

**A REPORT TO THE  
ILLINOIS SPECIAL EDUCATION FUNDING TASK FORCE**

**A Focus on the Federal Laws and Thirty Years of Key Points  
Affecting Children and Services**

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**By**

**Mike Schack M.A.. M.B.A.**

## **SPECIAL EDUCATIONAL LAWS AND FUNDING: KEY POINTS OVER 30 YEARS FROM FEDERAL TO ILLINOIS BY MIKE SCHACK**

1. Before the Federal Special Education Law 94-142 mandates became effective, Illinois had developed procedures for services for handicapped children. It was customary for certain non-profits and government agencies to care for children in need. Indeed, many states founded schools for the deaf, blind and orphans, while local municipalities often built residential facilities and depended upon service clubs and religious organizations to help fund the operations. Illinois local school districts served handicapped children and annually applied for partial reimbursements for such line items as Personnel, Transportation, Extraordinary Cost Programs and Private Special Education Facilities. School districts were not yet required to fund the total cost of the education. If a family had the financial resources, they could supplement costs and select programs within their budget. For the majority of children needing services, the public schools met most of the needs. However, for more severely challenged other optional placements became necessary. Those without the financial backing would often need to relinquish custody of the child to a state agency in order to gain services. Two state directors of special education in Illinois were Ray Graham and Vernon Frazee who creatively worked with the legislature to pass laws like HB 4366 and HB 2671. These measures ensured up to \$3000 per year to pay tuition for non-public day and residential schools. Years before that situation, Cook County had enacted a law in 1899 requiring that Chicago operate "parental schools" and the state of Illinois operated mental health facilities including educational programs. Under the "Orphanage Act" many homeless children were housed and given basic vocational training in a variety of facilities throughout Illinois. All these services were provided by state and local agencies and supplemented by private donations.

In 1975 it was generally agreed in Washington that millions of children with handicapping conditions were receiving no services at all. When President Ford signed PL 94-142 in 1975 he wrote at length about its high price tag. The law "promises more than the federal government can deliver" and contains "many unwise provisions," including "a vast array of detailed, complex and costly administrative requirements...under which tax dollars would be used to support administrative paperwork and not educational

programs."\* Ford offered to work with the Congress in order to develop an "effective and realistic" program which could recognize the federal role in helping states and localities fulfill their responsibilities in educating handicapped children. But Congress and an impassioned populace had no intention of going back to the drawing board and PL 94-142's regulations were signed August 15, 1977, by Health, Education and Welfare Undersecretary Hale Champion and published in the August 23 Federal *Register*. The bill represented a civil rights statement for the handicapped children from 3 to 21 whereby 75% of funds would pass through to local school districts.

Federal funding would start to flow to the states for the 1978 school year at 5% above of states supplemental costs and increasing until 1982 to 40% of those supplemental costs. The law included a provision for a graduated scale of incremental increases for the years 1979 through 1982 going from the promised 5% up to 40% and leveling off from that point. The federal law also required states to not identify too many handicapped children, and set limits at about 12% of the population of school-age children. Formulas were developed which capped the percentages of handicapped children that states could identify and a "free appropriate public education" for all handicapped children was to be established by September 1, 1978. Since those dates, the federal government has never fully funded 94-142. Most would argue that the highest annual amount ever given to the states has been less than 20%.

Public Law 94-142 has been labeled the most sweeping legislation in the history of special education. The intent of the law was to raise public awareness; increase administrative knowledge of how to educate handicapped children; break down stereotypes about disabled and challenged children; and to foster empathy in the hearts of traditional students so that they would no longer just see them as "those strange kids down the hall."\*\* It is unclear whether American mainstream educators, students or the general public have improved their acceptance of those who seem "different" from the norm. The increases in numbers of children now identified as disabled and those placed in self-contained classes, off campus learning centers and private special education schools has soared.

Since the federal laws required free individual educational programs for all handicapped children in America ages 3 to 21 starting in 1978, funding has always been an issue. Over the past 30 years the same ten states have led the country in the delivery of services and

in funds received. Illinois has maintained a position as number four in the numbers of children served. The top ten have for the most part been in order: California, Texas, New York, Illinois, Ohio, Pennsylvania, New Jersey, Florida, Michigan and Massachusetts. The largest amounts of federal funds have been allocated to these states in proportion to the numbers of children counted as of each December 1<sup>st</sup> since 1979. Most of these states have developed think tanks for exploring through research program innovations and funding strategies.

As the law mandated, each state must develop an Advisory Council for Special Education which must assist in the State's Compliance Plan and also coordinate efforts with the National Advisory Council for the Handicapped in Washington DC. Most state directors of special education will estimate that between 10% to 20% of school age children receive some level of special education and related services along the "Continuum."\*\*\* The Continuum means a detailed service delivery system ranging from Resource services for a few minutes per week all the way up to a 24 hour residential school. Any state compliance plan will elaborate on the vast array of service components in place.

7. The main priorities of Public Law 94-142 were to: identify and serve all underserved children; and to develop individual educational programs for the most severely handicapped children. State and local school agencies faced enormous increases in special education costs and have continuously struggled with finding and training enough certified qualified teachers and related personnel. Illinois has watched the state budget grow **as** well as the new requirements for detailed service delivery systems to meet increasing needs. Every year the media presents compelling stories of the increases in disabilities in children like Autism, Learning Disabilities, Other Health Impairments, Emotional Disturbances and Adolescent Depression. Today more school districts are seeking principals and superintendents who have special education experience and expertise in programs, conflict resolution and developing individual educational plans. The state of Illinois has one of the highest numbers of local districts and special education cooperatives in the nation, and offers the opportunity to become a role model for others in solving these challenges.

Section 300.550 of 94-142 required school districts and states to serve handicapped children within the Least Restrictive Environment (LRE). This necessitated the development of many

mainstreaming opportunities and resulted in costly Due Process hearings and law suits. The FAPE component brings an emphasis upon mainstream experiences as much as possible for the child. This one section has resulted in more expansive services and yet the requirement for documentation of every step in the identification and evaluation process further compounds the bureaucracy. Today's special and regular teacher needs to keep a lap-top computer handy just to be able to record every move and response to student actions and performance or lack thereof. Section 300.551 requires states and local educational agencies to develop a "Continuum" of services from Resource Service to Residential Educational Placements. These costs soared because of increases in required documentation and tuition and also room and board and related services. Illinois budget line item for non-public reimbursement has grown steadily in recent years.

9. Recently, the Illinois Special budget for 2010 was projected to be over \$1.7 billion. Without some form increased revenue in Illinois, local districts will not be able to meet the requirements of the laws and will face additional challenges from No Child Left Behind. NCLB attempted to replace the Elementary and Secondary Education Act of 1965, but only resulted in a "top-down" mandate introducing a culture of micromanagement for the American teacher largely ignoring the basic principals of pedagogy and good teaching. Now there appears to be a need for innovation, creativity, empathy and the means to manage the vast degree of documentation brought about by NCLB.
10. Illinois Educational funding has been promised federal assistance and to date has never received even 50% of what the laws from 1978 mandated. These requirements for service delivery have continually increased without adequate federal support. Also, within Illinois, little or no special educational funding has materialized as a result of proceeds from the rollway revenues or the state lottery. Local school district revenues are declining because of decreases in real estate taxes and there has been a drop in approved local referendums for school funding.

1." Impact on the Schools",94-142, Capitol Publications, Arlington, Virginia, Roberta Weiner, p. 20-21

\* Ibid.

\*\*Ibid

\*\*\*Ibid, p. 217