

# PL 94-142 and Local District Governance

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As policy makers in school districts across the nation began three years ago to implement regulations of the Education for All Handicapped Children Act, they found themselves, like Gulliver, ensnared by hundreds of tiny lines—lines of print in regulations. School districts have had to work diligently within those lines to make decisions, implement programs, and provide quality education to thousands of handicapped students.

PL 94-142 has affected local school district governance in four major areas. It has brought about (1) increased cooperation between parents, state education agencies, and other districts and agencies who serve handicapped children; (2) greater knowledge about the education of handicapped children; (3) new priorities for using funds and other resources; and (4) consideration of special education as an integral part of the total school program.

Parents have stimulated a conscious effort among school district officials to work closely with them. A highly desirable parent-school partnership is forming that produces not only compliance with the letter of the

law, but with the spirit as well. Local level decision makers are finding that program governance is easier to accomplish if they work closely with the state education agency, which is responsible for procedures—based on the federal regulations—for implementing PL 94-142 in the state. And there are other agencies that provide special services, which administrators must consider when making decisions. Regardless of which agency provides a particular service needed by a child, it is the school district's responsibility to educate that child. Cooperation among all of these individuals and agencies is essential to carry out the law.

School board members, superintendents, and principals are increasing their knowledge not only about the requirements of PL 94-142 but also about the range of conditions and services needed by children with handicaps. State and local education agencies have a joint responsibility to ensure that information and training are available to decision makers. In Delaware, for example, the Department of Public Instruction annually conducts an Administrative Training Institute to prepare administrators to meet their responsibilities and to make decisions based on accurate and current information. Instruction in implementing state and federal requirements, mainstreaming handicapped children, and related topics not only increases the knowledge base of decision makers but serves to shape more positive attitudes toward their responsibilities.

Finding and allocating the re-



Implementation of the Education for All Handicapped Children Act has created new issues and challenges in the governance of education.

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sources necessary for implementing the Act is a major concern of most school administrators. The intent of the law was to increase financial assistance to states and school districts to pay a portion of the excess cost of educating handicapped children. But according to a January 1979 HEW Office of Education study, Part B funds from PL 94-142 are a relatively minor share of the cost of such programs. In some states, federal money has covered only 4 percent of the total handicapped program expense. Yet, whether or not the federal contribution is fully made, states and local school districts must meet the requirements of the law. This means that state and local agencies, in order to provide services, must garner resources from within the state.

The move to provide appropriate education for the handicapped has fostered cooperation among smaller school districts. Even before enactment of PL 94-142, a number of states foresaw the need for mandatory special education legislation and collected prevalence data on handicapped children. They found that a student population of 15,000 or more is required to provide cost-effective categorical programs in most special areas. Some programs, such as those for deaf-blind students, require an even larger student population. As a result, these states established cooperative arrangements, including the RESAs of Iowa, the Joint Agreements of Illinois, and the BOCES of New York. Regardless of their advantages and disadvantages, such arrangements have become an economic necessity for school districts since enactment of PL 94-142.

While the Act has had an obvious impact on special education, it is beginning to substantially affect regular education programs as well. School personnel must make sure that students who are not truly handicapped but need remedial services are not placed in special education for lack of alternative programs. School districts that implement competency testing or basic skill achievement programs for all students cannot expect special education to serve as the major source of remedial assistance. Special education must supplement and support education for handicapped chil-

dren and not become a separate and parallel education system. It is important that staff be integrated throughout the total education program; communication lines and in-service training are critical to staff cooperation. Also, extracurricular and nonacademic services and activities must be available for handicapped children, even if their special needs require them to receive services outside their regular school or school district.

The impact of legal issues arising under PL 94-142 is far reaching. The Act invites broad review of educators' decisions by federal and state judges. This review is not limited to administrative records generated at local due process hearings; any party may supplement those records by submitting new evidence to the court. This review function places judges in a rather anomalous position: the judiciary is often called on by parents and school districts to substitute its judgment for that of educators. The opportunity for a judge to expand the evidentiary record appears to upset the time-honored legal principle that courts will defer to the special expertise of individuals and agencies. The problem is compounded when a litigant fails to exhaust administrative remedies, takes a shortcut to the courthouse, and asks a judge to order a specific program or placement.

An interesting phenomenon is related to the "least restrictive environment" provision. One of the cornerstone rules of the Act is that exceptional children are to be "mainstreamed" in regular education programs whenever appropriate. Ironically, the Act has been used by some parents as a vehicle for legally placing their handicapped children out of the "mainstream"—in private schools and institutions—at public expense. The courts have had to consider various options for children with a range of problems; in some cases they have ordered schools to accommodate all of the conditions of a child's special needs.

The due process hearings that preclude judicial action have created other legal concerns and problems. Most states do not possess a ready resource of experts cross-trained both in the nuances of due process and in modern theories and practices of special education. Lawyers may be

adept at ensuring fundamental due process, but their ability to make special education decisions and evaluate the types of evidence produced at hearings is questionable. On the other hand, many special education hearing officers who are versed in educational decision making are undertrained in ensuring procedural fairness and hearing efficiency. The cost of hiring attorneys strains tight budgets. Using special educators in the hearing room strains understaffed programs in the schools. And it is questionable whether the combative atmosphere of the hearing room fosters educational decisions that are in the best interest of exceptional children.

Claims of unequal treatment of handicapped children also have an impact on educational governance. Some courts have interpreted the Act to require different disciplinary tactics for exceptional students. The court in *Doe v. Koger*, 480 F. Supp. 225 (1979), held that long-term expulsion of a handicapped student was precluded until the student's program was reconsidered. In July the Third Circuit Court of Appeals upheld the ruling in *Armstrong v. Kline*, 476 F. Supp. 583 (1979), that a state may not arbitrarily limit the number of days in the exceptional child's school year to the number of days for all other children without violating federal law. The courts may sometime be asked to rule on the fairness of requiring individualized educational plans for some without giving equal time and attention to all other students.

Local school districts must weigh the impact of their decisions on a scale loaded on one side with the requirements of PL 94-142 and on the other with concerns for the whole system. Every decision regarding handicapped children will somehow affect the total program for all students.

Gulliver finally emerged from his dilemma in Lilliput and so will educators when PL 94-142 is fully implemented. Local governance may now be more deliberate and thoughtful, considering as it must the needs of students, concerns of parents, joint program operations, staff development, funding, due process and court decisions, and implications for other programs. PL 94-142 will continue to have an impact on local governance. ■

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