BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Unanswered Questions On Educating Handicapped Children in Local Public Schools

The Education for All Handicapped Children Act of 1975 required States to make free appropriate public education available for all handicapped children age 3 to 18 by September 1, 1978.

If this goal is to be met by at least the mid-1980's, the Department of Education and the Congress need to resolve problems with

--determining the number of children needing services,

--unclear eligibility criteria,

--individualized education programs,

--sufficiency of resources, and

-program management and enforcement.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 2054S

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To the President of the Senate and the
Speaker of the House of Representatives

This report points out problems in the program administered by the Department of Education under the Education for All Handicapped Children Act of 1975—the Public Law 94-142 Program. We made this review to evaluate progress and identify problems in program implementation.

Copies of the report are being sent to the Director, Office of Management and Budget, and the Secretary of Education.

Elmer B. Staats
Comptroller General
of the United States

JUN 10 1981

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

UNANSWERED QUESTIONS ON EDUCATING HANDICAPPED CHILDREN IN LOCAL PUBLIC SCHOOLS

DIGEST

In 1975 the Congress set a goal that by September 1, 1978, all of the Nation's handicapped children age 3 to 18 would have available a free appropriate public education which meets their unique needs. This goal probably will not be achieved until at least the mid-1980s.

GAO's review in 10 States disclosed major problems that need to be addressed to improve program operations and educational opportunities for handicapped children.

CONTROVERSY ON THE NUMBER OF CHILDREN NEEDING SERVICES

A large difference between the Department of Education's 1974 estimate of the number of handicapped children needing services (about 6.2 million) and the number of children being counted and served by the States (about 4.0 million as of December 1979) has created controversy.

The Department asserts that States' efforts to identify handicapped children have not been adequate. However, State officials and others contend that the Department's estimate is overstated significantly. GAO found that the basis for the estimate was questionable but could not conclude that it was overstated. (See p. 8.)

Because of the difference between its estimate and the States' counts, the Department had initiated a major effort to persuade the States to identify more children as handicapped, but had shown little concern for the possibility of overcounting or misclassifying children as handicapped. (See p. 22.)

The Department agreed with GAO's recommendations to (1) help States and local education agencies accurately identify, evaluate, and serve children with handicaps rather than simply emphasize increasing child-counts and (2) reconsider the validity of its 1974 estimate of the number of handicapped children needing services.

However, the Department disagreed with GAO's recommendation to discontinue using the 1974 estimate as the basis for encouraging States to increase the number of children counted and served. The Department cited certain data which, it believes, support its estimate and stated that it gives equivalent emphasis to safeguards to prevent misclassification. GAO still questions the reliability of the estimate and believes that it should not be used as the basis for encouraging States to increase their counts of handicapped children. (See p. 25.)

ELIGIBILITY CRITERIA SHOULD BE CLARIFIED BY THE CONGRESS

Nearly one-third of the children counted as handicapped under the program were classified as speech impaired and were receiving only speech therapy. For this number of children, States received about $253 million in Federal grant funds for fiscal year 1980. (See p. 29.)

The speech-impaired children included many who were receiving therapy for such impairments as lisping, stuttering, and word pronunication problems (e.g., they said "wabbit" for "rabbit," "pasketti" for "spaghetti," or "bud" for "bird"), as well as many whose voice tones were low, high, nasal, harsh, or hoarse. (See p. 38.)

The law and its legislative history are unclear on whether children receiving only speech therapy, or other services cited in the act as "related services," should be counted as handicapped for Federal funding. (See p. 29.)

Nevertheless, Department of Education regulations permit children receiving only speech therapy to qualify for Federal funds if a child's impairment has an "adverse effect" on his or her "educational performance." Through June 1980, the Department had not defined these terms or issued guidance for applying them. Most local education agencies visited by GAO disregarded the adverse effect requirement in counting children for Federal funding. Officials at 10 agencies told GAO that applying an "adverse effect on educational performance" test would likely reduce their counts of speech-impaired children by 33 to 75 percent. (See p. 34.)

In July 1980, the Department issued guidance to States which provides, in essence, that any child meets the "adverse effect" test if he or she is receiving speech therapy. This guidance is based on the premise that such children have not yet mastered the basic skill of effective oral communication and may be considered as handicapped without any further determination that the speech impairment adversely affects educational performance. (See p. 51.)

The Department disagreed with GAO's recommendation to the Congress to clarify whether, and under what conditions, children receiving only speech therapy or other related services are eligible for coverage under the 94-142 program. The Department believes that such children are clearly eligible. (See p. 50.)

GAO is recommending that the legislation be clarified because the Department's rationale is not clearly supported by the law or its legislative history. (See p. 51.)

EDUCATION PLANNING REQUIREMENTS NOT MET

The law requires an individualized education program for each handicapped child. Of the programs GAO reviewed, 84 percent (1) lacked one or more of the required items of information, (2) lacked evidence that parents or other required participants attended planning meetings, or (3) were not prepared until after prescribed deadlines. (See p. 53.)

Also, schools could have improperly counted at least 385,000 handicapped children in fiscal year 1978 who had no individualized education programs. States received about $60 million in fiscal year 1979 grant funds for these children. (See p. 65.)

Individualized programs did not disclose needed services if they were not available. School officials feared that such disclosure could lead to legal charges that the local education agency had violated the act's mandate to provide needed services. (See p. 55.)

The Department agreed with, and said it was acting on, GAO's recommendations to improve individualized education programs. (See p. 70.)

INADEQUATE FUNDS: CONGRESSIONAL CONSIDERATION NEEDED

Despite significant movement toward compliance, most local education agency officials interviewed said they did not expect their districts to be able to provide a free appropriate public education to handicapped children age 3 to 18 for at least 3 to 6 years beyond 1978. The most commonly cited reason for the expected delay was a shortage of funds. (See p. 71.)

The Department disagreed with GAO's recommendation that the Congress consider the conflict between the act's mandate and timetables. It said that the Congress has already examined the problem through extensive oversight hearings. However, because the act's target dates have passed and its goals have not been met, GAO believes that additional congressional attention is warranted. (See p. 84.)

OTHER STATE AND FEDERAL MANAGEMENT PROBLEMS

Additional problems impeding the act's implementation included:

—Insufficient staff at the State level to assist local education agencies and monitor their programs. (See p. 89.)

—Delays by the Department in issuing regulations, providing guidance and instructions, and approving State plans. (See p. 94.)

—Lack of comprehensive Federal evaluations of the States' compliance with the act's mandate. (See p. 99.)

The Department agreed with GAO's recommendations to evaluate States' compliance with the act's mandate and to emphasize the importance of (1) timely regulations, (2) technical assistance, (3) review of State plans, and (4) monitoring.

However, the Department disagreed with GAO's recommendation to require States to document in their plans, and demonstrate to the Department's satisfaction, that they are able to carry out their responsibilities under the act. The Department said that State plans already contain adequate assurances and that the concern raised by GAO was a compliance issue rather than a plan issue. GAO believes that, despite the assurances in existing State plans, States have problems which should be addressed in both the planning and compliance functions. (See p. 93.)

COMMENTS BY STATE OFFICIALS

Three of the 10 States included in the review responded to GAO's request for comments on this report. Their comments, which generally were clarifying in nature, were considered in preparing the report and are recognized, where appropriate, in the report.

Contents

ABBREVIATIONS

GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
IEP	individualized education program
LEA	local education agency
NAPPE	national average per pupil expenditure
OSE	Office of Special Education and Rehabilitative Services
SEA	State education agency

CHAPTER 1

INTRODUCTION

According to statistics published by the Department of Education, [1] an estimated 8 million children in the United States have mental, physical, emotional, or learning handicaps that require special education services. However, only about half of these children received education programs appropriate to their needs in the 1975-76 school year, according to the Department's Office of Special Education and Rehabilitative Services (OSE). OSE estimated that, of the remaining handicapped children, about 3 million were receiving an education less than appropriate and about 1 million were not attending school at all.

The Congress responded to this situation by declaring, as national policy, that all handicapped children are entitled to a free public education and that their education should be conducted in the least restrictive environment commensurate with their needs. For many handicapped children, this means full-time enrollment in regular classes in local public schools. For others, it means more limited school participation with non-handicapped children. For the severely and profoundly handicapped, satisfactory education is often available only in special schools or institutions.

Two Federal programs that provide financial assistance for educating handicapped children are:

—The program authorized by Public Law 89-313, approved November 1, 1965, as an amendment to title I of the

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[1] When we made this review, the activities discussed in this report were administered by the Bureau of Education for the Handicapped, Office of Education, Department of Health, Education, and Welfare (HEW). On October 17, 1979, the President signed the Department of Education Organization Act (Public Law 96-88) creating a Department of Education to administer all education programs that had been administered by HEW. The act also changed HEW's name to the Department of Health and Human Services. On May 4, 1980, responsibility for the activities discussed in this report was given to the Office of Special Education and Rehabilitative Services in the new Department of Education.

Elementary and Secondary Education Act of 1965 (20 U.S.C. 236 et seq.). This program, commonly known as the "89-313 program," provides grants for special education of handicapped children (1) in State operated or supported schools and (2) formerly in State schools who have transferred to special education programs in local public schools.

—The program authorized by part B of the Education of the Handicapped Act, as amended on November 29, 1975, by Public Law 94-142, the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq.). This program, now commonly known as the "94-142 program," provides grants for special education of handicapped children in local public school systems.

In 1978 we reported on the 89-313 program. 1/ This report deals with the 94-142 program.

THE 94-142 PROGRAM

On November 29, 1975, the Congress enacted Public Law 94-142 to (1) assure that all handicapped children have available a free appropriate public education which emphasizes special education and related services to meet their unique needs, (2) assure that the rights of handicapped children and their parents or guardians are protected, (3) assist States and localities to provide for the education of all handicapped children, and (4) assess and assure the effectiveness of efforts to educate handicapped children.

The act requires that a "free appropriate public education" be available for all handicapped children age 3 to 18 by September 1, 1978, and age 3 to 21 by September 1, 1980, except for children age 3 to 5 and 18 to 21 in States where the requirement is inconsistent with State law or practice or a court order. The act also specifies a number of activities that schools must engage in to ensure that handicapped children receive the rights they have been guaranteed. It requires that specialists evaluate the children's special needs and determine the most appropriate educational environment for these children; that an individualized education program (IEP) be developed for each child identified as needing special

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1/"Federal Direction Needed for Educating Handicapped Children in State Schools" (HRD-78-6, Mar. 16, 1978).

education; that the schools notify parents of findings concerning their children and include parents in the process of deciding how and in what circumstances their children will be educated; and that an opportunity for a hearing be provided to parents who are dissatisfied with the school's decision. Further, the act requires that, to the extent that it is in the child's best interest, each handicapped child be educated with non-handicapped children.

Program operations

Under the 94-142 program, grants are made to States and other jurisdictions 1/ to help defray the excess costs of educating handicapped children. The legislation defines excess costs as those that exceed the average annual per pupil expenditure in a local education agency (LEA), usually a local school district, during the preceding school year. Grants can be used to initiate, expand, or improve programs and projects for handicapped children at the preschool, elementary, and secondary levels to increase the quality and quantity of educational services.

The program is advance funded—funds appropriated in a given fiscal year are available for obligation in the following fiscal year. According to the law, the maximum amount each State is entitled to receive each year is equal to the number of children, age 3 to 21, receiving special education and related services, multiplied by a specified percentage of the national average per pupil expenditure (NAPPE). However, no State will receive an amount less than it received in fiscal year 1977. The percentage authorized increases yearly to a maximum of 40 percent for fiscal year 1982 and thereafter, as shown in the following table.

1/The District of Columbia, American Samoa, Guam, Puerto Rico, the Northern Marianas, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Bureau of Indian Affairs

Fiscal year appropriation	For use in fiscal year	Authorized percent of NAPPE
1977	1978	5
1978	1979	10
1979	1980	20
1980	1981	30
1981	1982	40

The law also provides that grants to all States are to be reduced proportionately if funds appropriated are less than funds authorized. In determining the amount of funds allocated to each State, no more than 12 percent of the number of children in each State, age 5 to 17, may be counted as handicapped. Legislation places priority on identifying and serving first the unserved handicapped children, and second the most severely handicapped within each disability category who are receiving an inadequate education.

Any State meeting the eligibility requirements set forth in the law and wishing to participate must submit to OSE each year a State plan which assures that (1) funds will be spent in accordance with the provisions of the law, (2) funds provided under other Federal programs for educating handicapped children will be used in a manner consistent with the goal of providing a free appropriate public education, (3) programs and procedures for personnel development will be established, (4) provision will be made for the participation of handicapped children in private schools and facilities, and (5) Federal funds will be used to supplement State and local expenditures. Of the total funds that a State receives, only 5 percent or $300,000, 1/ whichever is greater, may be used by States for administrative costs.

Under the act, 75 percent of a State's 94-142 grant is to "flow through" the State education agency (SEA) to the LEAs that meet legislated requirements and priorities and that are able to qualify for a minimum allocation of $7,500. Funds which a State retains must be matched on a program-by-program basis from non-Federal sources if the funds are used for other than administrative purposes.

1/Increased from $200,000 by Public Law 96-270 (94 Stat. 487), enacted on June 14, 1980.

The following chart shows Federal funding since the first year of program implementation:

Fiscal year	Amount appropriated	Amount per handicapped child
	(millions)	
1977	$315	$ 72
1978	465	156
1979	804	211
1980	874	227
1981	a/922	239 (est.)

a/Amount requested by the Department of Education.

Initially, the allocation of 94-142 funds to the States was based on the average of two separate State counts of handicapped children—one conducted on October 1 and the other on February 1 of the prior school year. On November 1, 1978, the Congress enacted Public Law 95-561 (92 Stat. 2364) to permit States to count their children only once each year, on December 1. OSE statistics show the following numbers of handicapped children counted and served under the 94-142 program:

Date	Childcount
Oct. 1, 1976	3,382,495
Feb. 1, 1977	3,613,550
Oct. 1, 1977	3,424,217
Feb. 1, 1978	3,684,167
Dec. 1, 1978	3,716,073
Dec. 1, 1979	3,802,511

In addition, more than 200,000 handicapped children were counted each year in State operated or supported schools under the 89-313 program, bringing the total count of children served to over 3.9 million in fiscal year 1979. 1/ The children served by these two programs fell predominantly into three categories—speech impaired, learning disabled, and mentally retarded. Lesser numbers of children were classified as emotionally disturbed, orthopedically impaired, deaf or hard of hearing, visually handicapped, or other health impaired.

1/4.0 million in fiscal year 1980.

OBJECTIVES, SCOPE, AND METHODOLOGY

Public Law 94-142 represented a landmark in educational legislation. The law requires States to locate, identify, and evaluate all handicapped children; establish full educational opportunities for them; and establish a full services timetable. It also required the States to provide a free appropriate public education to all handicapped children age 3 to 18 by September 1, 1978, and age 3 to 21 by September 1, 1980. The act authorized significantly increased Federal funding—estimated by OSE to reach nearly $4 billion a year by fiscal year 1982 if appropriated as authorized—to help States and LEAs carry out the act.

As part of our continuing interest in the vitality of the Nation's education efforts, we began to survey the operation, administration, and future prospects of Public Law 94-142 late in 1977, about the time that implementation of the act began. During our survey, we identified three major potential problem areas:

—Implementation, while generally off to a good start, appeared to be spotty in some locations and experiencing problems and disagreements on the mechanics of the law.

—Resources, in terms of both operating funds and trained personnel, appeared likely to be inadequate to meet the act's general goals and specific requirements by the statutory deadlines.

—Management, by OSE and the States, appeared to need strengthening in order for local public schools to meet their responsibilities.

We then reviewed these issues in greater depth. We made our review in 1978 and 1979 at OSE headquarters in Washington, D.C, and at SEAs, LEAs, and schools in California, Florida, Iowa, Mississippi,New Hampshire, Ohio, Oregon, South Dakota, Texas, and Washington. In fiscal year 1979 these States reported a combined total of about 1.1 million handicapped children, or nearly 30 percent of the national 94-142 childcount of about 3.7 million. We visited 55 State, local, and other activities, including 38 LEAs with reported 1977 or 1978 enrollments of handicapped students ranging from 13 to about 15,000 children. Appendix I lists the locations visited.

The States we reviewed were selected to provide a cross-section of large and small populations, relatively high and low per-capita State and local funding levels, older and newer State handicapped laws, approved and not yet approved State handicapped plans, and geographic distribution. LEAs were selected on the basis of their geographic location and size. Neither the States nor the LEAs were selected because their programs were considered better or worse than others. Also, because the focus of our review was on identifying ways in which the Federal Government and the States can assist LEAs rather than on identifying specific problems at individual locations, we generally have not identified LEAs by name.

Our review included discussions with appropriate management, teaching, and other personnel at the Federal, State, LEA, and school levels and examinations of legislation, regulations, State plans, district and school records (including children's individual education folders), and other reports, files, and documents related to the program. We also toured school facilities, visited classes, and observed school activities. We did not attempt to evaluate overall quality of education provided at any school, nor did we routinely discuss the programs with participating children or their parents.

Also, because most of the statistics on enrollments, counts, and other data we obtained were generated by many different Federal, State, and local agency computers, we could not readily evaluate the functioning of the automatic data processing systems to assess the reliability and precision of the computer-generated data.

In June 1980 we requested comments on our draft report from the Department of Education and the 10 States included in our review. Replies were received from the Department and from Florida, South Dakota, and Texas. State officials' comments were considered in preparing this report and are recognized, where appropriate, in the report. The Department's response is included as appendix II.

CHAPTER 2

CONTROVERSY ON ESTIMATED NUMBER OF HANDICAPPED CHILDREN

Because of controversy over OSE's estimate of the number of school-age handicapped children in the United States needing special education services—about 6.2 million—compared to the actual number of children identified and reported by the States as of December 1, 1978—about 3.9 million--OSE has attempted to get States to increase the number of children identified and reported. We agree with OSE on the importance of identifying and serving all handicapped children who should be served under the 94-142 program, but we believe that OSE's efforts to increase the number of children counted and served have not been tempered sufficiently to avoid identifying and serving, as handicapped, children who do not warrant such treatment.

Although the OSE estimates were based on questionable data, they are cited in Public Law 94-142 and continue to be used by OSE to encourage States to increase their childcounts. OSE recently began a program which emphasizes increasing the childcounts but appears to show little concern for the possibility of overcounting or misclassifying children as handicapped under the act. This practice could result in unwarranted increases in the amount of Federal funds going to States. More important, it could result in possible damage to children by mislabeling them as handicapped, a danger that the Congress wanted to avoid in enacting Public Law 94-142.

Chapter 3 of this report discusses the questionable practice of including many children in the 94-142 program without determining if their impairments—which were of minor severity—adversely affected their educational performance. OSE should not continue to emphasize that States need to increase the number of children counted, without also emphasizing the dangers of misclassifying and overcounting children.

OSE ESTIMATES FAR EXCEED ACTUAL NUMBER OF HANDICAPPED CHILDREN REPORTED BY STATES

Before Public Law 94-142 was enacted, OSE estimated that about 6.7 million children age 6 to 19, or about 12 percent of the Nation's school-age population, were handicapped and needed special educational services. Because of national declines in school enrollments since the early 1970s and differences in the age ranges used to define "school age," the 12-percent estimate currently translates to about 6.2 million children age 5 to 17. As of December 1978, however, after several years of searching for handicapped children, the total numbers of handicapped children reported by the States in the age range 6 to 17 and 3 to 21 were about 3.6 million and 3.9 million, respectively. 1/ The difference between the actual count of 3.9 million children and the OSE estimates amounts to at least 2.3 million children who, if the OSE estimates are correct, are handicapped but have not been either identified or accounted for under the 94-142 program.

This difference of over 2 million children has generated serious controversy among OSE, State officials, researchers, and others. On the one hand, OSE, in defense of its 12-percent estimate, asserts that the States' efforts to identify handicapped children have not been adequate. On the other hand, State officials, researchers, and others contend that OSE's estimates are significantly overstated and that most handicapped children have been identified.

Our review of the basis for OSE's estimates showed that the reliability of the data used was questionable, but we were unable to determine whether the estimates were overstated. Some State and local education officials believed that few, if any, handicapped children had not been identified and counted in their States or districts. Other such officials believed that there were more than a few unidentified handicapped children in their jurisdictions, but that adding such children to those already counted would not increase the total to anywhere near OSE's estimate.

Congressional reliance on OSE estimates

The Congress enacted Public Law 94-142 in 1975 partly to meet the needs of what it understood to be over 4 million

1/Age ranges used by OSE to report statistics on handicapped children have varied somewhat and tend to further confuse the question of the number of such children. OSE used ages 0 to 5, 6 to 19, and 5 to 17 in various estimates furnished to the Congress, and uses age 5 to 17 for its current estimates, but required States to report their actual 94-142 childcounts in age ranges 3 to 5 and 6 to 21 for school year 1977-78, and age ranges 3 to 5, 6 to 17, and 18 to 21 for school year 1978-79. Therefore, available data are not completely comparable.

handicapped children in the United States who were not receiving the appropriate special education and related services they needed. This estimate was based on 1974 statistics OSE gave the Congress indicating that more than 8 million handicapped children up to age 21 (including 6.7 million age 6 to 19 years) required special education and related services, of which:

—About 3.9 million children (3.7 million age 6 to 19 years) were receiving an appropriate education.

—About 4.25 million children (3.1 million age 6 to 19 years) were receiving an inappropriate education or no education at all. OSE estimated this group of children to include about 1.75 million handicapped youngsters who were excluded entirely from schooling.

OSE also gave the Congress the following percentages by handicapping condition to support its estimate that the prevalence rate of school-age handicapped children in the Nation was about 12 percent: 1/

	Prevalence
Visually handicapped	0.1
Deaf	.075
Hard of hearing	.5
Speech handicapped	3.5
Crippled and other health impaired	.5
Emotionally disturbed	2.0
Mentally retarded	2.3
Learning disabled	3.0
Multiple handicapped	.06
Total	12.035

The Congress relied on these OSE estimates in considering the need for Public Law 94-142. For example, the House Committee on Education and Labor stated in its June 1975 report on

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1/In 1970 OSE estimated a total handicap prevalence rate of 10.035 percent. In 1974 OSE increased its estimate for the learning disabilities category from 1.0 to 3.0 percent, thereby increasing the total estimate to the 12.035 percent shown in the table.

H.R. 7217, the House version of the bill which became Public Law 94-142:

> "Is there a need for H.R. 7217?
>
> "Federal legislative actions and State judicial and legislative actions have brought substantial progress toward the goal of providing each handicapped child with a free, full, public education.
>
> "Yet the most recent statistics provided by the Bureau for the Education of the Handicapped estimated that of the more than eight million children, birth to 21 years of age, with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education and 1.75 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education." (H.R. Rep. No. 94-332, 94th Cong., 1st Sess. 11 (1975)). (Underscoring supplied.)

The June 1975 report of the Senate Committee on Labor and Public Welfare 1/ put it this way:

> "NEED FOR LEGISLATION
>
> "In recent years decisions in more than 36 court cases in the States have recognized the rights of handicapped children to an appropriate education. States have made an effort to comply; however, lack of financial resources have prevented the implementation of the various decisions which have been rendered."
>
> * * * * *
>
> "Whereas the actions taken at the State and national levels over the past few years have brought substantial progress, the parents

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1/Now called the Senate Committee on Labor and Human Resources.

> of a handicapped child or a handicapped child himself must still too often be told that adequate funds do not exist to assure that child the availability of a free appropriate public education. The courts have stated that the lack of funding may not be used as an excuse for failing to provide educational services. Yet, the most recent statistics provided by the Bureau of Education for the Handicapped estimate that of the more than 8 million children (between birth and twenty-one years of age) with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education. 1.75 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education. * * *" (Underscoring supplied.)
>
> "The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society." (S. Rep. No. 94-168, 94th Cong., 1st Sess. 7, 8, 9 (1975)) .

Also, in the Statement of Findings and Purpose section of Public Law 94-142, the Congress stated specifically that the Nation had more than 8 million handicapped children, of which more than half were not receiving appropriate educational services and 1 million were excluded entirely from the public school system.

In addition to relying on OSE's estimates in considering the need for the legislation, the Congress also used the 12-percent estimate to develop a major control element in 94-142's entitlement formula. Under the law each State's childcount may be no greater than 12 percent of its total school age population, age 5 to 17. As stated in the House Committee report on H.R. 7217:

> "Will this formula encourage over-labeling of children as handicapped?
>
> "No. It has been noted previously that the prevalence of children with handicapping conditions is generally agreed to represent approximately 12 percent of the total child population in the Nation. H.R. 7217 stipulates that in the reporting of the number of handicapped children being served for purposes of the formula for allocation, no State may report more than 12 percent of its total population of children aged 5-17." (H.R. Rep. 94-332 at 12.)

OSE estimates were unreliable

In our opinion, the OSE estimates of handicapped children were questionable when provided to the Congress. These estimates still have not been validated. Reports prepared for the Federal Government before 1974 clearly pointed out the incompleteness, non-comparability, and other reliability limitations of the handicap prevalence estimates available at that time.

A number of studies on the prevalence of handicapping conditions were available when OSE provided its estimates to the Congress. OSE used several of these studies in developing its estimates. However, these studies varied widely in their estimates of the number of handicapped children in the school-age population. Further, most of these studies clearly qualified the reliability of their estimates. For example, a study report prepared for OSE in the early 1970s stated that "good data on the number of handicapped persons of school or pre-school age are simply not available."

A series of studies by Mackie 1/ and several others in the 1950s and 1960s provides a good example of the questionable data that researchers used to develop their estimates. Overall, Mackie estimated that about 10.5 percent of the

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1/R. Mackie, Chief, Exceptional Children and Youth, Office of Education, HEW.

school-age children in the Nation were handicapped. This percentage was developed from estimates for several handicapping conditions, each of which was determined in a variety of ways.

For example, Mackie's estimate for the prevalence of blind children in the United States (.033 percent) was developed from the January 1960 registration figures of an organization concerned with blind persons, plus Mackie's estimate of the number of legally blind children enrolled in private and parochial schools. The the estimated prevalence of emotionally disturbed or socially maladjusted children in the United States (2 percent) was derived in part from a 1959 California study, which included prevalence estimates ranging from 4 to 12 percent, and a 1960 National Association for Mental Health leaflet, which estimated that 1 out of 10 children in public schools had emotional problems requiring psychiatric help.

However, the Mackie study clearly qualified the reliability of prevalence estimates by stating:

> "No study of sufficient scope has been conducted that would form the basis for a completely reliable estimate of the number of exceptional children and youth in need of special education. The estimates that have been made vary widely according to the categories and definitions of exceptionality used and the purpose for which they were made."

Other studies also qualified their estimates. A 1970 OSE-funded study gave an estimate of 8.7 percent, but stated that:

> "* * * generalizations based on the studies of prevalence of exceptionalities which have been reported are of questionable accuracy at best."

A 1973 HEW-funded study stated:

> "Estimates of the number of handicapped youth vary widely depending on the definitions used, the data believed, and the type of service needed. Definitions of handicaps are not consistent among service agencies. The handicap, if defined at all, is almost never clearly

> stated and, hence, <u>reliable data on the prevalence of handicapping conditions in youth generally are not available."</u> (Underscoring supplied.)

Another study prepared for OSE in the early 1970s stated:

> <u>"Good data on the number of handicapped persons of school or preschool age are simply not available.</u> Annual estimates are prepared by official agencies for some handicapping conditions, i.e., the number of blind children and of the number of deaf children * * *, but estimates of the number of children with other more prevalent handicapping conditions are not to be had in part because the concept of what constitutes a handicap has changed in recent years, particularly with the emergence of classes and schools for 'emotionally disturbed' and 'learning disabled' children, groups difficult to define in the best of circumstances." (Underscoring supplied.)

In addition to various studies, OSE had "counts" of the numbers of handicapped children in each State reported by SEAs in the late 1960s. However, a 1970 OSE-funded study stated that in 39 States the "counts" were not counts at all, but projections based on the national prevalence figures Mackie developed in the 1950s. Separate estimates were prepared for several other States, but these estimates ranged from 4.1 percent in Wisconsin and 4.2 percent in California to 24.5 percent in Nebraska and 35.0 percent in New York. The results varied widely, according to the OSE-funded study, because of the differences in how each State defined the various handicaps and in where and how each study was conducted.

Although its estimates were based on unreliable data, OSE continues to use the estimates in its work today. In a January 1979 report to the Congress, OSE relied on its historical 12-percent prevalence estimate to conclude that, since only 3.8

[1] OSE statistics for the December 1978 childcount, prepared after the January 1979 report to the Congress was published, showed that 3.9 million handicapped children were counted as being served. Therefore, OSE's estimate of the number of handicapped children not being served would be at least 2.3 million.

million handicapped children were being counted as served by the States, at least 2.4 million handicapped children remain to be served. 1/ When it prepared this report, OSE had a July 1978 draft study of prevalences of handicapping conditions prepared by SRI International which, using more up-to-date information from SEAs, from HEW's Office for Civil Rights, and from the Bureau of the Census, estimated that the rate of handicaps among children age 3 to 21 was about 7 percent. Concerning the 12-percent OSE estimate, the report concluded that the 12-percent figure was too high as the estimate for a national ceiling.

Actual childcounts fall far short of OSE estimates

The highest actual count of handicapped children by the States 1/ was for fiscal year 1980 and totaled about 4 million, far less than OSE's estimate. In fact, the average number of children counted by States as receiving any amount of special education services in fiscal years 1977 and 1978 (3.7 million and 3.8 million, respectively) was less than OSE's 1974 estimate of the number of handicapped children (3.9 million) who were receiving appropriate special education services at that time.

The following table shows the national counts taken for fiscal years 1977-80 for both the 94-142 program and the Public Law 89-313 program.

Fiscal year	94-142 child-count (note a)	89-313 child-count (note b)	Total served
1977	3,498,022	223,805	3,721,827
1978	3,554,192	222,914	3,777,106
1979	3,716,073	225,520	3,941,593
1980	3,802,511	233,174	4,035,685

a/Public Law 94-142 provided that State grants were to be calculated by averaging childcounts taken on October 1 and February 1 of the preceding fiscal year. Public Law 95-561, enacted November 1, 1978, amended the procedure by providing for a single count on December 1 of each year.

b/The Public Law 89-313 childcount is taken on October 1 of each year.

1/Includes States, the District of Columbia, territories, possessions, and the Bureau of Indian Affairs.

These national counts for fiscal years 1977, 1978, 1979, and 1980 were 7.3, 7.4, 7.9, and 8.3 percent of the school-age population—well below OSE's 12-percent estimate. For fiscal year 1980, the individual counts of all of the 58 States and other jurisdictions were lower than the 12-percent estimate. Only nine States and the Bureau of Indian Affairs counted 10 percent or more of their school children as handicapped for fiscal year 1980. At the opposite end of the scale, nine States and jurisdictions counted less than 6 percent of their school children as handicapped.

For the 10 States we visited, the fiscal year 1978 counts and percentages, including Public Law 89-313 children, were as follows:

State	Childcount	Percent of school-age population
California	324,976	6.7
Florida	125,427	7.2
Iowa	52,406	7.6
Mississippi	32,374	5.3
New Hampshire	10,302	5.3
Ohio	176,453	6.8
Oregon	36,316	7.0
South Dakota	9,098	5.5
Texas	281,468	9.5
Washington	51,088	6.1

State and local agencies believe that few children remain to be identified

Although no reliable estimate of the number of remaining unserved handicapped children exists, the States and LEAs readily acknowledge that some handicapped children have yet to be identified. However, considering their efforts for several years to find, evaluate, and serve handicapped children, they believe that the number of remaining unidentified children is relatively small and far less than the 2.3 million OSE estimate

In discussing the extent to which additional handicapped children remain to be identified and included in the childcount, it is important to note that children receiving some but not all of the special education services they need are already identified and included in the count. Increasing the services to adequate or full-service levels for these children should not affect the childcount. The count would be increased only by providing services to children—either those in school or those not in school—who are not currently receiving any special education.

SEA and LEA efforts to find handicapped children

Nearly all of the LEAs and SEAs we visited had procedures and programs for identifying and locating handicapped children as required by 94-142. Most of the LEAs had local childfind programs for identifying handicapped children who were not in school, and all but one had formal referral procedures to bring in-school children suspected of having handicaps to the attention of special education officials. In addition, 9 of the 10 States visited had statewide childfind programs, often consisting of public awareness and advertising campaigns through television, radio, newspapers, posters, and billboards, or referrals through a toll-free telephone hotline. Oregon, the one State we visited without a statewide childfind program in 1978, began a program during the 1978-79 school year.

In addition to these activities, some LEA childfind programs included contacts with doctors, nurses, or community public health and social service agencies; in a few school districts, house-to-house canvasses were conducted. Some LEAs and SEAs tried additional techniques to find handicapped children. For example, representatives from one California LEA we visited enlisted the aid of irrigation district personnel, firefighters, police officers, and other community personnel who might enter a home and see a handicapped child. An LEA in Oregon held community clinics that screened 800 to 900 children, mostly of preschool age, each year. State efforts also included innovative approaches, such as Florida's and New Hampshire's programs which arranged to have childfind literature enclosed in utility bills.

The Congress, in enacting Public Law 93-380, the Education Amendments of 1974, mandated programs for identifying and locating handicapped children at the State level. In 1975 Public Law 94-142 extended the requirements to LEAs. As a result, some State and LEA search programs to identify both out-of-school and in-school handicapped children have operated for several years. For example, Florida began its statewide childfind program in August, 1975, and New Hampshire, South Dakota, Texas, and Washington began their programs in the 1975-76 school year.

Out-of-school handicapped children

Despite their often intensive efforts, SEAs and LEAs have found relatively few handicapped children who were not in school OSE was unable to provide us nationwide data on the number of out-of-school handicapped children found through childfind efforts. However, Texas data show that its childfind program, after operating 2 years, found only 8,500 out-of-school handicapped children. This is only a 0.3-percent increase in the proportion of handicapped children in the State's school-age population. Similarly, South Dakota data show that in 1977 its childfind program identified only 178 out-of-school handicapped children. This is only about a 0.1-percent increase in the proportion of handicapped children in that State's school-age population. Comments from officials at 17 LEAs included in our review likewise indicated that their childfind programs found few unserved out-of-school handicapped children.

Also, available evidence indicates that few handicapped children remain out of school. As the following table shows, 9 of the 10 States included in our review reported to OSE an estimate of only 7,176 handicapped children who received no educational services in the 1976-77 school year. 1/ This was only about 0.05 percent of the total school-age population of over 14 million children in these States that year.

State	Total school-age population	Handicapped school-age children receiving no education: Number	Handicapped school-age children receiving no education: Percent
California	4,766,000	3,936	0.08
Florida	1,697,000	476	.03
Iowa	672,000	230	.03
New Hampshire	208,000	17	.01
Ohio	2,587,000	1,816	.07
Oregon	513,000	43	.01
South Dakota	158,000		
Texas	3,012,000	589	.02
Washington	832,000	69	.01
Total	14,445,000	7,176	0.05

1/Data from Mississippi did not separate out-of-school children from in-school children.

Furthermore, in all 6 SEAs and 17 of the 21 LEAs where we discussed this issue, officials believed that few handicapped children were not in school in their jurisdictions. Several officials attributed this to their childfind program's past success. However, at four LEAs, officials believed that some out-of-school handicapped children remained to be found. Reasons given were (1) the many illegal aliens residing in the area who are afraid to reveal themselves, (2) the lack (in the past) of a compulsory State school attendance law, and (3) the stigma of having a handicapped child that still exists in some rural areas.

In-school handicapped children

In addition to their out-of-school childfind programs, LEAs had procedures to identify handicapped children in the regular classroom. At the time of our fieldwork, 29 of the 30 LEAs we visited had formal referral procedures that teachers, parents, and others could use to bring children suspected of having a handicap to the attention of special education personnel. In most LEAs many children were being referred.

Regarding the extent to which handicapped children remain undiagnosed in the regular classroom, officials in 15 of the 22 LEAs where we discussed the issue believed that some potentially eligible children were not being referred for evaluation because some teachers retained handicapped children in the regular classroom longer than they should. The four reasons most commonly cited for non-referrals or underreferrals by regular classroom teachers were that they:

—Fear that referrals could raise questions about their teaching ability.

—Fail to recognize that a child may be handicapped.

—Know or believe that insufficient special education assessment or teaching personnel are available to meet a child's needs.

—Do not want to do the paperwork that the referral process requires.

Several LEAs have given teachers training in an attempt to overcome these referral problems.

Some LEAs had handicapped children in the regular classrooms who officials said were on waiting lists for special education because the LEAs' services were insufficient. However, officials generally pointed out that only children with the most minor or marginal impairments would be placed on a waiting list. They stated that a moderately or severely handicapped child would always be placed directly into special education classes.

LEAs may also not have identified all the handicapped children who receive their education in private or parochial schools. Although Public Law 94-142 requires LEAs to identify and evaluate such children, none of the 20 LEAs we visited that had a private or parochial school within its jurisdiction actively sought to identify and evaluate handicapped children in those schools. Officials at 19 LEAs told us that they accepted referrals and served some children from private and parochial schools but did not actively search for handicapped children at such schools. Officials at the other LEA stated that a child would have to enroll in public school to receive services.

LEA officials gave us two principal reasons for their passive efforts to find handicapped children in private and parochial schools. First, several officials said they lack the staff and funds to extend their efforts beyond their own systems. Only when their own referral systems were working properly, and sufficient funds and staff were available, would they consider trying to identify handicapped children in private and parochial schools. Second, several officials said most private and parochial schools refuse admission to the more severely handicapped children. These officials therefore believed that only a few handicapped children with minor impairments, such as speech or learning disabilities, are enrolled in private and parochial schools. Of the 12 LEAs that were providing special education services to some private or parochial school children at the time of our fieldwork, 7 were providing speech therapy services only. The other five LEAs provided such services as physical therapy, psychological counseling, or services for the learning disabled in addition to speech therapy.

Thus, while State and LEA officials acknowledged that some handicapped children remain unidentified and unserved, both out of school and in the regular classroom, they believe the numbers are relatively small.

OSE SHOWS LITTLE CONCERN FOR POSSIBLE MISLABELING AND OVERCOUNTING OF CHILDREN

In September 1978, OSE launched a major "new initiative" to reduce the discrepancy between the number of handicapped children counted and its 12-percent national prevalence estimate by trying to get States to increase the 94-142 count. However, despite the questionable reliability of its estimate, OSE documents showed that it apparently has no plans to make a new study of the prevalence figures as part of its new initiative.

Instead, OSE officials have contacted at least 50 States and territories that counted less than 10 percent of their total student population as handicapped to "strongly urge" them to accept OSE technical assistance on increasing the childcount. OSE plans also call for asking States to "set specific [numerical] targets of their own for finding and serving handicapped children" and following this up with monitoring and assessment activities, including "careful review" of States' annual program plans before awarding grants and "special site visits" to key States. Furthermore, under the new initiative all OSE discretionary programs, which provide grants for such activities as technical assistance through Regional Resource Centers, model demonstration projects, and research and development projects, are to be refocused to emphasize finding and serving more handicapped children. OSE officials also contacted advocate groups, urging them to become more involved in finding and serving handicapped children. OSE has placed special national emphasis on increasing the count of speech-impaired children, a category which, as discussed in chapter 3, already includes many children whose eligibility is unclear.

As part of its initiative, OSE identified several factors that it believed could have caused undercounts of handicapped children:

—Problems with State and LEA data collection and processing procedures.

—Inadequate and/or inefficient child diagnostic and evaluation capability.

—Varying definitions used by the States to identify handicapped children.

—Inadequate special education services at the secondary-level.

—Unavailability and poor distribution of special education personnel.

—Other specific problems common to large urban areas, remote rural areas, or other special populations.

It is these problems—all focused on eliminating undercounts—that OSE is attempting to overcome in its efforts to get States to increase the number of handicapped children counted and served.

However, available documents indicate that OSE has not pointed out or cautioned States about the need to maintain balance—that is, to carefully evaluate and classify children so that those not eligible are not labeled as handicapped.

Overcounting children or improperly labeling them as handicapped can have at least two major adverse consequences. First, State counts would be inflated and the appropriation and distribution of Federal funds could be affected. Second, and even more important, children would be erroneously labeled as handicapped and this could have a stigmatizing effect that could be exceedingly difficult for them to overcome. This latter danger was one the Commissioner of Education expressed concern about in 1975 hearings on H.R. 7217, a bill containing a funding formula identical to that contained in S. 6, which became Public Law 94-142. The Commissioner's prepared statement included the following comments:

> "In addition, funding formulas which are based on the number of served handicapped children, while creating incentives for States to attempt to serve more children, may also encourage States to classify many children as handicapped too freely in order to qualify for funding. While this problem is partially met by the 12 percent ceiling in the bill there may well be local education agencies which will too liberally identify children if they happen to have less than 12 percent who are handicapped.

> "Our current figures estimate that between 4 percent and 6 percent of the children in school are receiving special services because of various handicapping conditions. In their haste to increase by two or three times the number of handicapped children served it is very likely that education agencies will be encouraged to 'label' children with mild, easily remedied, handicapping conditions in increasing numbers. The current reports of widespread mislabeling of (and consequent damage to) disadvantaged and bilingual children by labeling them as mentally retarded or emotionally disturbed must be carefully weighted [sic] in judging the merits of this approach to increased funding." 1/

In response, a Congressman pointed out that the 12-percent counting limit was included in the bill to prevent overcounting abuses.

CONCLUSIONS

The controversy over OSE's estimate of the number of school-age handicapped children needing services, compared to the numbers counted by the States as being served, has resulted in an intensive effort by OSE to get the States to increase their childcounts.

Although identifying and serving all handicapped children needing services under the act is important, we are concerned that OSE's effort to increase the childcounts might cause overcounting and mislabeling of children as handicapped. The key to this problem is the ability of States and LEAs to accurately identify, evaluate, and serve children with handicaps. OSE has identified several problems States and LEAs may be having in dealing with handicapped children. But OSE has emphasized increasing the childcounts rather than solving these problems.

1/"Education and Training of the Handicapped and H.R. 7217, Education for All Handicapped Act of 1975, Hearings Before the Subcommittee on Select Education of the Committee on Education and Labor, 94th Cong., 1st Sess. 134 (1975) [Statement of T. H. Bell]."

RECOMMENDATIONS TO THE SECRETARY OF EDUCATION

We recommend that the Secretary:

—Stop using, at least temporarily, the 12-percent handicap prevalence estimate as the basis for encouraging States to increase the number of children counted and served.

—Fully evaluate, either directly or through the States' program monitoring efforts, the effectiveness of LEA programs and processes for accurately identifying, evaluating, and serving all handicapped children needing services under the act.

—Reconsider the validity of the 12-percent handicap prevalence estimate based on the evaluation results.

—Assist States and LEAs to eliminate deficiencies in their programs and processes for identifying, evaluating, and serving handicapped children.

DEPARTMENT OF EDUCATION COMMENTS AND OUR EVALUATION

The Department of Education commented on the contents of this report in a July 14, 1980, letter. (See app. II.)

The Department agreed with our recommendations (1) to fully evaluate the effectiveness of LEA programs and processes for identifying, evaluating, and serving all handicapped children needing services, (2) to reconsider the validity of the 12-percent prevalence estimate, and (3) to assist States and LEAs to eliminate program deficiencies.

However, the Department did not agree that it should discontinue, even temporarily, the use of its 12-percent estimate as a basis for encouraging States to increase the number of children counted and served.

The Department stated that, while it recognizes that the 12-percent estimate was not definitive, it believes that there are no compelling data that would justify revising the estimate. In fact, the Department believes there are "strong indications" that the historical 12-percent prevalence estimate is reasonable, pointing to four States having counts over 10 percent. Also, the Department believes that SEAs and LEAs may not be doing all they can to identify handicapped children and that the 12-percent figure is useful as a general guide in determining whether all handicapped children are served. Finally, the Department stated that it places equivalent emphasis on States' procedural safeguards to prevent misclassification.

The main thrust of our report is not to resolve the controversy on the number of handicapped children needing services or to prove that OSE's 12-percent estimate is overstated. Rather, the report points out that OSE's efforts to persuade States to raise their childcounts to the 12-percent level were not being tempered with enough caution to minimize the possibility of misclassifying and mislabeling children as handicapped. Even though the Department acknowledges that the 12-percent estimate is not definitive, our review showed that OSE was using the estimate in its program management and oversight as if it were.

The Department cited four States with counts of over 10 percent in December 1978 as a "strong indication" that the 12-percent estimate is reasonable. Our report points out, however, that most States and jurisdictions had counts under 10 percent. Also, our report points out that, while States agree that they have not identified all handicapped children, State and LEA officials believe that the number of unidentified children is far below OSE's estimate.

Finally, the Department stated that in its program oversight activities it reviews a State's procedures for preventing misidentification and cited one instance where a large number of children were removed from the childcount. In our opinion, this after-the-fact review at the State level is not sufficient to overcome the thrust of OSE's efforts, under its "new initiative," to persuade States and LEAs to increase their count of handicapped children. We continue to believe that a more effective approach would be for the Department to stop, at least temporarily, relying on the 12-percent estimate as the basis for encouraging States to serve more handicapped children, and focus instead on updating the national prevalence rate and eliminating the barriers to full identification and service.

In September 10, 1980, hearings before the Subcommittee on Handicapped, Senate Committee on Labor and Human Resources, the Assistant Secretary, OSE, testified on the percentage of children being served as handicapped. The Assistant Secretary said that the growth year by year in special education enrollment, plus reports that there are still school children whose disabilities have not been appropriately identified, leads the agency to believe that its original estimates of the prevalence of educationally disabling conditions are still reasonable.

As discussed in this report, controversy has arisen because State counts of children being served have fallen substantially short of the original estimate that 12 percent of the Nation's school-age population is handicapped. State counts have averaged about 7.5 percent of the school-age population for the past several years and stood at 7.9 percent in December 1978. Computerized data provided to us by OSE dated July 21, 1980, showed that the most recent State counts of handicapped children (as of December 1979) averaged 8.25 percent of school-age population.

In his testimony, the Assistant Secretary presented data showing the percentage of handicapped children in school enrollment, as opposed to the percentage in total school-age population. Therefore, the percentage cited by the Assistant Secretary—9.5 percent—was higher than the 8.25 percent computed by relating the number of handicapped children to school-age population.

We are not aware of any previous instance in which OSE has used enrollment data as the base for calculating the percentage of handicapped children served. In all past calculations that we are aware of—including the original 12-percent estimate, annual public information reports, and data presented in the agency's status report to the Congress in January 1979—school-age population has been the base figure. Even in these calculations, the percentages of children served were inflated because the childcounts, which include children ages 3 to 21, were related to the school-age population, ages 5 to 17.

In commenting on this report, the Department of Education defended the reasonableness of its historical 12-percent estimate by pointing out that some States had counts of over 10 percent. The enrollment-based data in the Assistant Secretary's September 1980 testimony show that 20 States had counts of over 10 percent. However, relating the Assistant Secretary's figures on "children served" to school-age population instead of enrollment shows that only nine States had counts of over 10 percent.

Finally, if enrollment data are now considered to be better than school-age population data for calculating the percentage of handicapped children and if such percentages are to be related to the historical estimate, the historical estimate should be adjusted. The 12-percent estimate was based on school-age population. If it had been based on enrollment data, it would have been about 14 percent.

services" that are specified in the act as supportive to special education.

The Education of the Handicapped Act, as amended, requires that a child have one of nine impairments for which he or she needs "special education and related services" to be counted for Federal funding as "handicapped." The act states:

> "The term 'handicapped children' means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, *who by reason thereof require special education and related services.*" (20 U.S.C. 1401(1)) (Underscoring supplied.)

Federal law also defines the terms "special education" and "related services":

> "* * * The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.
>
> "* * * The term 'related services' means transportation, and such developmental, corrective, and other supportive services (*including speech pathology* and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children." (20 U.S.C. 1401(16)), (17)) (Underscoring supplied.)

According to these definitions from the act, "special education" is instruction which is specially designed to meet a handicapped child's unique education needs—needs which cannot be met through a regular classroom program and therefore require different or added instructional procedures. The act states that "related services," on the other hand, are those supplementary services which *may be needed* to correct, treat, or reduce the impact of the *child's impairment* and thus improve the child's ability to benefit from "special education." The law explicitly lists speech *pathology* (often used interchangeably with the term speech *therapy*) as a "related service."

However, it is not entirely clear whether, in the absence of "special education," children receiving only speech therapy or the other services specifically listed in the act as "related services" were to be considered eligible under the act. House and Senate committee and conference reports on the bill that became Public Law 94-142 did not conclusively address the question, although the committee reports implied that the Congress may not have intended or designed the act to include children who have minor impairments developed from poor habits, their home environment, or slow development. The committee reports indicated also that the principal objective was to serve the more severely handicapped children who, because of their impairments, need special education and related services.

In its report, the House Committee on Education and Labor stated:

> *"The definition [of handicapped child] clearly refers only to children whose handicap will require special education and related services.* For example, such a term does not include children who may be slow learners."
>
> * * * * *
>
> "By placing the cap on the number of learning disabled children a State may count for the purpose of Federal assistance *we are instructing the States that their principal objective should be directed at assisting these children who are the most severely handicapped*." (H.R. Rep. No. 94-332, at 8.) (Underscoring supplied.)

In its report, the Senate Committee on Labor and Public Welfare stated:

> "*The definition [of handicapped child] clearly refers only to children whose handicaps will require special education and related services, and not to children whose learning problems are caused by environmental, cultural or economic disadvantage*. For example, such term does not include children who may be slow learners. The Committee urges the Commissioner of Education to examine closely this definition and the population group identified as having this disability [learning disability] to assure that no abuse takes place with regard to the provision of services under this act." (S. Rep. No. 94-168 at 10.) (Underscoring supplied.)

These committee reports indicate that the Congress did not intend the program to cover children with mild handicaps, or those receiving only related services. However, two other legislative history documents contained conflicting discussions from administration representatives concerning mild handicapping conditions. The Deputy Assistant Secretary of HEW appeared to endorse Federal aid for children with speech problems and other mild handicaps when he stated:

> "H.R. 70 [predecessor to H.R. 7217] is concerned with providing adequate educational opportunities to handicapped children in the public education system. Our best estimate is that about 6 million children between the ages of 5 and 19 have handicapping conditions which will require special educational services for at least some portion of their school years. Other estimates gathered from State educational agencies or drawn from various sampling studies, show between 8 and 12 percent of all children as handicapped. One reason for the wide range of estimates is that there are many handicapping conditions, each of which may range from mild to severe in their impact on learning. *For some children such as those with speech problems, reading or learning disabilities, or development emotional disturbances, the period of special intervention may be quite short. Mildly handicapped children with hearing or vision impairments, with orthopedic handicaps, or with mild retardation will require only part-time programs of special education within a regular*

> school program. Other handicaps are, of course, vastly more severe and require intensive services over long periods of time." 1/ (Underscoring supplied.)

On the other hand, the Commissioner of Education appeared to express concern about including children with mild, easily remedied handicaps in the program when he stated:

> "In addition, funding formulas which are based on the number of served handicapped children, while creating incentives for States to attempt to serve more children, may also encourage States to classify many children as handicapped too freely in order to qualify for funding. While this problem is partially met by the 12 percent ceiling in the bill there may well be local education agencies which will too liberally identify children if they happen to have less than 12 percent who are handicapped.
>
> "Our current figures estimate that between 4 percent and 6 percent of the children in school are receiving special services because of various handicapping conditions. In their haste to increase by two or three times the number of handicapped children served it is very likely that education agencies will be encouraged to 'label' children with mild, easily remedied, handicapping conditions in increasing numbers. The current reports of widespread mislabeling of (and consequent damage to) disadvantaged and bilingual children by labeling them as mentally retarded or emotionally disturbed must be carefully weighted [sic] in judging the merits of this approach to increased funding." 2/ (Underscoring supplied.)

1/A Bill to Provide Financial Assistance to the States for Improved Educational Services for Handicapped Children, H.R. 70: Hearings Before the Select Subcommittee on Education of the Committee on Education and Labor, 93d Cong., 2d Sess. 292 (Statement of Charles M. Cooke, Jr., Deputy Assistant Secretary of Legislation, Education, HEW).

2/Hearings Before the Subcommittee on Select Education of the Committee on Education and Labor, 94th Cong., 1st Sess. 134

Because of these conflicting views, and the absence of definitive guidance in the legislative history, we were unable to conclusively determine whether the Congress intended children with mild handicaps, or those requiring only related services, to be covered under the act.

Although the eligibility of children receiving only related services is not specifically authorized in the act, program regulations provide that, under certain conditions, related services, such as speech therapy, can be considered as "special education" and thus make a child 'eligible even though he or she is not receiving any other services.

INSUFFICIENT GUIDANCE IN PROGRAM REGULATIONS

OSE regulations attempt to clarify the eligibility question by stating that, ordinarily, children who are receiving only related services are not eligible for the program. The regulations provide, however, that a service specifically listed in the act as a "related service" may be considered as "special education" if (1) the service meets the act's general definition of special education and (2) is considered special education rather than a related service under State standards. In our opinion, the regulations do not clarify sufficiently the question of whether, and under what conditions, speech therapy and other related services can be considered special education.

The regulations (45 CFR 121a.14) first define "special education" in the same manner as the act, as follows:

> "(a)(1) As used in this part, the term 'special education' means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions."

The regulations then expand the definition of "special education" to include "related services"—thus permitting children receiving only related services to qualify under the program—if two conditions are met:

> "(2) The term [special education] includes <u>speech pathology</u> or any other related service, if the service consists of specially designed

> instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered 'special education' rather than a 'related service' under State standards." (45 CFR 121a.14(a)(2)). (Underscoring supplied.)

If these conditions are not met—for example, if parents are charged for a related service, or if the child does not meet the act's or regulation's general definition of "handicapped"—then a child who is receiving only a related service is not eligible under the regulations to be counted or served. This point is made twice in the regulations. First, following the definition of the term "special education," the regulations state:

> "The definition of 'special education' is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. * * * The definition of 'related services' * * * also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, <u>if a child does not need special education, there can be no 'related services' and the child (because not 'handicapped') is not covered under the Act</u>." (Comments to 45 CFR 121a.14.) (Underscoring supplied.)

Later, in a section of the regulations entitled "Who May Be Counted," the regulations state:

> "With respect to children who only receive 'related services,' this is governed by statutory language. 'Related services' are only those 'required to assist a handicapped child to benefit from special education.' * * * <u>If a child does not need special education, there can be no 'related services,' as that term is defined in the Act.</u>" (42 Fed. Reg. 42515 (1977)). (Underscoring supplied.)

Thus, unlike the statute, the regulations specifically permit children receiving related services to be included in the program if the related services meet the definition of special education for a handicapped child.

The regulations interpret the act in several other key areas. First, in defining each handicap, the regulations require that, to be considered as "handicapped," a child must have an impairment which is severe enough to adversely affect the child's educational performance (an exception category is specific learning disabled). For example, the regulations define speech impaired as follows:

> "* * * 'speech impaired' means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, <u>which adversely affect a child's educational performance</u>. (45 CFR 121a.5(b)(10)). (Underscoring supplied.)

Second, the regulations require LEAs to document a child's eligibility for special education.

Thus, to classify and count a child as handicapped for the 94-142 program under the regulations, an LEA must determine and document that a child has an impairment listed in the law or regulations to such a degree that it adversely affects his or her educational performance.

The regulations also recognize that some children's impairments are not severe enough to warrant their being included under the term "handicapped." Regarding the children a State may report as handicapped, the regulations point out:

> "For consistency in this regulation, a child with a 'disability' means a child with one of the impairments listed in the definition of 'handicapped children' * * * if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a 'handicapped' child." (Comments to 45 CFR 121a.124.)

However, while the regulations recognize that some children's impairments are so mild that they do not adversely affect their education, OSE had not defined or established criteria for applying the adverse effect requirement, nor did its regulations require the States to establish their own criteria. 1/

OSE policy officials and compliance officials told us in November 1978 that OSE had not made any policy decisions or interpretations, or issued any definitions or guidance to the States, on the nature and the meaning of the "adverse effect" requirement. They stated that, unless a State or LEA had specifically sought an interpretation of the requirement, OSE would generally have had no reason to issue such guidance and thereby express its views on the meaning. The officials said, however, that until we brought the regulation's wording to their attention, they had not recognized that the regulations defining each handicap required a determination of adverse effect as a condition of eligibility.

We were also unable to determine OSE's views on the meaning of the "adverse effect" requirement by examining how it enforces the provision in its on-site monitoring visits since, according to OSE compliance personnel, their inspections at LEAs do not include a review or spot check of LEA eligibility determinations to see whether the requirement has been applied.

Thus, although the regulations repeatedly emphasize in the definition of each handicap that a child's impairment must adversely affect his or her educational performance in order for the child to be covered under the act and although the regulations require States and LEAs to determine and document the adverse effect, OSE had not provided guidance to the States on what the requirement means or how it should be applied.

LEAs ARE NOT APPLYING AN ADVERSE EFFECT TEST

The absence of guidance and instructions from OSE on the adverse effect requirement meant that the States and LEAs were free to interpret the provision themselves. Most States and LEAs included in our review, however, simply disregarded the requirement when classifying and counting children for 94-142 funding.

1/In July 1980 OSE provided guidance to States on the "adverse effect" requirement as it relates to speech-impaired children. (See p. 51.)

While children with many different handicaps sometimes receive speech therapy or other related services to supplement their special education instruction, children classified as speech impaired generally receive speech therapy only. Nationally, an average of about 1.2 million children were classified as speech impaired by the States in each of the first 3 years of the program. This category, the single largest handicap group, accounted for an average of about 35 percent of all children counted for 94-142 funding.

According to special education personnel in the LEAs included in our review, children usually were receiving speech therapy to treat articulation, fluency, voice quality, or similar problems. Articulation problems can include substitutions and distortions of speech sounds, such as "wabbit" for "rabbit," "bud" for "bird," or "thon" for "son." Fluency problems may include stuttering, hesitations, and repetitions. Voice quality problems can include differences in the intonation, pitch, and loudness of a child's speech which are not appropriate for the child's age or sex.

According to officials in 18 of 28 LEAs where we discussed the issue, LEA policy or practice does not require that a child's speech impairment has to adversely affect his or her educational performance to count the child for 94-142 funding. It appeared that most children whose speech attracted attention in any way, or caused a social or behavioral problem, were receiving speech therapy and were being counted for 94-142 funding, even if they were doing very well in the regular classroom and showing no educational deficiency.

Officials at 10 of the LEAs told us that, if they were directed to apply an "adverse effect on educational performance" requirement, their count of speech-impaired children would be reduced substantially (percentage reductions cited ranged from 33 to 75 percent). For example, a director of special education in a California LEA stated that enforcing such a requirement would reduce his LEA's 312-student speech count by two-thirds. A director in an Oregon LEA told us that applying such a requirement would result in the district's dropping its count of 360 speech-impaired children by 50 percent. A director in a South Dakota LEA stated that, of the 240 children his LEA counted as speech impaired, 60 percent would no longer qualify.

Five other LEA officials indicated that, unless the terms "adversely affects" and "educational performance" were defined stringently, applying the requirement would probably reduce their childcount by only a small amount, if at all. They said that, if necessary, their staffs could undoubtedly find some way to get around the requirement by tying a child's classroom performance to his or her speech defect. For example, officials stated that they might find that a child who receives speech therapy made a spelling error on a particular letter or word that the child has trouble pronouncing, or they might find that the child seems reluctant to speak before the class. In our opinion, however, these problems are common among school children, handicapped or not, and illustrate the questionable decisions that many LEAs are making in classifying children as handicapped for 94-142 funding. Officials also stated that the effect that a child's speech impairment has on educational performance is not readily apparent and, in many cases, proving adverse effect would be difficult or time consuming.

In contrast to the Federal regulations, the regulations of at least four States we visited—Florida, Mississippi, Oregon, and Texas—specifically allowed LEAs to classify children as speech impaired for State funding purposes even if the impairment did not adversely affect their classroom performance. For example, regulations of the Florida State Board of Education provided:

> "(1) Speech and language impaired—one whose basic communication system, whether verbal, gestural or vocal, evidences disorders, deviations or general developmental needs in language, speech, fluency or voice quality, which hinder his academic learning, *social adjustment, self-help skills or communication skills*." (Underscoring supplied.)

Texas regulations in effect until the 1978-79 school year stated:

> "SPEECH HANDICAPPED children are children who have abnormality of speech *calling adverse attention to itself, impairing communication, or causing maladjustment* arising out of problems with articulation, rhythm, voice, and/or oral language." (Underscoring supplied.)

LEA officials from the three States where we discussed the issue (Mississippi, Oregon, and Texas) told us that, using their State guidelines, they count all children receiving speech therapy in their districts for 94-142 funding.

Without mentioning the Federal adverse effect test, two other States, California and Washington, specifically instructed their LEAs to count all children receiving speech therapy in the 94-142 childcount. For example, Washington's instructions to LEAs for the 1978 childcounts stated:

> "Your unduplicated count must include all those children who:"

* * * * *

> "* * * Are receiving speech therapy from the CDS [communication disorder specialist] as their total special- education program."

Thus, many LEAs were providing speech therapy to children under State or LEA eligibility criteria which did not call for a test of adverse effect on educational performance, as do the Federal regulations.

Under their own standards, LEAs can, of course, provide speech therapy to whomever they wish. However, under Federal regulations, they are not permitted to count a child for Federal funding unless the child's impairment adversely affects his or her educational performance. Yet in most of the LEAs where officials told us they did not apply an adverse effect test, the LEA counted all children receiving speech therapy for 94-142 funding.

MOST SPEECH-IMPAIRED CHILDREN MIGHT NOT MEET AN ADVERSE EFFECT TEST

In addition to finding that most States we visited did not apply the required adverse effect test to their children as a condition of eligibility for 94-142 funding, we found significant differences between the services provided to speech-impaired children and the services provided to all other handicapped children. Compared to children with other impairments, most of the children classified as speech impaired

—received small amounts of service;

—received therapy for a short time, generally in the first few years of their education; and

—had little modification of their regular classroom programs.

These factors, along with comments by LEA officials, raise questions on whether the speech impairments of most of these children adversely affected their educational performance to any significant degree and whether these children would have met the eligibility criteria in 94-142 regulations if they had been applied. As stated previously, officials in many LEAs said that substantial percentages of their speech-impaired children would not pass an adverse effect test if one were applied. (See p. 38.)

Little therapy provided

Most children counted as speech impaired spend very little time with their therapists compared with the time other handicapped children spend with their special education teachers. According to officials at 28 LEAs where we discussed speech therapy, their speech-impaired children usually receive no more than 30 to 90 minutes of therapy a week, usually in small groups. This allows speech therapists to carry large caseloads of children. As the table on the following page (compiled from OSE's January 1979 report to the Congress) shows, the average speech therapist in the Nation served three times as many children in school year 1976-77 as did teachers of all other handicapped children.

The high caseloads mean that speech-impaired children receive only about one-third as much service as all other handicapped children. This analysis assumes that speech therapists provide no service to children with other handicaps and spend all their time providing speech therapy. In reality, speech therapists do provide speech services to children who have other handicaps, and they perform other tasks as well. Therefore, the actual average time available to be spent individually with children classified as speech impaired is usually much less than the average of about 34 minutes a week shown in the table.

State	Speech therapists: Average caseload (note a)	Speech therapists: Average minutes per child in a 25-hour week (note a)	All other teachers of the handicapped: Average caseload	All other teachers of the handicapped: Average minutes per child in a 25-hour week
California	47	32	16	94
Florida	53	28	14	107
Iowa	39	38	12	125
Mississippi	38	39	11	136
New Hampshire	b/4	375	10	150
Ohio	64	23	16	94
Oregon	36	42	19	79
South Dakota	51	29	10	150
Texas (note c)	48	31	30	50
Washington	75	20	16	94
National total	44	34	15	100

a/Calculation covers only children classified as speech impaired. Additional handicapped children (e.g., mentally retarded, deaf) served by the speech therapist would increase the average caseload and decrease the average minutes per child.

b/The disparity between New Hampshire and the other States is due to New Hampshire's method of counting children. (See p. 47.)

c/Texas' Commissioner of Education told us in July 1980 that the average caseload for speech therapists is around 60 students, the average minutes per child in a 25-hour week is 60, and that the average caseload for other teachers of handicapped children is about 20, with the average minutes per child in a 25-hour week being unknown. As previously stated the data shown in the table were taken from OSE's January 1979 report to the Congress.

For example, one California LEA we visited had five therapists to meet the needs of 350 speech-impaired and other handicapped children spread throughout an entire county. This is an average of 70 children per therapist, or about 21 minutes a week per child. At an LEA in Ohio, the average caseload per speech therapist was about 77 children. With such a large caseload, a therapist can spend an average of only about 20 minutes a week with each child. In another Ohio LEA, the caseload per speech therapist averaged 124 children. A therapist there can spend only about 12 minutes a week with each child and then only if the therapist does no paperwork or performs no other activities. Speech therapists in LEAs in other States had similarly high caseloads.

These high caseloads for speech therapists were permitted and sometimes even mandated by State standards in many States in our review. For example, California regulations allowed speech therapists to carry a caseload of up to 90 children. In Ohio, a speech therapist's caseload could reach 110 students, and generally had to be at least 60 students. This did not give therapists much time to provide individual service to students, especially since Ohio limited class sizes to five students or fewer at a time. Texas regulations cited the minimum caseload for a speech therapist as 60 students; a second therapist could be added only when the caseload reached 110 students. 1/ Similarly high caseload standards existed in other States we visited.

Contrasted with the large number of children served by speech therapists, the caseloads permitted for teachers of other handicapped children in these States were much lower. In Ohio the limit was 6 to 8 students for hearing-impaired children, 8 to 10 for learning disabled and emotionally disturbed children, and 12 to 18 for educable mentally retarded children at the elementary level. The highest caseload Texas regulations permitted for a disability other than speech impairment was 16 students—in a class for the learning disabled—and the caseloads for teachers of the visually handicapped, hearing impaired, orthopedically handicapped, mentally retarded, emotionally disturbed, and other health impaired were limited to 6 students. 1/ Similar disparities between speech therapists' and other teachers' caseloads occurred in most other States we visited.

1/Texas' Commissioner of Education told us in July 1980 that these statements are inaccurate, but did not provide what he considered to be accurate statements of caseload requirements. Our statements were taken from the Texas Education Agency's "Policies and Administrative Procedures for the Education of Handicapped Students," effective beginning with school year 1978-79 (p. 113).

Problems quickly corrected

Most speech-impaired children also receive services for a relatively short time, generally in the earliest years of their education. Their impairments are essentially corrected after a year or so of speech therapy. This is not generally true for children with other handicapping disabilities.

According to officials in 28 of 30 LEAs we reviewed, most of their children receive an average of 1 to 1-1/2 years of speech therapy, usually in kindergarten and grades one to three. Several of these officials stated that speech defects are usually corrected quickly because most speech impairments result from either poor habits, inadequate training or attention at home, slow development, or other causes which are relatively easy to treat and correct at an early age.

Children that LEAs count as speech impaired are also much younger on the average than children with other handicaps. For example, statistics from the five Texas LEAs we visited showed that about 95 percent of the children classified as speech impaired are age 10 or less, compared with only about 47 percent of the children who have other handicapping conditions. New Hampshire statistics showed that 81 percent of all children in the State classified as speech impaired are age 10 or less, compared with 34 percent of the children receiving special education for another impairment.

Thus, most children that LEAs count as speech impaired are the younger students, generally in grade three or below, whose impairments are treated and are corrected or outgrown after about a year of speech therapy for about 30 to 90 minutes a week. This is not true for children with other handicaps, who often receive special services during much of the school day for many years, or even for their entire school life.

Little or no program modification

Most children classified as speech impaired also spend significantly less time receiving services outside the regular classroom than do other children whom LEAs count as handicapped, and rarely, if ever, is the speech-impaired child's regular classroom program modified because of his or her impairment.

Substantially all children classified as speech impaired in the States in our review received their therapy service as a supplement to their regular classroom program, with minimal interruption of that program. Local school officials also told us that teachers usually do not modify their regular classroom program for the speech-impaired child except to provide occasional verbal reinforcement to remind the child of proper pronunciation.

This was rarely true for children with other handicapping impairments, who often received special services as a substitute for regular classroom programs. For example, statistics Iowa provided to OSE showed that 98 percent of the speech-impaired children spent their entire school day in the regular classroom, except for the short period of speech therapy they received each week, but only 1 percent of the other handicapped children in the State received their education that way. The other children generally attended special classes for all or part of each day. Similar disparities occurred in South Dakota, where 95 percent of the speech-impaired children received their basic education entirely in the regular class, compared with only 16 percent of the other handicapped children, and in Washington, where the figures were 100 percent and 5 percent, respectively.

94-142 PROGRAM NOT DESIGNED FOR CHILDREN RECEIVING SPEECH THERAPY ONLY

Some LEAs were experiencing problems applying 94-142 requirements, especially the IEP requirement, to the children they classified as speech impaired. The problems may have been occurring in part because 94-142 was not designed for these children. However, many LEAs seemed willing to tolerate the problems because the Federal contribution for such children in the future may exceed the cost of providing speech therapy.

Public Law 94-142 requires that each handicapped child have an IEP, a written document which must include information on the child's educational performance; the goals, objectives, and timetables for improving that performance; and the special education and related services to be provided. The IEP is to be developed at a meeting attended by the child's teachers, a representative of the LEA other than the teacher, and the child's parents or guardian. To count children receiving speech therapy as handicapped for 94-142 funding, LEAs must not only prepare IEPs, but may require both the regular classroom teacher and the speech therapist to participate in the

IEP process and attend a meeting with the parents and an LEA representative.

Some LEA officials told us that the IEP process was not really appropriate for children who receive only speech therapy. They complained, among other things, that:

—The IEP process forces a school district to label children as handicapped who are really not.

—Preparing and processing the IEP often takes almost as much time and effort as remedying the child's speech defect.

—Speech therapists have such high caseloads that, to complete IEPs by the childcount deadlines, the therapists often have to reduce the amount of services they provide. In the past, some LEAs stopped providing speech services altogether for several days or weeks to prepare and process IEPs.

The last point was a common complaint. Some speech therapists prepared 50 to 100 IEPs and by law had to attend an IEP meeting on each one. According to an Oregon LEA official, one speech therapist had to prepare IEPs and hold meetings for 160 children.

For some California LEAs, preparing IEPs on speech-impaired children was especially costly. According to LEA officials, the State finances speech therapy based on the amount of time a therapist spends providing direct services to children. They said that, when speech therapists reduced the time they spent providing speech services in order to prepare IEPs, the LEA received less State funding.

However, LEAs have apparently been willing to bear these inconveniences and costs because, in the long run, they might receive much more 94-142 funds for these children than it costs to provide the service. According to a 1977 Congressional Budget Office funding projection for Public Law 94-142, the estimated cost of providing speech therapy in school year 1981-82 will be $406 a child, whereas the estimated 94-142 Federal grant authorization will be $784 per child, or $378 more than the estimated cost per child classified as speech impaired. Since OSE estimates that at least 4.1 million handicapped children will be counted by that year and since the States have been counting about 35 percent of their handicapped children as speech impaired, as many as 1.43 million speech-impaired children could be reported. In that event the States could receive about $540 million more in Federal funds than it will cost them to provide speech services to their speech-impaired children.

EFFECT ON CHILDCOUNTS OF FAILING TO APPLY AN ADVERSE EFFECT TEST

As discussed previously, many of the children whom States and LEAs classified as speech impaired might not have met an "adverse effect" test and therefore might not have been eligible to be counted for 94-142 funding under program regulations. We do not know how many of these children have been counted. However, officials at 10 LEAs told us that, if they had applied an "adverse effect" requirement, their counts of speech-impaired children would have been reduced substantially (by 33 to 75 percent). Also, New Hampshire's statute contained a provision similar to OSE's adverse effect requirement, and its percentages of speech-impaired children counted in fiscal years 1977, 1978, and 1979 were substantially lower than in most other States.

A speech-impaired child in New Hampshire is considered a physically handicapped child, who is defined in the State's statutes as:

> "* * * a person 3 years of age or older but less than 21 years of age, married or unmarried, whose activity is or may become so far restricted by reason of physical defect or infirmity, however caused, as to reduce his normal capacity for education or self-support, or both." (Underscoring supplied.)

According to a top special education official in the New Hampshire Department of Education, children are not considered handicapped for Federal funding if they receive speech therapy or another service for a minor problem. This official said that only when their progress in the regular classroom is significantly impeded by their impairment are these children categorized as handicapped.

New Hampshire LEAs appeared to have observed the requirement from the beginning of the 94-142 counts in 1976. According to officials at all three LEAs we visited, the only children receiving speech therapy who are counted for Federal funding are those whose disabilities hinder their educational performance. These LEAs noted that many children receive speech therapy for minor speech defects, mainly articulation problems, but they do not consider these children handicapped under the Federal definition and they therefore do not count them for 94-142 funding. One LEA's records showed that, of 50 children receiving only speech therapy in the 1977-78 school year, the LEA counted 23 for 94-142 funding. In the other two LEAs, officials said that, of 60 and 150 children receiving only speech therapy, 36 and 60 children, respectively, were counted for 94-142 funding. Thus, less than half the speech-impaired children in these three LEAs were counted for Federal funding.

The graph on the following page shows the percentages of children classified as speech impaired in the States we visited and indicates the significant impact on childcount that occurs when a State, such as New Hampshire, applies an adverse effect requirement in classifying handicapped children.

As the graph shows, the difference between New Hampshire's count of speech-impaired children and that of the other States we visited was significant.

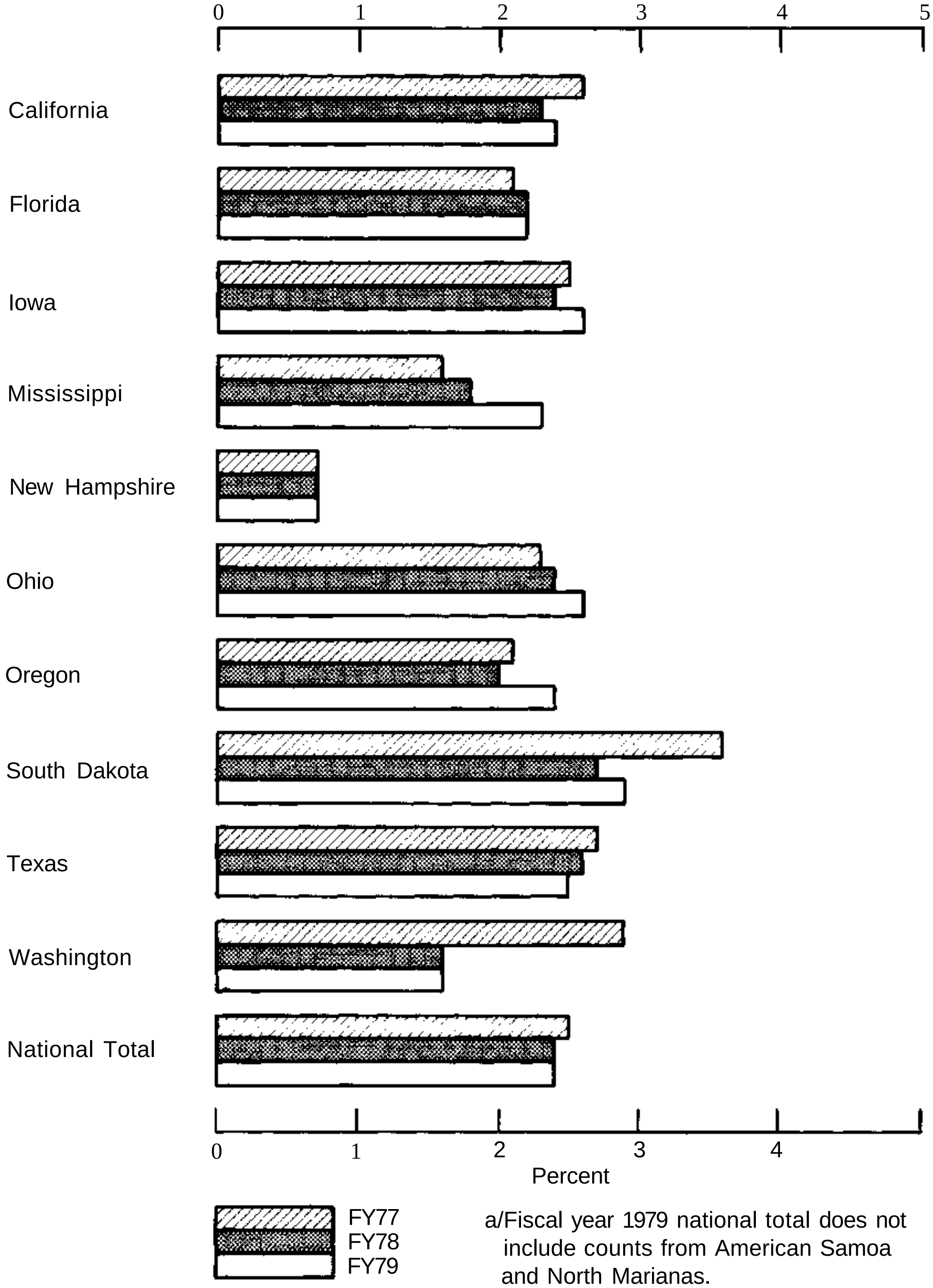
CONCLUSIONS

OSE data show that nearly one-third of the children counted for funding under the 94-142 program at the time of our review received speech therapy only. Most of these children's impairments were of minor severity and required no other services.

Public Law 94-142 requires that, to be eligible for funding under the program, a child must be receiving "special education" and any "related services" necessary to support such special education. The law specifically cites speech therapy as a related service, but does not specify whether and how such therapy may also be considered "special education." If speech therapy cannot be considered "special education" within itself, then children who are receiving only speech therapy are not eligible. Because the language in the law and the legislative history does not clarify this issue and because of the significant number of children affected, additional congressional guidance is needed.

Although not specified in the law, the Federal regulations permit speech therapy or any other service cited in the law as a "related service" to be considered "special education" if the child's impairment adversely affects his or her

Percentage of All Children Counted
As Speech Impaired in Fiscal Years
1977, 1978, and 1979



a/Fiscal year 1979 national total does not include counts from American Samoa and North Marianas.

educational performance and if the service is considered special education under State standards. However, OSE had not provided guidance on how SEAs and LEAs were to apply the adverse effect provision or required the States to establish their own standards for applying the provisions. Most SEAs and LEAs in our review classified children as eligible if they were receiving speech therapy, without determining whether their impairments adversely affected their educational performance.

In a draft of this report which was commented on by the Department of Education, we proposed that:

—The Congress clarify whether, and under what conditions, children who are receiving only speech therapy or other services cited in the law as "related services" are eligible for coverage under the 94-142 program.

—In resolving this matter, the Congress consider whether existing departmental regulations, which provide that children are eligible only if their impairments adversely affect their educational performance, represent a reasonable interpretation of congressional intent.

—Pending congressional action to clarify this matter, the Secretary of Education either modify the regulations to define the terms "adverse effect" and "educational performance" and provide guidance to States and LEAs on applying the requirement, or provide guidelines under which States must establish their own criteria for applying the requirement. The Secretary monitor and enforce the "adverse effect on educational performance" requirement in OSE's program oversight activities, and notify SEA and LEA officials that handicapped children, including children who receive only speech therapy or other related services, are not eligible to be counted unless the adverse effect test has been demonstrated and documented.

DEPARTMENT OF EDUCATION COMMENTS AND OUR EVALUATION

In its July 1980 letter, the Department of Education disagreed with our proposal that the Congress clarify whether, and under what conditions, children who are receiving only speech therapy or other "related services" are eligible under the 94-142 program. The Department believes it is already clear to the Congress and officials at all governmental levels that such children are eligible. In support of its position the Department said that:

—The term "speech impaired" has always been included in the definition of handicapped children.

—Speech pathology has been traditionally recognized in all quarters of the special education community as a basic special education service.

--Speech therapy was included in the law's definition of "related services" to ensure that, when a child has some other primary handicapping condition, but also has a speech impairment, the child will receive speech therapy in addition to being placed in a special education program for his or her primary handicap.

Although the eligibility of children receiving only speech therapy may be clear to the Department, we continue to believe that the law and its legislative history are not clear on this matter. (See p. 34.)

The Department agreed with our proposal that it define the terms "adverse effect" and "educational performance" and stated that it had developed and was disseminating a policy interpretation of these terms as they relate to speech-impaired children.

However, the effect of that policy interpretation, if adhered to by the States, could be to increase the number of children receiving only speech therapy and counted as handicapped under the program. This is because the policy interpretation states that:

> "The extent of a child's mastery of the basic skill of effective oral communication is clearly includable within the standard of 'educational performance' set by the regulations. Therefore, a speech/language impairment necessarily adversely affects educational performance when the communication disorder is judged sufficiently severe to require the provision of speech pathology services to the child."

Under this interpretation, States may count for funding any child who is receiving only speech therapy. The policy interpretation stated also that any State or local requirements which impose procedures more extensive or stringent than those in the Federal regulations must be scrutinized in light of the policy interpretation. Therefore, any States that previously were not counting all such children may count them in the future.

As discussed previously in this report, about 35 percent of the children counted for funding during the first 3 years under the program were receiving speech therapy only. Many of these children were receiving therapy for such impairments as lisping, stuttering, and word pronunciation problems (e.g., they said "wabbit" instead of "rabbit," "pasketti" instead of "spaghetti," or "bud" for "bird"), as well as many children whose voice tones were low, high, nasal, harsh, or hoarse. Because the 94-142 program applies to children beginning with age 3, the number of children with problems of this nature could be significantly greater than the number previously counted for funding under the program.

In view of the Department's stated position and actions on this matter, we have dropped our proposals to the Department and the Congress concerning the need to clarify the terms "adverse effect" and "educational performance." We believe that the Department's actions increase the need for the Congress to clarify the eligibility criteria for children who are receiving only speech therapy or other related services.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress clarify whether, and under what conditions, children who are receiving only speech therapy or other services currently cited in the law as "related services" are eligible for coverage under the 94-142 program.

CHAPTER 4

INDIVIDUALIZED EDUCATION PROGRAM

REQUIREMENTS NOT MET

The most important tool in helping school districts achieve Public Law 94-142's goal of a free appropriate public education for each handicapped child is the IEP. Program regulations require that beginning October 1, 1977, LEAs must complete an IEP for each handicapped child receiving special education.

Most IEPs we reviewed in 23 LEAs did not meet the legal requirements established to ensure appropriate education. Specifically, in developing IEPs, LEAs often did not

—include all required statements about services to be provided the child, goals and objectives of the services, and other necessary information;

—involve parents and LEA representatives in IEP meetings; or

—complete IEPs by the October 1, 1977, deadline or before counting children for Federal funding.

These shortcomings not only limited the IEPs' effectiveness as tools for accountability, parental involvement, communication, and planning, but also violated Federal regulations on counting children for 94-142 funding. We estimate that in fiscal year 1978 LEAs could have improperly counted 385,000 handicapped children who had no IEPs at the time they were counted, plus countless other handicapped children whose IEPs were incomplete. The 385,000 children without IEPs improperly generated about $60 million in fiscal year 1979 Federal grant funds.

OSE's failure to adequately disseminate suggested IEP procedures and forms and to provide clear instructions on childcount requirements contributed to these problems.

IEP REQUIREMENTS

Public Law 94-142 requires LEAs to establish an IEP for each handicapped child. The act defines an IEP as

> "* * * a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child * * *." (20 U.S.C. 1401 (19))

The act further requires that each IEP contain the following five items of information:

> "* * * (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved." (20 U.S.C. 1401(19))

In its implementing regulations, OSE added the following requirements regarding when IEPs must be in effect:

> "(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.
>
> "(b) An individualized education program must:
>
> "* * * Be in effect before special education and related services are provided to a child * * *." (45 CFR 121a.342)

Thus, beginning October 1, 1977, an LEA must develop an IEP for each handicapped child before providing special education and related services and before counting the child for

94-142 funding. The IEP must be developed at a meeting attended by the child's parents, the child's teacher, and an LEA representative and must include the required five items of information.

LEAs FAIL TO MEET IEP REQUIREMENTS

LEAs had considerable difficulty preparing IEPs which met Public Law 94-142 requirements. From April through August 1978 we reviewed 456 IEPs prepared by 23 LEAs in six States and found that 84 percent of the IEPs lacked one or more of the required items of information, lacked evidence that the three required participants attended the IEP meeting, or were not prepared until after the October 1, 1977, deadline. These three problems are discussed in more detail below.

IEP content problems

The IEPs had two principal content problems. First, contrary to OSE's interpretation of the law, many LEAs limited the content of their IEPs to the special education and related services currently available in the district, even if the child needed other services. Second, many IEPs did not contain all the information specifically required by the act.

IEPs did not describe all services needed

Because of some confusing actions by OSE during the writing of regulations, some LEAs were led to believe that an IEP need include only those special education and related services that were currently available in the LEA. Although OSE later notified the States that IEPs must include all services a child needs for an appropriate education, regardless of their current availability, many LEAs continued to limit the services listed in IEPs.

The proposed regulations, published December 30, 1976, stated that each child's IEP must include

> "* * * A statement of specific educational services _needed_ by the child, _(determined without regard to the availability of those services)_ * * *." (41 Fed. Reg. 56986 (1976)) (Underscoring supplied.)

However, because of the many comments received on the proposed regulations, OSE withdrew this wording in the final regulations and returned to the statutory language. The final regulations, published on August 23, 1977, stated that the IEP must include

> "* * * A statement of the specific special education and related services <u>to be provided</u> to the child * * *." (45 C.F.R. 121a.346(c)) (Underscoring supplied.)

Some LEAs interpreted the change in the regulations to mean that IEPs could include whatever services the LEAs intended to provide; in other words, the services currently available in the LEA. When OSE officials realized this was happening, it sent a letter to top education officials in the States attempting to clarify OSE's position on IEP content. The November 17, 1977, letter from the director of OSE stated in part:

> "The purpose of this letter is to clarify the position of * * * [OSE] regarding the content of the individualized education program (IEP).
>
> "In the final regulations, * * * [OSE] elected to adopt substantially verbatim the statutory language on IEP content and to delete additional details that were included in the proposed rules. As a result of this change, some parties have interpreted the final regulations to mean that a public agency must provide to a handicapped child only those services which are available in the agency. This interpretation is not correct.
>
> "Although the wording on IEP content was changed in the final regulations, our position on the critical issues of need and required services for individual handicapped children has not been altered. We do not wish to change this basic position and, under the statute and extensive legislative history on IEPs, we have no authority to do so."

Thus, OSE has concluded that the IEP is required to include all the special education and related services needed by a child. However, we found in 1978 that LEAs often had not complied with the requirement. For example, records in an Oregon LEA indicated that a speech-impaired child needed placement in a class for the learning disabled, but the child's IEP did not provide for that service or disclose that need. In an Ohio LEA, a mentally retarded child's records indicated that psychological counseling was needed, but that need was not being satisfied or shown in the IEP. In a California LEA, we examined the records of 25 children, 9 of whom had an indicated special education or related service need that was not disclosed in the IEP. These children needed speech therapy, occupational therapy, physical therapy, or psychological counseling.

Our discussions with LEA officials showed that the ramifications of the law and the regulations create a disincentive for LEAs to comply with the IEP requirements. The legal requirements involved are summarized as follows:

- The act mandates that a free appropriate public education be made available to all handicapped children. It defines "free appropriate public education" to include special education and related services which are provided in conformity with the child's IEP. The preamble to the act states that its purpose is to assure that all handicapped children have available to them a free appropriate public education which emphasizes special education and related services designed to meet their unique needs. (These requirements are quoted on pp. 71 to 73.)

- The act requires that an IEP be established for each child. (See p. 53.)

- The regulations state that the IEP must include special education and related services to <u>be provided</u> to the child, but OSE's supplementary instructions to LEAs in November 1977 stated that the IEP should not be limited to services available in the LEA. (See pp. 55 and 56.)

- The act requires that, if a child needs services that the LEA is unable or unwilling to provide, the State is responsible for making such services available at no cost to the parent or guardian.

LEA officials in 15 of 28 LEAs where we discussed this issue (after the November 1977 OSE letter was issued) claimed that their IEPs described all services needed by a child regardless of current availability. In most of these LEAs, however, we found IEPs that omitted needed services shown on the child's other records.

LEA officials in the other 13 LEAs candidly admitted that a child's IEP would not show needed special education or related services that the LEA does not or cannot provide. Two reasons were most frequently given by LEA officials. First, they believed that, since OE regulations treat the IEP as a guarantee to provide the services listed, an LEA which lists unavailable services in an IEP might be sued or forced to provide services it cannot afford or cannot provide for some other reason. Some officials said they were not willing, or not legally able, to obligate their LEA for services for which it cannot pay. Second, LEA officials stated that they do not want to hurt parent-school relations by telling parents, through an IEP, that their child needs a service that the LEA is unable to provide.

While LEAs' reluctance to list needed but unavailable services in IEPs may be understandable, the practice has resulted in State officials and LEAs not having the specific, child-centered information needed to

—determine what additional services or staff are needed,

—support budget requests,

—evaluate the extent to which they are providing a free appropriate public education to all handicapped children, and

—help manage their special education programs.

Limiting the contents of IEPs makes it difficult to assess the effectiveness of LEA programs and to identify needs for further development. As a result, handicapped children may not receive an appropriate public education. OSE needs to (1) revise its regulations to state clearly that IEPs must include services needed and (2) give special attention to this problem in its program administration.

IEPs did not contain all required information

In addition to requiring a statement of the special education and related services a handicapped child will receive, Public Law 94-142 requires that an IEP

—describe the child's present levels of educational performance;

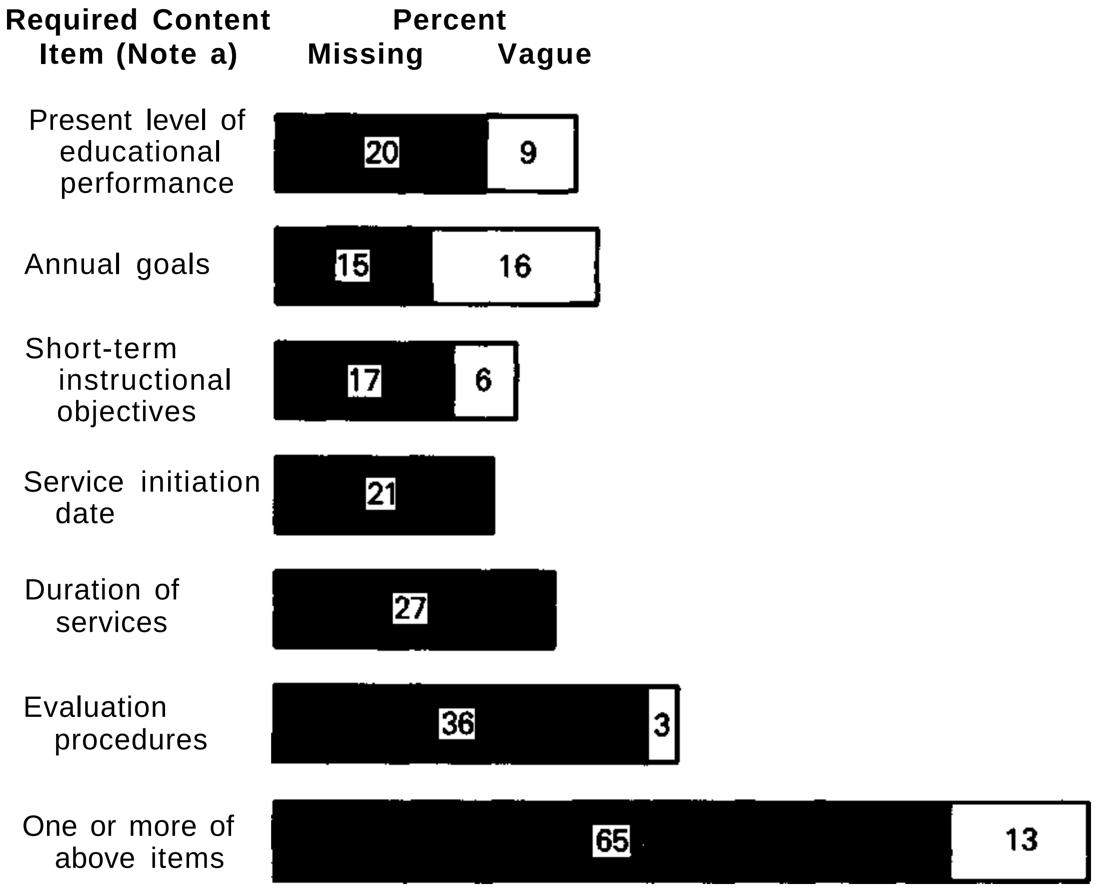
—state the annual goals and short-term instructional objectives to be achieved;

—state the projected initiation date and expected duration of special education and related services; and

—describe criteria and evaluation procedures and schedules for determining, at least annually, if the instructional objectives are being met.

About 65 percent of the 456 IEPs we reviewed between April and August 1978 lacked information on one or more of these elements, and an additional 13 percent contained vague or general statements. For example, IEPs had such statements as "improve basic academic skills," "increase in reading," "provide minimal support services," and "continue to improve self-help skills" as the annual goal. Others had only such statements as "below grade level" or "7th grade" as the description of the child's present levels of educational performance. The following chart shows which elements were most often missing and/or vague in the 456 IEPs we sampled.

As the chart shows, the service initiation date, duration of services, and description of evaluation procedures were the most commonly omitted statements, while descriptions of present levels of educational performance and annual goals were most often vague. Overall, 78 percent of the IEPs we examined did not meet Public Law 94-142's IEP content requirements.



a/For purposes of analysis we separated the statutory requirements for "annual goals, including short-term instructional objectives" and "projected date for initiation and anticipated duration of such services" in to their component parts, since IEP forms generally contain separate spaces for each of these four items.

IEP meetings poorly attended

The act and implementing regulations require that the IEP be developed or reviewed at least anually at a meeting attended by the child's parents, the teacher, an LEA representative, and, if appropriate, the child. The regulations require that, if the child has just been evaluated for the first time, a member of the evaluation team must also attend the meeting. In our review of IEPs, we checked on the three participants who must attend an IEP meeting—a parent, a teacher, and an LEA representative. As the following table shows, 52 percent of the 456 IEPs we reviewed lacked evidence that all required participants attended the IEP meeting.

Participant missing	Number of IEPs	Percent
Parent	117	26
Teacher	29	6
LEA representative	155	34
One or more of the above	239	52

The member of the IEP team missing most often was the LEA representative. According to 94-142 regulations, this representative must be someone who is not one of the child's teachers, but who is qualified to provide or supervise special education. School records showed that most LEAs delegated this responsibility to either the school principal or a member of the LEA's central office special education staff. According to LEA officials, these administrators have many other responsibilities and duties and often do not have or take the time to attend IEP meetings.

The second member of the IEP team missing most often was the child's parent(s). The regulations require that the LEA take several steps to ensure that one or both of the child's parents are present at the IEP meeting or are afforded an opportunity to participate. These steps include scheduling the meeting at a mutually agreed on time and place and giving parents adequate notice of the meeting. If neither parent can attend, LEAs are to attempt individual or conference telephone calls or other methods to involve the parents in the IEP development. If these methods fail, the LEA may hold the meeting without the parents, but it must maintain a record of its telephone calls, correspondence, home visits, or other attempts to arrange a mutually agreed on time and place for the meeting with the parents.

Many LEAs were not following the regulations. According to statements by officials at 13 LEAs, IEP meetings in those LEAs were generally not held at a time or place which was set through agreement with the parents, such as in the evening or on weekends in cases where both parents work.

For example, according to officials from a Texas LEA, they establish the date and time of the IEP meeting (always during school hours) and invite the child's parents. The meetings are not necessarily held when the parents are available. Officials said that parents attended only about 20 percent of this LEA's meetings.

An Ohio LEA's director of special education told us that IEP meetings are held during school hours and parents are given 15 days' notice of the meeting date set by the school. If a parent does not attend the scheduled meeting, the LEA does not attempt to reschedule the meeting, but simply completes the IEP and sends a copy to the parents for signature.

According to a California LEA official, IEP meetings are held on Wednesday afternoons only. Parents are invited, but they attend only 30 to 40 percent of the time. The official added that the LEA uses this policy to reduce paperwork.

Two LEAs found that parent attendance improves when the IEP meetings are held at the child's school rather than at LEA headquarters. Greater convenience and feelings of comfort for parents were cited as reasons. A California LEA official said that parents attend nearly 100 percent of the IEP meetings held in the child's school but only 30 to 40 percent of the meetings held at LEA headquarters.

Other LEA actions have also affected parents' attendance. For example, one California LEA generally does not hold meetings when preparing IEPs on students who are continuing in the same program. The LEA mails a copy of the revised IEP to the child's parents and meets with them only upon their request.

Despite these shortcomings, the IEP meeting requirement has increased parent involvement in the education process. Officials in 13 LEAs told us that they believed the IEP process has improved parent-school relations or has increased parents' understanding of their children's education. For example, a California LEA official stated that parent attendance at the annual review (now called the IEP meeting) increased from 25 percent under the old State program to 60 percent under Public Law 94-142's requirements. Similar comments were made at other LEAs.

We believe that, although parents have become more involved in the development of their child's educational program, continued effort is needed to increase parents' attendance at the IEP meetings.

IEPs not completed by October 1, 1977

OSE regulations specify two deadlines for developing IEPs for handicapped children. For children whom LEAs had previously identified and/or served, and intended to serve in the 1977-78 school year, LEAs had to hold meetings early enough to ensure that IEPs were developed by October 1, 1977. For handicapped children identified after October 1, 1977, an IEP meeting must be held within 30 calendar days of determining that the child needs special education.

While a few LEAs had problems meeting the 30-day requirement, LEAs had the greatest difficulty meeting the October 1, 1977, deadline. Only 10 of the 30 LEAs came reasonably close to meeting the date. In most LEAs we visited, special education teachers and specialists had to either reduce the amount of time they spent with children, halt services temporarily, or work on their own time to complete IEPs. Officials from two California LEAs told us that their speech therapy programs received less State funding, which is calculated on the number of minutes of direct service to children, because speech therapists had to reduce the amount of time they spent with children to prepare IEPs. A South Dakota LEA stopped providing speech therapy altogether for 2 months, from November 1977 to January 1978, to develop and process IEPs.

Our examination of 350 IEPs which should have been completed by October 1, 1977, showed that at least 46 percent were late, as follows:

IEPs completed by October 1, 1977?	Number of IEPs	Percent
Yes	130	37
No	162	46
Unknown	58	17
Total	350	100

While some LEAs did better than others in completing IEPs by October 1, 1977, most did poorly. We found that, for the 23 IEPs which showed the completion date, 5 completed none of the sampled IEPs by October 1, 1977, and 10 others completed less than half. Only two LEAs managed to finish all the sampled IEPs on time. Further, as discussed earlier, 78 percent of the IEPs we examined (which LEAs prepared) were vague or incomplete.

Also as noted earlier, OSE regulations forbid counting for 94-142 funding handicapped children who do not have a completed IEP on the day of the count. However, our examination of IEPs and other school records showed that on October 1, 1977, and February 1, 1978, most LEAs we visited improperly counted handicapped children who had no IEPs and those whose IEPs did not include required statements or were not prepared at meetings with parents and LEA representatives.

Information was not available to show, nationally, how many children without IEPs were counted for funding. In Oregon, however, SEA officials correctly interpreted OSE regulations to require a completed IEP in order to report a handicapped child to OSE for 94-142 funding. Oregon officials asked their LEAs to divide their fiscal year 1978 childcount between children with and without IEPs, and the State planned to report to OSE only children with IEPs. Oregon was the only State in our sample which did this. (However, as discussed below, Oregon officials stated that OSE instructions misled them into reporting children without IEPs also.) On October 1, 1977, Oregon LEAs counted 4,263 handicapped children without IEPs (16 percent of total count), and on February 1, 1978, they counted 2,794 children without IEPs (7 percent of total count). Averaged together for fiscal year 1978, Oregon LEAs counted 3,529 handicapped children that they were serving without IEPs (11 percent of average count). Oregon officials told us they believed that these percentages were probably underestimates of the true number of children without IEPs, because some LEAs did not want to inform the SEA of their failure to meet the requirements and therefore did not include children without IEPs in their report to the SEA.

Our review indicated that substantially more than 11 percent of the children counted on October 1, 1977, in the other States we visited did not have IEPs as required.

For example, our discussions with officials at 22 LEAs in eight States indicated that, of about 22,000 children counted for 94-142 funding, about 52 percent had no IEP. Similarly, our detailed examination of a sample of 350 IEPs which should have been completed for children counted on October 1, 1977, showed that at least 46 percent had not been prepared.

State and LEA records did not always show conclusively the number of children counted on October 1, 1977, and February 1, 1978, who had no IEPs. However, even if the nationwide average was as low as Oregon's 11 percent—a figure which appears to be conservative based on data we obtained in other States—about 385,000 handicapped children would have been reported to OSE who did not have completed IEPs by the October 1, 1977, and February 1, 1978, deadlines. At the 94-142 allocation rate of about $156 a child, States received at least $60 million in 94-142 grant funds for these children for fiscal year 1979.

LACK OF OSE GUIDANCE AND INSTRUCTIONS

In addition to the newness of the IEP requirements, one reason that LEAs generally did not prepare complete and timely IEPs, and did not report only children with completed IEPs for Federal funding, was the lack of OSE guidance and instructions. OSE did not instruct or remind the States to count only handicapped children for whom they had completed IEPs, but stated that "all" handicapped children should be counted. Also, because OSE's IEP development guidance did not reach many State and local officials, LEAs often had to design and implement their own IEP procedures and forms with little or no guidance beyond the statutory language.

Inadequate OSE criteria for counting children

Our review of OSE instructions and our discussions with State officials showed that OSE neither formally instructed the States to count only children with IEPs nor told the States not to count children without IEPs. An OSE official told us that, because the agency had internally "waffled" on the issue, OSE personnel had only informally acknowledged that an IEP is necessary to count a child and had admitted that fact only when pressed by a State. On the other hand, the OSE director told us OSE has always maintained that, as of October 1, 1977, a handicapped child had to have an IEP before he or she could be counted.

However, the director said just the opposite on March 16, 1978, at the fiscal year 1979 House appropriations hearings:

> "We have instructed all State Education Agencies to count all children eligible for Public Law 94-142 funding. The law requires an individual

> education plan for all children, but this does not mean that only those kids should be counted." (HEW Hearings Before the Committee on Appropriations, Subcommittee on the Department of Labor and HEW, 95th Cong., 2nd Sess. Part V, 245, 278 (1978)). (Underscoring supplied.)

In another reversal of position, OSE's January 1979 report to the Congress on implementation of Public Law 94-142 explained the reason for a slight decrease in some States' childcount in school year 1977-78 as follows:

> "Many of these decreases may have been due to the new requirement for individualized education programs (IEPs), which, under P.L. 94-142, must have been prepared by the time of the October 1, 1977 count. If States were unable to prepare IEPs for all of their handicapped children, they could not count those children." (Underscoring supplied.)

Thus, it appears to us that OSE's position on counting handicapped children without IEPs has been inconsistent, making it difficult for States to understand and comply with the requirement.

OSE's position on counting handicapped children without IEPs was also not evident from the results of its monitoring visits to States and LEAs, since OSE did not review this matter for compliance. OSE's site-visit personnel said they made no review or spot check of the records of children counted by LEAs to see whether each counted child had an IEP as of the October 1, 1977, and February 1, 1978, count dates. Instead, they checked only to see whether IEPs were completed on the day of their visit.

Finally, OSE instructions to States for both the October 1, 1977, and February 1, 1978, childcounts were misleading, since they implied that "all" children, with or without IEPs, should be counted. The instructions in OSE bulletins dated September 2, 1977, and January 6, 1978, both stated in part:

> "Please note that you are to count all handicapped children receiving special education and related services (including all specific learning disabled children). Do not limit your own State count by the 12% and 1/6th

> 'caps' set out in section 611(a)(5) of the Act. Any action taken with respect to these limitations shall be carried out by the Commissioner. It is clearly to your advantage to count all handicapped children served (including all 'SLD' [specific learning disabled] children)."

The lack of clear requirements in OSE's childcount instructions regarding completed IEPs caused a ripple effect of confusion in implementing instructions and practices of a number of States and LEAs. For example, as stated earlier, Oregon SEA officials originally planned to report for Federal funding only children with completed IEPs. However, according to the officials, the above instructions from OSE led them to believe that they were mistaken and that, in fact, they were supposed to report "all" handicapped children, even those without IEPs. Therefore, Oregon's fiscal year 1978 childcount reported to OSE for fiscal year 1979 funds included the 3,529 children who did not have IEPs when they were counted.

Also, California instructions to its LEAs for the October 1, 1977, childcount stated that IEPs did not need to be completed until February 1, 1978. Iowa SEA officials told us that, to count a handicapped child in their State, an LEA needed only to evaluate the child and decide that he or she needed special education. The LEA was not required to complete an IEP in order to count the child for 94-142 funding. Instructions from the Washington SEA for the February 1, 1978, childcount stated:

> "*Please count all children* who are receiving special education and related services *with or without an IEP* (Individual Education Program) having been developed." (Underscoring supplied.)

Because of these State instructions, it is no surprise that, of 16 LEAs we reviewed which did not complete their IEPs by the October 1, 1977, deadline, 15 included children without IEPs in their October childcount. Only one LEA--in Oregon—counted only children who had an IEP document; as a result, it counted only about half its total special education enrollment. However, the "IEP" used in this LEA consisted only of a letter to the handicapped child's parents describing their child's education program. This so-called

IEP was not prepared at a meeting with a parent, a teacher, and an LEA representative attending. In fact, the LEA asked for and received permission from the Oregon SEA to consider this letter as a valid IEP in order to increase its October 1, 1977, childcount. Had this LEA or the SEA followed prescribed procedures, the LEA's legitimate childcount would likely have been zero.

Insufficient OSE guidance for developing IEPs

Several States complained to us that OSE had provided little, if any, guidance on developing IEPs. Instead, SEAs and LEAs usually had to design their own IEP procedures and forms, many of which were incomplete.

OSE officials agreed that they had not provided extensive written guidance or models on IEP procedures, but said that OSE usually does not provide such guidance directly. Instead, it provides grants to universities and other organizations to make studies and provide assistance on IEPs as well as on other 94-142 procedures.

OSE has sponsored workshops, training sessions, and other activities related to developing IEPs. However, officials in half the LEAs we reviewed told us that they developed their own IEP procedures and forms with no outside help beyond the statute. As a result, several significant errors occurred. Of the 15 LEAs that designed their own IEP forms, 9 did not provide for recording the IEP meeting date, 6 did not provide for recording parent participation, 5 did not provide for a statement of evaluation procedures, and 3 did not provide for recording annual goals and/or short-term objectives.

To make up for a lack of OSE guidance, several States eventually distributed IEP guidelines to LEAs on their own, but this assistance was generally too late for use in meeting the October 1, 1977, deadline. For example, California distributed IEP guidelines dated November 1, 1977. Oregon published suggested IEP procedures in September 1977; however, they were not distributed in time for use by October 1.

CONCLUSIONS

Insufficient OSE guidance and instructions contributed to the difficulty experienced by States and LEAs in developing IEPs as required by Public Law 94-142. LEAs often failed to include in IEPs the five items of information required by the act, to develop IEPs in a meeting attended by the required persons, and to complete IEPs within the required time frames.

Further, because of confusing and misleading childcount instructions, in fiscal year 1978 LEAs could have improperly counted 385,000 handicapped children who had no IEP at the time they were counted. At the 94-142 allocation rate of about $156 a child, 385,000 children generated $60 million in fiscal year 1979 grant funds. Countless other handicapped children had incomplete or improperly prepared IEPs.

OSE regulations, which state that IEPs are to include services <u>to be provided</u>, have been and may continue to be interpreted by LEAs to mean that IEPs need not list the services needed but not available in the LEA. OSE issued a memorandum to LEAs stating that such an interpretation is not correct, but has not revised the regulations to state clearly what is required.

Also, the reluctance of LEAs to list in the IEPs services that are needed but are not currently available—for fear that such disclosure might lead to lawsuits and other problems—could mean that some handicapped children will not get a free appropriate public education as required by the act. This problem warrants special recognition and attention by OSE and the States in their monitoring and evaluations of LEAs' implementation of Public Law 94-142.

RECOMMENDATIONS TO THE SECRETARY OF EDUCATION

Since IEPs must be prepared each year for all handicapped children, we recommend that the Secretary increase the distribution to all States of instructions, guidance, and models relating to IEPs. The instructions should clearly provide that the States and LEAs cannot count handicapped children for 94-142 funding until LEAs have prepared IEPs according to all statutory and regulatory requirements.

We recommend also that the Secretary:

—Revise the program regulations to state clearly that IEPs must include all special education and related services needed to provide a free appropriate public education.

—Require that Federal and State efforts to oversee the the administration of Public Law 94-142 give special attention to enforcing IEP requirements.

DEPARTMENT OF EDUCATION COMMENTS

In its July 1980 letter, the Department of Education agreed with our recommendations and said it either had taken or was taking actions on them. The Department said that it

—had disseminated a draft policy statement on IEPs to all SEAs which states that IEPs must include all special education and related services needed to provide a free appropriate public education;

--had issued a bulletin dated September 10, 1979, to instruct SEAs to count handicapped children based on IEPs; and

—is giving special attention to enforcing IEP requirements by ensuring that (1) SEAs and LEAs are effectively implementing the requirements and (2) SEA monitoring efforts specifically address IEP requirements.

We believe that these actions, if carried out, should help improve IEPs for handicapped children.

CHAPTER 5

FREE APPROPRIATE PUBLIC EDUCATION NOT YET AVAILABLE TO ALL HANDICAPPED CHILDREN

The paramount goal of the Congress in enacting Public Law 94-142 was to make a free appropriate public education available to every handicapped child in the Nation. The act required that an appropriate education be available to all handicapped children age 3 to 18 by September 1, 1978.

However, officials in most LEAs in our review candidly admitted that they did not expect to meet the congressional full-service objective for at least 3 to 6 years beyond 1978. The most commonly cited reason for the expected delay was a shortage of funds. Although the inability to attract qualified personnel was the fundamental problem in a few locations, most LEAs saw the lack of money to pay for needed personnel, space, supplies, and other services as the principal barrier to providing full appropriate educational programing for all handicapped children. Despite the increased availability of special education funds and services in recent years from Federal, State, and local governments, LEAs indicated that further increases—often substantial—are needed.

The Congress may wish to consider the conflict between the act's goals and timetables and the problems States and LEAs are having in meeting those objectives.

FREE APPROPRIATE PUBLIC EDUCATION IS REQUIRED

To carry out its intent to assure that each handicapped child receives an appropriate education, the Congress required each State and LEA participating in the 94-142 program to assure that a "free appropriate public education" is made available to its handicapped children. The act defines appropriate education as follows:

> "* * * The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational

> agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the [child's] individualized education program * * *." (20 U.S.C. 1401(18))

According to the act, an appropriate education had to be available for most handicapped children age 3 to 18 by September 1, 1978, and age 3 to 21 by September 1, 1980, as follows:

> "* * * A free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State * * *." (20 U.S.C. 1412(2)(B))

Thus, as of September 1, 1978, all States and their LEAs were to make a free appropriate public education available to all handicapped children age 3 to 18 unless, for children age 3 to 5, a conflict existed with State law or practice or with a court order.

Making this appropriate education available to all handicapped children within these dates was a paramount goal of the Congress in enacting Public Law 94-142. The preamble to the act states:

> "* * * It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified * * *, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs * * *." (20 U.S.C. 1401 note.)

The intent is also reflected in legislative reports issued by both House and Senate committees. The Senate Committee on Labor and Public Welfare stated:

> "It should be clear * * * that the goal of providing a free appropriate public education to all children aged three to eighteen, by September 1, 1978, and aged three to 21, by September 1, 1980, remains paramount to the Committee." (S. Rep. No. 94-168 at 16.)

The House Committee on Education and Labor stated:

> "Is there a 'date certain' in this legislation?
>
> "Yes. Though the truism that 'justice knows no timetable' cannot be argued with, it is generally agreed that there should be a date beyond which no State or locality may be failing without penalty to guarantee the basic rights of handicapped children, and most especially, a guarantee against outright exclusion. Also, it is felt that the States ought to be given a reasonable but not lengthy-time period in whi
> 'full service.' H.R. 7217 establishes a 'date certain' of September 30, 1978." 1/ (H.R. Rep. No. 94-332 at 15.)

Thus, after the dates specified, no participating State or LEA can legally fail to provide a free appropriate public education to all its eligible handicapped children.

MORE TIME AND RESOURCES NEEDED

Officials in 16 of 21 LEAs said that their LEAs would not be able to provide an appropriate education to all their handicapped children until several years after that date. Some LEAs had handicapped children on waiting lists, while others provided only a portion of the services that their handicapped children needed.

The following are examples of comments from LEA officials with whom we discussed (1) what additional resources

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1/The date was changed to September 1, 1978, for children age 3 to 18 before final passage of the act.

were needed to enable the LEA to fully serve all handicapped children age 3 to 18 and (2) when they expected the needed resources to be available. While the comments are mainly estimates and are not precise, they indicate that LEAs generally expect to have lingering problems trying to meet 94-142's full-service mandate.

California

A California special education director stated that his LEA cannot provide any of the speech therapy or additional occupational and physical therapy needed by many mentally retarded students. The director estimated that a 10-percent increase in the LEA's special education budget was needed to provide those services but that it would not be available until the 1981-82 school year at the earliest.

Another California special education director noted that his LEA needed a 15-percent budget increase to hire an assistant administrator, four more psychologists, and four more teachers of the learning disabled to serve about 60 children on a waiting list. The director said the new staff members could be hired in the 1979-80 school year if Federal funds increase as expected.

According to a third California LEA's records, about 600 handicapped children were waiting for special education services in April 1978. The LEA special education director said that about 40 more professional special education staff members and about 50 teacher aides were needed, at a cost of over $1 million a year, to meet its handicapped children's needs. The director believed that the 1979-80 school year would be the earliest these funds would be available, and then, only if projected 94-142 grant levels are reached.

Mississippi

In a Mississippi LEA, the special education director estimated that the LEA needs to add at least $1 million a year to its current $818,000 special education budget to meet 94-142's full-service goals. The funds would add 65 people to the LEA's special education staff, raising the number to about 90.

New Hampshire

Officials in a New Hampshire LEA told us that their LEA needs three staff members to begin services for emotionally disturbed children and two more teachers to meet the needs of learning disabled children. They estimated that the LEA needs an additional $75,000 annually—about a 75-percent increase over its 1977-78 special education budget—to provide these and other services for handicapped children. They also stated that, if 94-142 funds increase to authorized levels, the needed services could be available in the 1980-81 school year.

Officials in a second New Hampshire LEA said that, to provide an appropriate education to all their handicapped children, they needed to add an adaptive physical education class, three more classes for the learning disabled, a full-time school psychologist, and other special education services and materials. The LEA would have to nearly double its 1977-78 special education budget of about $200,000 a year to provide these services. They said that not until 1981 to 1983 will they have the money for these services and the money will have to come from 94-142 grant funds.

The special education director in a third New Hampshire LEA estimated that the LEA will not have the $200,000 needed to pay the salaries of additional occupational therapists, teachers of learning disabled and emotionally disturbed children, and other special education staff until 1981 or 1982.

Oregon

According to the special education director in an Oregon LEA, the LEA needs a $750,000 (43-percent) budget increase to fully serve handicapped children. The official does not expect to have an appropriate education available for all handicapped children until the 1981-82 school year.

Special education administrators in a second Oregon LEA said they need an additional $294,000 for

—2 speech therapists at a cost of $36,000,

—10 to 13 teachers of the learning disabled at a cost of about $200,000,

—1 specialist for the hearing impaired at a cost of $18,000,

—1 physical therapist at a cost of $20,000, and

—1 adaptive physical education teacher at a cost of $20,000.

This is a 45-percent increase over the LEA's school year 1976-77 special education budget. District officials hope to provide these services by 1984.

Washington

The special education director of a Washington LEA said that, to provide an appropriate education to all its handicapped children, the LEA needs to hire 9 more special education professionals and 20 teacher aides for such services as speech therapy, psychological services, occupational therapy, physical therapy, and instruction of the hearing impaired. These salaries will cost an estimated $250,000 a year and represent a 20- to 25-percent increase in the LEA's special education budget. In January 1979, the LEA's supervisor of speech services told us that 150 to 200 children had been evaluated and found to need speech therapy services, but were on a waiting list because the LEA still had a shortage of speech therapists. The LEA director stated that, if the Federal increases in 94-142 funding occur as scheduled, all handicapped children will be served by about 1982.

The director of special education in a second Washington LEA stated that in June 1978 over 1,800 handicapped children either were on a waiting list for special education services or were waiting to be evaluated. Of these, about 250 handicapped children were awaiting space in special education classes, about 750 children needed more speech therapy, and about 400 suspected emotionally disturbed children and 300 suspected learning disabled children were awaiting an assessment or an IEP. The director estimated that between $1.5 and $2 million annually is needed to provide these services; assuming 94-142 grants are fully funded, the LEA will be able to provide the services by the 1983-84 school year.

In a third Washington LEA, the director of special education told us that about 130 to 160 handicapped children—40 to 50 percent beyond their present special education enrollment—mostly learning disabled, were not receiving an appropriate education. The director estimated that the LEA needs about $150,000 a year to provide these services, which would be about a 40-percent increase in its special education budget. The director believed that the LEA will be unable to make a free appropriate public education available to all its handicapped children until about 1983.

The preceding examples are typical of what we heard in nearly all of the LEAs where we discussed this issue. From these examples, and the supporting documentation we examined, it is apparent that many LEAs have not been able to make a free appropriate public education available to all their handicapped children, and probably will not be able to do so until the early to mid-1980s.

PROBLEMS IN OBTAINING RESOURCES

Although some LEAs were unable to find needed special education personnel, inadequate funding was by far the most common reason cited by LEA officials for not providing an appropriate education to all their handicapped children. As indicated in many examples in the preceding section, LEA officials are often relying on increased 94-142 grant funds to finance the cost of increased services needed to adequately serve all handicapped children. Few officials expect State and local funds to increase sufficiently to cover all costs in the near future.

However, the growth of 94-142 funds is not keeping pace with expectations. For fiscal year 1979, the President's budget requested only about 60 percent of the funding level authorized in the act; for fiscal year 1980, the request was only about 40 percent. The requests for these 2 years were nearly $1.9 billion below the act's full funding authorization levels. Therefore, the delay in achieving the act's primary purpose may be even greater than school officials anticipated at the time of our fieldwork.

In the following sections we briefly discuss LEA problems in obtaining local, State, and Federal funds and special educational personnel.

Local funds

LEAs in many States visited were experiencing problems raising local education funds. Passage of Proposition 13 in California and similar measures as well as levy failures in other States are expected to further hamper local funding for special education.

Some Ohio LEAs were forced to close schools temporarily because local levies failed to pass. LEAs had problems keeping regular classes going, let alone increasing special education funding.

An Oregon LEA we visited suffered three successive levy defeats in 1977, although each levy amount was progressively smaller. The LEA would have closed schools for the year had the levy not passed on the fourth try.

Officials in South Dakota told us that each county has a general property tax fund from which it pays the costs of local services. In many counties, education competes for funds directly with other essential services.

According to special education officials in New Hampshire, some rural district budgets must be approved each year in town meetings. Local citizens may discuss and delete any budget item, including special education expenditures.

Some States also have property tax limits, above which no local revenue may be raised. Many LEAs in Washington and California had reached their limits. This means that any local increase in special education funding might have to come at the expense of funds for regular education.

Because of these and other difficulties, many LEA and SEA officials we interviewed are not relying on the availability of local funds to finance much of the increased services needed to meet 94-142's mandates.

State funds

Most State special education funding is also not increasing rapidly enough to enable LEAs to fully serve all handicapped children in the near future. For example, California was moving to a new funding program, called Master Plan, which a State special education official said should eventually provide adequate funding of special education. However, in the 1978-79 school year only about 19 percent of the State's handicapped children were included under Master Plan funding. The percentage of children covered can rise to only 30 percent in school year 1979-80 and 55 percent in 1980-81. The final 45 percent of the State's handicapped children are not slated to receive fully funded programs until the 1981-82 school year.

In Texas, a State special education official stated that in 1969 the State began a funding program which it expected would provide adequate support of special education by about 1979 or 1980. For the first 5 years, State support grew rapidly, increasing at an average yearly rate of about 37 percent. However, the State legislature curtailed the planned growth starting with the 1975-76 school year; since then, State support of special education has grown at an average rate of only about 7 percent a year.

According to Washington LEA officials, the State's special education funding program contained several provisions which acted as disincentives to providing an appropriate education to all learning disabled children. First, the number of learning disabled children for whom the State paid special education costs was limited to 1.5 percent of an LEA's total enrollment of all children. The State contributed nothing toward the cost of educating additional learning disabled children in the LEA. Second, State financial support of self-contained classrooms greatly exceeded its support of resource classrooms. According to LEA officials, this gives LEAs a significant financial incentive to place handicapped children in self-contained classrooms, even though a resource room placement might be the least restrictive and therefore the most appropriate.

Iowa appeared to be an exception to this inadequate State funding pattern. According to SEA officials, the State has operated an essentially open-ended funding program for special education since 1975. That is, the State provides each LEA with predetermined amounts for every handicapped child served. The more handicapped children receiving special education, the more State funds the LEA receives. In the 1976-77 school year, each handicapped child served in a resource room generated about $2,266 toward his or her education, each child in a self-contained classroom generated about $2,770, and each severely handicapped child generated about $5,539. Of these amounts, the State directly contributed 48 percent and collected the other 52 percent through local property taxes. These funds were for instructional programs only. LEAs received added funds—75 percent from the State and 25 percent from local property taxes—to provide support services, such as therapy and counseling. The State funding formula also includes an inflation factor. In 1977-78 this factor allowed a 7.8-percent growth in the amount allocated for each child.

Thus, except for Iowa, many of the States and LEAs we visited are generally not expecting State or local sources to provide the increased financial support needed to give each handicapped child an appropriate public education in the near future. Instead, they are relying heavily on the future availability of more Federal funds. However, as described below, the authorized levels of Federal funds are not materializing.

Federal funds

Federal grant funds are made available under Public Law 94-142 to help States achieve the act's goals. The maximum amount of grant each State is entitled to receive each year is equal to the number of handicapped children age 3 to 21 receiving special education and related services in the State, multiplied by a specified percentage of the national average annual costs to educate all public elementary and secondary pupils. The percentage authorized by the act increases yearly from 5 percent in fiscal year 1977 to a maximum of 40 percent in fiscal "year 1981 and beyond.

Although actual Federal funding for the first 2 years of the 94-142 program—fiscal years 1978 and 1979—was at about the percentage levels authorized by the act, funds for the following 3 years are expected to be considerably less than authorized.

The following table depicts the funding history since the first year of implementation and contrasts the authorized or "full" funding levels with the actual funds requested by the President and made available by the Congress.

Fiscal year appropriation	For use in fiscal year (note a)	Full funding level		Actual funding level		
		Authorized percentage of NAPPE (note b)	Amount (note c)	Amount requested	Amount appropriated	Actual percentage of NAPPE (note d)
			(millions)			
1977	1978	5	e/$252	$110	$315	5
1978	1979	10	f/566	365	465	10
1979	1980	20	1,384	804	804	12
1980	1981	30	2,155	862	874	12
1981	1982	40	4,365	922	-	12

a/The 94-142 program is advance funded. The amount appropriated for fiscal year 1979, for example, became available for obligation on July 1, 1979, for use during the 1979-80 school year.

b/The percentage of the NAPPE authorized by Public Law 94-142 for Federal funding. For example, for fiscal year 1978, the 94-142 authorization for each handicapped student was 5 percent of the NAPPE of $1,430, or $71.50; for fiscal year 1979, it was 10 percent of the NAPPE of $1,561, or $156.10.

c/Figures for fiscal years 1978 and 1979 are obligations. Full funding amounts for fiscal years 1980, 1981, and 1982 are OSE estimates; exact amounts will not be known until childcounts are made and the NAPPEs calculated.

d/Figures for fiscal years 1980, 1981, and 1982 are OSE estimates.

e/Less than appropriated amount of $315 million due to a lower-than-anticipated childcount. Balance of about $63 million used for following year.

f/Includes carryover from previous year (about $63 million), regular appropriation of $465 million, and supplemental appropriation of about $38 million.

As the table shows, actual funding levels for fiscal years 1978 and 1979 were at about the 5- and 10-percent levels, respectively, authorized in the act. For fiscal year 1980, however, OSE requested and received an appropriation sufficient to cover only an estimated 12 percent of educational costs, although the full funding level authorized in Public Law 94-142 for that year was 20 percent. For fiscal year 1981, OSE again requested only an estimated 12 percent of costs although the authorized level had risen to 30 percent. For these 2 years, the total amount of 94-142 funds requested was almost $1.7 billion, but that amount was nearly $1.9 billion less than the act's full funding authorization.

In testifying at appropriation and oversight hearings, States, LEAs, and handicapped children's advocate groups have consistently pointed out their belief that, by reducing Federal funding so far below authorization levels, the Federal Government is failing to live up to its commitment and that this action will have adverse consequences on educating handicapped children. In response, OSE officials have pointed to the long-held view that education is a fundamental State responsibility, to the dramatic increase in Federal support of special education over the past 5 years, and to the administration's decision that the amounts requested are all that the Federal budget can support at this time.

Special education personnel

In some areas, even if sufficient funds were available, problems in finding qualified special education personnel would still prevent LEAs from providing all the services their handicapped children need. According to figures that about 40 States and territories submitted to OSE in 1977, their LEAs needed an average of 30 percent more instructional and non-instructional special education personnel in 1978-79 than they had in 1976-77. Most of the increase was needed in non-instructional staff, such as speech therapists, psychologists, diagnostic staff, and audiologists. The States estimated that they needed a 56-percent increase in non-instructional staff but
staff.

Rural areas seemed to have great difficulty attracting sufficient personnel. According to the director of special education at an Iowa LEA, the LEA received about $1 million in 3 years under the State's funding formula that it could not spend because special education personnel were not available to fill vacancies. The official told us at the time of our visit that only 265 of the LEA's 327 special education positions were filled.

Officials in a rural Oregon LEA told us that it took them almost a year to fill vacancies for a physical therapist and an occupational therapist. They stated that only six people applied for the positions, and only two were willing to work in the LEA.

At many locations in South Dakota, LEAs were having difficulty getting special education people to move from major cities in the region to the rural areas where the LEAs were located. Officials at a State hospital told us that, in looking for an occupational therapist for 2-1/2 years, they had found only *one* person willing to interview for the job.

Mississippi officials said that LEAs needed about 700 additional special education teachers in the 1978-79 school year. However, they estimated that only about 300 to 400 special education teachers who would be willing to remain in-State would graduate from Mississippi colleges and universities in time to fill these positions.

CONCLUSIONS

Although a paramount goal of the Congress in enacting Public Law 94-142 was to assure that by September 1, 1978, each eligible handicapped child age 3 to 18 would have available a free appropriate public education, and despite significant movement toward compliance, the goal has not been achieved. Shortages of special education funds and personnel continue to prevent LEAs from providing many services that their handicapped children need.

Without (1) added incentives to help overcome the barriers to increased State and local funding or (2) substantially increased Federal funding, the Congress' goal of providing each handicapped child age 3 to 18 with the opportunity for an appropriate education probably will not be reached nationally until the mid-1980s or beyond.

Since the act's October 1, 1977, deadline for implementing procedural requirements and its September 1, 1978, deadline for providing full educational services have both passed without having been met—in some cases by substantial margins—the Congress' goal has, in effect, already been modified. Whether this situation should be legitimatized with revised goals or dealt with in some other manner is a matter for the Congress to consider.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress consider the conflict between (1) the statutory purpose and timetable for providing each handicapped child with a free appropriate public education and (2) the problems States and LEAs are having, and will probably continue to have, in meeting those objectives. If considerable additional delays in reaching the goals are not acceptable, the Congress should provide (1) incentives to stimulate increased State and local funding or (2) increased Federal funding for the program. On the other hand, if the Congress finds that existing goals and deadlines are too stringent, considering potential fund and staff availability, it should modify the act's timetables or scope of coverage.

If the Congress examines the need for and availability of additional resources, we recommend that it consider the related question of the eligibility of children who need only small amounts of speech therapy, which we discussed in chapter 3. Because of the large number of children and sizable amount of Federal funds involved, any decision to exempt these children from coverage under the act, and to use Federal funds only for handicapped children whose impairments can be shown to adversely affect their educational performance, could significantly increase the chances of meeting Public Law 94-142's goals sooner—if funding levels are not reduced.

DEPARTMENT OF EDUCATION COMMENTS AND OUR EVALUATION

The Department of Education stated that it believed the Congress has undertaken, through oversight hearings, an extensive examination of both the statutory purpose and the problems encountered by the States and LEAs in meeting the act's purposes and timetables.

We are aware that the 94-142 program has been the subject of extensive congressional hearings. However, the Congress has not yet acted to resolve a basic problem—the inability of the States to provide a free appropriate public education to all handicapped children within the deadlines established in the act. We believe that the Congress should provide additional perspective and direction to all levels of the education community, particularly since both the 1978 and 1980 deadlines for compliance with the act have passed. Hence, we are giving the Congress additional information for its consideration of the program's future goals, deadlines for implementation, and funding.

CHAPTER 6

STATES NEED TO IMPROVE THEIR CAPABILITY TO CARRY OUT PUBLIC LAW 94-142

The Congress assigned SEAs the principal responsibility for assuring that LEAs and other public agencies carry out 94-142's requirements. As discussed in the previous chapters, however, these agencies have not implemented some of the act's requirements adequately or on time.

In our opinion, these problems occurred in part because SEAs had insufficient staff to provide the technical assistance and monitoring that LEAs needed.

SEA RESPONSIBILITIES

Public Law 94-142 gives SEAs the responsibility for ensuring that LEAs and other public agencies which provide education to handicapped children comply with the act's provisions. The act states:

> "* * * The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency." (20 U.S.C. 1412(6))

OSE regulations implementing the act give SEAs several responsibilities. First, SEAs are to ensure that each LEA or other public agency which educates handicapped children

—makes a free appropriate public education available to all handicapped children by the required deadlines;

—uses 94-142 funds properly and in accordance with prescribed priorities;

—prepares an IEP for each handicapped child;

—provides due process safeguards, including procedures for notifying and obtaining consent from parents, for appeals, and for impartial hearings;

--uses valid, nondiscriminatory testing procedures to evaluate and place handicapped children; and

—provides a continuum of alternative placements so that each handicapped child is educated with non-handicapped children to the maximum extent appropriate.

Also, the regulations require SEAs to provide technical assistance and training to LEAs and to monitor and evaluate their activities.

STATE ADMINISTRATION HAS BEEN INADEQUATE

At the time of our fieldwork, many SEAs had not adequately fulfilled their responsibilities for ensuring the proper implementation of Public Law 94-142. Technical assistance was often late and ineffective, little monitoring had occurred, and some SEAs still lacked needed enforcement authority to ensure compliance by all public agencies. As a result, many LEAs and State schools did not have the information they needed, when they needed it, to properly carry out 94-142's requirements.

Insufficient technical assistance

Officials in about half the locations we visited had problems obtaining technical assistance on the 94-142 program from their SEAs. In some instances, SEAs did not disseminate regulations, sent suggested procedures too late to be useful, or provided incorrect guidance.

For example, a California SEA official told us in April 1978 that, while the SEA had not distributed copies of OSE's December 29, 1977, regulations covering learning disabled children, it had distributed the August 23, 1977, regulations covering the general 94-142 program. However, special education directors in two California LEAs told us that they received no copies of the latter regulations from the SEA and had to obtain copies of both regulations through other sources. Also, a California SEA instruction dated September 8, 1977, incorrectly told LEAs that IEPs need not be completed until February 1, 1978, rather than the October 1, 1977, deadline in 94-142 regulations.

The Oregon SEA distributed several documents about 94-142, including a two-volume handbook of model procedures and policies for complying with the act. However, while SEA officials stated that they distributed these materials in fall 1977, two LEA officials told us that they did not receive the handbook until spring 1978. By then the LEAs had developed their own procedures, and the handbook was not used. These LEA officials commented that, to have been helpful in meeting the October 1977 deadline for implementing the act's procedural requirements, the SEA should have provided guidance in spring 1977, not a year later.

Overall, officials in 14 locations stated that the information their SEAs provided was inadequate to meet their needs.

No matter how many bulletins, instructions, and other documents SEAs issue on a new program, LEAs can be expected to have some questions about how the requirements apply to them. As a result, we believe SEAs should have knowledgeable staff available to answer LEA questions. However, officials in 11 locations told us that they had problems contacting SEA officials and/or obtaining correct and consistent answers. For example, officials in two Oregon LEAs stated that they could not obtain needed guidance from their SEA for 2 months during spring 1978, as the SEA staff was away monitoring LEAs. Officials in all four Oregon LEAs that we visited complained that answers they did receive were sometimes inconsistent or were often provided only as personal opinions, rather than definitive statements. One LEA official stated that, by being selective about whom he called at the SEA, he sometimes could obtain the answer he desired.

California officials also complained of difficulty in getting answers from SEA officials. They cited problems in contacting the specific people that could help them and the failure of SEA officials to return their calls. Similar problems were mentioned by LEA officials in Mississippi, Texas, and Washington.

Overall, about half the LEA and State school officials we talked with were dissatisfied with the assistance they received from their SEAs.

Little monitoring

As past OSE practices have demonstrated, SEA compliance monitoring visits, combined with substantial technical assistance—either before or immediately after 94-142 went into effect—could have helped LEAs identify and correct weaknesses in their special education programs. In fiscal year 1977, before most of 94-142 was effective, OSE officials monitored, or reviewed, State efforts to comply with the act and helped the States identify some corrections they needed to make by October 1, 1977. However, SEAs in only two of the States we visited, Iowa and New Hampshire, began monitoring LEAs before October 1, 1977. Six States did not start until the 1977-78 school year, and according to an SEA official, a seventh State, Texas, did not begin monitoring LEAs until the 1978-79 school year. As a result, LEAs in these States did not benefit from the assistance and direction that earlier SEA monitoring visits could have provided.

SEAs also had other problems in monitoring LEAs properly. For example, in the 1977-78 school year, the Ohio SEA monitored some LEA programs but did not monitor any special education programs operated by other State agencies. Interagency agreements giving the Ohio SEA supervisory authority over the education provided by other agencies had not been completed as required by 94-142, and State officials said that the SEA's authority to monitor State hospitals, institutions, and other State-operated programs remained unclear and prevented the SEA from exercising its monitoring responsibilities. In the same year, the South Dakota SEA monitored its LEAs against only a few 94-142 requirements, even though its State plan assured OSE that the SEA would monitor LEA compliance with all requirements. Oregon SEA officials told us that in fiscal year 1978, because of the shortages of staff and travel funds, they were able to monitor only 31 of the 330 districts in the State, most located near the State capital. While Oregon's annual program plan assured OSE that the SEA would monitor each LEA once every 3 years, continued shortages of resources could make it difficult for the SEA to meet its assurances or give LEAs the assistance they need.

LACK OF STATE SPECIAL EDUCATION STAFF

LEA officials generally attributed SEA shortcomings in technical assistance and monitoring to either a shortage of SEA special education staff or insufficient OSE direction and assistance. (See ch. 7.)

The following table shows the size of the SEA special education staffs in eight States during our visits.

State (note a)	Special education professional staff	Total special education staff
California	72	119
Mississippi	13	21
New Hampshire	10	15
Ohio	29	49
Oregon	11	14
South Dakota	13	20
Texas	66	117
Washington	10	16

a/information on Florida and Iowa not obtained.

These figures represent the entire staff in each SEA's special education unit. In most cases, the number of people assigned to help implement 94-142 was much smaller. For example, until mid-1978 the Washington SEA's special education staff involved with the 94-142 program consisted of a director and three professional staff, only one of whom was assigned to the 94-142 program full time.

Many SEAs recognized the increased responsibilities placed on them by Public Law 94-142 and the need for additional special education staff to administer the program to educate their handicapped children. However, most of them found that the act did not provide additional Federal funds to hire more staff. Public Law 94-142 continued the formula established in 1974 by Public Law 93-380, under which SEAs may use 5 percent of their grant or $200,000, 1/ whichever is greater, for program administration. In fiscal year 1978, because of this provision, 30 States received no increase in Federal administrative funds over their fiscal year 1977 level although their responsibilities had increased substantially. Many SEA special education officials therefore turned to State funding to supply the staff needed to administer the program. However, few of these requests for additional State-funded positions had been approved at the time of our fieldwork.

1/Increased to $300,000 by Public Law 96-270 (94 Stat. 487), enacted on June 14, 1980.

For instance, one State's special education director said that he requested 13 additional special education positions to augment his existing staff of around 20. Although this would have increased his total special education staff by just over 60 percent, it would have increased State-funded positions over 400 percent (from 3 to 16). The official had been told that he would receive only 6 of the 13 positions. Another State special education director told us that he requested 10 additional staff positions to supplement his existing staff of about 15. While increasing the total special education staff by less than 70 percent, the additional staff would have increased State-funded positions over 300 percent (from 3 to 13). The official had been informed that he would receive three additional positions at most.

We believe the difficulties SEAs experienced in attempting to obtain additional State-funded staff occurred, at least in part, because of the significant role Federal funds have come to play over the years in supporting State special education staffs. As shown in the following table, data available in seven States showed that an average of 59 percent of all SEA special education personnel were federally funded. In three States, Federal support was 80 percent or greater.

	Total SEA staff			
	State funded		Federally funded	
State	Number	Percent	Number	Percent
California	66	56	53	44
Mississippi	3	14	18	86
New Hampshire	3	20	12	80
Ohio	14	29	35	71
Oregon	9	62	5	38
South Dakota	6	28	14	72
Washington	2	14	14	86
Total	103	41	151	59

Considering this heavy reliance on Federal funding in the past, it is not surprising that States might come to expect the Federal Government to finance the major share of administering any new special education program.

OSE DOES NOT REVIEW SEA STAFF CAPABILITY

Since each State participating in the 94-142 program must submit an annual program plan containing assurances that the

State will carry out the provisions of the act, and since OSE must evaluate and approve the State's plan before grant funds are released, a vehicle exists enabling OSE to assess, at least in part, the SEA's adequacy and capability to fulfill its responsibilities.

Yet in reviewing and approving a State's plan, OSE solicits no information and makes no review of the structure or size of the SEA's overall special education staff to determine whether the SEA is capable of meeting the plan's assurances. Beginning with the fiscal year 1979 plans, States must list the names of the SEA staff paid from 94-142 funds and provide job descriptions. However, OSE does not require the States to demonstrate or assure in writing that SEA administration is adequate to meet the responsibilities imposed by the act or to carry out the annual program plans.

For example, SEAs need not include information on the duties of special education staff members paid from State or other Federal funds or their interrelationship with 94-142-funded staff. Also, SEAs are not asked to describe how the SEA's many 94-142 responsibilities—such as monitoring, technical assistance, training, and review of LEA grant applications—will be effectively carried out with the proposed staff and funds.

Such information, if required in the State plan, could enable OSE to evaluate the adequacy of SEA administration.

CONCLUSIONS

In Public Law 94-142, the Congress gave SEAs the principal responsibility for ensuring that LEAs properly implement the act. However, insufficient staff has limited SEAs' ability to provide needed technical assistance to LEAs and monitor their progress. The fact that States have relied so heavily in the past on Federal funds to support much of their SEA staff appears to have contributed to the difficulty they now face in increasing State-funded staff. Also contributing to the problem of SEA administration is the absence of a requirement that the States demonstrate and assure in writing in their annual program plans that their SEA staffs are capable of fulfilling their responsibilities. Such a requirement would force both the States and OSE to focus greater attention on SEA program management.