision for home and hospital services should include children with recurring illnesses in addition to those who are absent for 2 consecutive weeks,

-Hospital teaching should be paid for by the district where the hospital is located,

-Home and hospital should not be included in the continuum of services,

-At least a 2-week timeframe should be mandated before home and hospital services are mandated for cases involving communicable diseases, and,

-Clarification is needed regarding students incapacitated longer than six months. Anything longer than six months is a financial hardship.

On vocational programs;

-More attention should be given to vocational education programs for students with learning disabilities,

-A definition of vocational education should be included,

-Modifications of class requirements, extended time, etc. as expressed in the Voc. Ed. Act should be added to the regulations,

-Greater coordination is needed between prevocational and vocational programs, and,

-Requiring a vocational skills training program is too costly and unrealistic.

On the relationship between public and nonpublic schools;

-Services to nonpublic schools are not addressed in these rules and regulations,

-Clarification is needed concerning the role of private schools in evaluation, writing of IEPs, and participating in decisions about children whom they have been serving,

-The alternative of private or residential placement is costlier, and,

-There are concerns over protecting the educational rights of children as they are transitioned from nonpublic to public schools.

On program options in general;

-Leave decisions regarding the continuum of program options to the districts,

-There is a need to reexamine the preschool handicapped student program,

-The continuum of options should be extended to include 17-21 year olds,

-The services and modifications offered under each type of instructional program should be clarified,

-Program, support, and financial services should not be cut off once a diploma is granted,

-The lack of a junior high school "LD" classroom necessitates placing those who need a self-contained class in private school,

-Intermediate "BD" services are needed, and

-Services at the high school level for students with "LD" are not adequate; definite guidelines should be included in the rules and regulations.

These concerns about the programs' available to handicapped children indicates to the task force that research should be conducted to determine the effectiveness of various program options. This research should address the unit cost per student, possible alternative placements, appropriateness of educational services provided, and a designation of where responsibility lies for providing the services.

The task force finds that a variety of program options is necessary in order to assure equal educational opportunity for handicapped students, but a compelling interest by the State is not reflected in the specificity of the current mandates. Clearly, the identification of appropriate program options can best be made at the local level by professional educators and parents of handicapped children. Also, other mechanisms (e.g., IEP and due process) should be used to guarantee an appropriate educational placement for individual children. Regulations and statutes prescribing the options should be eliminated.

<u>Least restrictive environment</u> is a principle used in placement to provide an appropriate program option affording maximum contact of handicapped student with (less) or non-handicapped peers.

Citations for least restrictive environment are found in:

State Law: Section 14-8.02 of <u>The School Code of Illinois</u>
State Regulation: Articles 1.05; 3.04; 9.17
Federal Law: 612(5)(B); 618(2)(A)
Federal Regulation: P.L. 94-142 Sections 121a131; 121a550-554

The desirable condition called for by the least restrictive environment is the placement of a handicapped child in an environment closest to a regular education environment. No compelling State interest seems to be reflected in this concept.

Evidence on the effects of placing children in the least restrictive environment appears to be conflicting. Several studies comparing children assigned to special classes with children of comparable IQ's remaining in the regular grades were reviewed. Results indicate that except for the lower range of educability, children left in the regular grades are generally superior academically to those assigned to the special classes, but the social adjustment of lower functioning children in special classes is superior to those left in the regular grades. Also, handicapped children left in the regular grades tend to be rejected by the average children in these classes.

Criticism on the least restrictive environment from public testimony focused on two points:

-This rule is being misinterpreted to force students out of a private school and, against the parents' wishes, mainstream them back into the public school system; and

-Change "intensive" to "adequate" with regard to coordination between regular and special education instruction.

Given the lack of evidence to support a statute or regulation for least restrictive environment, or any compelling State interest served by the mandate, the task force recommends that references to the least restrictive environment be eliminated. The mandates for IEP, diagnosis and evaluation, placement, and due process can assure, in the absence of a least restrictive environment mandate, that the individual needs of the child are being met.

Related Services are defined as those non-instructional services (sometimes referred to as "indirect services") determined necessary to enable a child to benefit from instructional services. Related services may include one or more of the following services (whether delivered directly to the child or through consultation with instructional staff): speech pathology; audiology; psychology; physical therapy; occupational therapy; counseling for child and parents; social work; transportation; medical diagnosis and evaluation; and health related services.

Citations for related services are found in:

State Law: Section 14-8.02; 6.01; 7.02 of The School Code of Illinois
State Regulation: Articles 5; Article 6; Article 13; 2.20(4)(d)
Federal Law: 20 USC 1412 (2)(A), 1414 (a)(1)(c), and 14-2 (16)
Federal Regulation: P.L. 94-142 Sections 121a202(a), (b), (c) 203

The desirable condition called for by the mandate for related services is that no child be denied an appropriate education because of circumstances, characteristics, or other barriers that can be reasonably removed or altered by providing the necessary non-instructional services. The State's compelling interest is to provide an appropriate education for each child and guarantee that each child has access to such an education.

The State has historically viewed that it is in its interest to provide, or to require, a range of services for all children, including certain health services and transportation. In some cases, those have represented extensions of more general policies, (e.g., public health to the schools) and, in others, to improve educational opportunities or reduce other costs, such as in transportation. The concept of related services, however, represents a major and controversial extension of traditionally provided services.

Resolution of this issue requires that balance be achieved, first, between the State's compelling interest in educating its children and the claim that this interest and the rights conferred on children are so broad as to require not reasonable, but maximal efforts to provide that education, and second, between the obligation of the State to provide an education and the obligation of parents to support their children.

The test of reasonable, rather than maximal, effort appears most defensible since a test of maximal effort, in some cases, would render the child essentially a ward of the State and infringe upon parental rights and responsibilities. The reasonableness test would require the State to be responsible for only those related services that the parent would not be obligated to provide if the child were not enrolled in school. This principle is currently observed in provision of homebound and hospital services and generally in public schools. The schools are not required to pay for optometric prescriptions if the child needs glasses in order to read, for example.

In determining whether the mandate for related services is producing the desired result, there has to first be a criterion to measure whether the service can be demonstrably related to instructional activities. Currently, there is no such criterion.

What is known is that some thirty types of related services are currently being provided. These services include adaptive physical education, social work, transportation, and room and board for institutionalized children. Also, available data suggest that the number of services provided to children with various handicaps corresponds to reasonable expectations. For instance, almost 99% of the children in 1980-81 were reported as receiving at least one related service while about 50% of all LD children received no related service.

Table 2 illustrates State costs associated with related services. (Local costs are not included.)

Table 2. State Reimbursement for Related Services Staff

	1977-78	1980-81	% Change
Related Services (Total)	13,001.50	15,463.00	+19%
Speech Correction	1,601.00	1,887.50	+18%
School Psychologist	808.00	948.50	+17%
Social Worker	809.75	1,092.00	35%
School Nurse	325.50	451.50	+39%
Home and Hospital	2,353.50	1,728.00	-17%
Program Assistant	3,668.50	5,887.50	+60%
Other	4,435.25	3,468.00	+ 1%

The statistics, of course, do not demonstrate that any particular child or group of children are receiving appropriate instructionally-related services. The fact that the greatest increase (60%) in related services is for program assistants, a non-clinical service, suggests that the increase might very well be related to instructional services. But, this needs to be substantiated.

Public testimony criticisms about related services included the following:

-School districts should not be required to provide transportation or supervise the job outside of regular school hours for 18-21 year olds;

-The following should not be mandated: art therapy; music therapy; school nurse of all students; transportation to and from a residential school; a medical prescription of Physical/Occupation Therapy evaluation/treatment;

-School districts should not be required to provide medical services; and

-Clinical psychologists should be authorized to work in the schools.

Examination of available information indicates that the mandate for related services can be implemented differently and yield the desired results. A reasonably clear test for establishing that services are related to or supportive of a child's schooling needs to be established. In the absence of such a test, effective and prudent implementation of this concept is impossible and proceeds without effective limitations. On the other hand, some mandate appears necessary to require that justifiable, but more costly, related services are provided.

In sum, the task force finds that: (1) the current provision of related services is unchecked by any meaningful and administratively effective or enforcable criteria established by any level of government; (2) a criterion that requires related services to be demonstrably related to instructional activities needs to be created by the State; and (3) extensive clarification on providing related services needs to be provided to both districts and parents.

Summer School is the provision of services to handicapped pupils on an extended year basis in accordance with their IEPs.

References to summer school are only found in State law and State regulation:

State Law: Sections 14-7.03(7); 10-20.12; 10-19; 10-2233A; 18-4.3 of The School Code of Illinois
State Regulation: Articles 7.06 and 2.02

For a handicapped pupil, educational development proceeds more slowly than normal. Therefore, it is postulated that the impact of the handicap can be lessened with extended year service. Conversely, without the extended year services, as required in the individual pupil's IEP, it is postulated that the pupil may regress or not recoup his/her educational level as it relates to potential academic level and self sufficiency. While some evidence does exist to suggest that students regress during the summer months without instruction, the information is inadequate to form generalizations. No evidence exists which demonstrates that summer school provides benefits to students over an entire subsequent school year.

The provision of summer school for handicapped students is not an explicit mandate; however, an IEP requiring an extended school year has the effect of a mandate. Since there is very little evidence to support or reject the need for summer school for handicapped students, the task force recommends this topic be studied. Until this research is completed, the task force believes that no compelling State interest in requiring summer school for handicapped children in Illinois can be demonstrated and recommends that summer school as a mandate achieved through the IEP be eliminated.

4. Who should be responsible for providing special education services?

During the period of expanding special education services and increasing costs, the issue of responsibility has become a major controversy. It is not an overstatement to suggest that each of the partners directly or indirectly related to the education process is dissatisfied with the current lack of clarity in this regard.

The following concepts reflecting mandates related to the assignment of responsibility were analyzed by the task force: free education, districts, joint agreements, State education agency, other State agencies, and advisory boards and councils.

Free Education is the principle that the education of the handicapped child must be provided by government at no expense to the child or the parents.

Citations to this principle are made in:

State Law: Section 14-1.08 of The School Code of Illinois
State Regulations: Article 2.01
Federal Law: 20 USC 1401 - Section 601(18) P.L. 93-112
Federal Regulations: P.L. 94-142 Sections 121a12 and 121a 301-302

The desirable condition called for by the principle of free education is that a handicapping condition shall not prevent a child's access to a free and appropriate public education. Such equity is clearly a compelling State interest.

There is conflicting evidence on whether free education is actually being provided. In 1975, a Congressionally-funded study showed that families were forced to find adequate services outside the public sector at their own expense. The areas of greatest controversy have been related services and private residential placement. In the latter area, in 1980-81, district claims were $29,541,290 ($12,257,000 from Section 14-7.02), plus $3,685,012 in room and board and $868,633 in excess cost from the State's P.L. 94-142 share. These "excess cost" expenses have been termed by some to be noneducational, recreational therapy, etc. Congress authorized, over 5 years on an escalating basis, a funding scheme from 5-40% of the national average per pupil expenditure from federal funds in order to implement P.L. 94-142. However, the authorization has not been appropriated higher than the 12% level. There are frequent questions about whether summer school, standard fees, school meals, and related services fall under the principle of free education.

While the mandate seems clearly needed to assure an appropriate public education and prevent numerous court cases, a more specific definition of what constitutes a "free" education is necessary. A clearer statement on what "ordinary and contingent" expenses are and what parents must support would be useful; however, since this cannot be accomplished by Illinois alone, this is an area in which State efforts must be made to influence federal action.

District is defined as the legally constituted entity obligated to provide State-mandated services for all eligible pupils, including the handicapped, in a defined geographic area.

Citations regarding local districts are found in:

State Law: Article 10 of The School Code of Illinois
State Regulations: Articles 2 and 3
Federal Law: 20 USC 241-C-1 Section 611d
Federal Regulations: P.L. 94-142 Sections 121a8 & 121a11

The desired condition called for is to assign the responsibility for the delivery of the appropriate special education to the service level closest to the needs of special education students. Fixing the responsibility for the delivery of educational services is clearly in the interest of the State and reflects a compelling State interest. Fiscal responsibility is a value inherent in the State's dispersion of public monies. Further, by receiving the monies, districts are under obligation to comply with statute and regulations.

No matter how authority might be delegated in other administrative arrangements, such as the joint agreements, the district remains responsible for service to all its eligible special education students. The basic district concept should not be altered. But, a specific mandate is needed to firmly fix this responsibility.

Criticisms related to this concept include eliminating or reducing the restrictive paperwork requirements and allowing schools to operate without auditing and reporting requirements.

The task force finds that the concept of special education service provision and fixed responsibility by the local school district must remain as is, in order to assure statewide consistency and accountability in the delivery of appropriate education for its handicapped pupils.

Joint Agreement is defined as a legally authorized system for permitting two or more districts to enter into contractual arrangements for the delivery of special education services in order to provide for efficient use of resources.

Citations to joint agreements are found in:

State Law: Sections 10-22.31-10-22.31a of The School Code of Illinois
State Regulations: Articles 2.03 & Article 14
Federal Law: 20 USC 121a-Sect. 602(22)
Federal Regulations: P.L. 94-142 Sections 121a8 & 121a11

The desirable condition called for is to have efficient and comprehensive delivery of special education and related services throughout Illinois. There are at least two state interests served under this permissive mandate: efficiency and equity. If districts can collaborate to provide services, efficiency can be realized since not all districts will have to provide the full range of special education and related services singularly. Also, under such collaborative arrangements, the provision of services -- or access to services -- will not be a function of where a handicapped child resides. Thus, equity in access to programs is realized.

Although there has been district consolidation in Illinois over the last several decades, many districts are still too small individually to provide a comprehensive continuum of program options. Many such districts recognized this in the 1960s and joined together to provide services. Currently, there are 70-75 joint agreements; fewer than 20 districts operate independent special education programs. Monitoring visits recently completed by the State Board of Education determined that these units have been successful in providing services throughout the State.

This concept is a permissive one. It permits a strategy by which services can be provided in a more efficient manner. In its implementation, there are various ways to alter current boundaries, services contracted for, or populations at different levels.

The task force finds that the general concept of joint agreements, which is permissive, should remain. However, its implementation throughout the State should be examined in order to explore the potential of greater efficiency and effectiveness than occurs at the present. The process for formation and alteration of joint agreements should be reviewed. The following suggestions should be considered:

a. Alter geographic boundaries in order to permit clusters of classes without regard to joint agreements or county lines;

b. Provide services at the level closest to the child's home so that high incidence pupil services (e.g., "learning disabilities", "speech/language") are provided by the district, with only supervision provided through the joint agreement;

c. Develop a comprehensive plan for low incidence pupils (e.g., deaf/blind, severely handicapped) in areas larger than a single joint agreement in order to prevent duplication of services - e.g., services for autistic students to be delivered across two joint agreements;

d. Contract for unique or high cost support services across two or more joint agreements - e.g., psychiatric consultation; and,

e. Consider Educational Service Regions for the administration of multi-district operations.

State Board of Education is the constitutionally established State education agency charged with regulating and supervising the provision of elementary and secondary education for Illinois children.

Citations regarding the State Board of Education are found in:

State Law: Article 2 of The School Code of Illinois
State Regulation: Articles 3.07 , 3.11, 8.05, 8.06, 10, 11, 12, and 13
Federal Law: None
Federal Regulation: P.L. 94-142 Section 121a11

The desirable condition called for by this concept is to fix State responsibility for the regulation and supervision of special education services. Such accountability reflects a compelling State interest. Also, the identification and reduction of duplicative services or the provision of needed services increases both efficiency and equity.

Monitoring of districts by the State education agency occurs on a cyclical basis. There are two processes in current use which assist in the monitoring: program deviations and personnel deviations In 1979-80, there were 54 requests for program deviations and 63 in 1980-81. (Of these, nearly half each year were requests for class size and age range deviations.)

Criticisms about the State education agency role were abstracted from public testimony. They include:

- Don't eliminate district flexibility;
- Simplify the deviation process;
- Monitor more intensively--every 3 years and every district; meet with parents of handicapped children and with experienced, qualified monitors;
- Don't usurp local responsibilities; and,
- Change reference from calendar days to school days.

Practically any criticism or comment made regarding regulations and statutes could be categorized under the State education agency concept or organization, since the State agency is charged with administering such laws. Given the many comments, then, it follows that evidence exists that there are changes needed in order to produce the desired result.

The task force finds that the general responsibilities of the State Board of Education should remain those of regulating and supervising Illinois education, including special education; assuring equal educational opportunities; fixing responsibility; and encouraging efficiency. However, the implementation of the State regulatory processes should be altered. For example:

a. Limit rules and regulations to their most essential components and place those items which are of a "best practice" or "operational" nature into other documents;

b. Where program and personnel deviations are allowed through request to the State education agency, specify the criteria by which these decisions are made at the State level and permit local school officials to apply those same criteria in their program decision making;

c. Require only essential paperwork from the districts and joint agreements;

d. Delegate some regulatory responsibilities to Regional Superintendents; and

e. The State Board of Education should assume a more active supervisory role with respect to other State agencies.

Other State Agencies are Illinois agencies created by the Illinois Revised Statutes and under the direction of the Governor which provide/pay for special education and related services. This includes the Department of Mental Health and Developmental Disabilities, Department of Rehabilitation Services, Department of Public Health, Department of Public Aid, Department of Corrections, and Department of Children and Family Services.

Citations regarding other State agencies are found in:

State Law: Illinois Revised Statutes and Section 14-8.02 of The School Code of Illinois
State Regulation: Multiple in addition to The School Code of Illinois.
Federal Law: None
Federal Regulation: P.L. 94-142 Section 121a11

The desirable condition called for by mandates regarding other State agencies is a full, coordinated, and integrated system of human services which assures that individuals with unique and not necessarily discrete social needs will not be denied access to or provision of needed services. It is the major function of the State to provide services to the people of the State. That these services be efficient, coordinated, and equally accessible by its citizens clearly reflects a State interest.

The desirable condition is ideal in concept and extremely difficult to administer and implement in practice. Each State agency is making unilateral decisions abut its role in relation to handicapped students, and there is evidence that there is decreased funding for educational services by other State agencies. As a corollary, increased responsibility is being thrust on local districts and on the State Board of Education. This has had the effect of increasing education budget totals at the State and local levels. Evidence also exists that there are widening gaps in services.

Criticisms from testimony include the following:

-Revise rules on staff participants for residential placements; and,

-Clarify roles and responsibilities of other State agencies.

Revision of the mandates relating to other State agencies should contain the following components:

a. A consistent pattern of service without regional differentiation;

b. A pattern which addresses handicapped pupil needs broader than through a joint agreement; and,

c. An enforceable system.

This system cannot be established and implemented by the State Board of Education alone. It will require the cooperative efforts and authority of the Illinois General Assembly, perhaps through the School Problems Commission, and the Governor.

Advisory Boards and Councils are those legally constituted lay groups which are designed to advise the State Superintendent of Education and relevant others concerning current and future needs in the area of special education.

Citations regarding advisory boards and councils are found in:

State Law: Sections 14-3.01 and 14-11.02 the The School Code of Illinois
State Regulations: None
Federal Law: None
Federal Regulations: P.L. 94-142 Section 121a6

The desirable condition called for by the establishment of advisory boards and councils is the availability of timely and relevant advice which will assist the State Board of Education and its staff in assuring appropriate education for all handicapped children in Illinois. Public comment and advice from parties affected by the State's actions is certainly consistent with good democratic practice. However, there is no specific State interest which compels mandated advisory councils and boards. Currently, the State Board of Education has four boards and councils which provide advice on special education programs and services:

a) Advisory Board for Services for Deaf/Blind Individuals;

b) State Advisory Council on the Education of Handicapped Children;

c) Higher Education Advisory Council; and,

d) Pupil Personnel Services Advisory Board

The latter two councils are not mandated, yet they function effectively and regularly.

Given this *prima facie* evidence that advisory boards and councils can exist and function effectively in the absence of a mandate, it is recommended that such mandates be eliminated.

5. How should the state regulate its interests in special education?

One of the major responsiblities of the State is to develop regulatory mechanisms and procedures which will adequately protect its interests. In the area of special education, where the State's primary interest is in the appropriateness of the educational program provided to the students, these regulatory mechanisms have focused on both the content of local decisions and the process of local decision making.

The concepts analyzed included: class size, age range groupings, personnel, child-find, diagnosis and evaluation, individual education plan, placements, nondiscriminatory assessment, parental participation and due process.

Class size is the number of students authorized in one instructional grouping or setting.

Specification of class size does not appear in federal statute or regulation. However, the following State citations address the concept:

State Law: Section 14-8.01 of The School Code of Illinois
State Regulation: Article 4.04

The desired condition sought by the class size requirement is a safe and managable environment which facilitates student learning. This is clearly a State interest; however, there is no evidence of a relationship between any State-specified class size limitation and the adequacy and appropriateness of the specific learning environment. To the contrary, the differences in the personalities, competence and attitudes of individual teachers and the combination of these with differences among students (and aides when present) suggest that an appropriate learning environment cannot be prescribed by the State.

Major criticisms on class size as presented in the public testimony included the following:

-A weighting system should be used to determine enrollment;

-A combined self-contained and resource program should be recognized and approved;

-A full-time equivalency should be used in determining maximum class size;

-Districts should be given greater flexibility concerning class size;

-The present class sizes and deviation request procedure should be maintained;

-The use of student contact hours for mildly handicapped should be explored;

- An aide should increase enrollment maximums at the primary and intermediate levels;

- Speech and language caseloads should be reduced;

- The limits on mild/moderate "LD" should be raised;

- The class size for "EMH" should be reduced;

- The size for a learning problems class should be reduced; and,

- The class size for students with the following exceptional characteristics--severe visual impairment, auditory impairment, speech and language impairment, and physical or behavior disorder--should be reduced from a maximum of 8 to 5 or 6 students.

Given the task force's finding that the proper instructional milieu - including the exact size of special education classes -- is best determined by parents, teachers, and administrators, the class size requirement is not appropriate in its present form. However, given that the State does have a compelling interest in ensuring an appropriate learning environment, alternatives to the current mandate must be developed.

Age Range Groupings is defined as the range of student ages allowable within a given instructional grouping. Current regulations specify 4 years.

Citations are found only in State law and regulations:

State Law: Section 14-8.01(2) of The School Code of Illinois
State Regulation: Articles 4.03(1), (2)

The desirable condition called for by this mandate is an environment which is characterized by safety, functional similarities, common educational needs among the students, and ease in management by teachers. While this condition is within the State's interest, there is no known empirical evidence which indicates that age range groupings, including the four year maximum range, have any positive or negative effect on academic achievement or social adjustment.

Given this lack of evidence to support the age range grouping mandates, the task force finds that it is inappropriate in its current arbitrary format. However, again given the State's concern for ensuring the adequacy of the learning environment, the task force believes that alternative safeguards must be provided.

Personnel are those certificated and/or approved professional (instructional, administrative, supervisory, and supportive) and non-certificated individuals employed to provide special education and related services.

Citations regarding personnel are in:

State Law: Section 14-1.08, 14-1.10 and 8.02 of The School Code of Illinois
State Regulation: Articles 1.1-7 and 12
Federal Law: 20 USC 241-C-1 Section 613a3: P.L. 93-112
Federal Regulation: P.L. 94-142 Section 121a12

The desirable condition called for are personnel "who have the required special training in the understandings, techniques, and special methods of instruction for children because of their handicapping conditions..." The compelling State interest lies in the guarantee of the State that teachers (and other school personnel) paid by public funds have completed successfully a prescribed set of minimal training experience as deemed appropriate by the State. The award of a particular certificate relevant to the training is evidence of the State's guarantee. This is a method of protecting the public's interest. An extension of this protection is that a child who needs certain special education services will receive those services from at least a minimally trained and certificated person.

In determining whether the personnel requirements are meeting the desired results, several issues must be considered. First, the relationship of credentialing to quality is not an absolute nor a direct one. Levels of skills, competencies, attitudes about children, commitments, etc. are not absolutely guaranteed in the granting of a certificate; only certain assurances about meeting basic, minimum requirements are made.

A second issue relates to availability of personnel. Since personnel costs for schools account for about 79% of the total special education expenditures, clearly the selection and retention of adequate personnel resources is an extremely important consideration. Despite the best efforts of local districts and joint agreements to provide the proper array of personnel resources, there is evidence that the regulations and statutes may be too prescriptive. Districts do not have the flexibility they need to fill certain positions in which the supply and/or availability of fully certificated staff is inadequate.

Since the mandate reflects minimal training experiences, it should be maintained to protect the State's interests. However, there are strategies to alter the current implementation of the concept without jeopardizing essential special education services. Those strategies include:

a. Due to the unavailability or speech and language personnel (166 vacancies at the start of the 1980-81 school year), alter the current requirement which permits only masters' level/speech language personnel to be employed in Illinois districts;

b. Allow flexibility in employing personnel at the local level when appropriately/full credentialed persons are unavailable - e.g., use physical education teachers rather than credentialed adaptive physical education teachers;

c. Allow employment of paraprofessional personnel, particularly in noninstructional roles - e.g., physical therapy assistants -- to supplement qualified physical therapists;

d. Encourage cooperative arrangements between districts to enhance the use of related service personnel;

e. Reduce supervisory personnel requirements; do not require a supervisor certified in each category of special education;

Suggestions received in public testimony included the following:

- Supplement the Teacher Certification booklet with a section on special education personnel; reexamine certification requirements;

- Delineate standards for special education personnel in State Board of Education Document #1.

- Specifically delineate the functional requirements of administrative line supervision and technical assistance supervision (as occurred with a letter to school administrators from Superintendent Gill on August 6, 1981).

The task force finds that the mandates for qualified personnel must be retained, but finds also that these mandates can and should be modified to provide more flexibility to local districts in matching personnel to student needs.

Child-Find has been defined as an affirmative obligation of public school districts to sponsor programs to systematically seek out and identify children in the age range potentially eligible for special education services. It includes program components such as creating public awareness, providing parental notice, and conducting periodic screenings of children. Child-find usually refers to identification of potentially eligible preschool age children.

Citations for child-find are found in:

State Regulation: Article 9.01 and 9.03
Federal Law: 20 USC 1414 Section 614 (a)

The desirable outcome of child-find activities is the earliest possible identification of all children in a school district who may be eligible for special education services. The intent is to avoid late identification which may result in unnecessarily delayed education development.

The character of State interest in affirmative efforts to identify handicapped children is compelling. Failure to identify and design an appropriate education for each child reduces the likelihood of providing the education for each child. Alternatively, failure to determine that a child does not have a handicap may also lead to an inappropriate education.

Available information indicates that all districts have developed programs designed to identify handicapped children, including those of preschool age. In 1980-81, approximately 8,000 Illinois children aged 3-4 were being served in pre-school special education programs. These children represent 3.4 percent of all children served. Nearly four times as many students (30,000), aged 5-6, the usual ages for kindergarten and first grade, were identified/served in special education programs that same year. This dramatic increase could be explained in several ways. First, some handicapping conditions may not be so easily diagnosed until the child is readily engaged in traditional schooling. Second, the district's child find procedures, no matter how well announced, may still not reach all eligible students. Third, some students found to be eligible for special education at an early age (kindergarten or first grade) may be assessed inappropriately. The possibility of over-inclusion as well as under-inclusion must be considered.

In responding to whether the desirable condition can be achieved differently, the recommendations presented in public testimony called for eliminating the requirement that the school psychologist conduct screenings, an lengthening the time between vision and hearing screenings.

The task force found that the child-find mandate is necessary and should be retained.

Diagnois and Evaluation is defined as the process by which the type, extent, and details of a child's handicapping condition is determined. This includes conducting a multidimensional assessment of the individual student and convening a multidisciplinary conference to consider the findings of that assessment.

Citations regarding diagnosis and evaluation are found in:

State Law: Sections 14-1.09; 14-8.02(2), (2), (4), (5); 14-11.02 (02); 14-8.01(8) of The School Code of Illinois
State Regulation: Articles 1.06b; 1.07a; 1.10; 1.13; 9.1-9.16; 1.05a; 1.01
Federal Law: 20 USC 1412-5(C); 20 USC 1414 (a) (1)(A)
Federal Regulation: P.L. 94-142 Sections 121a128; 121a133; 121a220; 121a503; 121a532; 121a530-32; 121a146; 121a504-5; 121a453

The desirable condition called for by the process of diagnosis and evaluation is, first, an accurate identification and understanding of the child's learning or related problems; and, second, an accurate assessment of the changes which have occurred over time. The diagnosis and evaluation process is a central and essential part of the special education system, since it determines eligibility for special education, the character and extent of the child's program, and the termination of services. Available evidence indicates that the process of diagnosis and evaluation is in place and in most cases, functioning in compliance with the regulations. However, there is no definite evidence to indicate whether the process is yielding the desired result.

A significant number of substantial criticisms have been made regarding the current regulations on diagnosis and evaluation. These include:

- Clarification is needed regarding the definition of assessment for instructional purposes, learning disability diagnostic testing, and district-wide screening;

- A multidisciplinary conference should be held concerning termination of placement and the need for further educational or vocational services;

- Termination of service can be communicated orally; another report is not necessary;

- Clarification is needed regarding what "adaptive behavior" means;

- The decision to conduct a diagnostic or evaluative examination by a physician should be based only on a consensus of the multidisciplinary team reviewing the case; the examination should be reimbursed by the State;

- All testing and observations should take place while the child is still in the nonpublic school and before transition to the public school;

- The phrase, "the child's teacher", should be specified as the present teacher in the nonpublic school, not the teacher that child will have upon entry into the public school;

- State regulations regarding independent evaluations should be consolidated into a single section in a manner similar to the federal regulations;

- There is no need to notify the State office in writing when the district refuses a case study evaluation;

- As pertains to "LD" students, "social work study" are not consistent with definition of terms;

- For students in "LD" classes less than 50% of the time, a limited case study would be more appropriate;

- The terms, "preplacement evaluation" and "review" should be defined;

- The multidisciplinary conference requires too many staff; the number and type of staff should vary with the nature of the child's IEP;

- The requirement for a psychological evaluation should be limited;

- The 60 day limit for the completion of the multidisciplinary conference subsequent to the date of referral should be deleted.

The task force believes that the diagnostic and evaluation process is clearly a compelling interest for the State. However, the task force also believes this concept could be implemented differently, and more simply, while still ensuring that:

a. the evaluation is appropriate to the nature of problems leading to referral and provides sufficient information to understand those problems and develop an adequate IEP, and;

b. once the child has been placed, periodic reviews of the child's progress occur.

Therefore, it is recommended that the regulations and statutes pertaining to diagnosis and evaluation, including the multidisciplinary conference, be maintained but significantly clarified and simplified.

Nondiscriminatory Assessment is a principle governing the identification and evaluation of a potentially handicapped child. It requires that the diagnosis of a handicap be neutral with respect to attributes of the child which are unrelated to the handicap, such as the child's language and communication patterns, cultural background, or sex. Identification and evaluation must only be based on the results of objective and valid diagnostic devices.

Citations regarding nondiscriminatory assessment are found in
State Law: Section 14-8.02 of The School Code of Illinois
State Regulations: Articles 9.04 and 9.08
Federal Law: 20 USC 1412 (5) (C)
Federal Regulations: P.L. 94-142 Section 121a 430-433

Under this principle, all determinations of the presence and character of a handicap are to be from bias-free information. No handicap is determined to exist or no mistaken diagnosis of the character of a handicap occurs because of irrelevant attributes of the child or because of assumptions implicit in the procedures or on the part of those making the diagnosis. The desirable condition is that all children are diagnosed objectively.

Since providing a free and appropriate education represents a compelling State interest, it is in the State's interest to assure that the education provided is, in fact, appropriate and reflects equity. The provision of education designed in response to irrelevant attributes of the child frustrates fulfilling both the State's and the child's interest.

Relative to whether an objective, bias-free condition is being met, the statistical evidence on race and sex are conflicting or missing. About 72% of all Illinois school children are identified as White; slightly more than 20% are Black. Seventy-five percent of all special education children are White, and slightly less than 20% are Black. These data suggest that, in general, race is not a significant factor in determining or assigning children to special education services.

However, when the race of children is considered by specific special education category, certain obvious disproportionalities emerge. Over 46% of all children classified as educable mentally handicapped are Black, and 15.4% of all children classified as learning disabled are Black. Fifty percent of all EMH children are White and 80% of all LD children are White. There appears to be no signficant racial variations in the incidence of classification for minority groups other than Blacks.

If race is not a factor in the identification of a specific handicapping condition, the presence of a particular group of children within a handicapping condition should generally reflect the overall presence of that group in the general student population.

Further, since the sex of children found as eligible in special education is not reported to the State, there is no current way to determine whether an assessment free of sex bias is being conducted.

The analysis of public testimony indicated that diagnostic procedures and instruments need to be examined and bias eliminated.

The task force recognized that factors other than race (e.g., family income or socio-economic status) may be associated with statistical disparities and subsequent placement of children in special education, but the evidence supports the need for the mandate to be retained and State monitoring for compliance strengthened. The compliance procedure should definitely address the procedures and instruments used in assessments as well as the inclusion of sex as an identifying variable in counts of children.

Individualized Educational Program (IEP) is a written statement developed cooperatively by parents and school district representatives to describe the appropriate educational program for an eligible child for a period up to one year. The IEP constitutes a statement, not contractually binding, of the appropriate education and related services a child needs.

Citations for the IEP are found in:

State Law: Section 14-1.02 of The School Code of Illinois
State Regulation: Articles 9.18, 5, and 6
Federal Law: 20 USC 1401 (18), 1412 (2) (B), 1414 (a) (5); (1) (6) and 1412 (4), (6)
Federal Regulation: P.L. 94-142 Section 121a. 221-226

The desirable condition called for by the IEP is that each eligible child will follow a program specifically designed to respond to his or her unique characteristics. The program is written to ensure that the several participants responsible for providing the program understand their contributions.

The State's interest does not compel the specific administrative document currently known as the "IEP." However, the protection of the handicapped child's interests and rights to an appropriate education requires some means of verifying that a plan for an appropriate education has been developed and is being implemented. The child's interests and rights can only be protected through a written instrument setting forth the particular educational objectives.

There is mixed evidence on whether the IEP as mandated is yielding desired results. In over 28% of all orders issued in response to state level appeals, the State Superintendent has ordered redrafting of IEPs on substantive grounds. Anecdotal information provided to the State indicates that school district personnel rely on standardized or "canned" IEPs that are only slightly adapted for the individual child. The overall low incidence of complaints initiated by parents provides some grounds for assuming that the concept of IEPs is being effectively implemented; however, it may also mean that parents are not sufficiently skilled to evaluate the IEP effectiveness or appropriateness.

No data are available on the effect of implementing the IEP relative to a child's education.

Criticisms of the IEP have included the following:

- The development of the student's IEP should not have to be completed within the 60 day requirement;

- The IEP should be less complex and, whenever possible, written reports from the multidisciplinary conference should be used;

- There is uncertainty as to who has the right to make a final and binding decision on matters such as evaluation, eligibility, placement, etc. Is it the multidisciplinary conference "consensus", the Board of Education, or the local special education director's right?

- The development of the IEP requires an inordinate amount of staff time and procedures should be found to simplify that process. One possibility would be to allow the student's counselor to represent the teachers at the multidisciplinary conferences, particularly for students at the junior high and high school levels; and,

- The difference between a multidisciplinary conference and IEP meeting should be clarified.

While it is clear that some written plan for the education to be provided for handicapped children is necessary, it does not follow that the IEP as currently described is the only effective means of providing the necessary assurances. A more reasonable approach would require that a written document be prepared that states in clear terms the services to be provided, the reasons for those services, the process by which the effectiveness of the total program will be determined, and the conditions under which services will be terminated, if termination is a reasonable expectation.

The task force finds that the concept of an individual plan is necessary to assure a handicapped child's right to an appropriate education; however, the mandate as currently prescribed should be modified to render the IEP a more useful document. Further, the process by which the IEP is developed should be modified to be less burdensome.

Several other States are examining ways to combine computer technology with the IEP development. These options should be explored and expanded to include State functions of monitoring and reimbursement.

Placement refers to the process of assigning a handicapped student to a special education program, as deemed appropriate by the diagnosis and evaluation process and the IEP, and the initiation of services.

Citations relative to placement are found in:

State Law: Sections 14-8.02 (2), (3); 14-7.02; 14-1.02a; 14-4.02a; 14-4.01; 14-6.01; 14-7.01; 14-8 of The School Code of Illinois
State Regulation: Articles 1.03; 1.05a; 1.13; 1.14; 4.01; 7.01-8; 8.01; 9.21-24; 9.28-29; 10.07-21
Federal Law: 20 USC 1412-2B-C; 20 USC 1412-5B; 20 USC 1414 a 1A, C: 20 USC 1415-b 1C, 2, 3

Federal Regulation: P.L. 94-142 Sections 121a227; 121a 302; 122a347; 121a400; 121a403; 121a504; 121a513; 121a553; 121a552

The desirable condition sought is the actual delivery or provision of special education. Since there can be no provision of special education without placement, it is in the State's interest to mandate a placement process.

Criticisms taken from public testimony suggest that there are problems with the placement mandate. It appears that the process of placement can be streamlined to reduce the time necessary for the process, the number of people involved, and the multiple steps in the process. Criticisms included the following.

- "Immediate placement" should be changed to "no later than the next semester";
- The focus should be on the appropriateness of the proposed program for the child rather than on placement;
- A local district should not be mandated to serve a student until the semester after which he/she is identified as a special education student; all timeframes should be started at the date the problem has been identified;
- An educational placement cannot be called an emergency; if it is an emergency, then it is psychiatric or medically oriented and should be handled as any other medical expense or paid by the Illinois Department of Mental Health; an LEA should not be held financially responsible;
- By what logic is a psychiatrist permitted to make decisions concerning placement of students; this circumvents the local administration and Board of Education.

Based on these comments and its own analysis, the task force finds the placement mandate to be an intergal part of the system and important enough to be maintained. However, revised and streamlined regulations are in order.

Parental Participation is a practice under which decisions regarding the evaluation and determination of an appropriate education for a child are reached through a process involving the active participation of parents. The practice permits parental consent or objection at major phases in evaluation of the child and in the development and evaluation of the child's educational program.

Citations for parental participation are made in:

State Law: Section 14-8.02 of The School Code of Illinois
State Regulation: Articles 2.19, 9, and 10
Federal Law: 20 USC 1415
Federal Regulation: P.L. 94-142 Sections 121a.400, 403-405

The ideal condition to be achieved is a fully cooperative effort between the parents and the school district in determining and providing the child with an appropriate education. The concept recognizes that a major role of parents is to protect the rights and interests of the student.

Active parental participation in the design and implementation of a child's education program is a matter both of furthering the realization of the State's interest and protecting the child's rights. Further, the concept recognizes the overlapping responsibilities and obligations of parents and the State, particularly in the case of handicapped children, which frequently does not permit drawing clear boundaries regarding these responsibilities.

The evidence is conflicting as to whether the parental participation mandate is yielding proper collaboration and protection of the student. In some cases, it is alleged that districts do not act affirmatively to provide parents with the required notices. In other cases, it is alleged that parents either are uncooperative and do not participate in the process meaningfully, or are not afforded opportunity to participate meaningfully, particularly when confronted with essentially technical information without adequate explanation.

Commentary from the State Board of Education legal staff drew attention to the extreme difficulty in some cases in determining which individuals or State agency held parental custody of a child. This determination applies particularly to children previously wards of the Department of Corrections or Department of Children and Family Services. Further, the increase in divorce, joint custody situations, or merged families exacerbates the issue of parental participation.

Criticism from public testimony included the following:

- Copies of forms and reports should be made available to parents of handicapped persons free of charge;

- All parents should receive a copy of the rules and regulations; and,

- Clarification is needed regarding when parental consent is required.

Based on these observations, the task force finds that the concept of parent participation is a necessary mandate, but one which needs clarification. The term "surrogate parent" used in current rules and regulations does not have a basis in Illinois statutes and should be replaced with a carefully drafted definition of the statutory terms "parent", "guardian", and "advocate".

Due Process is a system designed to ensure that fundamental fairness is achieved in a timely mannor when individuals believe their rights or interests have been abridged by actions of another party. It is usually implemented through a series of procedures designed to fully elicit relevant factual background and to ensure impartiality in decisions. It is an adminstrative remedy for the resolution of disputes.

Citations for due process are made in:

State Law: Section 14.802 of The School Code of Illinois
State Regulation: Articles 9.03, 9.23 and 10
Federal Law: 20 USC 1415 (a); 1415 (b)(2); 1415(c); 1415(d); 1415(e)(3); 1415(b)(1)(B); 1417(c)
Federal Regulation: P.L. 94-142 Sections 121a.401, 406-414

The desired condition sought by due process is the impartial resolution of any disputes arising among interested parties -- parents and school districts -- in assuring an appropriate education for the child. As in all cases in which due process is available, the process ideally would not need to be used or would be used rarely. When it is used, it is not intended to be an adversarial process governed by rules of evidence. The establishment of this process assumes that all parties to the process have an equal interest in determining what constitutes an appropriate education.

The provision of due process stems from democratic values such as fairness, objectivity, right of appeal to higher authorities, and participative decision making. Clearly, then, the due process system reflects a compelling State interest.

Available information indicates that the existing due process system is used on behalf of less than one-tenth of one percent of all special education students. It is not known whether this statistic means that there are few disputes requiring formal resolution, that most disputes are being resolved at an informal level, or that the process is not being used for the purpose for which it was designed. It is known that there are a significant number of concerns about the due process mandates currently in place.

a. The elaborate and complex procedures for the formal resolution of special education disputes provides rights and opportunities to a select group of students - the handicapped - which are not available to non-handicapped students.

b. There is considerable reason to suspect that the elaborate and complex nature of the process results in discrepancies in its use, and that these discrepancies are based on income and other resources. A study of the use of the appeals process in another state found that the process was under-utilized by the poor, minorities, and rural parents and mainly used by "middle and upper class suburban parents of mildly handicapped children seeking more restrictive placements".

c. The complexity of the process has resulted in high costs, significant time delays between the appeal and a final decision, and administrative burdens at both the state and local levels.

d. Contrary to its supposed intent, the process has become highly adversarial. As described in the School Code of Illinois, the due process system is to be "directed toward bringing out all facts necessary for the impartial hearing officer to render an informed decision". At the same time, the statute provides for representation by counsel and by knowledgeable advisors, presentation of evidence, confrontation and cross-examination of witnesses, and preparation of a written record--all of which to render the process adversarial in nature.

e. There is evidence to suggest that less formal procedures are more successful in resolving disputes. Some 80% of the complaints filed with the Department of Specialized Educational Services have been resolved without recourse to the formal appeal process and a mediation process being implemented in Illinois has been very successful elsewhere.

f) The grounds providing access to due process include general conditions under which the due process system may be engaged (e.g., failure to provide an exceptional child with a free appropriate education) but do not include specific grounds, such as biased assessment.

The task force finds that an administrative remedy for the resolution of disputes is both necessary and desirable. It supports the notion of fundamental fairness and provides a means for regulating the State's interest in the education of handicapped children.

However, the task force also finds that the due process system currently in place should be replaced by a procedure with the following characteristics: (1) accessible to all students and/or parents; (2) accessible to school districts where parents are given refusal rights (e.g., refusal to consent to an evaluation); (3) provides stages which are less formal and closer to the level of service (e.g., guaranteed hearing before the school board, resolution through the Regional Superintendent); (4) makes use of non-adversarial resources, such as the complaint review staff of the State Board of Education; and (5) specifies the grounds for seeking resolution at each stage in the process. These grounds could be quite limited at the more advanced stages - e.g., if a formal appeal to the State Board of Education is authorized, it could be limited to certain classes of issues which call for interpretation of the statutes and/or regulations.

V. SUMMARY, FINDINGS, AND CONCLUSIONS

Summary

The purpose of this preliminary report is to present a comprehensive and deliberative analysis of the special education mandate.

Six major assumptions were made which affected the scope or conclusions of this study.

First, since mandates are essentially solutions to perceived problems, it was assumed that the special education mandates represent the State response to certain implicit issues. These issues have been identified by staff and posed as questions, as follows.

1. Should there be a mandate for special education?
2. Who should be served by special education?
3. What special education services should be provided?
4. Who should be responsible for special education services?
5. How should the State regulate its interest in special education?

A second assumption underlying this study concerned the relationship of the State statute and regulations to federal statute and regulations. Because the task force did not want to be inhibited in its analysis, evaluations, and recommendations; because the federal statute and regulations are also currently under review; and because Illinois has traditionally taken a leadership role regarding special education, the task force took the position that the current status of the federal mandate should not direct or influence the direction of this study. Therefore, it was assumed that if changes were needed in a State mandate, and this mandate was reflective of a federal mandate, then Illinois policy makers and opinion leaders would work toward making necessary changes at the federal level. In this way, potential violation of applicable federal statutes could be avoided, but areas for needed changes could be identified.

A third assumption limiting this study was that confidentiality of student records is applicable to all Illinois students and not exclusively to handicapped students. Therefore, testimony and other documentation concerning problems of student records was deferred until the Board considers the Illinois School Student Records Act.

Fourth, it was assumed that funding mechanisms should flow from policy, rather than direct policy. Since the policies to be adopted by the Board as a result of its study of mandates may well have implications for special education finance, it was considered premature to discuss and make recommendations regarding funding at this time. Further, since there is a separate study which is to specifically address funding policy and mechanisms (The Illinois Public School Finance Study), this important dimension was eliminated from the study.

A fifth assumption concerned the extent and quality of evidence available to support the analysis and evaluation of special education mandates. Since education is an imprecise science, and since special education in particular is a relatively new field of inquiry, it was assumed that the evidence needed for analysis might be inconsistent in quality and accessibility. In those areas in which substantive data were insufficient, it was agreed that analysis and recommendations could be based on the current best professional judgments and that these areas should be identified as a potential research and development agenda.

A sixth major assumption related to the State's role in regulation. It was a major assumption of this study that mandates should be the final recourse used by the State to solve a problem and/or achieve a desired condition. The extension of this assumption means that the burden of proof is on the State to show that other less restrictive means have been unsuccessful and that a certain condition can be created or a problem solved only through State statute or regulations. Where that proof was not shown, there was no supportable basis for the mandate to be maintained in its current form.

The study methodology used the five major questions approved by the State Board of Education on September 10, 1981, as part of the mandate analysis. Those questions were: (1) What desirable condition or outcome is called for by the mandate? (2) Is there evidence that in the absence of the mandates the condition or outcome will not be achieved? (3) As presently defined, does (can) the mandate yield the desired result? (4) Could the mandate be defined and/or implemented differently and yield the desired result? and (5) Does the mandate reflect a compelling State interest?

This report traces the Illinois legislative history and the federal statutory authority for special education, and details the current State Board of Education policy statement on special education.

Findings and Conclusions

The findings and conclusions of this study of special education mandates are:

1. Should there be a mandate for special education? The State mandate for providing a free and appropriate public education for all handicapped children in Illinois reflects a compelling State interest, that of equality of opportunity. The history of special education shows that this interest can be guaranteed only at the State level and through State mandate. Most of the arguments concerning the special education mandate could be eliminated through revisions of the statute and regulations. Therefore, the mandate for special education should be maintained but modified.

2. Who should be served by special education? The identification of those students who should be served by special education has traditionally been accomplished through mandates establishing eligibility. Currently, a student may receive special education services if he or she is (or has):

    -- A resident in the local district;
    -- Within the established age range;

-- Enrolled in the public school, even though attending a parochial or nonpublic school;
-- Demonstrated the exceptional characteristics defined as handicapping, regardless of level of severity; and
-- Not been graduated.

Mandates related to these criteria were analyzed through the following concepts: ages served, categories, suspension and expulsion.

a. Ages Served. The State's compelling interest in education requires establishment of mandatory school attendance between specified ages in order to provide an appropriate education. Since efficiency is also a principle which reflects a State interest, providing education for handicapped children beyond the normal range may be viewed as yielding greater efficiency over time.

   Because of the demonstrated benefits of providing special education as early as possible, the task force believes that the feasibility of lowering the required age range from 3 to 1 year, or to the point of first identification, and requiring increased screening efforts, should be examined. The upper age limit of 21 should be maintained for the present, since it is consistent with the upper age limit for non-handicapped students. However, the benefits of schooling realized by handicapped students at the upper end of the age range should be studied, and this limit considered as a part of the Board's later analysis of the general issue of school age mandates.

b. Categories. There appear to be many problems with classification of children as a means for determining who should be served in special education. Some categories are not sufficiently precise. There is disproportionate representation of students among the categories, which suggests that the assignment of a student is related to social and cultural factors rather than educational factors. No compelling State interest was found to be served by the categorization system. Since there are other options available for determining eligibility and placement and for reporting and monitoring, it is recommended that the regulations specifying categories be eliminated.

c. Suspension and Expulsion. Mandates on these concepts were found to be acceptable although district officials appear to need further information concerning these requirements.

3. What special education services should be provided? Mandates which respond to the issue of the services to be provided were analyzed through the following concepts: continuum of program options, least restrictive environment, related services, and summer school.

   a. Continuum of Program Options. The task force found no compelling State interest in this concept and no evidence to support the premise that the desired condition could only be achieved by prescription by the State. Since the identification of appropriate program options can best be made at the local level by professional educators and parents of handicapped children, and since other mechanisms (e.g., the IEP and due process) can be used to guarantee an appropriate educational placement for individual children, regulations and statutes prescribing the program options should be eliminated.

b. Least Restrictive Environment. Conflicting evidence exists about the value of this concept. Further, a compelling State interest is not served by the mandate. The mandates for IEP, diagnosis and evaluation, placement, and due process can assure, in the absence of a least restrictive environment mandate, that the individual needs of the child are being met. Therefore, it is recommended that the least restrictive environment mandate be removed.

c. Related Services. This concept represents a major extension of services traditionally provided by the public schools, and school officials report being burdened by costs related to services which are not instructional. Currently, there are over 30 different related services offered; however, the State lacks criteria f determining whether these services are directly related to instruction. Extensive clarification is needed to determine what services should be provided by the public schools.

d. Summer School. Summer school for handicapped students is not a mandate, but an IEP requiring an extended school year has the effect of a mandate. There is little evidence to support or reject the need for summer school. No compelling State interest is served by requiring summer school. Therefore, the summer school requirement achieved through the IEP should be eliminated.

4. Who should be responsible for special education services? Concepts examined by the task force which are related to the assignment of responsibility included free education, districts, joint agreements, state education agency, other state agencies, and advisory boards and councils.

   a. Free education. While this concept represents a clearly compelling state interest, there is much confusion about what constitutes "free education." Clarification of this issue should consider the following suggestions:

      (1) Narrow the current scope of related services to include only those items which are essential components of, or adjuncts to, the instructional program for handicapped students;

      (2) Define medical services in relation to school-age handicapped students (i.e., what is evaluation versus what is ongoing service);

      (3) Delineate what fees parents may/must pay (e.g., laboratory fees, book fees, copies of records);

      (4) Require third party payors to pay (e.g., insurance companies);

(5) When residential services are involved, require parental payment/Public aid/Mental Health to pay for room and board aspect, if possible;

(6) Define responsibility for residency and enrollment so that the Illinois State Board of Education is financially responsible only for Illinois students; and,

(7) Delineate the conditions for providing service for pupils attending parochial schools, so that public school districts pay only for special education and related services.

b. <u>Districts</u>. The district must remain responsible for service to all its eligible special education students. A compelling State interest is reflected in this concept and a State statute is necessary to fix such responsibility. This mandate should remain as stated.

c. <u>Joint Agreements</u>. Although joint agreements serve a valuable function in the efficient delivery of special education services, there is potential for greater effectiveness and efficiency. The following changes should be considered:

(1) Alter geographic boundaries in order to permit clusters of classes without regard to joint agreement or county lines:

(2) Provide services at the level closest to a child's home so that high incidence pupil services (e.g, "learning disabilities," "speech/language") are provided by the district, with only supervision provided through the joint agreement;

(3) Develop a comprehensive plan for low incidence pupils (e.g., "deaf/blind," "severely handicapped") in areas larger than a single joint agreement in order to prevent duplication of services, (e.g., services for autistic students to be delivered across two joint agreements;

(4) Contract for unique or high cost support or related services across two or more joint agreements - e.g., psychiatric consultations or mobility specialist; and

(5) Consider Educational Service Regions for the administration of multi-district operations.

d. <u>State Board of Education</u>. The State Board of Education's current regulatory documents and procedures are in need of immediate simplification. Four general recommendations are applicable:

(1) Limit special education rules and regulations to their most essential components and place those items which are "best practice" or "operational" into other documents.

(2) Where program and personnel deviations are allowed, specify the criteria by which these decisions are made at the State level and permit local school officials to apply those same criteria in their local program decision-making.

(3) Delegate some regulatory responsibility to Regional Superintendents.

(4) Assume a more active supervisory role with respect to other state agencies.

e. Other State Agencies. The desirable condition called for by mandates regarding other state agencies is a full, coordinated, and integrated system of human services which assures that individuals with unique and not necessarily discrete social needs will not be denied access to or provision of needed services. It is the major function of the State to provide services to the people of the State. That these services be efficient, coordinated, and equally accessible by its citizens clearly reflects a State's interest.

The desirable condition, even with the mandate, is not being met. Both the mandate and its implementation must be addressed comprehensively. There is a lack of clarity in the mandate itself which contributes to the implementation problems of a coordinated service system. Revision of the mandate should contain the following components: a consistent pattern of service without regional differentiation; a pattern which addresses handicapped pupil needs broader than through a joint agreement; and an enforceable system.

This interagency system cannot be established and implemented by the State Board of Education alone. It will require the cooperative efforts and authority of the Illinois General Assembly, possibly through the School Problems Commission, and the Governor.

f. Advisory Boards and Councils. Public comment and advice from parties affected by the State's actions is certainly consistent with good democratic practice. However, there is no specific State interest which compels mandated advisory councils and boards. Currently, the State Board of Education has four boards and councils which advise comprehensively on special education programs and services. Two of the current four advisory councils are not mandated, and yet they function effectively and regularly. Given the *prima facie* evidence that advisory boards exist and function effectively in the absence of a mandate, the mandate for advisory boards and councils can be eliminated.

5. How should the State regulate its interests in special education?

In its analysis of Illinois special education mandates, the task force noticed a thematic shift from regulating the quality of decisions made by local districts to an emphasis on regulating the quality and character of the process used in arriving at such decisions. This began in 1972, when earlier rules prescribing curriculum and other matters specific to each category of children were eliminated in lieu of local prerogative, and when specific eligibility criteria, such as Intelligence Quotient, were replaced by procedural steps for establishing the child's need for special education. This shift accelerated with the advent of P.L. 94-142, and although there are many, including the task force, who believe that the federal regulation regarding the decision-making process are overly prescriptive, the general emphasis seems to be a valid and important one.

It is the task force's opinion that an essential fairness and pragmatism is present in a regulating activity which recognizes, first, the desire of local boards, parents, and professionals to make just and professionally sound decisions about programs for children; and, second, that the State has a legitimate interest in protecting children from either intentional or unintentional abridgments of that process. The procedural laws and regulations, in essence, provide that higher levels of government will accept the decisions made locally, provided that the proper interests are involved in the making of such decisions. They further provide that should the child's advocates (parents or guardians) in making such decisions feel that unreasonable conclusions find their way into diagnosis and/or educational prescriptions, they have a distinct way in which to ask for higher levels of government to review and make final determination.

The task force believes that justifications which may have existed earlier for regulating the quality of decisions at the local level are now unacceptable if one follows this logic to its conclusion. The task force believes, for example, that a local interdisciplinary staffing with parental involvement can determine in what size of class, and with what kind of children, a child should be placed. Similarly, a multidisciplinary evaluation procedure can identify whether a child needs educational assistance beyond that provided in the standard classroom, without recourse to classification labels.

Therefore, the task force concludes that the following principles should direct the State's administration of special education mandates.

a. State regulatory activity should recognize, first, the desire of local boards, parents, and professionals to make just and sound decisions about education for children, and second, that the State has a legitimate interest in protecting children from either intentional or unintentional abridgment of that decision making process.

b. Regulations should address the quality and character of the <u>process</u> by which decisions are made rather than the character of the <u>decisions</u>.

c. Procedural regulations should be limited to certain fundamental concepts such as timeliness, participants, and a remedy for disputes.

d. Whenever possible, the entity responsible for making decisions should be directed to develop its own procedures incorporating the State's fundamental concerns, as above. Once the State has approved the respective procedures, the State should accept the decisions resulting from that process, and should review such decisions only when irresolvable disputes arise at the local level.

Conclusions resulting from the task force analysis of mandates which safeguard the State's interest in the handicapped child follow:

a. Class size. The task force finds that the proper educational lieu -- including the specific size of special education instructional groupings -- is best determined by those who are most familiar with the uniqueness of each child, each teacher, and each school. Therefore, the class size requirements in their current arbitrary form are not appropriate.

   On the other hand, the task force finds that the State does have a compelling interest in ensuring an appropriate learning environment. Therefore, alternatives which emphasize the local decision making process should be developed.

b. Age Range Groupings. The task force finds that there is a lack of evidence to support the age range grouping mandate and that it is inappropriate in its current arbitrary format. However, again given the State's concern for ensuring the adequacy of the learning environment, the task force believes that alternative procedural safeguards must be developed.

c. Personnel. The task force finds that the interest of the State in the appropriate education of handicapped children extends to include a guarantee, to the extent possible, of the qualifications of the personnel who serve them. This guarantee is met by the requirement that special education personnel meet certain minimal training standards which are affirmed through a certificate. Since this is essential to the provision of special education, the task force finds that a mandate for qualified personnel is necessary and must be retained. However, the task force also finds that the mandate for personnel qualifications can and should provide more flexibility.

d. Child-Find. The desirable outcome of child-find activities is the earliest possible identification of all children eligible for special education. Since the State's interest in identifying these children is compelling, the task force finds that the child-find mandate is necessary and should be retained in its present form.

e. Diagnosis and Evaluation. The task force believes that the diagnostic and evaluation process is clearly a compelling interest for the State. However, the task force also believes that this concept could be implemented differently, and more simply, while still ensuring that:

   (1) the evaluation is appropriate to the nature of the problems leading to referral and provides sufficient information to understand those problems and develop an adequate IEP; and

   (2) once the child has been placed, periodic reviews of the child's progress occur.

   Therefore, it is recommended that the regulations and statutes pertaining to diagnosis and evaluation, including the multidisciplinary conference, be maintained but significantly clarified and simplified.

f. Nondiscriminatory Assessment. Nondiscriminatory assessment is a principle governing the identification and evaluation of a potentially handicapped child. It requires that the diagnosis of a handicap be neutral with respect to attributes of the child unrelated to the handicap, such as the child's langauge and communication patterns, cultural background, or sex. Identification and evaluation must only be based on the results of objective and valid diagnostic devices.

The task force recognizes that factors other than race (e.g., family income or socio-economic status) may be associated with statistical disparities and subsequent placement of children in special education, but the evidence supports the need for this mandate to be retained and State monitoring for compliance strengthened. The compliance procedure should definitely address the procedures and instruments used in assessments as well as the inclusion of sex as an identifying variable on counts of children.

g. IEP. The task force believes that while it is clear that some written plan for the education to be provided for handicapped children is necessary, it does not follow that the IEP as currently described is the only effective means of providing the necessary assurances. A more reasonable approach would require that a written document be prepared that states clearly the services to be provided, the reasons for those services, the process by which the effectiveness of the total program will be determined, and the conditions under which services will be terminated, if termination is a reasonable expectation.

While the concept of an individual plan is necessary to assure a handicapped child's right to an appropriate education, it is clear that the mandate as currently prescribed needs to be modified. Further, the process by which the IEP is developed should be modified.

h. Placement. Since there can be no provision of special education without placement, it is in the State's interest to mandate a placement process. The task force finds the placement mandate to be an integral part of the system and important enough to be maintained, but not in its present form. Revised, streamlined regulations are in order.

i. Parental Participation. Parental participation is a practice under which decisions regarding the evaluation and determination of an appropriate education for a child are reached through a process involving active participation of parents. The practice permits parental consent or objection at major phases in evaluation of the child and in the development and evaluation of the child's educational program.

The task force finds that the concept of parental participation is a necessary mandate, but one which needs clarification. The term "surrogate parent" used in current rules and regulations does not have a basis in Illinois statutes and should be replaced with a carefully drafted definition of the statutory terms "parent", "guardian", and "advocate".

j. Due Process. The task force finds that an administrative remedy for the resolution of disputes is both necessary and desirable; it supports the notion of fundamental fairness and provides a means for regulating the State's interest in the education of handicapped children. However, the task force also finds that the due process system currently in place should be replaced by a procedure with the following characteristics:

(1) accessible to all students and/or parents;

(2) accessible to school districts where parents are given refusal rights (e.g., refusal to consent to an evaluation);

(3) provide stages which are less formal and closer to the level of service (e.g., guaranteed hearing before the school board, resolution through the Regional Superintendent);

(4) makes use of non-adversarial resources, such as the complaint review staff of the State Board of Education; and,

(5) specifies the grounds for seeking resolution at each stage in the process.

6. Reliable evidence was unavailable for some important issues in special education. This information void could constitute an important research and development agenda for consideration by the special education research community:

a. The effect of the IEP on educational programs for children, and the relationship of the IEP to academic achievement or social adjustment, should be to be studied. The possibility of linking the IEP to specific services which constitute critical monitoring factors should be studied. Further, the IEP as a potential primary source for reimbursement needs study. Lastly, the feasibility of combining contemporary computer technology with the IEP to create efficient and effective development, monitoring, and reimbursing functions at the local and state level should be explored.

b. Research-based procedures for determining whether a related service can be demonstrably or directly related to instruction are needed. Further, there is a need to determine what roles program assistants serve, since they account for the largest increase in related service costs.

c. Evidence is lacking on the benefits accruing to children who remain in special education programs past age 19 or after the age of 21. The feasibility of lowering the age range to one year, or the point of first identification, and increasing screening efforts, should be explored.

d. Criteria are needed to help in determining whether a specific act or pattern of behavior is or is not directly related to or caused by a handicapping condition. These criteria would assist in decisions concerning disciplinary actions.

e. No evidence exists about the accuracy, completeness, or reliability of diagnoses and evaluations.

f. Diagnostic testing and instrument development is in need of validation. Research is needed to determine why there is an overrepresentation of black children in EMH classes and an overrepresentation of white children in learning disabled classes.

g. No research was available to indicate effects of age range groupings and class size on special education students.

h. The effects of summer school on special education children should be determined.

i. The effects of placing children in the least restrictive environment needs further study, particularly to determine the effects on academic achievement and social adjustment.

j. A study of the appeals process in Illinois would be useful in determining the extent to which income, socio-economic status, or rural/urban/suburban variables have an effect on the use of due process by parents.

k. The extent to which students exit from special education needs study.

7. Excessive paperwork requirements should be reduced. Time taken for unnecessary forms completion is time taken from instruction, supervision, and administration. Basic auditing, monitoring and reporting requirements must still be met, however, in order that the State have the necessary information for monitoring and maintaining accountability.

VI. PRELIMINARY RECOMMENDATIONS FOR ACTION BY THE STATE BOARD OF EDUCATION

As a result of this study and its findings and conclusions, certain recommendations for action are made to the State Board of Education. Taking these actions will not conclude the process of reviewing the mandate for special education; rather, it would extend that review on an ongoing, logical basis. The recommendations are:

1. The State Board of Education should adopt the following four principles to guide and direct its regulatory activity in relation to the education of handicapped children:

   -- State regulatory activity should recognize, first, the desire of local boards, parents, and professionals to make just and sound decisions about education for children, and second, that the State has a legitimate interest in protecting children from either intentional or unintentional abridgment of that decision-making process.

   -- Regulations should address the quality and character of the process by which decisions are made rather than prescribing the character of the decisions.

   -- These process regulations should be limited to certain fundamental concepts such as timeliness, participants, and a remedy for disputes.

   -- Whenever possible, the entity responsible for making decisions should be directed to develop its own procedures incorporating the State's fundamental concerns, as stated above. Once the State has approved the respective procedures, the State should accept the decisions resulting from that process, and should review them only when irresolvable disputes arise at the local level.

2. The State Board of Education should reaffirm its commitment to the general goals of special education and to the provision of a free appropriate public education for all handicapped children in Illinois. However, its policy statement on special education, adopted February, 1978, should be modified. The following components should be included in a new policy statement on special education:

   -- A right-to-education policy for all children;

   -- Instruction provided at no cost to parents when children are placed by the local or state education agency;

   -- Guarantee of procedural safeguards, due process, and nondiscriminatory assessment;

   -- Individual education plans for each handicapped student;

   -- A comprehensive, efficient, and flexible personnel system;

   -- An intensive and continuing search for handicapped children in Illinois;

-- State education agency supervision of all education programs for handicapped children within Illinois; and,

-- Rights and guarantees applied to children in private or other state-funded schools, as well as public schools.

This change in policy removes the least restrictive environment component, deletes the age range, changes the wording of the IEP to better reflect its intent, and modifies the wording regarding personnel to allow for more flexibility.

3. The State Board of Education should seek the cooperation of the U.S. Congress and the Illinois General Assembly in declaring a moratorium through 1984 on establishing any laws dictating additional responsibilities for special education on the local or state education agency. This moratorium is necessary to allow sufficient time to revise the statutes and rules in accordance with the findings of this report. Further, the moratorium is necessary since the amount of legislation passed during a relatively short period of time has contributed to legitimate problems and complaints.

   Therefore, the State Board of Education should direct the State Superintendent to develop and submit a time-specific plan which will increase the likelihood of cooperation for a legislative and congressional moratorium and allow time for drafting legislation needed to revise State statutes and encourage appropriate federal legislation.

4. The State Board of Education should direct the State Superintendent to submit a time-specific plan to revise the current rules and regulations governing special education in accordance with this report.

5. The State Board of Education should direct the State Superintendent to prepare and submit a time-specific monitoring and supervision plan which is consistent with the revised rules and regulations and the major conclusions of this report.

6. Since several State agencies are responsible for providing special education and related services, the State Board of Education should request the assistance of the Governor and the Illinois General Assembly in the development of a system for specifying the human and fiscal roles and responsibilities of the various State agencies and for resolving interagency conflicts regarding these responsibilities.

   Such a system would need to assure that handicapped persons have available free, appropriate instructional and supportive services required to meet individual needs. As economic resources decline, interagency cooperation becomes more essential, in special education as well as other areas of human services.

   Therefore, the State Board of Education should direct the State Superintendent to seek the cooperation and participation of the Governor and General Assembly in developing a system for interagency cooperation which guarantees a full spectrum of human services.

7. The State Board of Education should direct the State Superintendent to evaluate and prioritize the proposed research and development agenda contained in this report and obtain assistance and collaboration of the State special education research community in fulfilling that agenda, as appropriate.

8. The State Board of Education, in recognizing its previously adopted goal for "Simplifying Reporting Systems," should direct the State Superintendent to submit a time-specific data management plan whereby the State and federal reporting requirements are met for special education in an efficient and effective manner. This plan should achieve the development of integrated pupil data bases, which include, but are not limited to, special education information. It should also lead to a decrease in the data burden on school districts and an increase in the data use at the state level.

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