BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RF TEST CLAIM ON:

Education Code sections: 4 1850; 4 185 1.2; 4 1976.5; 56026; 56030.5; 56050; 56170; 56171; 56190; 56191; 56192; 56193; 56194; 56206; 56321; 56325; 56329; 56344; 56345; 56346; 56361; 56362; 56363; 56363.3; 56365; 56366; 56504; 56507; 56520; 56726; 56760; 56762; 56780; 56781; 56782; and 56783, as added and amended by

Statutes of 1977, Chapter 1247; Statutes of 1980, Chapters 797, 1325, 1329, 1353, and 1354; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1983, Chapter 1099; Statutes of 1984, Chapter 268; Statutes of 1985, Chapters 115, 795, and 1603; Statutes of 1987, Chapters 311, and 1452; Statutes of 1988, Chapter 35; Statutes of 1990, Chapters 182, 959, and 1234; Statutes of 1991, Chapters 223, 283, and 1756; Statutes of 1992, Chapters 759, 1061, 1360, and 1361; Statutes of 1993, Chapters 489, and 1296; Statutes of 1994, Chapters 1172, and 1288; and Statutes of 1995, Chapter 530

Government Code section 7579.5, as added and amended by

Statutes of 1990, Chapter 182; Statutes of 1991, Chapter 223; and Statutes of 1993, Chapter 489; and

Title 5, California Code of Regulations, sections: 3029; 3030; 3043; 3051; and 3067

Filed by Riverside County Superintendent of Schools, Claimant and

North Region SELPA (Alameda Unified School District, Administrative Unit), Castro Valley Unified School District, Contra Costa SELPA, Grant Union High School District, Newport Mesa Unified School District, Oakland Unified School District, Palo Alto Unified School District, and San Mateo-Foster City School District, Supplemental Claimants.

NO. CSM-3986

SPECIAL EDUCATION

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted on November 30, 1998)

STATEMENT OF DECISION

The attached Statement of Decision is hereby adopted by the Commission on State Mandates on November 30, 1998. The decision is effective on December 11, 1998.

Date: December 11, 1998

Paula Higashi

Paula Higashi, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code sections: 41850; 41851.2; 41976.5; 56026; 56030.5; 56050; 56170; 56171; 56190; 56191; 56192; 56193; 56194; 56206; 56321; 56325; 56329; 56344; 56345; 56346; 56361; 56362; 56363; 56363.3; 56365; 56366; 56504; 56507; 56520; 56726; 56760; 56762; 56780; 56781; 56782; and 56783, as added and amended by

Statutes of 1977, Chapter 1247; Statutes of 1980, Chapters 797, 1325, 1329, 1353, and 1354; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1983, Chapter 1099; Statutes of 1984, Chapter 268; Statutes of 1985, Chapters 115, 795, and 1603; Statutes of 1987, Chapters 311, and 1452; Statutes of 1988, Chapter 35; Statutes of 1990, Chapters 182, 959, and 1234; Statutes of 1991, Chapters 223, 283, and 1756; Statutes of 1992, Chapters 759, 1061, 1360, and 1361; Statutes of 1993, Chapters 489, and 1296; Statutes of 1994, Chapters 1172, and 1288; and Statutes of 1995, Chapter 530

Government Code section 7579.5, as added and amended by

Statutes of 1990, Chapter 182; Statutes of 1991, Chapter 223; and Statutes of 1993, Chapter 489; and

Title 5, California Code of Regulations, sections: 3029; 3030; 3043; 3051; and 3067

Filed by Riverside County Superintendent of Schools, Claimant and

North Region SELPA (Alameda Unified School District, Administrative Unit), Castro Valley Unified School District, Contra Costa SELPA, Grant Union High School District, Newport Mesa Unified School District, Oakland Unified School District, Palo Alto Unified School District, and San Mateo-Foster City School District, Supplemental Claimants.

NO. CSM-3986

SPECIAL EDUCATION

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted on November 30, 1998)

Special Education Test Claim
Proposed Statement of Decision

Table of Contents

STATEMENT OF DECISION

I. Introduction and Background

On October 3 1, 1980, the Santa Barbara County Superintendent of Schools (Santa Barbara) filed a test claim with the Board of Control (Board). Santa Barbara sought reimbursement for costs incurred in the 1979-80 fiscal year to provide special education services as required by Statutes of 1977, Chapter 1247 (Chapter 1247/77) and Statutes of 1980, Chapter 797 (Chapter 797/80).

The Board adopted a decision denying Santa Barbara's claim. The Board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government and that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act. "

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings inadequate. Judgment was rendered requiring the Board to set aside its decision, to rehear the matter, and to establish a proper record, including findings. The judgment was not appealed.

On October 30, 1981, Riverside County Superintendent of Schools (Riverside) filed a test claim for costs incurred regarding the provision of special education in the 1980-8 1 fiscal year. The Board denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the Board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the Board that any appropriation in the state budget act necessarily satisfies the state's subvention obligation. The court concluded that the Board had failed to consider whether the state had fully reimbursed local districts for the state mandated costs that were in excess of the federal mandate and remanded the matter for consideration of that question. The judgment was not appealed.

On remand, the Board consolidated the Santa Barbara and Riverside claims. The Board adopted a decision holding that all special education costs under Chapter 1247/77 and Chapter 797180 are state mandated costs subject to subvention. The Board reasoned that the federal Education of Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law. Therefore, special education programs are optional in the absence of a state mandate.

The claimants were directed to draft parameters and guidelines and the Board adopted them. The Board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-81 through 1985-86 fiscal years would be more than $2 billion. Proposed legislation that would have appropriated funds for reimbursement of special education costs during the 1980-81 through 1985-86 fiscal years failed to pass in the Legislature (Sen. Bill No. 1082 (1985-1986 Reg. Sess .) .) A separate bill which would have appropriated funds to reimburse Riverside for its 1980-81 claim also failed to pass (Sen. Bill No. 238 (1987-1988 Reg. Sess.).)

At this point Mr. Huff, Director of the Department of Finance, brought an action in administrative mandate to set aside the decision of the Board. Riverside

cross-petitioned for a writ of mandate directing the state, the State Controller, and the State Treasurer to issue a warrant in payment of its claim for the 1980-8 1 fiscal year.

The superior court concluded that the Board did not apply the appropriate standard in determining whether any portions of local special education costs were incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the California Supreme Court in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, "marked a departure from the narrower 'no discretion' test" of the appellate court in the earlier decision involving the *City of Sacramento* case, The superior court further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively. "

Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates (Commission) to set aside the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento,* and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate. " Riverside's cross-petition for a writ of mandate was denied. The judgment was appealed.

On December 30, 1992, the appellate court in *Hayes v. Commission on State Mandates* (1992) 11 Cal. App .4th 1564, agreed with the superior court and remanded the test claim to the Commission for consideration in light of the criteria set forth in the California Supreme Court's *City of Sacramento* decision. *Hayes* directed the Commission to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

Following the *Hayes* Decision

In response to the appellate court's ruling in *Hayes,* Riverside submitted a test claim on 17 program areas or activities regarding special education. Riverside prepared a comparative federal and state analysis of the current state and federal law on these 17 program areas and proposed that the scope of the test claim be restricted to exclude the time-period preceding July 1, 1993, the beginning date of the 1993-94 fiscal year.

At its April 28, 1995, hearing, the Commission adopted a Statement of Decision regarding three introductory procedural matters raised at the February 23, 1995, hearing.'

In that decision, the Commission concluded it was Riverside's responsibility, at a minirnum, to prepare a comparative analysis of relevant state and federal statutes, regulations, and case law, for the period commencing from the operative date of the current state law through the present time affecting its 17 program areas. The Commission would proceed to hear the test claim only after the submission of the comparative analysis. In addition, the comparative analysis was to take into account any variations in the levels of service required under the federal law during the entire time-period. Riverside's test claim, and the time-period of the comparative analysis, would apply to all school districts.

The Commission decided that other school districts may join the present test claim and include other program areas or activities related to special education in the comparative analysis that were not set forth in Riverside's test claim filing. The Commission also decided that, unless a

[1] Any citation, quotation, or paraphrasing from the April 28, 1995, Statement of Decision on Procedural Matters is for clarification purposes only and is not part of this Statement of Decision.

test claim was filed on or before July 3 1, 1995, it would not be joined and consolidated with Riverside's test claim filing. Test claims not joined and consolidated with Riverside's test claim would be subject to a new test claim filing date. Moreover, additional test claims filed would apply to all school districts, whether or not they were joined and consolidated with Riverside's original test claim.[2]

The Commission required notification of as many other potential school district test claimants as possible, using reasonable and appropriate measures. Specifically, the notification would indicate that the test claim was restricted to a comparative analysis of relevant current state law and federal law. A comparative analysis of the program areas or activities in Riverside's test claim for the time-period preceding the operative date of current state law would not be considered, unless another test claimant submitted a test claim containing a comparative analysis of relevant state and federal statutes, regulations, and case law, for every month, year, or other appropriate time-period for which reimbursement was sought. The earliest starting date for the comparative analysis was October 31, 1980, the filing date of the original test claim.

On June 26, 1995, Riverside filed a Summary of Relevant State and Federal Special Education Statutes and Regulations for the years 1980- 1995.

On or before July 3 1, 1995, the Commission consolidated eight other test claims with the Riverside test claim. These claims were filed by San Mateo-Foster City School District, Palo Alto Unified School District, Oakland Unified School District, North Region SELPA (Alameda Unified School District, Administrative Unit), Newport-Mesa Unified School District, Grant Union High School District, Contra Costa SELPA, and Castro Valley Unified School District.

On October 27, 1995, staff held a pre-hearing conference to set a briefing schedule, test claim hearing dates, and a Final Statement of Decision approval date.

[2] At the April 28, 1995, hearing the Commission extended the original filing date of May 3 1, 1995, to July 31, 1995.

II. Procedural Issues

The Commission heard several procedural issues on June 27, 1996, and December 19, 1996. These issues are presented in chronological order.

A. June 27, 1996, Hearing

On June 27, 1996, the Commission on State Mandates (Commission) heard five procedural items during a regularly scheduled hearing.

Cornmission Members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorney General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the items were submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Governrnent Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission made the following findings and conclusions as to each of the five issues described below.

Issue 1

> Should Riverside's test claim and the eight supplemental test claims be dismissed or stricken because they are unsupported and therefore fail to meet the Commission's briefing conditions?[3]

In its March 1, 1996, Supplemental Opposition and Recommendation, the Department of Finance argued that Riverside's test claim and the eight supplemental test claims are unsupported and must be dismissed or stricken for failure to meet the Commission's clearly stated briefing conditions. In essence, the test claimants have not met their prima facie burdens. The Department asserted that the test claims did not comply with the Commission's conditions and directives that a test claim would only be considered if it was supported with a detailed and thorough comparative historical analysis of all relevant state and federal law, i.e., inclusion of all pertinent case law for every year or applicable time increment within the alleged reimbursement claiming period.

The Department also asserted that that four of the eight supplemental test claims were not filed by the Connnission's July 3 1, 1995, deadline.

Commission Findings

The Commission found that Riverside and each of the eight supplemental test claimants did submit a historical matrix or analysis of the program areas in question comparing federal law with state law. The Cornmission further found that each of the test claims were postmarked on

[3] The Commission prescribed the briefing conditions in its Procedural Statement of Decision adopted on April 28, 1995, and amended on July 20, 1995.

or before the July 3 1, 1995, due date and, therefore, were timely filed. (July 3 1, 1995, was the due date for consolidating other test claims with the Riverside test claim. Test claims regarding special education that were filed after July 3 1, 1995, were not joined and consolidated with Riverside's test claim and would be subject to a new test claim filing date.)

Conclusion

The Commission concludes that the test claims are complete and should not be dismissed or stricken from the record. The Cornrnission further concludes that the eight supplemental test claims will be joined and consolidated with Riverside's test claim.

Issue 2

> Do the test claims allege programs that fall within the sweeping scope of the federal mandate?

The Department of Finance argued that, even if claimants had satisfied their clearly delineated prima facie burdens, their test claims fall within the sweeping scope of the federal mandate imposing special education duties upon school districts. Thus, claimants did not cite any state mandated programs.

Commission Findings

The Commission found it premature to make an initial determination that all of the program areas referenced in the consolidated test claim should be summarily denied because they are encompassed within the federal mandate of special education.

The Commission noted that the Hayes decision stated that it is the court's "conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state [and] marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. "[4]

Conclusion

The Cornmission concludes that it will proceed to hear each of the program areas identified in the consolidated test claim and then determine whether a reimbursable state mandate exists as to each alleged program.

Issue 3

> Does California's special education program merely effectuate and implement federally mandated requirements thereby prohibiting a finding that Riverside's test claim and the supplemental test claims represent reimbursable state mandated programs?

The Department of Finance argued that any federally mandated requirements are effectuated and implemented by California's special education program. The Department maintained that, if a program contained in state law serves only to detail or implement a federal policy or program and does not reflect an independent state policy, then such state statutes or orders are expressly excluded from the definition of reimbursable state mandates.

[4] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1592.

The Department further contended that the Legislature, in Education Code section 56000, clearly announced its intention to merely comply with and not to exceed the requirements imposed by federal law.

Finally, the Department submitted that state law regarding special education is driven by and is entirely consistent with existing federal mandates, Therefore, there is no basis upon which this Cornmission could lawfully find a reimbursable state mandate within the meaning of section 6, article XIII B.

Commission Findings

The Commission found it premature to make an initial determination that all of the program areas referenced in the consolidated test claim should be summarily denied because they are encompassed within a federal mandate for special education.

Further, the Commission found the ***Hayes*** decision to be instructive when it stated that it is the court's "conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state and marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. "[5]

Conclusion

The Commission concludes it will proceed to hear each of the program areas identified in the consolidated test claim and then determine whether a state mandated program exists in any of the program areas.

Issue 4

> What is the claiming period for the test claim and supplemental claims if the Commission finds a reimbursable state mandated program exists for some or all of the test claim areas?

The Department of Finance argued that the claiming period is limited to current state law. The Department of Finance noted that the Commission, in its April 28, 1995, decision required that, at a minimum, Riverside must initially prepare a comparative analysis of relevant state and federal statutes, regulations, and case law. This comparative analysis shall cover the entire period commencing from the operative date of the current state law through the present time affecting its 17 program areas.

Thus, the Department submitted the earliest reimbursement date for Riverside's test claim, should the Commission determine a subvention right exists, would be the operative date of the current state law. The Department contended that new test claims, unless accompanied by a comparative analysis for periods preceding the current law's operative date, would also be bound by Riverside's claiming period. Because the supplemental claims do not include a comparative analysis of applicable federal law for any period, they are restricted to Riverside's claiming periods for potential reimbursement.

Commission Findings

The Cornmission found that the Amended Statement of Decision adopted on July 20, 1995, stated that Riverside, as the principal test claimant, is responsible, "at a minimum, to initially prepare a comparative analysis of relevant state and federal statutes, regulations, and case law,

[5] *Ibid.*

for the entire period commencing from the operative date of the current state law through the present time. . . . "

The Commission noted it had established only a minimum time-period for Riverside to compare state and federal law, i.e., the time-period covering at least the current state law. The Commission found Riverside and the other claimants exceeded this minimum time-period in their comparative analyses.

Conclusion

The Comrnission concludes that the reimbursable time-period should not automatically be limited to the period covering the current state law for each of the 19 program areas. Rather, the Cornrnission concludes that it will determine the existence of a state mandated program during the periods set forth in the consolidated test claim.

The Commission notes that the filing date of the original test claim was October 3 1, 1980, and not October 30, 1980, as set forth in the Commission's Amended Statement of Decision.

Issue 5

> Does the *Hayes* case require the Cornrnission to find a state mandate if the state retains any discretion in allocating the costs of the special education programs?
>
> To the extent that the state does not retain such discretion, is the Cornrnission authorized to exclude from the state mandate only those costs that are specifically imposed upon school districts by federal law?
>
> In addition, if the state law implemented federal law and exceeded the federal mandate to any extent, are all costs mandated by the state law reimbursable?

Long Beach Unified School District (Long Beach), as an interested party, submitted the arguments set forth above and referenced the Hayes decision on page 1595: ". . . on remand the Commission must focus upon the costs incurred by local districts and whether those costs were imposed on local districts by federal mandate or by the state's voluntary choice in its implementation of the federal program. "

Commission Findings

The Commission found language in the *Hayes* decision to be instructive:

> "It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local educational agencies. Congress found that 'State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;' and 'it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.'" *Hayes v. Commission on State Mandates* (1992) 11 Cal. App 4th 1564, 1587, 1588.

The Comrnission found the Hayes decision recognizes that the federal government directs the delivery of special education services upon state and local educational agencies. That being the

case, the Commission found it may not simply determine that any state mandated program necessarily includes the portion of the program related to a federal requirement.

The Commission found Long Beach's argument, the extent the state mandate would even include the portion encompassed by the federal mandate, to be unpersuasive.

Conclusion

The Commission concludes it will hear each of the program areas identified in the consolidated test claim and then determine whether a state-mandated program exists. The Commission concludes that at such time it will determine whether and to what extent state law does not include activities encompassed by the federal mandate.

B. December 19, 1996, Hearing

On December 19, 1996, the Cornmission heard the following procedural item during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants.

At the hearing, evidence both oral and documentary was introduced.

The law applicable to the Commission's determination of a request for disqualification of a Cornmission member is Title 2, California Code of Regulations, section 1187.3, subdivision (b).

Issue

Should the Commission disqualify the State Controller's representative and any subsequent State Controller's Office representative to hear the Special Education claims of the supplemental claimants?

The Commission did not vote on Ms. McDonough's motion and no action was taken.

III. The Special Education Test Claim

The Special Education Test Claim consists of 19 separate program areas considered by the Commission on State Mandates. The 19 program areas are as follows: (1) Maximum Age Limit; (2)(A) Maximum Enrollment Caseloads for Resource Specialists; (2)(B) Maximum Enrollment Caseloads for Language, Speech, and Hearing Specialists; (3) Community Advisory Committees; (4) Individualized Education Program Timelines; (5) Psychological Requirements; (6) Related Services; (7) Transportation; (8) Surrogate Parents; (9) Preschool Transportation for Ages 3-5 Not Requiring Intensive Services (Not-RIS); (10) Eligibility Criteria for Specific Learning Disabilities; (11) Definition of Severely Handicapped; (12) Extended School Year; (13) Interim Placements; (14) Governance Structure; (15) Non-Public Schools (Individual Service Agreements); (16)(A) Parent Notice and Access to Records; (16)(B) Written Parental Consent; (17) Payment of Attorney's Fees in Administrative Due Process Proceedings and IEP Meetings; (18) Resource Specialist Program; and (19) Ten Percent (10 %) Restriction of Total Enrollment.

1. Maximum Age Limit

On June 27, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornmission Members present were William Sherwood, Stan DiOrio, Diane Richardson, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts as an interested party appeared for Long Beach Unified School District, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission adopted the staff recommendation to find that the Maximum Age Limit portion of the Special Education Test Claim represents a reimbursable state mandated program for students who become 22 years of age while participating in special education.

Issue

> Does Education Code section 56026 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the provision of special education services beyond age 21 under certain circumstances?

Federal Law

Federal law requires that a free appropriate public education be made available to children with disabilities through age 21. Federal law does not require the provision of special education and related services to children with disabilities beyond the age of 2 1 .[6]

The provisions of federal law are set forth in the Addendum.

State Law

Under certain circumstances as specified therein, Education Code section 56026 requires the provision of special education for those students who become age 22 while participating in a special education program. In sum, state law requires the provision of special education beyond age 21.

The provisions of state law are set forth in the Addendum,

Commission Findings

The Con-mission found that federal law requires the provision of a free appropriate public education through the age of 21. Federal law does not require the provision of a free appropriate public education if the student in question becomes age 22 while participating in a special education program.[7] The Cornmission found that state law exceeds the federal law by requiring the provision of special education to students beyond the federal mandated age of 21 and, thus, the Legislature voluntarily imposed a higher level of service upon school districts.[8]

Each of the various chaptered versions of Education Code section 56026 referenced in the test claim,' exceeded federal law by permitting a student who becomes 22 years of age while participating in a special education program to continue his or her participation in the program, as specified therein.

Conclusion

The Commission concludes that Education Code section 56026 imposed a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Further, any special educational services provided to those students who become age 22 while participating in special education as specified under section 56026 are eligible for reimbursement. [10]

---

[6] Title 20, United States Code, section 1412; Title 34, Code of Federal Regulations, sections 300,123, 300.222.

[7] *Ibid.*

[8] Education Code section 56026.

[9] Statutes of 1995, Chapter 530; Statutes of 1993, Chapter 1296; Statutes of 1992, Chapter 1361; Statutes of 1991, Chapter 223; Statutes of 1988, Chapter 35; Statutes of 1987, Chapter 311; and Statutes of 1980, Chapter 797.

[10] All references are to the Education Code unless otherwise stated.

2A. Maximum Enrollment Caseloads for Resource Specialists

The Cornmission considered this portion of the Special Education Test Claim during three hearings, as follows :

June 27, 1996

On June 27, 1996, the Comrnission first heard this portion of the Special Education Test Claim. No action was taken.

Commission Members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted and the Comrnission continued the matter, inviting the parties to submit further briefs in response to the following questions and issues:

1. Do existing federal guidelines address caseloads? Does the federal application mention caseloads?

2. If California's state plan would be accepted by the federal government without caseloads, how is the imposition of caseload limitations by the state a federal mandate?

3. A comparative survey of other states' caseload requirements, or lack thereof, for both resource specialists and Language, Speech, and Hearing (LSH) specialists;

4. An explanation of the requirements to obtain a waiver for both resource specialists and LSH specialists; and

5. A detailed explanation of the existence of prior law argument raised by the Department of Finance during the subject hearing.

April 24, 1997

On April 24, 1997, the Cornmission re-heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission Members present were William Sherwood, Diane Richardson, Richard Chivaro, Dave Cox, and Albert Beltrami.

W. Craig Biddle, and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Steven N. Morford, Marin County Office of Education, SELPA, appeared for the claimant, Diana K. (Smith) McDonough, appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission determined that the Maximum Enrollment Caseloads for Resource Specialists portion of the Special Education Test Claim represents a limited reimbursable state mandated program,

October 30, 1997

On October 30, 1997, the Commission considered the State Board of Education's (SBE) request for reconsideration of its decision regarding Maximum Enrollment Caseloads Limit for Resource Specialists. Specifically, the SBE sought reconsideration of the conclusion that reimbursement for the cost of hiring additional resource specialists is conditioned on a local educational agency's application for a waiver and subsequent refusal of that waiver by the State Board of Education.

Cornmission members present were William Sherwood, Richard Chivaro, Nancy Patton, Joann Steinmeier, and Albert Beltrami.

Greg Geeting appeared for the State Board of Education, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the request was submitted, and the vote was taken.

The Commission voted on a motion to deny the request for reconsideration. The motion failed on a roll call vote of 3-1, with one abstention. [11] [Members Chivaro, Beltrami, and Sherwood voted "Aye, " Member Patton voted "No, " and Member Steinmeier abstained.]

Issue,

> Does Education Code section 56362, subdivision (c), impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 by setting an enrollment caseload limit for resource specialists?

Federal Law

Federal law does not specify enrollment caseloads for resource specialists.

State Law

The original enactment of Education Code section 56362, subdivision (c), limits the average caseload for resource specialists to 24 pupils and the maximum caseload to 28 pupils. In 1982, an amendment to this subdivision deleted the reference to "average caseload of 24. " The maximum caseload of 28 pupils per resource specialist remained unchanged.

The provisions of state law are set forth in the Addendum,

Commission Findings

[11] Title 2, California Code of Regulations, section 1182, subdivision (b) provides: "All actions of the commission . . . shall require the affirmative vote of at least a majority of the existing membership of the commission. . . ."

Govermnent Code section 17556, subdivision (c), provides that the Cornmission shall not find *costs mandated by the state,* as defined in section 175 14, in any claim submitted by a school district, if, after a hearing, the Comrnission finds that: "(c) The statute or executive order implemented a federal law or regulation and resulted in *costs mandated by the federal government,* unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." (Emphasis added.)

1. Limitation of the resource specialist caseload does not result in costs mandated by the federal government.

The *Hayes* court directed the Cornmission to reconsider the Special Education Test Claim, "in light of the criteria set forth in the Supreme Court's City of Sacramento decision. [The court added] that on remand the Comrnission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state's voluntary choice in its implementation of the federal program. "[12]

In 1980, after the adoption of article XIII B, the Legislature amended the statutory definition of "costs mandated by the federal government" to provide that these include "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. . . . "[13]

The Corntnission noted that the definition of "costs mandated by the federal government" and the definition in Governrnent Code section 175 13, are identical. Moreover, in analyzing a question involving reimbursement under section 6, the definitions contained in article XIII B and in the legislation enacted to implement it must be deemed controlling. [14] Therefore, the Commission relied on the statutory definition in Government Code section 175 13, and not that proposed by the Department of Finance?

a. There are no federal guidelines that limit special education services to a minimum or maximum enrollment caseload.

Riverside County Office of Education (Riverside) maintained that there are no federal guidelines that limit specific special education services to a minimum or maximum enrollment caseload. [16] They claimed that:

> ✍ Under federal law, State Plans must include information described in Title 34, Code of Federal Regulations, sections 300.121-300.154, none of which include maximum or minimum enrollment caseloads. In fact, California's State Plan for FY 1994 through FY 1997 does not include any language regarding enrollment caseloads.
>
> ✍ On page 10 of the State Superintendent of Public Instruction's detailed instructions regarding the required components of local plans, the State instructs

[12] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1595.

[13] Revenue and Taxation Code, section 2206; Statutes of 1980, Chapter 1256, section 3, p. 4247; *City of Sacramento v. State of California* (1990) 50 Cal.3d 5 1, 75.

[14] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1815.

[15] See Addendum for State Law.

[16] April 24, 1997, (Volume 6 of 8), pp. 1520, 1521.

each Local Educational Agency (LEA) to include a statement that incorporates into the plan, by reference, the Education Code provisions relating to enrollment caseloads. [17]

Supplemental Claimants stated that a review of federal law and regulations for the Individuals with Disabilities Education Act (IDEA) reveals no mention of caseload enrollments or teacher-pupil ratios. [18] The supplemental claimants asserted that "the absence of specific laws and regulations relating to caseload enrollments and teacher-pupil ratios is confirmed in *Letter to Fascell*, 18 IDELR 219 (1991).[19]

The U.S. Department of Education's Office of Special Education and Rehabilitative Services responded to an inquiry which specifically asked if the IDEA and its regulations mandate class sizes or teacher-pupil ratios. In *Letter* to *Fascell*, the Digest of Response stated: " [t]he Part B regulations do not require specific class sizes or teacher-pupil ratios for children with disabilities; however, state and local educational agencies must ensure that all eligible children are provided FAPE [free appropriate public education] in the least restrictive environment."

However, the Department of Finance maintained that the same *Letter to Fascell* supports its position because the letter so clearly reflects the federal government's recognition of caseload standards as an appropriate implementation tool, provided that the ratios are sufficiently low to guarantee meaningful educational benefits. The Department of Finance stated that the letter warns states that, if they choose to employ such ratios, the ratios must be pegged at a level that ensures special education students receive genuine attention and benefits from their instructors .[20]

The Cornmission noted that the response states: " [t]he Part B regulations do not specify teacher-pupil ratios. States may generally establish teacher-pupil ratios. However, in doing so, they must ensure that FAPE is provided for all children." (Emphasis added.) By using the word "may" before "generally establish", the response clearly indicates that the establishment of teacher-pupil ratios is optional. Although the Department of Finance correctly states that the federal government recognizes caseload standards as an appropriate implementation tool and that the third sentence warns states, these considerations were irrelevant to the Commission's determination of whether teacher-pupil ratios are mandated by the federal government or by the state.

Therefore, the Commission found that "the absence of specific laws and regulations relating to enrollment caseloads and teacher-pupil ratios" is confirmed in *Letter to Fascell*.

b. If the federal government will **accept a state** plan without specific enrollment caseloads, the failure to enact enrollment caseload standards for resource specialists would not result in substantial monetary penalties or loss of funds to public persons.

During the June 27, 1996, hearing, the Cornmission requested information on other states' caseload requirements, or lack thereof, for resource specialists. This inquiry was prompted by claimants' assertion that the federal government will and has accepted state plans without

---

[17] *Ibid.*

[18] Title 20, United States Code, section 1413(a); Title 34, Code of Federal Regulations, sections 300.110 - 300.154.

[19] April 24, 1997, (Volume 6 of 8), p. 1499.

[20] *Id.* at 1529.

specific enrollment caseloads.

Based on documentation submitted by supplemental claimants, the Commission recognized that the federal government accepts state plans without specific enrollment caseloads. A California Department of Education (CDE) staff declaration, a December 12, 1995, report, and a survey of 35 states documented this finding.[21,22,23]

Accordingly, the Commission found that the state's failure to enact caseload standards to meet federal program requirements would not have resulted in substantial monetary penalties or loss of funds to the state.

Therefore, the Cornmission found that the Legislature voluntarily chose to set maximum class sizes or teacher-pupil ratios for resource specialists and, therefore, state law exceeds the federal mandate. [24]

c. If there are options available to the state, enactment of specific enrollment caseloads for resource specialists does not constitute "costs mandated by the federal government."

""Costs mandated by the federal government' does not include . . . programs or services which may be implemented at the option of the state, local agency, or school district. "[25]

Supplemental claimants maintained that there are a number of alternatives available to states, as is evidenced by the NASDSE report on caseload/class size. Although California had a number of options available, the Legislature set a specific limitation on the size of the resource specialist caseload in state law. In other words, instead of allowing local decision-makers to set caseload based on a combination of criteria, the state chose to include this restrictive language in the Education Code.

The Commission's review of the documentation provided by supplemental claimants confirmed that a number of options, other than fixed caseloads, were available to California. Thus, the Commission found that caseload limitations were an option available to the state.

Based on the foregoing, the Commission found that limiting resource specialist caseload does not constitute "costs mandated by the federal government."

2. The Department of Finance failed to establish that pre-1975 law established caseload standards for resource specialists.

---

[21] Susan Westaby, Special Education Consultant, Special Education Division of the California Department of Education states that, since October 30, 1980, there have been no federal guidelines for State Plans regarding caseloads for resource and or LSH specialists. Since this same date, the federal application has not mentioned caseloads for these specialists.

[22] Caseload/Class Size in Special Education: A Brief Analysis of State Regulations, by Eileen M. Ahearn, Ph.D., a report prepared by Project FORUM, National Association of State Directors of Special Education.

[23] Supplemental Claimants surveyed other states to determine how many states have enacted legislation to set enrollment caseloads. Twenty-one of thirty-five responding states reported having state laws that do not specify enrollment caseloads for resource specialists,

[24] Education Code section 56362.

[25] Government Code section 17513; Revenue and Taxation Code section 2206.

The Commission was not persuaded by the Department of Finance's argument that state law imposed pupil teacher ratios before 1975. Section 6, subdivision (c), of article XIII B states that, for such pre-1975 laws, the Legislature is not required to provide subvention.[26]

At the June 27, 1996, hearing, the Cornmission asked the Department of Finance to include a detailed explanation of the "existence of prior law" to support the argument made during that hearing.

The Department identified a variety of state statutes and a state regulation to support its contention:

- Maximum classroom sizes were set for various physically disabled students. (Former Ed. Code, § 6802.2, which was enacted in 1969 and amended in 1970 and 1974 .)[27]
- Maximum enrollment was set for special day classes of mentally disabled students. (Former Ed. Code, § 6902.3, enacted in 1969 and amended in 1971 and 1974 .)[28]
- Enrollment in special day classes for mentally disabled children was also limited. (Former Ed. Code, § 6903.2, another 1969 statute that was amended in 1971 and 1974. See *also* Ed. Code, § 6804 (enacted 1959) [State Department of Education may prescribe standards for special education enrollment] .)[29]
- Maximum teacher load of speech and hearing handicapped minors taught in remedial classes were established by regulation. (Cal. Code Regs., tit. 5, § 3021, prior to 1975 .)[30]

The Department of Finance concluded that, as these provisions reflect, state law "mandated" maximum class enrollment for special education classes long before January 1, 1975; special education enrollment limits have been imposed by the state since at least 1969. Even then, the state realized that some maximum teacher-pupil ratio was necessary to ensure that these special classes would be effective. [31]

Supplemental claimants rebutted the Department of Finance:

> "Enrollment caseloads for resource specialists do not constitute a legislative mandate enacted prior to 1975 under section 6, subdivision (c), of article XIII B of the California Constitution. The Department of Finance's argument fails for the following reasons:
>
> - "DOF cites no authority demonstrating that enrollment caseloads were in effect for resource specialists prior to January 1, 1975 .[32]
> - "The resource specialist program came into existence after January 1, 1975 .[33]

---

[26] Government Code section 17514.

[27] April 24, 1997, (Volume 6 of 8), pp. 1534, 1535.

[28] Id. at 1535.

[29] *Ibid.*

[30] *Id.* at 1536.

[31] *Ibid.*

[32] *Id.* at 1588.

- "Prior to 1980, there were no enrollment caseloads in effect for resource specialists. [34]

- "Special education pre-1975 is a significantly different program from special education post-l 975 .[35]

- "Enrollment caseloads for language, speech, and hearing specialists do not constitute a legislative mandate enacted prior to 1975 under article XIII B, section 6 subdivision (c) of the California Constitution. "[36]

The Department of Finance maintained that claimants were incorrect in asserting that the resource specialist program, with accompanying caseload limits, did not exist in any form before 1980:

> "In fact the Legislature initially provided for resource specialists in 1974, as part of a pilot bill for the Master Plan for Special Education. (Stats. 1974, ch. 1532, § 1.) This statute, a copy of which is appended hereto, was approved by the Governor and filed with the Secretary of State on September 27, 1974. It contained, in former Education Code section 7017(a)(2), a requirement that pilot plans include a resource specialist program. . . . Section 7018, also . . . set forth the services to be provided by resource specialists . . . while Section 7018.1 set forth various conditions and restrictions applicable to resource specialists, including their qualifications, and . . . *a requirement that their enrollment caseloads be limited:*
>
> > "(b) Maximum caseloads for resource specialists shall be stated in the local comprehensive plan under standards established by the board." (Emphasis added.)

The Department of Finance concluded that this "pre-1975 state law plainly provided for State-imposed caseload standards for resource specialists. . . . Accordingly, the factual predicate underlying claimants' argument fails entirely, and it is abundantly clear, for this reason as well, that their 'Enrollment Caseloads' subvention claim is untenable under Section 6(c) of Article XIII B. "[37]

In a Department of Finance report, entitled "The California Master Plan for Special Education - An Update", the Department described the resource specialist program as "the only significant new special education service delivery setting under the Master Plan. The Master Plan was established as a pilot program by Assembly Bill 4040 (Stats. 1974, ch. 1532). "

The Commission found that before the inception of the Master Plan pilot program, California's special education program was a system of 28 "categorical" programs based on the disability of the student. For several years following 1975, both systems, "categorical" and Master Plan, were in place. The Master Plan was not fully implemented statewide until 1980-1981 by the passage of Senate Bill 1870, at which time the "categorical" program was ended.

---

[33] *Id*. at 1590.

[34] *Id*. at 1591.

[35] *Id.* at 1592.

[36] *Id.* at 1594

[37] *Id*. at 1608.

Therefore, before January 1, 1975, enrollment caseloads were not in effect for the resource specialist program because a statewide program did not exist.

According to supplemental claimants, Statutes of 1974, Chapter 1532, added section 7018.1 to the Education Code addressing the issue of caseloads as follows: "Maximum caseloads for resource specialists shall be stated in the local comprehensive plan under standards established by the board." Education Code section 56334 was later amended by Statutes of 1977, Chapter 1247, to read as follows: "(b) Caseloads for resource specialists shall be stated in the local comprehensive plan under standards established by the board." Statutes of 1980, Chapter 797, added section 56362, subdivision (c), to the Education Code, thereby establishing a caseload mandate :

> "(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56221 and in accordance with regulations established by the board. The average caseload shall be no more than 24 pupils, and no resource specialist shall have a caseload which exceeds 28 pupils."[38]

Education Code section 7001, (added by Stats. 1974, ch. 1532), documents the Legislature's intent to establish a pilot program consisting of implementation of no more than 10 local comprehensive plans. Therefore, the Cornmission found the pre-1975 requirements for the resource specialist cited by the Department of Finance did not apply to all school districts and county offices of education, but only to those that voluntarily chose to participate in the pilot program.[39]

The Commission found that pre-1975 state law did not require or establish caseload standards for resource specialists. Instead, the Legislature merely established a pilot program for special education services, under Statutes of 1974, Chapter 1532, which was not mandated on a statewide basis.

Based on the foregoing, the Cornmission found that resource specialist caseloads were not mandated under pre-1975 law.

3. School districts and SELPAs may assign larger caseloads or general education students to a resource specialist if a waiver is obtained from the State Board of Education.

At the June 27, 1996, hearing, the Commission requested more information about the waiver process. Therefore, Riverside and supplemental claimants briefed this issue.

When a local agency must assign more resource specialist hours than current caseloads permit, a district has two options: (1) to employ additional resource specialists to meet the increased demand for services; or (2) to seek a State Board of Education waiver to increase caseloads for existing specialists. If the local agency employs resource specialists who do not carry an average caseload maximum of 28 pupils, it may obtain a waiver in order to allow the specialist to teach general education students.

The process for obtaining a waiver to increase a resource specialist caseload has not changed substantially since October 30, 1980. The State Board of Education reserves complete discretion to deny waivers. Although preparation of a waiver is not a mandated activity, it follows that it should be a reimbursable activity if this subdivision imposes a reimbursable state

[38] Id. at 1609, 1610.

[39] Id. at 1605.

mandated program.

If the district prepares a waiver request which is denied by the State Board of Education, the district has no choice but to employ an additional (part-time or full-time, as necessary) resource specialist in order to comply with state law. Therefore, the Commission found that the existence of the waiver process does not negate a finding of a reimbursable state mandated program in Education Code section 56362, subdivision (c).

Conclusion

Based on the foregoing, the Commission concludes that the caseload limitation for resource specialists contained in Education Code section 56362, subdivision (c), constitutes a reimbursable state mandated program, subject to the following:

Eligibility Period from July 28, 1980, to September 21, 1982

- Monitoring resource specialist caseloads to ensure that the average caseload does not exceed 24 students and that the maximum caseload does not exceed 28 students.

Eligibility Period from September 22, 1982, to Present

- Monitoring resource specialist caseloads to ensure that the maximum caseload does not exceed 28 students.

Eligibility Period from Julv 28, 1980, to Present

- Preparation and participation in the State Board of Education waiver process to obtain approval of maximum caseloads over 28.
- Recruitment and selection of additional resource specialists, required by denial of a waiver request.
- Employing additional resource specialists, required by denial of a waiver request, and limited to the actual proportion of time a person acts in such capacity.
- Preparation and participation in the State Board of Education waiver process to obtain approval for a part-time resource specialist to be simultaneously assigned to regular classes.

2B. Maximum Enrollment Caseloads for Language, Speech, and Hearing (LSH) Specialists

The Commission considered this portion of the Special Education Test Claim during two hearings, as follows:

June 27, 1996

On June 27, 1996, the Commission first heard this portion of the Special Education Test Claim. No action was taken.

Commission Members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted and the Commission continued the matter and requested the parties to submit further briefs in response to the following questions and on the following issues:

1. Do existing federal guidelines address caseloads? Does the federal application mention caseloads?

2. If California's state plan would be accepted by the federal government without caseloads, how is the imposition of caseload limitations by the state a federal mandate?

3. A comparative survey of other states' caseload requirements, or lack thereof, for both resource specialists and Language, Speech, and Hearing specialists;

4. An explanation of the requirements to obtain a waiver for both resource specialist and Language, Speech, and Hearing specialists; and

5. A detailed explanation of the existence of prior law argument raised by the Department of Finance during the hearing.

April 24, 1997

On April 24, 1997, the Cornrnission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission Members present were William Sherwood, Diane Richardson, Richard Chivaro, Dave Cox, and Albert Beltrami.

W. Craig Biddle, and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Steven N. Morford, Marin County Office of Education, SELPA, appeared for the claimant, Diana K. (Smith) McDonough, appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Cornrnission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission determined that the Maximum Enrollment Caseloads for Language, Speech, and Hearing Specialists portion of the Special Education Test Claim represents a limited reimbursable state mandated program.

Issue

Does Education Code section 56363.3 impose a new program or a higher level of service in an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by setting maximum enrollment caseload limits for language, speech, and hearing specialists?

Federal Law

Federal law is silent regarding the imposition of guidelines limiting specific special education services to a minimum or maximum enrollment caseload.

State Law

Education Code section 56363.3 requires that the average caseload for language, speech, and hearing specialists shall not exceed 55 cases, unless the local comprehensive plan specifies a higher average caseload and the reasons for the greater average caseload.

The provisions of state law are set forth in the Addendum.

Commission Findings

1. LSH caseload limitations cannot be deemed costs mandated by the federal government.

The Cornmission incorporates its discussion from section 2A on "costs mandated by the federal government. "

a. No substantial monetary penalties or loss of funds to public persons would result if the caseload limitations for LSH specialists were not enacted.

The claimants submitted a survey compiled by the American Speech-Language-Hearing Association in June, 1991, entitled, "State Licensure, Certification, and Caseload Requirements. " This survey reported that 17 states and the District of Columbia had no enrollment caseloads for LSH specialists; 12 states had an enrollment caseload range (of these, 10 states had a higher maximum than California); and 20 states, including California, had an enrollment caseload maximum (of these, 12 states had a higher maximum than California) .[40]

Claimants also surveyed states to compare state enrollment caseloads. Responses from 35 states indicated that 22 states' laws do not specify enrollment caseloads for LSH specialists. The Commission recognized that these results show that, by mandating enrollment caseloads, California made a voluntary choice that is not required under federal law.

b. LSH caseload limitations were implemented at the option of the state.

The Comrnission recognized that California has a number of alternatives acceptable to the federal government for addressing teacher pupil ratios. This was evidenced by the NASDSE

[40] This survey includes responses from 50 states and the District of Columbia.

report on caseload/class size. Among these alternatives, California can provide that caseload is based on a combination of criteria or it can allow caseload decisions to be made at the local level, based on the needs of the individual students being served by the local educational agency. California voluntarily chose an alternative, the imposition of rigid caseloads, which resulted in required costs for local school districts.

According to the Department of Finance, many other states-a significant majority of other states according to the ASHA Survey-have included similar caseload guidelines in their state special education programs as a reasonable and effective means of ensuring the provision of federally "appropriate" services. The survey results establish that caseload standards are indeed commonly employed by other states.

However, the Commission found that LSH caseload limitations are not costs mandated by the federal government.

2. Pre-1975 law did not impose LSH caseloads.

The Department of Finance continued to maintain that pre-1975 law imposed LSH caseloads, and therefore, this portion of the special education test claim should be denied. According to the Department of Finance, Title 5, California Code of Regulations, section 302 1 prescribed a maximum caseload for speech and hearing classes prior to 1975.

Supplemental claimants contend that "all special education programs were fundamentally different after 1975 because of the passage of Public Law 94-142, effective October 1, 1977, and the phase in of the Master Plan, beginning with the passage of Assembly Bill 4040, effective January 1,1975. Thus, despite the fact that the state served students with speech and hearing disabilities prior to 1975, the fundamental nature of these programs was so different from those in existence after 1975 that enrollment caseloads for language, speech, and hearing specialists cannot escape subvention under Article XIII B, section 6(c). "

The Commission recognized Dr. Caryl Miller's review of special education local plans. This review revealed that five of the forty-five SELPAs included language to exceed the SELPA-wide 55 student average caseload for LSH specialists as follows:

- Colusa: May exceed 55 if classified support is provided.
- Lake: Speech loads are not to exceed 75 per instructional specialist, and shall be prorated for part-time employees (based upon the history of designated instruction services).
- Merced: Average caseload for LSH may exceed 55, but not 60, for specified reasons.
- Moreno Valley USD: Speech therapists at present are serving a caseload of 60.43 students.
- Riverside County SELPA: County-wide LSH caseload shall not exceed 68 cases.

Section 52363.3 requires school districts, county offices of education, or SELPAs to set caseload limitations for LSH specialists. There are two options: (1) implement the 55 maximum average or (2) explain and provide for a higher average caseload in the local area plan.

Conclusion

The Commission concludes that Education Code section 56363.3 imposes a reimbursable state mandated program upon school districts, by requiring districts to:

1. Monitor caseload averages;

2. Prepare and participate in the Board of Education waiver process;

3. Recruit and select additional LSH specialists if additional services are required and a waiver has been denied; and

4. Prepare a justification to increase the LSH caseload for inclusion in the local area plan.

The Commission concluded that a district's employment of additional LSH specialists shall not be reimbursed because districts are authorized to avoid the student limitation by providing a justification for a higher average and placing it in the local area plan.

3. Community Advisory Committees

The Cornmission considered this portion of the Special Education Test Claim during three hearings, as follows:

July 25, 1996

On July 25, 1996, the Comrnission first heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornmission Members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts appeared as an interested party for Long Beach Unified School District, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken,

The law applicable to the Cornmission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Commission adopted the staff recommendation finding the Community Advisory Committees portion of the Special Education test claim represents a limited reimbursable state mandate. [Members Sherwood, Richardson, DiOrio voted "aye"; Member Beltrami voted "no" .]

April 24, 1997

The Commission granted a request for reconsideration on April 24, 1997.

Cornrnission Members present were William Sherwood, Richard Chivaro, Diane Richardson, Dave Cox, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission adopted the staff reconu-nendation to reconsider the Community Advisory Comrnittees portion of the Special Education Test Claim.

October 30, 1997

The Con-mission made its final determination on October 30, 1997.

Cornmission Members present were William Sherwood, Richard Chivaro, Nancy Patton, Albert Beltrami, Dave Cox, and Joanne Steinmeier.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Anthony Murray and Joseph D. Mullender, Jr. appeared as interested parties for Long Beach Unified School District, interested party, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 6-0, the Commission found that the Community Advisory Committees portion of the Special Education Test Claim represents a reimbursable state mandated program.

Issue

Does Education Code section 56190 et seq., impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 when compared to the requirements contained in the Individuals With Disabilities Education Act by directing the implementation, composition, membership, and duties of community advisory committees?

Federal Law

Federal law requires that local special education plans must establish a goal of providing full educational opportunities to all children with disabilities including the participation and consultation of the parents or guardian of such children.[41]

The provisions of federal law are set forth in the Addendum.

State Law

State law requires the establishment of community advisory committees and provides for the appointment and composition of the committee's members, and the authority and responsibilities of the committee.

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission compared federal and state requirements regarding the implementation, appointment, and responsibilities surrounding community advisory committees. Based on this comparison, the Commission found that federal law requires the majority of the activities concerning community advisory committees to be performed at the state level. However, state law shifts many of these activities to the local level.

[41] Title 20, United States Code, section 1412(7)(A).

Federal law does not require the establishment of community advisory committees at the local level. However, Education Code section 56190 requires the establishment of a community advisory committee at the local level. Thus, the Commission found that the state voluntarily chose to require community advisory committees at the local level.

Further, the appointment of members to conununity advisory committees at the local level was voluntarily required by the state under Education Code section 56191. In addition, the state voluntarily required local educational agencies to determine the procedures for appointing members. No such requirements exist at the federal level.

Regarding Education Code section 56192, state mandated activities relate only to community advisory committee members who are local governmental employees and participate on the committee. Specifically, these employees include: regular education teachers, special education teachers, other school personnel, and other local public agency representatives.

Regarding Education Code section 56193, the membership requirement of parents, as specified therein, on the community advisory committee was similar to and therefore, falls within, the provisions of the Individuals with Disabilities Education Act (IDEA). At the local level, the IDEA requires the community advisory committee to be composed entirely of the parents or guardians of disabled children. Therefore, section 56193 does not impose new requirements upon local educational agencies.

Regarding Education Code section 56194, the duties of parents and guardians of disabled individuals do not represent reimbursable state mandated activities because they fall within the provisions of the IDEA. However, member duties for individuals employed by a local governmental agency represent reimbursable state mandated activities under Education Code section 56 194 which are similar to those in Education Code section 56192.

Conclusion

The Commission concludes that the following activities regarding community advisory committees impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Governrnent Code section 17514:

- Establishment of community advisory committees at the local level. (Ed. Code, § 56190.)
- Establishment of appointment procedures and practices for community advisory committees at the local level. (Ed. Code, § 5619 1.)
- Participation of (1) Special education teachers, (2) regular education teachers, (3) other school personnel, and (4) representatives of other local public agencies associated with advising the policy and administrative entity of a district regarding the development, amendments, and review of the local plan, recommending priorities, assisting in recruitment, encouraging community involvement, supporting activities on behalf of disabled individuals, and assisting in parent awareness in the importance of regular attendance. (Ed. Code, §§ 56192, 56194.)

The following activities fall within the provisions of the IDEA and, therefore, do not impose new programs or higher levels of service within existing programs upon school districts within

the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514:

- Functions associated with the requirement that the parents and guardians of disabled individuals be members of a community advisory committee at the local level. (Ed. Code, § 56193.)

- Activities/tasks associated with the duties of community advisory committee members who are parents and guardians of disabled individuals. (Ed. Code, § 56194.)

4. Individualized Education Program Timelines

On July 25, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle, Jack B. Clarke, Jr., Ray Easler, and Caryl Miller appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts appeared as an interested party for Long Beach Unified School District, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission denied the Individualized Education Program Timelines portion of the Special Education Test Claim.

Issue

> Does Education Code section 56344 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14, by requiring the development of an individualized education program within 50 days from the date of receipt of the parent's written consent of assessment, unless the parent agrees in writing to an extension?

Federal Law

A meeting to develop an individualized education program (IEP) for a child must be held within 30 calendar days of a determination that the child needs special education and related services. Federal law requires that special education and related services be implemented without undue delay following the IEP meetings.[42]

The provisions of federal law are set forth in the Addendum.

State Law

State law provides that an IEP required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 days from the date of receipt of the parent's written consent for assessment, unless the parent agrees in writing to an extension.[43]

The provisions of state law are set forth in the Addendum.

---

[42] Title 34, Code of Federal Regulations, section 300.342(c).

[43] Education Code section 56344.

Commission Findings

The Cornmission found the process of identifying special needs pupils and implementing services consists of the following stages:

1. School personnel identify a pupil as potentially in need of special education and related services.
2. The school secures written parental consent to assess child.
3. The child is professionally assessed.
4. The IEP team meets to develop an IEP for the child.
5. The IEP is implemented for the child.

Federal law requires that there can be no "undue delay" in providing special education and related services to a disabled child.[44]

Federal regulations require that a meeting to develop an IEP for a child must be held within 30 calendar days from the date that it is determined, by way of an assessment or evaluation, that the child needs special education and related services. The 30-day period encompasses stages 3 and 4 described above.[45]

By comparison, state law allows 50 days from the date parental consent is received for an assessment to develop the IEP. Thus, the 50-day period encompasses stages 2 through 4 described above. [46]

The timeline under state law did not impose a more stringent time constraint because the 50 days to complete stages 2 through 4 falls within the federal time constraint of 30 days for completing stages 3 and 4.

Education Code section 56344 provides some latitude for school districts by permitting a waiver to extend the 50-day period, provided, that the parent agrees in writing.

Conclusion

Based on the foregoing, the Cornmission concludes that Education Code section 56344 does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

---

[44] Title 34, Code of Federal Regulations, section 300.342.

[45] *Ibid.*

[46] Education Code section 56344.

5. Psychological Requirements

On July 25, 1996, the Comrnission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle, Jack B. Clarke, Jr., Ray Easler, and Caryl Miller appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts appeared as an interested party for Long Beach Unified School District, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Cornmission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission denied the Psychological Requirements portion of the Special Education Test Claim.

Issue

> Do Education Code section 56363 and Title 5, California Code of Regulations, section 3029 impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the use of licensed psychologists when credentialed psychologists are unavailable and by limiting psychological services to services other than assessment and development of the individualized education program?

Federal Law

Federal law lists psychological services as a related service.[47] In addition, each state's special education plan sets forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out related services are adequately prepared and trained consistent with any state-approved or recognized certification and licensing. Moreover, the congressional notes provide that, depending upon requirements in individual states, psychological services may be provided by persons from varying professional backgrounds and with a variety of operational titles.[48]

The provisions of federal law are set forth in the Addendum.

State Law

State law lists psychological services other than assessment and development of the individualized education program (IEP) as one of the designated instruction and services categories, and the state regulations set forth the requirements to utilize licensed psychologists when credentialed psychologists are unavailable.

---

[47] Title 20, United States Code, section 1401(a)(17); Title 34, Code of Federal Regulations, section 300.16(a).

[48] Title 20, United States Code, section 1413(a)(14).

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission found that the Individuals with Disabilities Education Act (IDEA) recognizes that each individual state must license and credential its psychologists. Therefore, California's provision for professional qualifications for psychologists is part of the process of assuring compliance with the IDEA.[49]

The IDEA explicitly defers to and requires the imposition of state standards. Therefore, California did not voluntarily impose more stringent requirements upon school districts when psychological services are involved in special education?'

State law permits psychological services to be administered when such instruction and services are necessary for the pupil to benefit educationally from his/her instructional program under the IEP. In addition, psychological services are included in the assessment and evaluation processes of a disabled individual?

The state's requirement to use licensed psychologists when credential psychologists are unavailable, falls within the provisions of the IDEA to provide assessments and related services without undue delay. The language in Education Code section 56363 is silent with respect to the qualifications of the individuals providing the psychological services. Although Title 5, California Code of Regulations, section 3029, by the use of the word "shall," imposes requirements with respect to the qualifications of individuals providing psychological services, the Cornmission did not find that these requirements constitute a reimbursable state mandated program.

In light of the specific federal requirements in Title 34, Code of Federal Regulations, section 300.16, the explicit language in the Committee Notes to section 300.16, and the requirements of Title 20, United States Code, section 1413(a)(14), the state made provision for professional qualifications for individuals providing psychological services part of the process of assuring compliance with federal laws and regulations. Since the federal requirements both explicitly defer to and require the imposition of state standards, the state requirements do not exceed federal requirements.

With respect to the issue of assessments and evaluations, the language of Education Code section 56363, subdivision (b)(10), states that designated instructions and services may include, but are not limited to, " [p] sychological services other than assessment and development of the individualized education program. "

When read together with the language in Education Code section 56363, subdivision (a), which states, " [d]esignated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program," the Comrnission found that the language merely states that the assessment and evaluation services which are necessary to develop the IEP are not themselves provided as a part of, or under the authority of, the IEP.

---

[49] *Ibid.*

[50] *Ibid.*

[51] Education Code section 56363.

While assessment and evaluation procedures are excluded from the state's designated instruction and services list, they are explicitly included in Education Code sections 56320, subdivision (b)(3), and 56327 as referenced in Title 5, California Code of Regulations, section 3029. The requirements of Education Code sections 56320, subdivision (b)(3), 56363, and 56327 together with regulation section 3029 do not exceed the federal requirements contained in Title 20, United States Code, section 140 1 (a)(17) and Title 34, Code of Federal Regulations, section 300.16 concerning psychological services.

Conclusion

Based on the foregoing, the Cornrnission concludes that Education Code section 56363 and Title 5, California Code of Regulations, section 3029 carry out the IDEA's requirements and, accordingly, do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

6. Related Services

On July 25, 1996, the Comrnission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle, Jack B. Clarke, Jr., Ray Easler, and Caryl Miller appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts appeared as an interested party for Long Beach Unified School District, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission denied the Related Services portion of the Special Education Test Claim.

Issue

> Do Education Code sections 56363 and 56520, and Title 5, California Code of Regulations, sections 3051.3, 3051.7, 3051.75, and 3051.8 impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the provision of services which are not required under federal law, including orientation and mobility services, specialized driver training instruction, vision services, and vision therapy?

Federal Law

The federal regulations list 14 related services. The Committee Notes following the regulations state these 14 related services are not the total universe of possible related services. The notes state that any service that is related to the provision of special education and is required to assist a disabled child to benefit from special education instruction will be deemed a "related service. "[52]

The provisions of federal law are set forth in the Addendum.

State Law

Education Code section 56363, subdivision (a), states, "[d]esignated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. . . ." This language parallels federal language which states, "[t]he list of related services is not exhaustive and may include other developmental, corrective, or supportive

[52] Title 34, Code of Federal Regulations, section 300.16.

services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education. . . ."[53]

The language in Education Code section 56363, subdivision (b), by the use of the phrase "may include, but are not limited to, the following. . . ", does not impose a requirement but is, instead, advisory of a possible spectrum of services.

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission recognized that the list of 14 related services in the federal regulations is not exhaustive. The Cornmittee Notes to Title 34, Code of Federal Regulations, section 300.16 provide, in pertinent part:

> "The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.
>
> "The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education. . . ."

The purpose of the IDEA, to provide all disabled children with a free appropriate public education and related services, is described in Title 20, United States Code, section 1400(c). To that end, federal law does not limit related services to a specific list. Rather, federal and state law allow the provision of any service that will enable a disabled child to benefit from special education. The list of additional state services found in the Education Code corresponds to the type of related services enumerated under federal law and, therefore, does not impose a higher level of service upon school districts.[54]

The language in Education Code section 56363, subdivision (a), which states, "[d]esignated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program, " precisely parallels the federal language which states, "[t]he list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education. . . ."

Education Code section 56520 contains legislative findings and intent language, neither of which contains a requirement to provide either a new program or a higher level of service in an existing program. These statements evidence that both the state and federal requirements include any and all designated instruction and services/related services which are necessary for the pupil to benefit from special education, and exclude all other designated instruction and

---

[53] Title 34, Code of Federal Regulations, section 300.16 Notes.

[54] Title 20, United States Code, section 1401(a)(17); Title 34, Code of Federal Regulations, section 300.16; Education Code section 56363.

services/related services. Therefore, Education Code section 56520 does not impose reimbursable state mandated activities upon school districts.

Additionally, the language in Education Code section 56363, subdivision (b), by the use of the phrase "may include, but are not limited to, the following," does not impose a requirement but is, instead, advisory of a possible spectrum of services. This language does not constitute a reimbursable state mandated activity.

The Hayes court directed the Commission to reconsider the claim, "in light of the criteria set forth in the Supreme Court's City *of Sacramento* decision. [The court added] that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed on local districts by federal mandate or by the state's voluntary choice in its implementation of the federal program. "[55]

The state had no choice other than to implement this federal program. Providing related services (whether referred to by the state as related services or as designated instruction and services) was one of the federal requirements imposed both on the state and on local educational agencies.

The claimants did not dispute that the list of services specified in Education Code section 56363, subdivision (b), is not exhaustive. The claimants further acknowledged that the federal requirement, which gave rise to section 56363, subdivision (b), is likewise not exhaustive.

In light of the specific federal requirements in Title 34, Code of Federal Regulations, section 300.16, as well as the broad duty in Title 20, United States Code, section 1400(c) to ensure "that all children with disabilities have available to them, . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, . . . and to assess and assure the effectiveness of efforts to education of children with disabilities, " the Commission found that the state made the provision for designated instruction and services and related services comply with federal statute and regulations.

With respect to Title 5, California Code of Regulations, sections 305 1.3, 305 1.7, 305 1.75, and 305 1.8, each of these sections contain language setting forth requirements, e.g., " [t]he person providing . . . services shall hold a credential", "[v]ision services shall be provided by . . .", "[v]ision therapy shall be provided by . . .", and "[d]river training . . . must be provided by . . . . " These state requirements reflect the federal law to ensure that personnel carrying out the various types of related services are appropriately and adequately prepared and trained. [56]

Conclusion

The Commission concludes that:

- Designated instruction and services/related services are clearly provided for by both state and federal law.
- Both the state and federal lists of designated instruction and services/related services are non-exhaustive.

---

[55] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595.

[56] Title 20, United States Code, section 1413(a)(14).

- For each pupil, both state and federal law only require the provision of those services that are necessary for the pupil to benefit from special education.

- The state's listing of services in Education Code section 56363 is permissive.

Notwithstanding the fact that these two non-exhaustive lists are not identical, there is no excess in the state requirements.

The Cornmission notes that the issue of the effectiveness of the services required is one that can be dealt with only in the context of an individual IEP. If the services are not effective for an individual pupil, then they cannot be found to be necessary for the pupil to benefit from special education, and should not be provided for in the IEP. Whether a particular service can be of benefit to any pupil is not an issue within the jurisdiction of this Comrnission.

Because federal law provides for "related services" and provides an explicitly non-exhaustive list of such services, and in the light of Title 20, United States Code, section 1413(a)(14), state requirements do not exceed federal law. Any costs were imposed on local districts by the federal mandate and not by the state's voluntary choice in its implementation of the federal program.

Based on the foregoing, the Cornmission concludes that Education Code sections 56363 and 56520, and Title 5, California Code of Regulations, sections 305 1.3, 305 1.7, 305 1.75, and 305 1.8, do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B and Government Code section 175 14.

7. Transportation

On July 25, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission Members present were William Sherwood, Diane Richardson, Stan DiOrio, and Albert Beltrami.

W. Craig Biddle, Jack B. Clarke, Jr., Ray Easier, and Caryl Miller appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, Allan E. Tebbetts appeared as an interested party for Long Beach Unified School District, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance,

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Comtnission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Commission denied the Transportation portion of the Special Education Test Claim. [Members DiOrio, Richardson, and Beltrami voted "aye"; Member Sherwood voted "no".]

Issue

Do Education Code sections 41850 and 41851.2 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the provision of transportation from home to school for disabled students?

Federal Law

Title 20, United States Code, section 1401(a)(17) and Title 34, Code of Federal Regulations, section 300.16 list transportation as a related service. Federal law does not use the term "home to school" transportation in setting forth transportation requirements. Section 300.16 further defines transportation as including travel to and from school and between schools.

The provisions of federal law are set forth in the Addendum.

State Law

Education Code sections 41850 and 4 185 1.2 refer to transportation from home to school. The language in these Education Code sections details that transportation for disabled children is to include transportation from home to school,

The provisions of state law are set forth in the Addendum.

Commission Findings

Transportation is the first related service enumerated under federal law that must be made available to disabled children in need of special education. The Individuals with Disabilities Education Act (IDEA) broadly defines transportation to include "travel to and from school and

between schools. "[57] The federal phrase of "travel to and from school" is a broader requirement than the state phrase of "home to school transportation. " From the plain language of Education Code section 41850, subdivisions (b)(5) and (d), the actual breadth of the state requirement depends on the pupil's individualized education program (IEP).

The state's statutory phrase, "home-to-school transportation, " under section 41850, is encompassed within the federal mandated provisions of the IDEA and, thus, does not impose a higher level of service upon school districts.

Under the IDEA, it is the pupil's IEP that mandates transportation and "home-to-school" is within the broad and sweeping definition of "travel to and from school and between schools. " Despite the use of the term "home to school transportation" in the section, transportation provided to special education pupils by school districts pursuant to section 41850, subdivision (b)(5), need not in actuality be from each pupil's home to the school, but rather, according to the plain language of subdivision (5), must be provided in accordance with the pupil's IEP.

The Commission noted that the Department of Finance submitted cases and policy letters indicating that, under federal law, transportation can be required from the home.

The statutory provisions for school funding and apportionment to school districts for transportation does not equate to the imposition of reimbursable state mandated activities. The guidelines issued by the Superintendent of Public Instruction regarding special education transportation services are exemplary and compliance is not mandatory. In order to adequately carry out its function, an IEP team should be aware of alternatives available to facilitate the provision of a free appropriate public education, and be able to select those that are both medically and legally necessary. The transportation guidelines provide a non-binding tool to assist in the IEP process.

Federal law requires that transportation be provided, when necessary, since it is listed as a related service, and explicitly includes "travel to and from school and between schools" in its definition of transportation. The federal law that applies to related services generally must therefore also apply to transportation. The Commission notes additional federal law that is relevant to transportation as a related service is Title 20, United States Code, section 1401(a)(18), which provides:

> "(18) 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 individualized education program required under section 614(a)(5) [20 U.S.C. § 1414(a)(5)]."

In light of the specific federal requirements and the duty to ensure "that all children with disabilities have available to them . . , a free appropriate public education . . . and related services designed to meet their unique needs, " the Commission found that the state enactments were made to comply with federal law.

Conclusion

[57] Title 34, Code of Federal Regulations, section 300.16(b)(14).

Based on the foregoing, the Commission concludes that Education Code sections 41850 and 41851.2 carry out the IDEA's requirements and, accordingly, do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Further, any additional costs that school districts may incur due to a shortage of funding under the statutory provisions in question are unfunded costs imposed by the federal government pursuant to the IDEA and not unfunded costs mandated by the state.

8. Surrogate Parents

On July 25, 1996, the Commission first heard this portion of the Special Education Test Claim during a regularly scheduled hearing. On September 26, 1996, the Commission re-heard this portion of the Special Education Test Claim.

Commission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Dr. Ray Easler of Riverside County SELPA appeared for the test claimant, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission denied the Surrogate Parents portion of the Special Education Test Claim. [Note: Original vote was 3-O with Member Pichardo abstaining. Member Pichardo changed his vote at the end of the hearing.]

Issue

> Does Government Code section 7579.5 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 by requiring school districts, before the appointment of a surrogate parent for a ward of the state, to obtain a court order that specifically limits the right of a ward's parent/guardian to make educational decisions?

Federal Law

The Individuals with Disabilities Education Act (IDEA) requires parental consent before any preplacement evaluation and before the initial placement of a child in a special education program. Further, the IDEA provides that when the parent or guardian of a child with disabilities is not known or available, or when the child is a ward of the state, an individual must be appointed to act as a surrogate parent and the state must establish procedures by which to appoint a surrogate parent.[58]

Federal regulations specify that each public agency shall ensure that the rights of a child are protected by appointing a surrogate parent when: (1) no parent can be identified, (2) after reasonable efforts, the agency cannot discover the whereabouts of a parent, or (3) the child is a ward of the state under the laws of that state.[59]

Federal law also provides that parents of a child who is a ward of the state do not lose their parental status automatically by being uncooperative with school authorities or by refusing special education services for the child.[60] Before a governmental agency may intervene to

---

[58] Title 20, United States Code, section 1415(b)(l)(B).

[59] Title 34, Code of Federal Regulations, section 300.514(a).

[60] *Santosky v. Kramer (1982) 455* U.S. 745.

make educational decisions for a child (instead of their parents), the federal Constitution requires that parents be provided appropriate due process protections under the 14th Amendment. [61]

The U.S. Supreme Court ruled that the natural parent's desire for and right to the companionship, care, custody, and management of their children is an interest far more precious than any property right, which does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state.[62]

The provisions of federal law are set forth in the Addendum.

State Law

State law provides that a surrogate parent shall not be appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child.[63]

Further, the California Rules of Court provide that any limitation on the right of a parent or guardian to make educational decisions for the child (who is a dependent or a ward) shall be specified in the court order.[64]

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission found that the express wording of the IDEA does not provide "the child is a ward of the State" and stop there; rather, the federal provisions go on to say, ". . . under the laws of that State. "

These words, when read together, evidence that the IDEA incorporates the specific provisions of a particular state's laws when defining a "ward of the State." Therefore, a particular state's requirements for the appointment of a surrogate parent for a ward of the state is part of the federal mandate.

In *tassiter v. Department of Social Services* (1981) 452 U. S. 18, 27, the U.S. Supreme Court stated that its decisions "have by now made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody and management of his or her children' is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest, protection. (citation omitted.)" Therefore, "[a] parent's interest in the accuracy and injustice of the decision to terminate his or her parental status is, therefore a commanding one. [Fn. omitted.] "

In *Santosky* v. *Kramer* (1982) 455 U.S. 745, the United States Supreme Court reviewed a New York court ruling which completely severed the rights of parents whose children had been permanently neglected. The Court made the following findings pertinent to the present test claim:

---

[61] *Ibid.*

[62] *Ibid.*

[63] Government Code section 7579.5, subdivision (a).

[64] California Rules of Court, rules 1456 & 1493.

> "1. Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding. . .
>
> > "(a) The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. . . .
>
> ". . .Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. . . . "

Before a parent's educational management and control rights may be terminated regarding their child, the federal Constitution mandates that a parent be guaranteed appropriate due process protections under the 14th Amendment.

Based on the foregoing, where the child may be a ward or dependent of the state, but the parent retains educational decision making control and becomes unavailable or uncooperative with a school district regarding special education, that parent's rights are violated when any governmental agency automatically severs their educational management and control rights over the child and appoints a surrogate.

In addition, even when a parent retains the ability to make educational decisions over their child who is a ward of California, federal law commands that a government agency use reasonable efforts to locate and find that parent before they may be deemed unavailable or classified as whereabouts unknown. Federal law does not permit a surrogate parent to be selected automatically for any ward of the state where no court order exists terminating the parent's educational decision making rights and even if such parent is unavailable or uncooperative in place of the natural parent, without due process procedures guaranteed under the federal Constitution.

In addition, where no court order exists terminating the parent's educational decision making rights, federal law mandates that a due process hearing is required before appointment of a surrogate to terminate or limit the rights of a parent.

California's provisions requiring that any limitation on the right of the parent to make educational decisions for a ward of the state must be expressly addressed in a court order is part of the federal mandate and not a separate reimbursable state mandated program.

Conclusion

The Comrnission concludes that the provisions of the IDEA and the 14th Amendment of the federal Constitution support the position that "a ward of the State under the laws of the State" mean that the federal mandate incorporates the standards and procedures of the particular state law.

Based on the foregoing, the Commission concludes that Government Code section 7579.5 does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

9. Preschool Transportation Program for Ages 3-5 Not Requiring Intensive Services (Not-RIS)

[On November 30, 1998, the Commission decided to sever this portion of the Special Education Test Claim from this Statement of Decision.]

10. Eligibility Criteria for Specific Learning Disabilities

On September 26, 1996, the Comrnission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornrnission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Dr. Ray Easler of the Riverside County SELPA appeared for the claimant, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Governrnent Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Commission denied the Eligibility Criteria for Specific Learning Disabilities portion of the Special Education Test Claim. [Note: Original vote was 3-O with Member Pichardo abstaining. Member Pichardo changed his vote at the end of the hearing.]

Issue

> Do Title 5, California Code of Regulations, section 3030, subdivisions (j) (4) (A) and (C), impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by permitting an Individualized Education Program team to use alternative procedures to determine eligibility for special education?

Federal Law

Federal law provides that states and local educational agencies must identify, locate, and evaluate all children who are disabled, regardless of the severity of their disability, and who are in need of special education? Before being placed in special education for the first time, federal law requires that a child must receive a full and individualized evaluation of educational needs. This assessment must include all areas relating to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative+ status, and motor abilities. The evaluation is made by a multidisciplinary team. [66]

Further, federal law mandates that states and local entities must ensure that testing and evaluation materials are properly validated, administered, and tailored to assess specific areas of educational need, and not merely designed to provide a single general intelligence quotient.

---

[65] Title 20, United States Code, sections 1412(2)(C), 1414(a)(l)(A).

[66] Title 34, Code of Federal Regulations, section 300.532(e).

No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child. [67]

In addition, federal law provides that, in interpreting evaluation data and in making placement decisions, each public agency shall draw upon information from a variety of sources and that the information obtained from all of these sources is documented and carefully considered.[68]

Moreover, federal law mandates additional procedures, beyond standardized testing, for evaluating children with specific learning disabilities."

The provisions of federal law are set forth in the Addendum.

State Law

California's eligibility criteria are set forth in the Department of Education's regulations. Regulation section 3030 provides that the individualized educational program (IEP) team decides whether the degree of a child's impairment qualifies a child for special education. The criterion for specific learning disabilities is set forth in section 303, subdivision (j).

Section 3030, like the federal law, requires that no single score or product of scores, tests, or procedures shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. The IEP team shall take into account all the relevant material that is available on the pupil. If standardized tests do not reveal a severe discrepancy, the IEP team may find that a severe discrepancy does exist, provided the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes.

The provisions of state law are set forth in the Addendum,

Commission Findings

The Comrnission found that federal law requires states, local educational agencies, and intermediate educational units to ensure that all children with disabilities, regardless of the severity of their disability and need of special education, are entitled to special education and to be identified, located, and evaluated.[70]

Federal law requires that a child must receive a full and individualized evaluation of educational needs before initial placement in special education. This assessment must include all areas relating to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge of the suspected disability. [71]

Federal law mandates that states and local educational agencies ensure that testing and evaluation materials are properly validated, administered, and tailored to assess specific areas of educational need, and not merely designed to provide a single general intelligence quotient.

---

[67] Title 34, Code of Federal Regulations, section 300.532.

[68] Title 34, Code of Federal Regulations, section 300.533.

[69] Title 34, Code of Federal Regulations, section 300.540.

[70] Title 20, United States Code, sections 1412(2)(C), 1414(a)(l)(A).

[71] Title 34, Code of Federal Regulations, sections 300.7, 300.532, 300.533, 300.540.

No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child.[72]

Federal law provides that, in interpreting evaluation data and in making placement decisions, each public agency shall: (1) draw upon information from a variety of sources; (2) that the inforrnation obtained from all of these sources is documented and carefully considered; and (3) ensure that the placement decision is made by a group of persons.[73]

In addition, the IEP team may determine that a child has a specific learning disability if the child does not achieve scores commensurate with his or her age and ability levels in certain areas when provided with learning experiences appropriate for the child's age and ability levels. [74]

Further, federal law requires additional procedures for evaluating children with specific learning disabilities. In evaluating a child suspected of having a specific learning disability, in addition to the requirements of the requirements of Title 34, Code of Federal Regulations, section 300.532, each public agency shall include on the multidisciplinary evaluation team the child's regular classroom teacher, and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [75]

The disciplinary evaluation team must find that a child has a severe discrepancy between achievement and intellectual ability in any of the areas outlined in Title 34, Code of Federal Regulations, section 300.541. In addition, a team member must observe the child's academic performance and the team must prepare a written report of the results of the evaluation. The report must include a statement of whether the child has a specific learning disability, the basis for making the determination, the relevant behavior noted during the observation of the child, the relationship of that behavior to the child's academic functioning, the educationally relevant medical findings (if any), whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services, and the determination concerning the effects of environmental, cultural, or economic disadvantage .[76]

California's eligibility criteria are set forth in the Department of Education's regulations. Regulation section 3030 provides that the IEP team decides whether the degree of a child's impairment qualifies for child for special education. The criterion for specific learning disabilities is set forth in section 3030, subdivision (j).

Section 3030, like the federal law, requires that no single score or product of scores, tests, or procedures shall be used as the sole criterion for the decisions of the IEP program team as to the pupil's eligibility for special education. The IEP team shall take into account all the relevant material that is available on the pupil.

Further, if standardized tests do not reveal a severe discrepancy, the IEP team may find that a severe discrepancy does exist, provided the team documents in a written report that the severe

---

[72] Title 34, Code of Federal Regulations, section 300.532.

[73] Title 34, Code of Federal Regulations, section 300.533.

[74] Title 34, Code of Federal Regulations, section 300.541.

[75] Title 34, Code of Federal Regulations, section 300.540.

[76] Title 34, Code of Federal Regulations, section 300.542.

discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include, among other things, data obtained from standardized assessment instruments, information provided by the parent and the pupil's present teacher, evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group of test scores, consideration of the pupil's age, particularly for young children, and any other relevant information.[77]

Conclusion

The Cornmission concludes that Title 5, California Code of Regulations, section 3030 conforms to federal law and does not impose a state mandate by permitting the IEP team to take into account all the relevant information available concerning the pupil to determine eligibility for special education.

Both federal and state law emphasize that no single procedure or score shall be used as the sole criterion for determining an appropriate educational program for a child. Even if standardized test scores do not reveal a specific learning disability, both federal and state law authorize the use of alternative procedures for determining a child's eligibility, as long as the information is documented, and carefully considered, and the placement decision is made by the multidisciplinary team or the IEP team.

Further, California's eligibility criteria for specific learning disabilities, which includes subjective and objective standards, do not impose a new state mandated program upon school districts. The claimant failed to show that the state's requirements exceeded those in federal law. Therefore, the Comrnission concludes that:

- Federal law mandates both states and local educational agencies to employ a wide range of eligibility criteria for evaluating specific learning disabilities.
- Federal law provides that states and local educational agencies must identify, locate, and evaluate, all children who are disabled, regardless of the severity of their disability, and who are in need of special education.
- California law provides local educational agencies with authority to control certain aspects of the eligibility and assessment process.
- Federal law creates a presumption in favor of the education placement established by a child's IEP and, if a local educational agency desires to challenge the terms of an IEP, it bears the burden of showing why the educational setting established by the IEP is not appropriate.

Based on the foregoing, the Commission concludes that Title 5, California Code of Regulations, section 3030 does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

[77] Title 5, California Code of Regulations, section 3030.

11. Definition of Severely Handicapped

On December 19, 1996, the Comrnission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Dr. Caryl Miller of Riverside County SELPA, appeared for Riverside, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Comrnission denied the Definition of Severely Handicapped portion of the Special Education Test Claim. [Members Richardson, Pichardo, and Sherwood voted "aye" ; Member Beltrami voted "no. "]

Issue

Does Education Code section 56030.5 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code 175 14 by categorizing students with disabilities into two groups, severe and non-severe?

Federal Law

The Individuals with Disabilities Education Act (IDEA) provides a broad definition of the term "children with disabilities, " which includes a variety of types and conditions .[78] Further, federal law provides that states and local educational agencies must identify, locate, and evaluate children with disabilities that need special education regardless of the severity of their disability .[79]

The provisions of federal law are set forth in the Addendum.

State Law

Education Code section 56030.5 defines "severely disabled" to mean "individuals with exceptional needs who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, severe mental retardation, and those individuals who would have been eligible for enrollment in a development center for handicapped pupils under Chapter 6 (commencing with § 56800) of this part as it read on January 1, 1980."

---

[78] Title 20, United States Code, section 1401(a)(l)(A)(i); Title 34, Code of Federal Regulations, section 300.7(b).

[79] Title 20, United States Code, sections 1412(2)(c), 1414(a)(l)(A).

The provisions of state law are set forth in the Addendum.

Commission Findings

The Cornmission found that federal statutes and regulations define the term "children with disabilities" to include many different types of handicapping categories. Further, federal law provides that all children with disabilities, regardless of the severity of their disability, and who are in need of special education, are entitled to be identified, located, and evaluated, and to receive special education. [80]

The Commission compared the disabling conditions included in Education Code section 56030.5 with the federal definition of "children with disabilities." The table below compares California definitions with federal definitions:

CALIFORNIA LAW	FEDERAL LAW
Autism	Defined in 34 C.F.R. § 300.7(b)(l)
Blindness	Included in definition of "visual impairment" in 34 C.F.R. § 300.7(b)(13)
Deafness	Defined in 34 C.F.R. § 300.7(b)(3)
Severe orthopedic impairments	Included in definition of "orthopedic impairment" in 34 C.F.R. § 300.7(b)(7).
Serious emotional disturbances	Defined in 34 C.F.R. § 300.7(b)(9)
Severe mental retardation	Defined in 34 C.F.R. § 300.7(b)(5)
hose individuals who would have been eligible for enrollment in a development center for handicapped pupils under section 56800 (i.e., severely mentally retarded or physically handicapped .)	Physically handicapped and mentally retarded pupils (20 U.S.C. § 1401(a)(l)(i) and 34 C.F.R. § 300.7(b)(5)).

Based on the foregoing comparison, the Commission found the "severely disabled" definition in section 56030.5 corresponds to the federal definition "children with disabilities" and, as such, does not impose state mandated activities or increased levels of service over and above the provisions of the IDEA. The claimant failed to assert other Education provisions that imposed additional state mandated activities beyond the federal requirements.

The claimant misconstrued the provisions of section 6, article XIII B, of the California Constitution by equating additional costs to an increased level of service. The Comrnission noted this interpretation would mean that all additional costs are reimbursable costs mandated by the state. The claimant's position was rejected by the California Supreme Court in County ***of*** *Los Angeles v. State* ***of*** *California* (1987) 43 Cal. 3d 46. The high court ruled that the subvention requirement under the state Constitution for increased levels of service is directed to state mandated increases in the services provided by local governmental entities.

[80] Title 20, United States Code, sections 1412(2)(c), 1414(a)(l)(A).

Thus, local governmental entities are only entitled to reimbursement for costs resulting from a new program or higher level of service and not simply for increased costs alone.

Conclusion

The Comrnission concludes that the test claim legislation consists solely of a definition of "severely disabled, " which corresponds to the federal definition of '"children with disabilities. "

Moreover, without other Education Code provisions in its test claim, the claimant has failed to show that section 56030.5 imposed new mandated activities or increased levels of service upon school districts.

Based on the foregoing, the Cornmission concludes that Education Code section 56030.5 does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

12. Extended School Year

On September 26, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Comrnission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Dr. Ray Easler of the Riverside County SELPA appeared for the claimant, Diana IS. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Commission found the Extended School Year portion of the Special Education Test Claim to represent a limited reimbursable state mandate. [Members Richardson, Sherwood, and Beltrami voted "aye"; Member Pichardo voted "no."]

Issue

> Do Education Code section 56345, subdivision (b)(5), and Title 5, California Code of Regulations, section 3043 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring districts to provide extended school year services that may differ from a pupil's Individualized Education Program?

Federal Law

Under federal law, the free appropriate public education required by the Individuals with Disabilities Education Act (IDEA) is tailored to the unique needs of each handicapped child by means of an individualized education program (IEP). The individualization requirement is of paramount importance to the IDEA? Federal regulations further provide that the IEP for each child must include, among other things, the projected dates for initiation of services, and the anticipated duration of those services .[82]

Although statutory authority exists for the Secretary of Education to fund the development and operation of extended school year projects for children with severe disabilities, there are no federal statutes that expressly require local educational agencies to establish extended school year programs.

When a child's IEP includes a provision for an extended school year program, the statutory phrase free appropriate public education does not limit a student's educational program to 180 days or 9 months. In *Armstrong* v. *Mine* (E.D. Pa. 1979) 476 F.Supp. 583, the district court

---

[81] Title 20, United States Code, sections 1401(a)(18), 1414(a)(5).

[82] *Ibid;* Title 34, Code of Federal Regulations, section 300.346(a)(4).

ruled that Pennsylvania's policy of not providing educational services beyond the traditional 180-day school year deprived certain disabled students of a free appropriate public education.

In *Battle v. Pennsylvania* (3rd Cir. 1980) 629 F.2d 269, the Third Circuit Court of Appeals upheld the district court's decision, concluding that Pennsylvania's blanket policy of forbidding any child from receiving summer school special education services precluded the proper determination of the content of a free appropriate public education and thus violated the Education for All Handicapped Children Act. Other federal courts have ruled similarly.

The provisions of federal law are set forth in the Addendum.

State Law

Generally, California conforms to the federal mandate as judicially interpreted. State law specifies that the IEP shall also include extended school year services, when needed, as determined by the IEP team.[83] If the IEP team determines that an individual student needs an extended school year program, Department of Education regulations state that such services shall be provided for a minimum of 20 instructional days.[84]

The regulations also limit reimbursement to 55 instructional days for individuals in special classes or centers for the severely handicapped, and to a maximum of 30 instructional days for all other eligible pupils needing extended school year services.[85] If an IEP calls for schooling beyond the 55 or 30-day maximums, local governing boards are empowered to increase the number of extended school days to coincide with a pupil's IEP and federal law .[86]

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission found that federal law empowers an IEP team to determine a child's IEP. For some children, special education may be required for longer than the traditional nine-month school year. [87]

Federal courts have held that efforts by states to restrict programming to the traditional nine-month school year violate the IDEA when a child's IEP provides for extended year programming. Further, federal law establishes the obligation for states to provide extended year programming, when appropriate, pursuant to a child's IEP. Accordingly, Education Code section 56345, subdivision (b)(5), does not impose a new program or higher level of service upon school districts by allowing special education and related services to be provided to disabled children beyond the traditional nine-month school year.

However, Title 5, California Code of Regulations, section 3043, subdivision (d), requires school districts to provide a minimum of 20 days of extended school year programming, even if a child's IEP provides for fewer days. Therefore, section 3043, subdivision (d), imposes a reimbursable state mandated program or higher level of service upon school districts because it

---

[83] Education Code section 56345, subdivision (b) (5); Title 5, California Code of Regulations, section 3043, subdivision (f).

[84] Title 5, California Code of Regulations, section 3043, subdivision (d) (1), (2).

[85] *Ibid.*

[86] Title 5, California Code of Regulations, section 3043, subdivision (e).

[87] Title 20, United States Code, section 1401(a)(18), Title 34, Code of Federal Regulations, section 300.346(a)(4).

exceeds federal requirements by requiring a minimum of 20 days of extended school year services be provided to a pupil, instead of fewer days, if that is what is specified by the IEP.

Except as stated above, the Comrnission found that the remaining portions of section 3043 do not impose a new program or higher level of service upon school districts because they mirror federal law.

Conclusion

Therefore, the Cornmission concludes that:

- Education Code section 56345, subdivision (b)(5), does not impose a new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 because federal law requires school districts to provide extended school year services and programs, when required by a pupil's IEP.

- The first sentence of Title 5, California Code of Regulations, section 3043, subsection (d), imposes a reimbursable state mandated program or higher level of service upon school districts because it exceeds federal requirements by requiring a minimum of 20 days of extended school year services be provided to a pupil, instead of fewer days, if that is what is specified by the IEP.

- Except as stated above, the remaining portions of Title 5, California Code of Regulations, section 3043, do not impose a new program or higher level of service upon school districts because they mirror federal law as judicially interpreted.

13. Interim Placements

On September 26, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornmission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Dr. Ray Easler of the Riverside County SELPA appeared for the claimant, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Comrnission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 3-1, the Cornmission found the Interim Placements portion of the Special Education Test Claim to represent a limited reimbursable state mandate. [Members Sherwood, Richardson, and Beltrami voted "aye"; Member Pichardo voted "no".]

Issue

Do Education Code section 56325 and Title 5, California Code of Regulations, section 3067 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 by requiring, upon a pupil's district transfer, immediate interim placement in an individualized education program that is similar, if not the same program as the pupil had before the transfer?

Federal Law

Federal law requires that all children with disabilities have available to them a free appropriate public education (FAPE) which emphasizes special education and related services designed to meet their unique needs ✍✍ gg An individualized education program (IEP) is developed to determine his or her specific education and related services needs. Special education and related services are provided to the pupil based upon the IEP.[89]

Federal law also requires review and revision of a pupil's IEP if necessary at the beginning of the school year. A pupil's IEP may be reviewed more frequently, but must be reviewed at least annually. 90

The provisions of federal law are set forth in the Addendum.

---

[88] Title 20, United States Code, section 1412.

[89] Title 34, Code of Federal Regulations, section 300.342.

[90] *Ibid.*

State Law

State law requires that special education pupils who transfer to another school district that operates under a different local plan be provided interim placement not to exceed 30 days. The interim placement must conform to the pupil's IEP, unless the parent or guardian agrees otherwise. The IEP implemented during the interim placement period can be the pupil's existing IEP implemented to the extent possible, or a new IEP developed in accordance with state law.[91]

When a pupil transfers to a non-public school, the IEP shall be reviewed by the new public education agency within 15 days of transfer. An IEP team shall determine whether the pupil's existing IEP is to be used or a new IEP is to be drafted.[92]

The provisions of state law are set forth in the Addendum.

Commission Findings

The Cornmission considered this portion of the Special Education Test Claim in sections and made the following findings:

1. IEP Content - Services

Federal law specifies that the IEP must include all services necessary to meet the child's identified special education and related services needs and local educational agencies must provide the services identified in the IEP to comply with the Individuals with Disabilities Education Act (IDEA). [93]

If a child changes schools, federal law requires the new local educational agency (LEA) to provide all services called for in the original IEP, unless the factualcircumstances of the child's condition have changed. If the child's condition remains the same, federal law requires a new LEA to comply with the IEP and provide similar services.

Federal law permits a new LEA to revise the IEP when either the LEA or the parent believes that the IEP is not appropriate. An IEP meeting must be conducted to make this revision.[94]

2. Timing of IEP Placement Determinations - Public School Placements

Education Code section 56325 has been amended during the reimbursement period.

2a. As Enacted by Statutes of 1980, Chapter 797

The original language of Education Code section 56325 provided that the receiving school district "... may place the pupil in a comparable program for a period not to exceed 30 days" and "[b]efore the expiration of the 30-day period, such interim placement shall be reviewed ... and a final recommendation shall be made [regarding permanent placement] ."

The original section 56325 offered two alternatives (interim placement or permanent placement), and California LEAs were opting for a third alternative (leaving the child out of school for up to 30 days). A letter from the federal Department of Education to the California Department of Education explains that the federal government deemed the practice of leaving

[91] Education Code section 56325; Title 5, California Code of Regulations, section 3067.

[92] *Ibid.*

[93] Title 34, Code of Federal Regulations, section 300, Appendix C, Question No. 45.

[94] Title 34, Code of Federal Regulations, section 300, Appendix C, Question No. 6.

children out of school to be in violation of the federal statute and ordered the state to cease permitting this practice. The letter further explained that "once a child has been identified as a 'handicapped child' who is in need of special education, the [IDEA] imposes on both the state and local agencies an ongoing obligation to ensure that a FAPE is provided to that child in conformity with an IEP . . . [i]t would be inconsistent with this responsibility for a child to be placed, even temporarily, without appropriate special education services. " The Commission noted that the federal government then ordered California to modify its law in a manner consistent with the federal government's policy interpretation.

2b. As Amended by Statutes of 1990, Chapter 1234

The 1990 amendment provided that the receiving school district ". . . shall ensure that the pupil is irnmediately provided an interim placement for a period not to exceed 30 days. . . . " The other requirements were unchanged.

Section 56325 requires: (1) that an interim placement be made, (2) that a review of that interim placement be made within 30 days, and (3) that a recommendation for a permanent placement be made within that same 30 day period. The Commission found that Title 34, Code of Federal Regulations, section 300, Appendix C, Question No. 6 spoke directly to those requirements. Question number 6 provides, " . . . if the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally within one week). . . . "

Federal law requires that if there is any doubt about permanent placement for the pupil, a meeting to resolve that matter must be held within one week of the child's enrollment, and the child must be placed in a special education program immediately after that meeting.

Based on the foregoing, the Comrnission found that the federal statute is more stringent than state law and that the federal government directly mandated the requirements set forth in Education Code section 56325 relating to interim placements.

3. Timing of IEP Placement Determinations - Non-Public School Placements

Federal law requires local educational agencies to meet to determine a pupil's appropriate placement. This meeting is to be held within one week of enrollment, and the child is to be placed immediately after the IEP is finalized. [95] State regulations, which specify that an IEP should be reviewed within 15 working days of receipt of the records, provides a longer period than federal law .[96] Therefore, the Cornmission found that the federal requirement is more stringent than the state requirement.

4. Human resources

The claimant alleges the involvement of more than one person in the review and development of a permanent placement recommendation is a reimbursable state mandated activity.

Federal law requires an IEP team meeting to determine a pupil's IEP and that an IEP be provided to every disabled pupil. An LEA is also required to conduct an IEP meeting under certain circumstances, and determine the appropriateness of a pupil's IEP upon transfer.

[95] *Ibid.*

[96] Title 5, California Code of Regulations, section 3067.

Education Code section 56325 requires an IEP be "reviewed by the individualized education program team and a final recommendation shall be made by the team." The requirement for the team to participate in the making of a final recommendation for permanent placement appears to exceed the federal requirement.

Education Code section 56341 identifies IEP team members as follows:

> Members required at every IEP team meeting are:
>
> - An LEA administration representative who is not the pupil's teacher,
> - The pupil's teacher, and
> - One or both of the pupil's parents.
>
> The following persons are to be included when necessary:
>
> - The pupil,
> - Appropriate experts,
> - A person that has conducted an assessment of the pupil, and
> - A person, other than the teacher, who has observed the pupil in an appropriate setting.

To the extent that the LEA incurs costs related to the involvement of more than one LEA employee in the making the final recommendation for permanent placement, the Commission found that this requirement imposed a reimbursable state mandated program upon school districts.

However, federal law requires LEAs to establish or revise each child's IEP at the beginning of each school year and then review it no less than annually.[97] Since the annual review must be conducted by the entire IEP team, in some cases, the same IEP team meeting could satisfy both the state requirement of Education Code section 56325, subdivision (b), and the federal requirement of Title 20, United States Code, section 1414(5). The Commission found that, should that occur, no state reimbursement would be appropriate.

The Commission noted that Title 5, California Code of Regulations, section 3067, subdivision (b)(4), as originally enacted in 1982, provided that the pupil's IEP "shall be reviewed by the new public education agency. . . ." The regulation included factors to be included in the review. Moreover, those factors were determinations to be made by the entire IEP team. [98] In its amended form, the regulation required the IEP team to make the determination."

School districts are ineligible for reimbursement when an IEP team meeting satisfies both federal and state requirements.

The Commission noted that Title 5, California Code of Regulations, section 3067 was repealed, effective January 1, 1995.

---

[97] Title 20, United States Code, section 1414(5).

[98] Title 5, California Code of Regulations, section 3067, subdivision (b)(4)(B), (C).

[99] Title 5, California Code of Regulations, section 3067, subdivision (d).

Conclusion

Based on the foregoing, the Cornrnission concludes that Education Code section 56325 and Title 5, California Code of Regulations, section 3067, impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the involvement of more than one LEA employee in placement determinations.

The Cornmission concludes that California's requirement that the entire IEP team be involved in the development of permanent placement recommendations for pupils transferring into either public or non-public schools exceeds the federal requirement since such recommendations can be made by one person *if* the use of the existing "old" IEP is uncontested by the pupil's parents or guardians and by the receiving LEA.

The Commission further determines the remaining provisions of Education Code section 56325 and Title 5, California Code of Regulations, section 3067 regarding IEP content, including services and costs, fall within the federal mandate and, accordingly, do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

14. Governance Structure

The Comrnission considered this portion of the Special Education Test Claim during two hearings, as follows:

December 19, 1996

On December 19, 1996, the Commission first heard this portion of the Special Education Test Claim during a regularly scheduled hearing. At the conclusion of the hearing, the Department of Finance requested reconsideration on Education Code section 56171.

Comrnission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Governrnent Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Cornmission found the Governance Structure portion of the Special Education Test Claim to represent a limited reimbursable state mandate.

April 24, 1997

On April 24, 1997, the Commission reheard the portion of this item relating to Education Code section 56171 during a regularly scheduled hearing.

Comrnission members present were William Sherwood, Richard Chivaro, Diane Richardson, Dave Cox, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Steven N. Morford, Marin County Office of Education, SELPA, appeared for the claimant, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and supplemental claimants, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission reaffirmed its December 19, 1996, decision finding that the Governance Structure portion of the Special Education Test Claim represents a limited reimbursable state mandate.

The December 19, 1996, Hearing

Issue

Do Education Code sections 56170, 56171, and 56780-56783 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Governrnent Code section 175 14 by requiring the establishment of a local plan, local plan duties, and by defining how funds are to be apportioned for regionalized services?

Federal Law

Federal law uses the term intermediate educational unit (IEU) to describe any public authority that is established by state law for providing a free public education on a regional basis.[100] Federal law requires that the states must provide a free appropriate public education for all disabled children. To this end, the IEU is meant to create regions of such size that would allow the states to effectively provide special education and related services to disabled children.

Although federal law is not specific regarding the participation or membership of the IEUs, it does require states to comply with the Individuals with Disabilities Education Act's (IDEA) requirements through state statute, regulation, signed agreement between respective agency officials, or other documents. Federal law reflects Congress' desire for a central point of responsibility and accountability in the education of children with disabilities within each state.

Federal law also requires that the state take oversight responsibility for assuring that the expenditure of federal funds conforms to the IDEA.

The provisions of federal law are set forth in the Addendum.

State Law

State law uses the term Special Education Local Plan Areas (SELPA) to describe the service area covered by a local plan developed under Education Code section 56170. SELPAs provide a regional basis for the provision of special education and related services for disabled children. In addition, the SELPA is the central point of responsibility for a particular region.

State law sets forth the requirements regarding the development of local plans. In addition, state law requires how funds are to be apportioned for regionalized services, for program specialists, instructional personnel services, other program specialists, and annual increases in apportionments.

The provisions of state law are set forth in the Addendum.

Commission Findings

Education Code section 56170

The Comrnission found that the federal IEU to be equivalent to the California SELPA as defined Education Code section 56170. Federal law provides for the establishment of regional local plans. The Commission noted that this serves the purpose of assuring that the full range of special education services are available in each region. Title 20, United States Code,

[100] Title 20, United States Code, section 1401(a).

section 1414(a)(6) requires LEAs or IEUs that wish to qualify for federal funds under the IDEA to conform their policies and programs to federal requirements.

Title 20, United States Code, section 1412(1) requires the state to have a policy in effect that assures all handicapped children the right to a free appropriate public education. California's establishment of the SELPA requirements under Education Code sections 56 170 and 56 17 1 is precisely the policy that the federal statute at Title 20, United States Code, section 1412(1) requires of the state.

Education Code section 56170 does not impose reimbursable state mandated activities for the following reasons:

1. The Education Code section 56170 requirement is a state standard incorporated into the federal statute by Title 20, United States Code, section 1401 (a)(18)(B) and therefore is part of the federal mandate,

2. Education Code section 56 170, subdivision (d), identifies Education Code sections 56170, subdivisions (a), (b), and (c) as SELPAs; but effective September 30, 1984, also offers subdivision (e), which may be selected. Subdivision (e) does not require an LEA to form a SELPA. It permits an LEA to contract with a County Office for needed services.

Education Code section 56 17 1

The Comrnission found that Education Code section 56171 could not be the basis for claiming SELPA ongoing administrative expenses. These requirements are not required of SELPAs – they are required of the "districts. " Education Code section 56025 defines "districts" to mean school districts, not SELPAs. The Commission noted it is the school districts that are required to assure that SELPAs are formed with school districts assembled into workable groupings. Therefore, Education Code section 56 17 1 could not be the source of a state mandate for SELPA ongoing administrative expenses,

The various requirements in section 5617 1 for cooperation and coordination are incorporated into the federal mandate through Title 20, United States Code, section 1412(6). Section 1412(6) requires the state educational agency to take responsibility for the administrative oversight of all educational programs for handicapped children within the state. This federal requirement includes state oversight responsibility for locally administered special education programs. In addition, Title 34, Code of Federal Regulations, section 300.600 provides that the state must comply through state statute, regulation, signed agreement, or other documents.

California has complied with Title 20, United States Code, section 1412(6) by enacting statutory provisions that relate entirely to the administration of the local plans. Education Code section 56171 is one of the state statutory provisions enacted to implement the state oversight of local special education programs. While these provisions are substantially more detailed than the federal requirement at Title 20, United States Code, section 1412(6), they are precisely the type of state statute that federal law authorizes the state to enact to meet its oversight obligation. Therefore, the requirements in section 56 17 1 are incorporated into the federal mandate and cannot form the basis for a state mandate.

However, Education Code section 56171 also requires the participation of parents and teachers selected by their peers in the development of the local plan. These requirements are not found in the federal special education program statutes or related federal regulations. The

Commission found that these requirements impose reimbursable state mandated activities upon school districts.

The Commission noted that similar requirements for teacher participation in the development of the local plan were also found to constitute reimbursable state mandates under the Community Advisory Committee part of the Special Education test claim. The parameters and guidelines phase of this claim will prohibit both duplication of reimbursement for the advisory services of teachers in the development of the local plan and duplication of reimbursement for the costs of having these parents and teachers selected by their peers for such participation. Notwithstanding this caveat, the Commission recognized that teachers could perform reimbursable duties under both Education Code section 5617 1 and the Community Advisory Committee statutes.

Education Code sections 56780, 56781, 56782, 56783

The Commission noted that Title 20, United States Code, section 14 13(a) lists the federal requirements for qualifying state plans. Specifically, subdivision (1) requires the state to "set forth policies and procedures designed to assure that funds paid to the state . . . will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections [20 U.S.C. §§ 1411(b)-(d), 1412(2), (3)]. . . ." Title 20, United States Code, section 1413(a)(l) details the federal requirement that the state take oversight responsibility for assuring that the expenditure of federal funds conforms with the IDEA.

The provisions of Education Code sections 56780 - 56783 are a few of the "policies and procedures" by which the state meets its federal obligation to assure that federal funds are expended for authorized purposes. These provisions merely provide the specific details of the spending limitations.

An alternative basis for arriving at the same conclusion comes from *County of Los Angeles,* which requires that a new program or higher level of service must be found as a prerequisite to a state mandate. The Cornmission found that, by describing in detail how federal funds are to be applied, the state has not imposed a new program or a higher level of service.

Conclusion

The Commission concludes that the California SELPAs authorized under Education Code section 56 170 are the same as IEUs defined under Title 20, United States Code, section 1401(22) and federally authorized under Title 20, United States Code, section 1414(a). The requirements in section 56170 are incorporated into the federal statute. In addition, since September 30, 1984, section 56170, subdivision (e), has provided an option that does not require LEAs to participate in a SELPA. Based on the foregoing, Education Code section 56170 does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

The coordination provisions of Education Code section 56171 have been enacted to implement the federal requirement for state oversight found at Title 20, United States Code, section 1412(6). The enactment of statutes to carry out this oversight responsibility is specifically provided for at Title 34, Code of Federal Regulations, section 300.600(b). The requirements in section 56 17 1 are part of the federal mandate. However, section 5617 1 also requires the participation and selection by their peers of parents and teachers in the development of the local plan. These requirements exceed what can reasonably be considered responsible

oversight, and do not fall under the federal mandate. Therefore, these requirements impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

The provisions of California Education Code sections 56780, 56781, 56782, and 56783 do no more than provide the specific details of the spending allocations for federal funds under this program. Additionally, *County of Los Angeles*, requires that a new program or higher level of service must be found before a state mandate may be established. Therefore, Education Code sections 56780, 56781, 56782, and 56783 do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

The April 24, 1997, Reconsideration

Issue

Does Education Code section 56171 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 by requiring peer selection of parents and teachers as well as their participation in the development of a local plan?

Federal Law

See the Federal Law section above and the Addendum.

State Law

See the State Law section above and the Addendum.

Commission Findings

Although Riverside did not specifically claim parent and teacher participation and peer selection in its brief, Riverside did include Education Code section 56171 in its original test claim filed on September 29, 1993. The provisions of Education Code section 56 17 1 were cited by Riverside and the issue regarding parent and teacher participation was identified and claimed by Contra Costa SELPA, supplemental claimant. The Commission found that all the costs of compliance with Education Code section 56171 are properly claimed for reimbursement within the consolidated special education test claim.

The Commission found that neither interested parties nor staff limited the Department of Finance's ability to research and brief this portion of the Special Education Test Claim.

The Commission noted that both Contra Costa SELPA and the Department of Finance focused on Title 20, United States Code, section 1414(a)(1)(C)(iii) for the proposition that federal law contemplates parent participation in the development of local plans. However, this code section deals with assurances by the state that federal funding will be used for specific program costs. This provision neither requires parent or teacher participation in the development of a local plan, nor is the term "local plan" in the section,

Senator Williams' remarks evidence that the Senate Committee on Labor and Public Welfare intended the terms in Title 20, United States Code, section 1414(a)(1)(C)(iii) regarding participation and consultation to mean inclusion of the parents or guardians at the local level in the individualized planning conference.

The design of the federal legislation is quite specific in the types of parental involvement it requires, and it does not include a standing local level advisory committee for parents or guardians to participate in or consult with. At the local level, Congress intended only to involve parents and guardians in the individualized planning conferences for their own child.

Conclusion

The Commission reaffirms its adoption of the original staff recommendations for the Governance item as presented at the December 19, 1996, hearing. The Commission concludes that Education Code section 56 17 1, subdivision (a), requiring peer selection of parents and teachers and their participation in the development of local plans, imposes a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

15. Non-Public Schools (Individual Service Agreements)

The Commission considered this portion of the Special Education Test Claim during two hearings, as follows:

February 14, 1997

On February 14, 1997, the Commission first heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Mario Pichardo, Dave Cox, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Cornrnission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-1, the Cornmission denied the Non-Public Schools (Individual Service Agreements) portion of the Special Education Test Claim (specifically, Ed. Code, § 56365 subd. (a).) [Members Sherwood, Richardson, Pichardo, and Beltrami voted "aye"; Member Cox voted "no".]

October 30, 1997

On October 30, 1997, the Commission re-heard the portion of this item relating to Education Code section, 56366, subdivision (a)(Z).

Commission members present were William Sherwood, Richard Chivaro, Nancy Patton, Dave Cox, Albert Beltrami, and Joann Steinmeier.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Caryl Miller of Riverside County SELPA, appeared for the claimant, Diana K. (Smith) McDonough appeared for the supplemental claimants, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Comtnission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Cornmission by a vote of 6-O denied Education Code section 56366, subdivision (a)(2) based on the evidence presented on February 14, 1997. The claimant stated pursuit of that portion of the test claim would not be worthwhile.

Issue

Do Education Code sections 56365, subdivision (a), and 56366, subdivision (a)(2), impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring nonpublic, nonsectarian school services be made available to disabled children when appropriate and by requiring the master contract to include an individual services agreement?

Federal Law

Title 20, United States Code, section 1413(a)(4)(B)(i) of the Individual with Disabilities Education Act (IDEA) considers the placement of disabled students in private schools when necessary to provide special education services needed by the students but unavailable in the public school. The federal law applies only to public entities and describes required contents of an individualized education program (IEP) in Title 20, United States Code, section 1401(a)(20). However, contract terms that bind a public school and a nonpublic school to deliver special education services are not among the required contents of an IEP. Consequently, for a state to fulfill its administrative oversight responsibility, it is necessary that a master contract is signed when contracting with private schools to deliver special education services to disabled students placed in those private schools by public educational entities.

The provisions of federal law are set forth in the Addendum.

State Law

The master contract described under Education Code section 56366, subdivision (a)(2), is intended to comply with the state's obligation to satisfy its administrative oversight responsibility. The master contract entered into between a public school and a nonpublic school includes an individual services agreement for each disabled student placed by the public school in the nonpublic school. The individual services agreement is an integral part of the master contract and as such serves the essential function of tailoring the contract to the specific needs of each student. That tailoring is the essence of the master contract, because the contract ensures that each disabled student receives the special education services his IEP prescribes. The state's requirement to enter into master contracts is within the federal mandate embodied in the IDEA.

For a period beginning with Statutes of 1993, Chapter 1296, effective October 11, 1993, and ending with Statutes of 1996, Chapter 944, effective January 1, 1997, the state required the use of specific state-designed forms for the master contract and individual services agreement.

The provisions of state law are set forth in the Addendum.

Commission Findings

Education Code section 56365, subdivision (a)

The Cornmission found that, in order to receive federal moneys under the IDEA, Title 20, United States Code, section 1412(6) provides that the state educational agency is required to take responsibility for the administrative oversight of all educational programs for disabled students within the state. Further, Title 20, United States Code, section 1413 requires participating states to develop a state plan for special education and lists many features which

that plan must include. Among those features is the requirement under subdivision (a)(4) to "set forth policies and procedures to assure . . . " that the provisions of Title 20, United States Code, section 1413(a)(4)(B)(i) are followed.

Title 20, United States Code, section 1413(a)(4)(B)(i) federally authorizes states to use private school placements to meet the requirements of the IDEA to provide a FAPE to all disabled students.

The provisions of Education Code section 56365, subdivision (a), follow and repeat the federal directives, namely, that nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies, shall be available to comply with a child's IEP.

Education Code section 563 66, subdivision (a)(2)

Title 20, United States Code, section 1400(c) very generally states the primary goals of the federal mandate. Notable among those goals is the assurance, ". . . that the rights of children with disabilities and their parents or guardians are protected. . . ." To further assure the achievement of that goal federal law at Title 20, United States Code, section 1412(6) reiterates the centralization of oversight responsibility in the state educational agency. Similar requirements are repeated in the federal regulations at both Title 34, Code of Federal Regulations, sections 300.348(c) and 300.600(a).

To carry out this federal mandate, the state educational agency may contract with private agencies. Title 34, Code of Federal Regulations, section 300.600(b) provides that the state may enact state statutes, state regulations, or enter into signed agreements. The provisions of Education Code section 56366, subdivision (a)(2), are within federal statutory authority and, therefore, incorporated into the federal mandate.

The federal special education statutes and regulations only apply to public entities; they do not obligate private schools to provide special education services. Because the federal mandate only applies to public entities, it is reasonable under federal law that the state require any public school district that finds it necessary to place a disabled student in a private school to contractually obligate the private school to provide any necessary special education services.

Title 20, United States Code, section 1401(a)(20) lists the federally required contents of an IEP. From this definition, the IEP is fundamentally a prescription for specific special education services required by the student for which the IEP has been completed. Further, none of the federally required IEP provisions address contract issues for agreements between public schools and private schools for disabled student placement in the private school.

Education Code section 56366, subdivision (a)(2), provides that "the master contract shall include an individual services agreement. . . , " This phrase means that the individual services agreement is not a separate document; it is an integral part of the master contract. Absent a provision in the master contract specifically tailored to each individual student, there would be nothing obligating a private school to deliver all the services identified in a pupil's IEP.

Education Code section 56366, subdivision (a)(2), as originally enacted by Statutes of 1980, Chapter 797, contained a requirement for a contract, but did not specify what form that contract should take. The requirement to prepare the written contract on forms developed by the state Department of Education was amended into section 56366 by Statutes of 1993, Chapter 1296, as an urgency measure effective October 11, 1993. The 1993 version of the statute was repealed and reenacted in Statutes of 1994, Chapter 1172 (§§ 19, 20 & 36). The

requirement for use of state-designed contract forms was eliminated from the statute by Statutes of 1996, Chapter 944, effective January 1, 1997.

The claimant only alleged a reimbursable state mandated program, related to the obligation to use an individual services agreement, for the period beginning with the enactment of Statutes of 1994, Chapter 1172. Under the test claim legislation, both the requirement to have a master contract and the requirement to use state-designed contract forms already existed under state law. Consequently, the test claim legislation did not impose a new state mandated activity, because the requirement to use state contract forms did not originate from the subject legislation.

The claimant was free to amend its test claim to include Statutes of 1993, Chapter 1296. However, to do so would mean the reimbursement period for this portion of the Special Education Test Claim would begin on July 1, 1996. This would leave only six months of reimbursement because Education Code section 56366, subdivision (a)(2), was repealed by Statutes of 1996, Chapter 944, effective January 1, 1997.

During the October 30, 1997, hearing, the Commission found that, due to the claimant's decision not to amend its claim to include Statutes of 1993, Chapter 1296, the Chapter as cited by the claimant does not impose reimbursable state mandated activities upon school districts.

Conchsion

Education Code section 56365, subdivision (a)

The Commission concludes that Education Code section 56365, subdivision (a), which requires that private school placement be an available option to satisfy a child's IEP, corresponds to the federal mandate embodied in the IDEA. Therefore, Education Code section 56365, subdivision (a), does not impose reimbursable state mandated activities upon school districts.

Consequently, any state mandate claim by a school district will fail regarding the requirement to prepare a written contract which includes provisions obligating the private school to meet the special education needs of each individual student placed in the private school, because such contracting is in the federal mandate.

Therefore, the Commission concludes that Education Code section 56365, subdivision (a), does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

Education Code section 56366, subdivision (a)(2)

The Cornmission concludes that, while the requirement to prepare a written contract for placement of disabled students in private school is within the federal mandate, the requirement to use state-designed contract forms is not federally mandated. Consequently, for the period between October 11, 1993, and January 1, 1997, a state mandate existed for school districts to use the state's standardized master contract and individual services agreement forms.

However, this test claim concerns the requirements of Education Code section 56366, subdivision (a)(2), as amended by Statutes of 1994, Chapter 1172, and no new program or higher level of service originated from this statute as defined by section 6, article XIII B of the California Constitution and Government Code section 175 14.

In light of the claimant's decision not to amend its test claim to include the originating statute imposing the requirement that school districts use the state designed contract forms, the

Commission concludes that Education Code section 56366, subdivision (a)(2), does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

16-A. Parental Notice and Access to Records

On February 14, 1997, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Diane Richardson, Mario Pichardo, Dave Cox, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Caryl Miller of Riverside County SELPA, appeared for the claimant, Diana K. (Smith) McDonough appeared for the supplemental claimants, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission denied the Parent Notice and Access to Records portion of the Special Education Test Claim.

Parental Notice

Issue

> Does Education Code section 56329 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the preparation and sending of a written notice to parents regarding access rights to their child's special education assessments?

Federal Law

The Individuals with Disabilities Education Act (IDEA) and the federal regulations issued thereunder require that written notice to parents be prepared and sent from school districts. The written notification must include, among other things, an opportunity for the parents to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, to obtain an independent educational evaluation of the child, a full explanation of the procedural safeguards available to parents established under federal law, a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, a description of any options the agency considered and the reasons why those options were rejected, a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal, and a description of any other factors that are relevant to the agency's proposal or refusal.[101]

The provisions of federal law are set forth in the Addendum.

State Law

Education Code section 56329 requires school districts to provide written notice to parents informing them that they may obtain, upon request, a copy of the findings of the child's special

[101] Title 20, United States Code, section 1415; Title 34, Code of Federal Regulations, section 300.504(a)-(c).

education assessment(s). Section 56329 also provides that the notice must include, among other things, that the individualized education program team, which includes the parents, will be scheduled to discuss the assessment, the education recommendations, and the reasons for these recommendations, that a parent has the right to obtain, at public expense, an independent educational assessment of the pupil if the parent disagrees with an assessment obtained by the public educational agency, and that the public educational agency may initiate a due process hearing to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right for an independent educational assessment, but not at public expense.

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission found that the school district's task to prepare and send a parental notice under section 56329 is not a new state mandated program because the written notice requirement stems from federal law, i.e., the IDEA. [102] The Legislature followed the directives contained in the IDEA by spelling out the federal procedural safeguards owed to parents in the special education portion of the Education Code.

Federal law under Title 20, United States Code, section 1415(a) requires that procedures must be established and maintained to assure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). Also, pursuant to subdivision (b)(l), the federal procedures required by section 14 15 shall include, but shall not be limited to, an opportunity for parents to examine all relevant records with respect to their child's educational placement, written notice whenever an agency proposes or refuses to initiate a change in the child's placement, and a process to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE.

In view of the foregoing federal statutory provisions, all state and local educational agencies are directed to establish procedural safeguards regarding the rights of parents and children with disabilities, which includes the preparation and sending of written notice to parents regarding the special education matters associated with their child.

Moreover, the federal regulations under the IDEA also reinforce the federal mandate to provide written parental notice. Title 34, Code of Federal Regulations, section 300.501 requires that each state ensure that each public agency (i.e., any local or intermediate/regional educational agency) establishes and implements procedural safeguards that meet the requirements of sections 300.500 through 300.5 15.

Title 34, Code of Federal Regulations, section 300.504 requires that written notice "must be given to the parents of a child with a disability. " In addition, the written notice must include a full explanation of the procedural safeguards available to parents, a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any of any options the agency considered and the reasons why those options were rejected, a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal, and a description of any other factors that are relevant to the agency's proposal or refusal.

[102] *Ibid.*

Conclusion

In view of the explicit wording of the IDEA and the federal regulations issued thereunder, the Commission concludes that the preparation and sending of a written parental notice regarding a child's special education matters is a federally mandated program or task. Further, the contents that must be included in the written parental notice, as directed by the Education Code, correspond to the list of contents established under federal law.

Therefore, the Cornrnission concludes that the requirement under Education Code section 56329, to prepare and send written parental notice, stems from federal law and as such does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Parental Access

Issue

Does Education Code section 56504 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Governrnent Code section 175 14 by requiring school districts to allow for the opportunity of a parent to examine and review a child's records and to provide a copy of these records within five days after the parent's request is made?

Federal Law

The Family Educational Rights and Privacy Act of 1974 and the IDEA grant parents the right to copies of records if not providing them copies will defeat the right of inspection and review. Further, federal law imposes a forty-five day period for a school to comply with a parental request to review and inspect a child's education records or to receive a reproduction of the child's education records.

The provisions of federal law are set forth in the Addendum.

State Law

Education Code section 56504 gives parents an unconditional right to examine a child's education records and to receive a copy of such records within five days of the parent's request.

However, it should be noted that the obligation to comply with a parent's request to provide a copy of a child's education records within five days was required by other state provisions before the enactment of the test claim legislation. This previous legislation, enacted in 1975, was contained in Education Code sections 49060 through 49078, in response to the federal Family Educational Rights and Privacy Act of 1974.

The provisions of Education Code section 49060 explain that these state statutory provisions were designed to comply with the federal Family Educational Rights and Privacy Act law by eliminating any conflicts between the California statutory scheme and the federal law.

Education Code section 49061, subdivision (e), broadly defines "access" granted to parents to mean:

- A personal inspection and review of a record or an accurate copy of a record, or
- Receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and
- A request to release a copy of any record.

Education Code section 49069 states that each school district shall adopt procedures for the granting of requests by parents for copies of all pupil records or to inspect and review records, provided that the requested access must be granted no later than five days following the date of the request.

The provisions of state law are set forth in the Addendum.

Commission Findings

Education Code section 56504 provides in pertinent part:

> "[t]he parent shall have the right and opportunity to examine all school records of the child and to receive copies pursuant to this section and to Section 49065 within five days after such request is made by the parent. . . ."

The Comrnission found that the express wording of section 56504 gives parents an unconditional right to examine a child's records and receive a copy of the record within five days after a parent's request. Notwithstanding this express statutory wording, the tasks imposed upon school districts (when responding to a parental request) are not new nor does section 56504 constitute a higher level of service within an existing program, because these tasks were mandated under prior law.

Before the enactment of Education Code section 56504 in 1980, the Legislature had previously enacted a series of statutes to comply with the federal Family Educational Rights and Privacy Act (pursuant to Statutes of 1975, Chapter 816). The Legislature placed California's version of the federal Act in the Education Code (beginning with section 49060), whereas California's special education provisions are located in another part of the Education Code, beginning with section 56000.

Education Code section 49060 provides, in pertinent part:

> "It is the intent of the Legislature to resolve the potential conflicts between California law and the provisions of [the Family Educational Rights and Privacy Act of 1974] regarding parental access to, and the confidentiality of, pupil records in order to insure continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records. . . ."

Education Code section 49061, subdivision (e), broadly defines the types of "access" granted to parents to mean:

> ". . . a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record."

Education Code section 49069 provides, in pertinent part:

"Parents . . . have an absolute right to access any and all pupil records. . . . "

"Each school shall adopt procedures for the granting of requests by parents for copies of all pupil records pursuant to Section 49605, or to inspect and review records during regular school hours, provided that the requested access shall be granted no later than five days following the date of the request. . . . "

Congress enacted the IDEA one year after the 1974 passage of the federal Family Educational Rights and Privacy Act (which impacts all educational agencies and institutions receiving federal funding). Under the IDEA, the Secretary of Education is authorized to prescribe regulations to ensure the confidentiality of personally identifiable data, information, and records collected or maintained by the Secretary and by state and local educational agencies about students with disabilities, in accordance with the federal Family Educational Rights and Privacy Act. [103]

Accordingly, pursuant to Title 20, United States Code, section 14 17(c), the federal special education provisions incorporate and thereby repeat the same requirements contained in the federal Family Educational Rights and Privacy Act.

Pursuant to section 49069, each school must adopt procedures for responding to requests by parents and, thus, it is reasonable to conclude that some of these procedures may vary from school to school. Nevertheless, section 49069 requires that all school procedures must contain a provision that the requested access must be satisfied within five days following the parent's request. Hence, if a parent requests a copy of a pupil's records, the copy must be provided within five days. Alternatively, if a parent requests an opportunity to inspect the pupil's records, such opportunity must be granted within five days of the request. Moreover, if the parent simultaneously requests the opportunity to inspect and to receive a copy of the pupil's records, the school must satisfy both services within five days of the parent's requests. State laws were in effect before the enactment of Education Code section 56504.

Following the enactment of California's version of the federal Family Educational Rights and Privacy Act, the Legislature enacted its version of the federal IDEA. The Legislature incorporated and repeated some of the same requirements contained in California's version of the federal Family Educational Rights and Privacy Act into its special education provisions.

Thus, the Legislature followed Congress' lead and merely parroted the federal statutory scheme and, as a consequence, the parental access requirements spelled out in Education Code section 56504 reiterate the requirements set forth in pre-existing Education Code sections 49060, 49061, and 49069.

In addition to parental access rights located in the Education Code, the California Public Records Act, commencing with section 6250 of the Government Code and enacted before 1975, grants the right of inspection of public government records to members of the public. Under the Act, a parent, as a member of the public, has the legal right to inspect his child's education records at an educational agency or institution, The California Public Records Act is another example of state requirements protecting the rights of parents that preceded the enactment of the test claim legislation.

Schools have the authority to charge fees for costs incurred while copying a student's record. This authority is contained in section 99.11 of the regulations pursuant to the federal Family

[103] Title 20, United States Code, section 1417(c).

Educational Rights and Privacy Act. Section 99.11 provides that an educational agency or institution may charge a fee for a copy of an education record, but may not charge a fee to search for or to retrieve the education records of a student.

In addition to the federal Family Educational Rights and Privacy Act, similar fee authorization provisions are likewise granted to schools under Education Code section 49065 (under California's version of the federal Family Educational Rights and Privacy Act), Education Code section 56504 (under California's special education provisions), and Government Code section 6257 (under the California Public Records Act.)

When Education Code sections 49060, 49061, and 49069 are read together, state law recognizes and protects a parent's access rights and access methods to a child's education records and thereby obligates schools to obey the requests of parents in an expeditious fashion. The Legislature's findings and declarations, set forth in Education Code section 49060, explain that California's statutory provisions were enacted to comply with the federal Family Educational Rights and Privacy Act of 1974. The underlying principle of California's version of the federal Family Educational Rights and Privacy of 1974 is to command schools to comply with the requests of parents in an expeditious fashion. If a parent only desires to examine and inspect a child's record, complying with that specific request satisfies the provisions of the test claim legislation. A school is not required to perform tasks beyond the parent's request. Under normal circumstances, the school could submit a billing invoice for copying charges to the parent.

> Note: The Commission acknowledges that the Family Educational Rights and Privacy Act and the IDEA Act differ from state law by only granting parents the right to copies of records if not providing them copies will defeat the right of inspection and review' Further, the federal law imposes a forty-five day period for a school to comply with a parental request.
>
> Notwithstanding the differences between federal law and state law, the Commission found the legal basis to deny this test claim hinges on the existence of prior state law. In the instant matter, the prior state requirements under California's version of the Family Educational Rights and Privacy Act encompassed the same parental access rights and a school's obligation to comply with parental requests, that are contained in the test claim legislation.[104]

Conclusion

Based on the foregoing, the Cornmission concludes that a parent's access rights to a child's education records under Education Code section 56504 do not impose a new program or higher level of service within an existing program upon school districts within the meaning section 6, article XIII B of the California Constitution and Government Code section 175 14. The required obligations under section 56504 are not new, but originate from previously enacted Education Code provisions.

[104] Education Code section 56329.

16-B. Written Parental Consent

On December 19, 1996, the Cornmission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Comrnission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Cornmission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Cornmission found the Written Parental Consent portion of the Special Education Test Claim to represent a reimbursable state mandate.

Issue

> Do Education Code sections 56321 and 56346 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by requiring the receipt of written parental consent for assessments and individualized education programs, beyond preplacement assessments and initial placement of a child in a special education program?

Federal Law

Notice rights to parents regarding special education are derived from the due process provisions of the 14th Amendment of the federal Constitution. Accordingly, the Individuals with Disabilities Education Act (IDEA) imposes procedural safeguards and requires a school district to notify parents in writing if it intends to begin or to change the child's identification as a child with disabilities, to begin an evaluation, to begin or to change the child's placement, or change the child's individualized education program (IEP). In addition, if the school district refuses to implement a child's IEP it must notify the parents.[105]

However, the IDEA requires parental consent before any preplacement evaluation and before initial placement of a child in a special education program. Subsequent evaluations and placements do not carry the same consent requirements. [106]

The provisions of federal law are set forth in the Addendum.

---

[105] Title 20, United States Code, section 1415(b)(l)(C); Title 34, Code of Federal Regulations, section 300.504.

[106] Title 34, Code of Federal Regulations, section 300.504.

State Law

Under the IDEA, the states have the option of establishing their own additional parental consent requirements. California elected to expand the federal mandate by imposing a parental consent requirement for all subsequent assessments and for all revisions to a child's IEP. In sum, before any assessment is conducted and before any revision of the child's IEP is implemented, written parental approval must be obtained by the school district.

The provisions of state law are set forth in the Addendum.

Commission Findings

The Commission found that notice rights to parents regarding special education are derived from the due process provisions of the 14th Amendment of the federal Constitution. Accordingly, the IDEA imposes procedural safeguards and requires a school district to notify parents in writing if it intends to begin or to change the child's identification as a child with disabilities, to begin an evaluation, to begin or to change the child's placement, or change the child's IEP. In addition, if the school district refuses to implement a child's IEP it must notify the parents. [107]

However, before any preplacement evaluation and before the initial placement of a child in a special education program, the IDEA goes beyond mere notification and requires written parental approval. Title 34, Code of Federal Regulations, section 300.504(b) provides in pertinent part:

> "(1) Parent consent must be obtained before
>
> > "(i) Conducting a preplacement evaluation; and
> >
> > "(ii) Initial placement of a child with a disability in a program providing special education and related services.
>
> "(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.
>
> "(c) Additional State consent requirements
>
> "In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide a child with [free appropriate public education]. "

Based on the foregoing, federal law requires parental consent before any preplacement evaluation and before the initial placement of a child in a special education program. Federal law also contemplates that some states may decide to impose extra parental consent requirements for all subsequent assessments and modifications to an IEP after initial placement.

---

[107] *Ibid;* Title 20, United States Code, section 1415(b)(l)(C)

California expanded the federal mandate by imposing a parental consent requirement for subsequent assessments or reevaluations, and for revisions to a child's IEP.

Education Code section 56321 provides in pertinent part:

> "(a) Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment. . . .
>
> " .....
>
> "(c) No assessment shall be conducted unless the written consent of the parent is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. "

Education Code section 56506, subdivision (e), provides :

> "Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to such assessment. "

Education Code section 56346, subdivision (a), provides in pertinent part:

> "No pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts . . . and of the contents of the individualized education program, and after this notice, consents, in writing, to all or part of the individualized education program. . . "

In view of the foregoing California statutes, school districts are obligated to obtain written parental consent before any assessment for special education is undertaken and before any revision to an IEP is implemented. These state statutory obligations exceed the federal mandate because they cover situations beyond a preplacement assessment/evaluation and the initial placement of a child in an IEP.

Under the California statutory scheme, the requirement of obtaining written parental consent (for all subsequent assessments and modifications to IEPs) causes the occurrence of more "downstream" tasks upon school districts in order to provide a child with a free appropriate public education (FAPE). If the consent is not received, district personnel will follow-up and attempt to contact the parent and, if necessary, may eventually resort to triggering a due process hearing, or another state procedure, to override the withholding of consent.

On the other hand, under federal law, as long as the school district provides adequate notice and conducts the assessment or evaluation and the IEP meetings according to law, no written parental approval is needed to enable the school district to proceed. In essence, after the district sends a written notice to a parent, a non-response on the part of the parent is deemed an approval, i.e., silence implies acquiescence,

Conclusion

The Commission concludes that Education Code sections 56321 and 56346 exceed the IDEA and impose extra written parental consent requirements for all subsequent assessments and

revisions to an IEP after initial placement. The state's election to broaden written parental consent obligations upon school districts causes the occurrence of "downstream" tasks to be performed by the districts in order to provide a child with a FAPE.

Therefore, Education Code sections 56321 and 56346 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

17. Payment of Attorney's Fees in Administrative Due Process Proceedings and IEP Meetings

On September 26, 1996, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornmission members present were William Sherwood, Diane Richardson, Mario Pichardo, and Albert Beltrami.

Allan E. Tebbetts appeared for Long Beach Unified School District, W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 4-0, the Commission denied the Payment of Attorney's Fees portion of the Special Education Test Claim.

Issue

Does Education Code section 56507 impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by:

- Allowing for an award of attorneys' fees to the prevailing parent, guardian, or pupil, with the agreement of the parties following the conclusion of the administrative hearing process;
- Requiring school districts to pay attorneys' fees to the parents or guardian of a pupil if the district initiated the use of an attorney in a mediation conference, an IEP meeting, or a state review hearing; or
- Requiring school districts to provide notice of their intention to use an attorney to the parents or guardian?

Federal Law

To receive federal assistance, federal law requires states to establish and maintain procedural safeguards for the review of a complaint on any matter relating to the provision of a free appropriate public education (FAPE). These procedures must require the state or local agency to give the parent[108] an opportunity for an impartial due process hearing whenever the parent presents a complaint. [109]

[108] Hereafter, "parent" includes "parent or guardian. "

[109] Title 20, United States Code, section 1415.

If the local agency conducts the due process hearing, any aggrieved party may appeal the decision to the state agency that shall then conduct an impartial review hearing. A party to any of these proceedings has the right to be accompanied and advised by counsel. However, federal law does not mandate the use of an attorney during these proceedings or during an individualized education program (IEP) meeting. In any action or proceeding brought under this federal law, the court is authorized to award attorneys' fees to the prevailing parent, guardian, or youth. [110]

The provisions of federal law are set forth in the Addendum.

State Law

Similar to federal law, California does not mandate the use of an attorney during the administrative due process proceedings and the IEP meeting. Former Education Code section 56503, subdivision (a), stated that "[i]t is the intent of the Legislature that the mediation conference be an intervening, informal process conducted in a nonadversarial atmosphere." State law provides that "the [IEP] team meetings be nonadversarial and convened solely [to make] educational decisions for the good of the individual with exceptional needs. "

To promote a nonadversarial atmosphere, state law provided for attorneys' fees to be paid to parents if the school district initiated the use of an attorney in a mediation conference or state hearing. A subsequent amendment added " [IEP] meetings. " Lastly, state law was amended to authorize payment of attorneys' fees (1) upon agreement of the parties or (2) pursuant to federal law.

The provisions of state law are set forth in the Addendum.

Commission Findings

October 30, 1980 - December 31, 1980

Although federal law addresses "civil action" and the parties' "right to be accompanied and advised by counsel. . . , " neither federal law nor state law specifically addresses payment of attorneys' fees. Therefore, Commission found that state law does not exceed federal law from October 30, 1980, through December 31, 1980.

January 1, 1981 - December 31, 1992

California law provides the same procedural safeguards for parents and school districts. Similar to federal law, state law does not mandate the use of an attorney during the administrative due process proceedings and the IEP program meeting. The apparent objective of both state and federal law was to create a "level playing field" for the parents and educational agency.

During this period, California law strongly discouraged local agency representation by attorneys in these proceedings by creating a costly disincentive. Education Code section 56507, subdivision (a), specified that the public agency, "shall not use the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof," during any part of a mediation conference, IEP meeting, or state hearing, "except as provided in subdivisions (b) and (c). " Subdivision (b) provided that, if the public agency initiates the services of an attorney in a mediation conference, IEP meeting, or state hearing, the agency must pay for the costs of the parent's attorney, among other

[110] *Ibid.*

requirements. Subdivision (c) provided that, when the parent initiates the use of an attorney, the parent shall bear his or her own costs.

Education Code section 56507 was drafted to further the Legislature's intent for these proceedings to be nonadversarial. Although section 56507 did not prohibit the use of attorneys, it did create a disincentive by requiring school districts to reimburse parents for the actual cost of their attorneys, as specified, if the agency initiated the use of an attorney.

The provisions of Title 5, California Code of Regulations, section 3082, entitled, "Due Process Hearing Procedures" are important to the decision regarding this test claim. Section 3082 states that, during the course of any of the due process proceedings, either the school district or the parents may have an attorney present as an observer. In other words, the attorney may watch the proceedings to advise their client later. This regulation interpreted Education Code section 56507 to mean that if the school district's attorney stepped out of this passive role and represented the district by presenting oral argument, written argument, evidence, or consulted in any manner in or out of the room, the parent's right to reimbursement would be triggered.

Accordingly, the payment of attorneys' fees to the parents or guardian by a school district is not reimbursable because state law does not require attorneys to represent school districts in administrative proceedings and IEP meetings, Payment of parents' attorneys' fees would occur only after a school district voluntarily elects to employ an attorney on its behalf during these nonadversarial meetings or hearings that are held for the benefit of the individual with exceptional needs.

In addition, through July 3, 1984, federal law did not specifically address payment of attorneys ' fees. Further, federal law did not mandate the use of an attorney during administrative due process proceedings. Effective retroactively to July 4, 1984, through the present day, federal law authorizes courts to award attorneys' fees to the prevailing parent, guardian, or youth in such a proceeding.

The Cornmission found that state law did not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 during this period.

January 1, 1993 - Present

The Cornrnission noted that, during this period, federal law remains unchanged. Federal law provides, "[i]n any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party. "[111]

Education Code section 56507, subdivision (b), now allows for an award of attorneys' fees to the prevailing parent, guardian, or pupil either (1) with the agreement of the parties following the conclusion of the administrative hearing process, or (2) pursuant to the federal law. State law authorizes the payment of attorneys' fees, following the conclusion of the administrative hearing process and based upon the agreement of the parties,

Agreement by a district to pay parents' attorneys' fees is the result of a voluntary or discretionary decision by the district. Since state law does not require the district to agree to pay prevailing parents' attorneys' fees, there is no reimbursable state mandated program. If

[111] Title 20, United States Code, section 1415.

the agency does not choose to enter into such an agreement, then attorneys' fees may be awarded by a court of competent jurisdiction "pursuant to paragraph (4) of subsection (e) of Section 1415 of Title 20 of the United States Code. " This reference to federal law does not constitute a reimbursable state mandated program.

The Commission found that state law did not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 during this period.

Notice of Intent to Use an Attorney

The Commission found that, in both prior and current law, a public educational agency is not required to send notice of its intent to be represented by an attorney unless it decides to use an attorney. The decision to use an attorney, which is clearly discouraged in Education Code section 56507, is purely discretionary. The notification does not constitute a reimbursable state mandated program.

Conclusion

Based on the foregoing, the Commission concludes that from October 30, 1980, through the present, Education Code section 56507 has not and currently does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

18. Resource Specialist Program

On October 30, 1997, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Commission members present were William Sherwood, Richard Chivaro, Nancy Patton, Dave Cox, Joann Steinrneier, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Diana K. (Smith) McDonough appeared for the Education Mandated Cost Network and the supplemental claimants, and Deputy Attorney General Daniel G. Stone appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 6-0, the Comrnission found the Resource Specialist Program portion of the Special Education Test Claim to represent a limited reimbursable state mandate.

Issue

> Do Education Code sections 56361 and 56362 impose a new program or a higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by establishing and setting standards for the resource specialist program which exceed federal law?

Federal Law

Congress enacted the Individuals with Disabilities Education Act (IDEA) to provide handicapped children access to public education and to require states to adopt procedures that will result in individualized consideration of and instruction for each handicapped child. The individualization requirement is of paramount importance in the IDEA. School officials are required to determine the appropriate placement for each child and must develop an individualized educational plan (IEP) that tailors the child's education to his individual needs. Federal law defines the term "free appropriate public education" to mean special education and related services which school districts provide in conformity with the IEP.[112]

Federal regulations further provide that the IEP for each child must include, among other things, "(1) a statement of the child's present levels of educational performance; (2) a statement of annual goals, including short-term instructional objectives; (3) a statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs; (4) the projected dates for initiation of services and the anticipated duration of the services; and (5) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. . . ."[113]

---

[112] Title 20, United States Code, section 1401(a)(18).

[113] Title 34, Code of Federal Regulations, section 300.346(a).

Federal law also requires states to ensure that, "to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. "[114]

The IDEA requires participating school districts to provide a "continuum of alternate placements . . . available to meet the needs of children with disabilities. " Accordingly, there must be available, at one end of the continuum, completely segregated placements within separate schools, and, at the other end, placements within regular classes in public schools. [115]

When a child with a disability is placed as a member of a regular class, with the provision of "supplementary aids and services, " this is known as supported inclusive education. The middle of the continuum contains mixed placements in which a child might be a member of a regular class, but obtain certain supplementary services in a separate resource room, or where he or she might be a member of a self-contained special education class, but spend portions of time mainstreamed in regular classes or along with nondisabled students in other school activities such as recreation or lunch. [116]

Federal law also requires the state to establish and maintain standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained. The Act authorizes states to establish and maintain standards, which are consistent with any state approved certification, that apply to the area in which such personnel are providing special education or related services, [117]

The resource room is included in the federal regulation as an example of a "supplementary service" in conjunction with regular class placement."*

The provisions of federal law are set forth in the Addendum.

State Law

The test claim statutes:

(1) Establish and define the resource specialist program;

(2) establish qualifications and a credential for resource specialists;

(3) Specify the services to be carried out by a resource specialist;

(4) Prohibit districts from simultaneously assigning resource specialists to serve as resource specialists and to teach regular classes;

(5) Prohibit resource specialists from enrolling pupils for a majority of a school day without prior approval of the superintendent; and

(6) Require districts to provide instructional aides to at least 80 percent of resource specialists.

---

[114] Title 20, United States Code, section 1412(5)(B).

[115] *Ibid,* Title 34, Code of Federal Regulations, section 300.551.

[116] *See Daniel R.R. v. State Board of Education* (5th Cir, 1989) 874 F.2d 1036, 1050.

[117] Title 20, United States Code, section 1413(a)(14).

[118] Title 34, Code of Federal Regulations, section 300.551(b)(2).

The provisions of state law are set forth in the Addendum.

Commission Findings

a. Establishment of the Resource Specialist Program

The Commission noted that the resource specialist program was introduced by the Master Plan for Special Education in California in 1973. The Master Plan of 1973 was a pilot program that was not applicable to all school districts. The resource specialist program was subsequently added as a requirement under state law to comply with federal law.

Under Title 34, Code of Federal Regulations, section 300.55 l(Z), states must provide a continuum of alternative placements and, as part of this required continuum, must "(2) [m]ake provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement." As noted above, Congress has specifically avoided going into substantive details of the IDEA in this regard so that states may retain flexibility in implementing these federal requirements, However, it is clear that Congress requires such state variations to be consistent with the overall federal 'mainstreaming' objective and to provide skilled and meaningful support for students with disabilities.

The Legislature's decision to define the resource specialist program is nothing more than an effort to comply with the applicable federal mandate and to ensure that resource specialist program services match federal expectations.

Education Code sections 56361, subdivisions (a), (f), and 56362, subdivision (a), were enacted by the Legislature to implement federal requirements imposed under Title 34, Code of Federal Regulations, section 300.55 l(2). Specifically, the Resource Specialist Program as established and described in sections 56361, subdivisions (a) and (f), and 56362, subdivision (a), is the state's "resource room," a "supplementary service provided in conjunction with regular class placement. "

Therefore, Education Code sections 56361, subdivisions (a) and (f), and 56362, subdivision (a), do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

b. Qualifications of a Resource Specialist[119]

The Commission found that federal law requires the state to include in its plan policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out these requirements are appropriately and adequately prepared and trained. [120] The statute authorizes states to establish and maintain standards consistent with any state approved certification that applies to the area in which such personnel are providing special education or related services.

Section 56362, subdivision (b), establishes and maintains standards to ensure that school districts employ appropriately qualified personnel to direct and staff the resource specialist program. These provisions implement the specific federal requirement for states to establish

[119] Education Code section 56362, subdivision (c) details the qualifications required for a resource specialist. The provisions of state law are set forth in the Addendum.

[120] Title 20, United States Code, section 1413(a)(14).

and maintain standards which are consistent with any state approved or recognized certification, e. g . , Commission on Teacher Credentialing. Since the federal requirement both explicitly defers to and requires the imposition of state standards, the state requirements do not exceed federal requirements.

Therefore, Education Code section 56362, subdivision (b), does not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

[Note: Education Code § 56362, subd. (c), was considered by the Commission as the subject of the Maximum Caseloads portion of the Special Education Test Claim.]

c. Limitations on the Duties of a Resource Specialist

1. Simultaneous Assignment as Resource Specialist and Classroom Teacher

Education Code section 56362, subdivision (d), provides that, "resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. " The Commission found that section 56362, subdivision (d), prohibits districts from simultaneously assigning an employee to serve as resource specialist and to teach regular classes.

Section 56362, subdivision (d), was included in Riverside's filing dated June 26, 1995, and supplemental claimants' filing dated June 25, 1995. Subdivision (d) limits a school district's ability to assign a resource specialist to a regular classroom, irrespective of the number of children assigned to a specialist's caseload or the number of hours of resource room services provided by an individual specialist. Neither federal law nor cases require states to impose this assignment restriction on resource specialists.

Therefore, Education Code section 56362, subdivision (d), imposes a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Although preparation of a waiver is not a mandated activity, it is a reimbursable activity.

2. Limitation on Enrollment of Pupil for a Majority of a Schoolday

Education Code section 56362, subdivision (e), provides that, "resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent."

Enrollment of a pupil in the resource room for any length of time, including the majority of a school day, will be specified in the federally required IEP. However, subdivision (e) prohibits a resource specialist from enrolling a pupil pursuant to this IEP without prior approval by the superintendent. Therefore, the additional requirement of obtaining prior approval by the superintendent, irrespective of the IEP, constitutes a reimbursable state mandated program.

Therefore, Education Code section 56362, subdivision (e), imposes a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

d. Provision of Instructional Aides

The current version of Education Code section 56362, subdivision (f), provides that "at least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide."[121]

The Cornmission found that: (1) there are no federal statutes or regulations that expressly require local educational agencies to provide instructional aides for resource specialists; and (2) federal regulations include the resource room as a supplementary service in conjunction with regular classroom instruction.[122]

The federal requirement to provide supplementary services, including the resource room, is implemented on a case by case basis from the IEP. This federal requirement did not require California to enact Education Code section 56362, subdivision (f). Accordingly, Education Code section 56362, subdivision (f), does not implement a federal mandate but was enacted by the State at its own option.

Therefore, Education Code section 56362, subdivision (f), imposes a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

Conclusion

The Commission concludes that Education Code sections 56361, subdivisions (a) and (f), and 56362, subdivisions (a) and (b), do not impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 because federal law requires school districts to: (1) provide supplementary services, including the resource room, pursuant to an IEP, and (2) establish standards to ensure that personnel are appropriately and adequately prepared and trained to provide special education services.

The Commission concludes that Education Code section 56362, subdivisions (d), (e), and (f), impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 because these provisions exceed federal requirements by: (1) prohibiting the district from the simultaneous assignment of individuals as resource specialists and regular classroom teachers, (2) prohibiting the resource specialist from enrolling a pupil for a majority of a school day, pursuant to an IEP, without prior approval by the superintendent, and (3) requiring school districts to provide instructional aides for resource specialists, as specified during the applicable claiming periods.

In addition, the preparation of a waiver allowing a resource specialist to simultaneously teach regular classes is a reimbursable state mandated activity.

---

[121] The Commission recognized three applicable claim periods identified by Supplemental Claimant, Oakland Unified School District: October 3 1, 1980–December 3 1, 198 1; January 1, 1982–September 21, 1982; and September 22, 1982–Present.

[122] Title 34, Code of Federal Regulations, section 300.55 1 (b)(2),

19. Ten Percent (10%) Restriction of Total Enrollment

On February 14, 1997, the Commission heard this portion of the Special Education Test Claim during a regularly scheduled hearing.

Cornmission members present were William Sherwood, Diane Richardson, Mario Pichardo, Dave Cox, and Albert Beltrami.

W. Craig Biddle and Jack B. Clarke, Jr. appeared for Riverside County Superintendent of Schools, Caryl Miller of Riverside County SELPA, appeared for the claimant, Diana K. (Smith) McDonough appeared for the supplemental claimants, and Deputy Attorneys General Daniel G. Stone and Kyungah Suk appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Cornmission's determination of a test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

By a vote of 5-0, the Commission denied the Ten Percent (10%) Restriction of Total Enrollment portion of the Special Education Test Claim.

Issue

> Do Education Code sections 56760 and 56762 impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 by subjecting the distribution of state moneys to a state entitlement formula with a funding cap or ceiling equal to ten percent of the then current year's statewide enrollment in kindergarten and grades 1 to 12, inclusive?

Federal Law

Pursuant to the provisions of the Individuals with Disabilities Education Act (IDEA), Title 20, United States Code, section 14 11 establishes the formula for determining a state's maximum entitlement from the federal government. In general terms, a state's maximum entitlement from the federal government is calculated:

- by the total number of children with disabilities (aged 3 through 21, inclusive) receiving special education and services related thereto
- multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

The federal formula also creates a floor or a minimum amount equal to the sum received by such state for the fiscal year ending September 30, 1977.

The provisions of federal law are set forth in the Addendum.

State Law

Generally, Education Code sections 56760 and 56762 place a cap or ceiling on the amount of state moneys that California will pay to a school district, special education local plan area, or

county office of education, equal to ten percent of the statewide enrollment in kindergarten and grades 1 to 12, inclusive, for the then current fiscal year.

The provisions of state law are set forth in the Addendum.

Commission Findings

The Federal Entitlement Formula for Federal Monevs

Title 20, United States Code, section 1411 establishes the formula for determining maximum state entitlements from the federal government. In general terms, a state's maximum entitlement from the federal government is calculated:

- by the total number of children with disabilities (aged 3 through 21, inclusive) receiving special education and services related thereto
- multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

The federal formula also creates a floor or a minimum amount equal to the sum received by such state for the fiscal year ending September 30, 1977. Section 1411 goes on to provide that the federal grant moneys for each state may be allocated between the state and the local and intermediate educational agencies within such state in the ratio of 25 percent and 75 percent, respectively.

The Legislature's Assembly Joint Resolution No. 87, filed with the Secretary of State on August 17, 1994, reveals that:

- notwithstanding the 40 percent maximum entitlement due to the states from the federal government, the 1995 federal budget proposes a payment of only 7 percent;
- the State of California anticipates receiving approximately $220 million in federal special education funds under Part B of the IDEA, even though the 40 percent federal funding level would provide over $900 million annually to California; and
- in addition to the $168 million local general fund contribution required by state law, local educational agencies in California have to pay for the underfunded federal mandates for special education programs, at the cost of approximately $600 million annually, from regular education program money, thereby reducing funding that is available for other education programs.

Based on the foregoing Resolution, the federal government, by not paying each state the authorized 40 percent sum, places each state and its local educational agencies in an enormous financial bind. State educational agencies and local educational agencies, who are obligated to carry out the federal mandated program under the IDEA, are faced with a significant unfunded federal mandate.

The California Entitlement Formula for State Moneys

Education Code section 56760 provides in pertinent part:

> "The annual budget plan, required by subdivision (3) of Section 56200, shall comply with the following proportions, unless a waiver is granted by the superintendent pursuant to Section 5676 1:

"(a) The district, special education local plan area, or county office, shall estimate the pupils to be served in the subsequent fiscal year by instructional personnel service. The estimate shall be computed as the ratio of pupils to be served by instructional personnel service to the enrollment of pupils in kindergarten and grades 1 to 12, inclusive, of the districts and county offices participating in the plan.

"(1) The ratio of pupils funded by the state by instructional personnel service during the regular school year, including pupils for whom education and services are provided for by contract with nonpublic, nonsectarian schools, to the enrollment in kindergarten and grades 1 to 12, inclusive, shall not exceed 0.10.

" ....."

Education Code section 56762 provides that, "[t]he superintendent shall adopt rules and regulations to ensure that apportionments made pursuant to this chapter shall be paid on account of no more than 10 percent of the statewide enrollment in kindergarten and grades 1 to 12, inclusive, for the then current fiscal year. "

Generally, the provisions of sections 56760 and 56762 place a cap or ceiling on the amount of state moneys that California will pay to a school district, special education local plan area, or county office of education, equal to 10 percent of the statewide enrollment in kindergarten and grades 1 to 12, inclusive, for the then current fiscal year.

The Legislature's Resolution shows that the federal government's funding falls well short of the mark. As indicated by the Legislature, instead of Congress paying California at the 40 percent funding level, which equates to over $900 million, Congress proposed to pay California only $220 million – a difference of nearly $700 million.

The Commission found that the financial impact suffered by the claimant (and other similarly situated school districts throughout California), when carrying out the IDEA, stems from the shortage of federal moneys and, accordingly, is not caused by California's entitlement formula for distributing state moneys.

The State's Funding Formula is not Germane to the Issue of Whether a State Statute Constitutes a Reimbursable State Mandated Program

Whether a state statute constitutes a reimbursable state mandated program depends on the alleged newly imposed activity or task required of local agencies or school districts. The statutory language must direct or obligate the purported activity or task upon local governmental entities.

In 1987, the California Supreme Court examined the wording of section 6, article XIII B of the state Constitution in its County *of Los Angeles v. State* ***of*** *California (1987) 43* Cal .3d 46, decision. The issue before the Court was whether higher benefit payments under amended workers compensation statutes command reimbursement from the State Treasury to local agencies pursuant to section 6, article XIII B.

The Court recognized that workers compensation was not a new program, so the focus was whether the higher benefit payment for the cost of living adjustment constitutes a higher level of service. The local agencies argued that the payment provisions of higher workers

compensation benefits cause them to incur additional costs, which equate to an increased level of service and, as a consequence, these incurred additional costs must then be characterized as reimbursable costs mandated by the state.

The Court declined to accept the local agencies' argument because the legal bases of the agencies' position, which was contained in former Revenue and Taxation Code provisions, was repealed in 1975 by the Legislature. Instead, the Court recognized that during the post-l 975 era, the provisions of section 6, article XIII B must be examined to determine whether a statute constitutes a reimbursable state mandated program,

In particular, on page 56 of its decision, the Court acknowledged and ruled that in:

> "Looking at the language of section 6 then, it seems clear that by itself the term 'higher level of service' is meaningless. It must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs. ' What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meaning of the term--programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. "

Based on the *County* of *Los Angeles* decision, the mere showing of increased or additional costs incurred by a local governmental entity is not enough to substantiate that a certain statute constitutes a reimbursable state mandated program. Rather, the initial or threshold inquiry is whether the legislation in question obligates local agencies or school districts to carry out a new task or an increased/higher level of service beyond the former level of service.

In other words, the California Supreme Court held that local governmental entities are not entitled to reimbursement from the State Treasury for all increased costs incurred pursuant to state law, but only for those costs resulting from a new program or an increased level of service imposed upon them by the state.

In this portion of the Special Education Test Claim, the legislation is not germane to the inquiry of whether a state statute that imposes a new program or increased level of service is subject to reimbursement pursuant to section 6, article XIII B. In sum, because the *Hayes* court concluded that, as far as California is concerned, the IDEA constitutes a federal mandate, it is therefore incumbent upon test claimants to show what new state mandated tasks or increased levels of service are imposed upon local educational agencies.

In the matter before the Cornmission, where the test claimant contends that California's entitlement formula of state moneys imposes a reimbursable state mandated program, there was no showing that certain special educational activities were mandated by the state.

Conclusion

Based on the foregoing, the Commission concludes that state educational agencies and local educational agencies are faced with an unfunded federal mandate. Therefore, the entitlements formula applied by the state does not represent a new program or higher level of service within

an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Based on the foregoing case law, the Commission concludes that the test claim legislation is not germane in deciding whether the legislation imposes a reimbursable state mandated program under section 6, article XIII B of the California Constitution.

Hearing Date: November 30, 1998
f:\mandates\csm3000\3986\Sod\Addendum.doc

Addendum

Special Education Test Claim
CSM-3986

Federal and State Law

1. Maximum Age Limit

Federal Law

State Law

2. Maximum Enrollment Caseloads

A. Maximum Enrollment Caseloads for Resource Specialists

Federal Law

State Law

B. Maximum Enrollment Caseloads for Language, Speech, and Hearing Specialists

State Law

3. Community Advisory Committees

Federal Law

State Law

4. Individualized Education Program Timelines

Federal Law

State Law

5. Psychological Requirements

Federal Law

State Law

6. Related Services

Federal Law

State Law

7. Transportation

Federal Law

State Law

8. Surrogate Parents

Federal Law

State Law

9. Preschool Transportation

Federal Law

State Law

10. Eligibility Criteria for Specific Learning Disabilities

Federal Law

State Law

11. Definition of Severely Handicapped

Federal Law

State Law

12. Extended School Year

Federal Law

State Law

13. Interim Placements

Federal Law

State Law

14. Governance Structure

Federal Law

State Law

15. Non-Public Schools – Individualized Service Agreements

Federal Law

State Law

16-A. Parental Notice and Access to Records

Federal Law

State Law

16-B. Written Parental Consent

Federal Law

State Law

17. Payment of Attorney's Fees

Federal Law

State Law

18. Resource Specialist Program

Federal Law

State Law

19. Ten percent (10%) Restriction of Total Enrollment

Federal Law

State Law

1. Maximum Age Limit
Federal Law

20 U.S.C. section 1412(2)(B) provides:

"..... .....

"(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

"..... .....

"(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities 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. section 1414 provides in pertinent part:

"(a) Requisite features. A local educational agency or an intermediate education unit which desires to receive payments under section 61 l(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

"..... .....

"(C) establish a goal of providing full educational opportunities to all children with disabilities including—

"..... ....."

34 C.F.R. section 300.123 provides:

"Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21. "

34 C.F.R. section 300.222 provides:

"Each application must-

"(a) Include a goal of providing full educational opportunity to all children with disabilities, aged birth through 21; and

"(b) Include a detailed timetable for accomplishing the goal. "

1. Maximum Age Limit
State Law

The 1980 version of Education Code section 56026 provided:

"Individuals with exceptional needs means those persons who satisfy all the following:

"(a) Identified by an individualized education program team as a handicapped child as that term was defined in subsection (1) of Section 1401 of Title 20 of the United States Code as it read July 1, 1980.

"(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

"(c) Come within one of the following age categories:

"(1) Younger than three years of age and identified by the district, the special education services region, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

"(2) Between the ages of three and four years and nine months, inclusive, and identified by the district, the special education services region, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

"(3) Between the ages of four years and nine months and 18 years, inclusive.

"(4) Between the ages of 19 and 21, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 5 12 15 and 5 1216. Any such person who becomes 22 years of age while participating in a program under this part may continue his or her participation in the program for the remainder of the then current school year.

"(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 5633) of Chapter 4.

"(e) Unless handicapped within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs. "

The 1987 version of Education Code section 56026 made the following amendments:

1. Substituted "local plan area" for "services region" in subdivision (c)(1);
2. Amended subdivision (c)(2) by:
   a. substituting "five years" for "four years and nine months";
   b. substituting "local plan area" for "services region";
   c. adding " ; or between the ages of three and five years, inclusive, and identified by the district, special education local plan area, or county office pursuant to Section 6441.11" at the end of the subdivision;
3. Substituted "five years" for "four years and nine months" in subdivision (c)(3);
4. Deleted "such" before "person who becomes" in subdivision (c)(4); and
5. Added subdivision (f).

The 1988 version of Education Code section 56026 made the following amendments:

Substituted "to five years" for "and five years, inclusive," after "Between the ages of three" in subdivision (c)(2).

The 1991 version of Education Code section 56026 made the following amendments:

1. Added "inclusive, " after "to five years" in subdivision (c)(2);
2. Re-designated former subdivision (c)(4) to be subdivision (c)(4) and subdivision (c)(4)(A);
3. Added "years" after "19 and 21" in subdivision (c)(4);
4. Amended subdivision (c)(4)(A) to read:

   "(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the . , . then-current fiscal year, including an extended school year program for individuals with exceptional needs established pursuant to regulations of the State Board of Education."
5. Added subdivisions (c)(4)(B), (c)(4)(C) and (c)(4)(D) to read:

   "(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year if he or she becomes 22 years of age in September of that new fiscal year. However, if a person who is in a year-round school program and is completing the requirements for obtaining a diploma in a term that extends into the new fiscal year, then the person may complete that term. "

   "(C) Any person who becomes 22 years of age during the month of October, November or December while participating in a program under this part shall be

terminated from the program on December 31 of the then-current fiscal year, or at the end of the current term if the pupil is completing requirements for obtaining a diploma.

"(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives."

6. Added "inclusive," after "and five years" in subdivision (f).

The 1992 version of Education Code section 56026 made the following amendments:

1. Amended subdivision (c)(4)(A) to read:

   "Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to regulations . . . adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56 100) of Chapter 2."

2. Amended subdivision (c)(4)(B) to read:

   "(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in September of that new fiscal year. However, if a person . . . is in a year -round school program and is completing . . . his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term."

3. Amended subdivision (c)(4)(C) to read:

   "(C) Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 3 1 of the current fiscal year, . . . unless the person would otherwise complete his or her individualized education program at the end of the current . . . fiscal year or unless the person has not had an individual transition plan incorporated into his or her individualized education program and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year."

The 1993 version of Education Code section 56026 made the following amendments:

1. Substituted "children with disabilities as that phrase is defined in paragraph (1) of subdivision (a) of Section 1401 of Title 20 of the United States Code" for "a handicapped child as that term was defined in subsection (1) of section 1401 of Title 20 of the United States Code as it read July 1, 1980" in subdivision (a);

2. Amended subdivision (c)(4)(B) to read:

"(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term; "

3. Substituted "disabled" for "handicapped" after "Unless" in subdivision (e).

The 1995 version of Education Code section 56026 made the following amendment:

Deleted "as requiring intensive special education and services, as defined by the State Board of Education; or between the ages of three and five years, inclusive, and identified by the district, special education local plan area, or county office" after the '"the county office" in subdivision (c)(2).

Education Code section 56026 currently provides:

"'Individuals with exceptional needs' means those persons who satisfy all the following:

"(a) Identified by an individualized education program team as children with disabilities as that phrase is defined in paragraph (1) of subdivision (a) of Section 1401 of Title 20 of the United States Code.

"(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

"(c) Come within one of the following age categories:

"(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

"(2) Between the ages of three to five years, inclusive, and identified by the district, the special education local plan area, or the county office * * * pursuant to Section 56441.11.

"(3) Between the ages of five and 18 years, inclusive.

"(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 5 12 15 and 5 12 16.

"(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to regulations adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56100) of Chapter 2.

"(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

"(C) Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 3 1 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year or unless the person has not had an individual transition plan incorporated into his or her individualized education program and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year.

"(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

"(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

"(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

"(f) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, pursuant to Section 56448, and as of that date is repealed. "

2. Maximum Enrollment Caseloads
A. Maximum Enrollment Caseloads for Resource Specialists
Federal Law

20 U.S.C. section 1400(c) provides:

"....

" (c) Purpose

"It is the purpose of this chapter to assure that all children with disabilities have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities. "

20 U.S.C. section 1401(17) and (18) provide:

"(a) As used in this chapter—

"....

"(17) 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, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

"(18) The term 'free appropriate public education' means special education and related services that-

"(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 in conformity with the individualized education program required under section 1415(a)(5) of this title.

" ..... "

34 C.F.R. section 300.123 provides:

> "Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through 21."

A. Maximum Enrollment Caseloads for Resource Specialists
State Law

Education Code section 56362, 1985 version, provided:

> "(a) The resource specialist program shall provide, but not be limited to, all of the following:
>
> "(1) Provision for a resource specialist or specialists who shall provide instruction and services for those pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a schoolday.
>
> "(2) Provision of information and assistance to individuals with exceptional needs and their parents.
>
> " (3) Provision of consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.
>
> "(4) Coordination of special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.
>
> "(5) Monitoring of pupil progress on a regular basis, participation in the review and revision of individualized education programs, as appropriate, and referral of pupils who do not demonstrate appropriate progress to the individualized education program team.
>
> "(6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.
>
> "(b) The resource specialist program shall be under the direction of a resource specialist who is a credentialed special education teacher, or who has a clinical services credential with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, as defined by rules and regulations of the Cornrnission on Teacher Credentialing and who has demonstrated the competencies for a resource specialist, as established by the Cornmission on Teacher Credentialing .
>
> "(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56221 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds 28 pupils.

"(d) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.

"(e) Resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.

" (f) At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide. "

Note: Statutes of 1997, Chapter 854 amended subsection (c) changing the Education Code section cited from 56221 to 56195.8. Additionally, in 1981 and 1982 minor amendments were made to section 56362.

Education Code section 56362.1 provides:

"For purposes of Section 56362, 'caseload' shall include, but not be limited to, all pupils for whom the resource specialist performs any of the services described in subdivision (a) of Section 56362. "

Education Code section 56363 provides:

"(a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services. Designated instruction and services shall meet standards adopted by the board.

"(b) These services may include, but are not limited to, the following:

"(1) Language and speech development and remediation.

"(2) Audiological services.

" (3) Orientation and mobility instruction.

"(4) Instruction in the home or hospital.

"(5) Adapted physical education.

" (6) Physical and occupational therapy.

"(7) Vision services.

" (8) Specialized driver training instruction.

"(9) Counseling and guidance.

"(10) Psychological services other than assessment and development of the "individualized education program.

"(11) Parent counseling and training.

"(12) Health and nursing services.

"(13) Social worker services.

" (14) Specially designed vocational education and career development.

" (15) Recreation services.

"(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing specialists."

Education Code section 56363.3 provides:

"The average caseload for language, speech, and hearing specialists in districts, county offices, or special education local plan areas shall not exceed 55 cases, unless the local comprehensive plan specifies a higher average caseload and the reasons for the greater average caseload. "

B. Maximum Enrollment Caseloads for Language, Speech and Hearing Specialists State Law

Education Code section 56363.3 provides:

"The average caseload for language, speech, and hearing specialists in districts, county offices, or special education local plan areas shall not exceed 55 cases, unless the local comprehensive plan specifies a higher average caseload and the reasons for the greater average caseload. "

3. Community Advisory Committees
Federal Law

20 U.S.C. section 1412(7)(A) provides:

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

"....

"(7) The State shall assure that

"(A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities.

"...."

20 U.S.C. section 1413(a)(12) provides:

"'(a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its state educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall include—

"....

"(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials, and administrators or programs for children with disabilities, which—

"(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities,

"(B) comments publicly on any rules or regulations proposed for issuance by the State regarding education of children with disabilities and the procedures for distribution of funds under this subchapter, and

"(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under section 1418 of this title.

"...."

20 U.S.C. section 1414(a)(1)(C)(iii) provides:

" (a) Requisite features

"A local educational agency or an intermediate educational unit which desires to receive payments under section 1411 (d) of this title for any fiscal year shall submit an application to the appropriate state educational agency. Such application shall-

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

"……

"(C) establish a goal of providing full educational opportunities to all children with disabilities, including—

" . . . . . **..... ……

"(iii) the participation and consultation of the parents or guardians of such children,

". . . ..*..... .a..... ……"

34 C.F.R. section 300.651 provides:

"(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of children with disabilities. The membership must include at least one person representative of each of the following groups—

"(1) Individuals with disabilities;

"(2) Teachers of children with disabilities;

"(3) Parents of children with disabilities;

"(4) State and local educational officials; and

" (5) Special education program administrators.

"(b) the State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed."

3. Community Advisory Committees

State Law

Education Code section 56190 provides:

"Each plan submitted under Section 56195.1 shall establish a community advisory committee. The committee shall serve only in an advisory capacity."

Education Code section 56191 provides:

"The members of the community advisory committee shall be appointed by, and responsible to, the governing board of each participating district or county office, or any combination thereof participating in the local plan. Appointment shall be in accordance with a locally determined selection procedure that is described in the local plan. Where appropriate, this procedure shall provide for selection of representatives of groups specified in Section 56192 by their peers. Such procedure shall provide that terms of appointment are for at least two years and are annually staggered to ensure that no more than one half of the membership serves the first year of the term in any one year."

Education Code section 56192 provides:

"The community advisory committee shall be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, pupils and adults with disabilities, regular education teachers, special education teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs."

Education Code section 56193 provides:

'"At least the majority of such committee shall be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, handicapped pupils and adults, regular education teachers, special education teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs."

Education Code section 56194 provides:

"The community advisory committee shall have the authority and fulfill the responsibilities that are defined for it in the local plan. The responsibilities shall include, but need not be limited to, all the following:

"(a) Advising the policy and administrative entity of the district, special education local plan area, or county office, regarding development, amendment, and review of the local plan. The entity shall review and consider comments from the community advisory committee.

"(b) Recommending annual priorities to be addressed by the plan.

"(c) Assisting in parent education and in recruiting parents and other volunteers who may contribute to the implementation of the plan.

"(d) Encouraging community involvement in the development and review of the local plan.

"(e) Supporting activities on behalf of individuals with exceptional needs.

"(f) Assisting in parent awareness of the importance of regular school attendance."

4. Individualized Education Program Timelines
Federal Law

20 U.S.C. section 1414(a)(5) provides:

"(a) Requisite features

"A local educational agency or an intermediate educational unit which desires to receive payments under section 141 l(d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall-

" .....

"(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 1477(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually.

" ....."

34 C.F.R. section 300.342 provides:

"(a) At the beginning of each school year, each public agency shall have in effect an IEP for each child with a disability who is receiving special education from that agency.

"(b) An IEP must—

"(1) Be in effect before special education and related services are provided to a child; and

"(2) Be implemented as soon as possible following the meetings under Sec. 300.343.

"NOTE: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meeting under Sec. 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child. "

34 C.F.R. section 300.343 provides:

"……

"(c) Timeline. A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

"(d) Review. Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

"[CONGRESSIONAL] NOTE: The date on which agencies must have IEPs in effect is specified in Sec. 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

"In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

"The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency. "

4. Individualized Education Program Timelines

State Law

Education Code Section 56344 provides:

"An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 days, not counting days between school sessions or terms days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, such an individualized education program shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year. "

5. Psychological Requirements
Federal Law

20 U.S.C. section 1401(a)(17) provides:

"(a) As used in this chapter-

"……

" (17) 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, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

"……"

20 U.S.C. section 1413(a)(14) provides:

" (a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its state educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall include—

"……

"(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained, including-

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

"……"

34 C.F.R. section 380.16 provides:

"(a) As used in this part, the term 'related services' means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"(b) The terms used in this definition are defined as follows :

"(1) 'Audiology' includes-

"(i) Identification of children with hearing loss;

"(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

" (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation

"(iv) Creation and administration of programs for prevention of hearing loss;

"(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

"(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of the amplification.

"(2) 'Counseling services' means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

"(3) 'Early identification and assessment of disabilities in children' means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

"(4) 'Medical services' means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services,

"(5) 'Occupational therapy' includes-

"(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation.

"(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

"(iii) Preventing, through early intervention, initial or further impairment or loss of function.

"(6) 'Parent counseling and training' means assisting parents in understanding the special needs of their child and providing parents with information about child development.

"(7) 'Physical therapy' means services provided by a qualified physical therapist.

" (8) 'Psychological services ' includes-

" (i) Administering psychological and educational tests, and other assessment procedures;

"(ii) Interpreting assessment results;

"(iii) Obtaining, integrating, and interpreting information about child behavior and conditions related to learning.

"(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

"(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

"(9) 'Recreation' includes-

"(i) Assessment of leisure function;

" (ii) Therapeutic recreation services;

"(iii) Recreation programs in schools and conxnunity agencies; and

"(iv) Leisure education.

"(10) 'Rehabilitation counseling services' means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

"(11) 'School health services' means services provided by a qualified school nurse or other qualified person.

"(12) 'Social work services in schools' includes-

"(i) Preparing a social or developmental history on a child with a disability;

"(ii) Group and individual counseling with the child and family;

"(iii) Working with those problems in the child's living situation (home, school, and community) that affect the child's adjustment in school;

"(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

"(13) 'Speech pathology' includes-

"(i) Identification of children with speech or language impairments;

"(ii) Diagnosis and appraisal of specific speech or language impairments;

"(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

"(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

"(v) Counseling and guidance of parents, children, and teacher regarding speech and language impairments"

" (14) 'Transportation' includes-

"(i) Travel to and from school and between schools;

"(ii) Travel in and around school buildings; and

"(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. "

5. Psychological Requirements
State Law

Education Code section 56136 provides:

"The superintendent shall develop guidelines for each low incidence disability area and provide technical assistance to parents, teachers, and administrators regarding the implementation of the guidelines. The guidelines shall clarify the identification, assessment, planning of, and provision of, specialized services to pupils with low incidence disabilities. The superintendent shall consider the guidelines when monitoring programs serving pupils with low incidence disabilities pursuant to Section 56825. The adopted guidelines shall be promulgated for the purpose of establishing recommended guidelines and shall not operate to impose minimum state requirements. "

Education Code section 56320(b)(3) provides:

"Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

" .....

"(b) Tests and other assessment materials meet all the following requirements:

".....*.....

"(3) Are administered by trained personnel in conformance with the instructions provided by the producer of the tests and other assessment materials, except that

individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist.

" ..... "

Education Code section 56327 provides:

"The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all of the following:

"(a) Whether the pupil may need special education and related services.

"(b) The basis for making the determination.

"(c) The relevant behavior noted during the observation of the pupil in an appropriate setting.

"(d) The relationship of that behavior to the pupil's academic and social functioning.

"(e) The educationally relevant health and development, and medical findings, if any.

"(f) For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.

"(g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.

"(h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56 136. "

Education Code section 56363 provides:

"(a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services. Designated instruction and services shall meet standards adopted by the board.

"(b) These services may include, but are not limited to, the following:

" (1) Language and speech development and remediation.

" (2) Audiological services.

"(3) Orientation and mobility instruction.

" (4) Instruction in the home or hospital.

"(5) Adapted physical education.

" (6) Physical and occupational therapy.

" (7) Vision services.

"(8) Specialized driver training instruction.

"(9) Counseling and guidance.

"(10) Psychological services other than assessment and development of the "individualized education program.

"(11) Parent counseling and training.

"(12) Health and nursing services.

"(13) Social worker services.

" (14) Specially designed vocational education and career development.

"(15) Recreation services.

"(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing specialists. "

5 C.C.R. section 3029 provides:

"(a) School districts, county offices, and special education local plan areas shall ensure that credentialed school psychologists are available to perform individually administered tests of intellectual or emotional functioning pursuant to Section 56320 (b) (3) of the Education Code.

"(b) Due to the temporary unavailability of a credentialed school psychologist, a school district or county office may contract with qualified personnel to perform individually administered tests of intellectual or emotional functioning including necessary reports pursuant to Section 56327 of the Education Code.

"(c) The district or county office shall seek appropriately credentialed school psychologists for employment. These efforts, which include but are not limited to contacting institutions of higher education having approved school psychology programs and utilizing established personnel recruitment practices, shall be documented and available for review.

'"(d) The only persons qualified to provide assessment services under this section shall be educational psychologists licensed by the Board of Behavioral Science Examiners. "

6. Related Services
Federal Law

20 U.S.C. section 1401(a)(17) provides:

"(a) As used in this chapter—

"……*……

"(17) 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, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

……"

20 U.S.C. section 1413(a)(14) provides:

" (a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its state educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall include—

"……*……*……a...

"(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained, including-

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

"……*.*.*.*.....*.**.....*……"

34 C.F.R. section 300.16 provides:

"(a) As used in this part, the term 'related services' means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"(b) The terms used in this definition are defined as follows:

" (1) 'Audiology' includes-

"(i) Identification of children with hearing loss;

" (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

" (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation

"(iv) Creation and administration of programs for prevention of hearing loss;

"(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

"(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of the amplification.

"(2) Counseling services' means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

"(3) 'Early identification and assessment of disabilities in children' means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

"(4) 'Medical services' means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

"(5) 'Occupational therapy' includes-

"(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation.

"(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

"(iii) Preventing, through early intervention, initial or further impairment or loss of function.

"(6) 'Parent counseling and training' means assisting parents in understanding the special needs of their child and providing parents with information about child development.

"(7) 'Physical therapy' means services provided by a qualified physical therapist.

" (8) 'Psychological services' includes-

"(i) Administering psychological and educational tests, and other assessment procedures;

"(ii) Interpreting assessment results;

" (iii) Obtaining, integrating, and interpreting information about child behavior and conditions related to learning.

"(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

"(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

"(9) 'Recreation' includes-

"(i) Assessment of leisure function;

"(ii) Therapeutic recreation services;

"(iii) Recreation programs in schools and community agencies; and

"(iv) Leisure education.

" (10) 'Rehabilitation counseling services ' means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

"(11) 'School health services' means services provided by a qualified school nurse or other qualified person.

"(12) 'Social work services in schools' includes-

"(i) Preparing a social or developmental history on a child with a disability;

"(ii) Group and individual counseling with the child and family;

"(iii) Working with those problems in the child's living situation (home, school, and community) that affect the child's adjustment in school;

"(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

" (13) 'Speech pathology' includes-

"(i) Identification of children with speech or language impairments;

"(ii) Diagnosis and appraisal of specific speech or language irnpairments;

"(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

"(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

"(v) Counseling and guidance of parents, children, and teacher regarding speech and language impairments "

"(14) 'Transportation' includes-

"(i) Travel to and from school and between schools;

"(ii) Travel in and around school buildings; and

"(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. "

6. Related Services
State Law

Education Code section 56363 provides:

"(a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services. Designated instruction and services shall meet standards adopted by the board.

"(b) These services may include, but are not limited to, the following:

"(1) Language and speech development and remediation.

" (2) Audiological services.

"(3) Orientation and mobility instruction.

"(4) Instruction in the home or hospital.

"(5) Adapted physical education.

" (6) Physical and occupational therapy.

" (7) Vision services.

"(8) Specialized driver training instruction.

“ (9) Counseling and guidance.

“(10) Psychological services other than assessment and development of the “individualized education program.

“(11) Parent counseling and training.

“(12) Health and nursing services.

“(13) Social worker services.

“(14) Specially designed vocational education and career development.

“(15) Recreation services.

“(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing specialists. ”

Education Code section 56520 provides:

“(a) The Legislature finds and declares all of the following:

“(1) The state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.

“(2) That teachers of children with special needs require training and guidance that provides positive ways for working successfully with children who have difficulties conforming to acceptable behavioral patterns in order to provide an environment in which learning can occur.

“(3) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.

“(b) It is the intent of the Legislature:

“(1) That when behavioral interventions are used, they be used in consideration of the pupil’s physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil’s right to placement in the least restrictive educational environment.

“(2) That behavioral management plans be developed and used to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.

“(3) That a statewide study be conducted of the use of behavioral interventions with California individuals with exceptional needs receiving special education and related services.

“(4) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs me made available as necessary in school districts and county offices of education to assure that adequately

trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs. "

5 C.C.R. section 3051.3 provides:

"(a) Mobility instruction may include:

"(1) Specialized instruction for individuals in orientation and mobility techniques

"(2) Consultative services to other educators and parents regarding instructional planning and implementation of the individualized education program relative to the development of orientation and mobility skills and independent living skills.

"(b) The person providing mobility instruction and services shall hold a credential as an orientation and mobility specialist. "

5 C.C.R. section 3051.7 provides:

"(a) Vision services shall be provided by a credentialed teacher of the visually handicapped and may include:

"(1) Adaptations in curriculum, media, and the environment, as well as instruction in special skills.

"(2) Consultative services to pupils, parents, teachers, and other school personnel.

"(b) An assessment of and provision for services to visually impaired pupils may be conducted by an eye specialist who has training and expertise in low vision disabilities and has available the appropriate low vision aids for the purposes of assessment. The eye specialist may provide consultation to the pupil, parents, teacher and other school personnel as may be requested by the individualized education program team.

"(c) Procedures which may be utilized by qualified personnel are those procedures authorized by federal and state laws and regulations and performed in accordance with these laws and regulations and standards of the profession.

"(d) For the purposes of this section, an eye specialist shall mean a licensed optometrist, ophthalmologist, or other licensed physician and surgeon who has training and expertise in low vision disabilities. "

5 C.C.R. section 3051.75 provides:

"(a) Vision therapy may include: Remedial and/or developmental instruction provided directly by or in consultation with the optometrist, ophthalmologist, or other qualified licensed physician and surgeon provided ongoing care to the individual.

"(b) Vision therapy shall be provided by an optometrist, ophthalmologist, or by appropriate qualified school personnel when prescribed by a licensed optometrist, ophthalmologist, or other qualified licensed physician and surgeon.

"(c) Procedures which may be utilized by qualified personnel are those procedures authorized by federal and state laws and regulations and performed in accordance with these laws and regulations and standards of the profession."

5 **C.C.R.** section 3051.8 provides:

"(a) Specialized driver training instruction may include instruction to an individual with exceptional needs to supplement the regular driver training program. The individualized education program team shall determine the need for supplementary specialized driver training instruction. The need to supplement the regular program shall be based on an assessment of the pupil's health, physical and/or educational needs which require modifications which cannot be met through a regular driver training program.

"(b) Driver training for individuals herein described must be provided by qualified teachers, as defined by Education Code Sections 41906 and 4 1907. "

7. Transportation
Federal Law

20 U.S.C. section 1401(a)(17) provides:

"(a) As used in this chapter—

"……

"(17) 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, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

"……"

34 C.F.R. section 300.16 provides, in pertinent part:

"(a) As used in this part, the term 'related services' means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"(b) The terms used in this definition are defined as follows:

"……

"(14)'Transportation' includes-

"(i) Travel to and from school and between schools;

"(ii) Travel in and around school buildings; and

"(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability."

The Commission observed that the Committee Notes which accompany 34 C.F.R. section 300.16 state that the list of related services is not exhaustive.

7. Transportation
State Law

Education Code section 41850 provides:

"(a) Apportionments made pursuant to the article shall only be made for home-to-school transportation and special education transportation, as defined in this section.

"(b) As used in this article, 'home-to-school transportation' includes all of the following:

"(1) The transportation of pupils between their homes and the regular full-time day school they attend, as provided by a school district or county superintendent of schools.

"(2) The payment of moneys by a school district or county superintendent of schools to parents or guardians of pupils made in lieu of providing for the transportation of pupils between their homes and the regular full-time day schools they attend.

"(3) Providing board and lodging to pupils by a school district or county superintendent of schools made in lieu of providing for the transportation of pupils between their homes and the regular full-time day schools they attend.

"(4) The transportation of pupils between the regular full-time day schools they would attend and the regular full-time occupational training classes they attend, as provided by a regional occupational center or program.

"(5) The transportation of individuals with exceptional needs as specified in their individualized educational programs, who do not receive special education transportation as defined in subdivision (d).

"(6) The payment of monies by a school district or county superintendent of schools for the replacement or acquisition of schoolbuses.

"(c) For purposes of this article, the computation of the allowances provided to a regional occupational center or program shall be subject to all of the following:

"(1) A regional occupational center or program shall receive no allowance for 50 percent of the total transportation costs.

"(2) A regional occupational center or program shall be eligible for a transportation allowance only if the total transportation costs exceed 10 percent of the total operational budget of the regional occupational center or program.

"(3) A regional occupational center or program eligible for a transportation allowance pursuant to paragraph (2) shall receive an amount equal to one-third of the transportation costs subject to reimbursement.

"(d) As used in this article, 'special education transportation' means either:

"(1) The transportation of severely handicapped special day class pupils, and orthopedically handicapped pupils who required a vehicle with a wheel chair left, who received transportation in the prior fiscal year, as specified in their individualized education program.

"(2) A vehicle that was used to transport special education pupils. "

Education Code section 41851.2 provides:

"No later than December 3 1, 1992 the Superintendent of Public Instruction shall develop and disseminate nonprescriptive guidelines for use by individualized education program teams during their annual reviews pursuant to Section 56343. The guidelines shall clarify when special education transportation services, as defined in Section 41850, are required. The guidelines shall be developed in accordance with Section 33308.5 and shall be exemplary in nature. "

8. Surrogate Parents
Federal Law

20 U.S.C. section 1415(b)(l)(B) provides:

"Required Procedures; hearing. (1) The procedures required by this section shall include, but shall not be limited to-

"……

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"……"

34 C.F.R. section 300.13 provides:

"As used in this part, the term 'parent' means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 5300.514. The term does not include the State if the child is a ward of the State.

"Note: The term 'parent' is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare. "

34 C.F.R. section 300.514(a), (a)(3) provides:

"(a) General. Each public agency shall ensure that the rights of a child are protected when—

"(1) No parent (as defined in $300.13) can be identified;

"(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

"(3) The child is a ward of the State under the laws of that State.

"(b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

"(c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law.

"(2) Public agencies shall ensure that a person selected as a surrogate—

"(i) Has no interest that conflicts with the interest of the child he or she represents; and

"(ii) Has knowledge and skills that ensure adequate representation of the child.

"(d) Non-employee requirement; compensation. (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

"(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(l) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

"(e) Responsibilities. The surrogate parent may represent the child in all matters relating to -

"(1) The identification, evaluation, and educational placement of the child; and

" (2) The provision of FAPE to the child. "

8. Surrogate Parents
State Law

Education Code section 56050 provides:

"(a) For purposes of this article, 'surrogate parent' shall be defined as it is defined in Section 300.5 14 of Title 34 of the Code of Federal Regulations.

"(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instruction al planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate public education to the individual. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. The surrogate parent may sign any consent relating to individualized education program purposes,

"(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

"(d) A surrogate parent shall also be governed by Section 7579.5 of the Governrnent Code. "

Government Code section 7579.5 provides:

"(a) A surrogate parent shall not be appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make

educational decisions for the child. A surrogate parent shall not be appointed for a child who has reached the age of majority unless the child has been declared incompetent by a court of law.

"(b) A local educational agency shall appoint a surrogate parent for a child under one or more of the following circumstances:

"(1) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to a local educational agency for special education and related services, or in cases where the child already has a valid individualized education program.

"(2) No parent for the child can be identified.

"(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

"(c) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent.

"(d) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes.

"(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

"(f) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, shall not be appointed as a surrogate parent. 'An individual who would have a conflict of interest, ' for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

"(g) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate

parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the local educational agency shall terminate the appointment and appoint another surrogate parent.

"(h) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

"(i) Nothing in this section shall be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

"(j) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-890 of the annual Budget Act."

Cal. Rules of Court, Rule 1456 provides in pertinent part:

"..... .....

"(b) Appointment of a legal guardian

"(1) At the disposition hearing, the court may appoint a legal guardian for the child if:

"..... .....

"(C) the court finds that the appointment of the legal guardian in the best interest of the child.

"(2) If the court appoints a legal guardian, it shall:

"..... .....

"(B) state on the record or in the minutes its findings and the factual basis for them;

"..... .....

"(3) The court may appoint a legal guardian without declaring the child a dependent of the court. If dependency s declared, a six-month review hearing shall be set. "

Cal Rules of Court, Rule 1493 provides in pertinent part:

"……

"(c) Removal of custody – required findings

"The Court shall not order a ward removed from the physical custody of a parent or guardian unless the court finds:

"(1) The parent or guardian has failed or neglected to provide, or is incapable of providing proper maintenance, training, and education for the child; or

" …… "

9. Preschool Transportation
Federal Law

20 U.S.C. section 1401(a)(17) provides:

"(a) As used in this chapter—

"..... .....

"(17) 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, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

" ....."

34 C.F.R. section 300.16 provides:

"(a) As used in this part, the term 'related services' means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"(b) The terms used in this definition are defined as follows:

"(1) 'Audiology' includes-

"(i) Identification of children with hearing loss;

"(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

"(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation

"(iv) Creation and administration of programs for prevention of hearing loss;

"(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

"(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of the amplification.

" (2) 'Counseling services' means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

"(3) 'Early identification and assessment of disabilities in children' means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

"(4) 'Medical services' means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

"(5) 'Occupational therapy' includes-

"(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation.

"(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

"(iii) Preventing, through early intervention, initial or further impairment or loss of function.

"(6) 'Parent counseling and training' means assisting parents in understanding the special needs of their child and providing parents with information about child development.

"(7) 'Physical therapy' means services provided by a qualified physical therapist.

" (8) 'Psychological services ' includes-

"(i) Administering psychological and educational tests, and other assessment procedures;

"(ii) Interpreting assessment results;

"(iii) Obtaining, integrating, and interpreting information about child behavior and conditions related to learning.

"(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

"(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

"(9) 'Recreation' includes—

"(i) Assessment of leisure function;

"(ii) Therapeutic recreation services;

"(iii) Recreation programs in schools and community agencies; and

"(iv) Leisure education.

“ (10) ‘Rehabilitation counseling services ’ means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

“(11) ‘School health services’ means services provided by a qualified school nurse or other qualified person.

“(12) ‘Social work services in schools’ includes-

“(i) Preparing a social or developmental history on a child with a disability;

“(ii) Group and individual counseling with the child and family;

“(iii) Working with those problems in the child’s living situation (home, school, and community) that affect the child’s adjustment in school;

“(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

“ (13) ‘ Speech pathology’ includes-

“(i) Identification of children with speech or language impairments;

‘“(ii) Diagnosis and appraisal of specific speech or language impairments;

“(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

“(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

“(v) Counseling and guidance of parents, children, and teacher regarding speech and language impairments”

“(14) ‘Transportation’ includes-

“(i) Travel to and from school and between schools;

“(ii) Travel in and around school buildings; and

“(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability. ”

9. Preschool Transportation

State Law

Education Code section 56441.14 provides:

“Criteria and options for meeting the special education transportation needs of individuals with exceptional needs between the ages of three and five, shall be included in the local

transportation policy required pursuant to paragraph (5) of subdivision (b) of Section 56221. "

Education Code section 56448 provided:

"If the amount of funding provided by the federal government pursuant to Sections 1411 and 1419 of Title 20 of the United States Code for the 1990-91 fiscal year, or any fiscal year thereafter, is not sufficient to fund the full costs of programs and services required pursuant to this chapter, for pupils identified pursuant to subdivision (g) of Section 56440, except for those pupils identified pursuant to paragraph (2) of subdivision (c) of Section 56026, as it read on January 8, 1987, and that lack of federal funding would require any contribution from the General Fund or any contribution from a local educational agency in order to fund those costs, California shall terminate its participation in that program. "

Chapter 311, Statutes of 1987, Amended Education Code section 56448 to provide:

"If the federal government fails to fund the authorized level of Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U. S.C. Secs. 1411, 1412, 1413, and 1419) during the fiscal year of 1988, or any fiscal year thereafter, California shall terminate its participation in this program. "

Education Code section 56449 provided:

"This chapter shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448, and as of that date is repealed. "

Chapter 311, Statutes of 1987, Amended Education Code section 56449 to provide:

"This chapter shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448, and as of that date is repealed. "

10. Eligibility Criteria for Specific Learning Disabilities
Federal Law

20 U.S.C. section 1412(2)(C) provides:

"(2) . . . the State will undertake . . . to assure that—

"..... ..*..*.....*.*..... .....*.....

"(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated. . . .

"..... ...*.....*.....*.....**. .....*.....a*..... ....."

20 U.S.C. section 1414(a)(l)(A) provides, in pertinent part:

" (a) Requisite features

"A local educational agency or an intermediate educational unit which desire to receive payments under section 61 l(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

". . . . .**.....*..... .....*.....I..... ,.,.....a.....

"(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated. . . ."

34 C.F.R. section **300.7(b)(10)** provides:

"....."

"(b) The terms in this definition are defined as follows:

"....."

" 'Specific learning disability' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities , brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual , hearing, or motor disabilities, or mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

"....."

34 C.F.R. section 300.532 provides, in pertinent part:

"State educational agencies and LEAs shall ensure, at a minimum, that:

"....

"(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

"(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

"(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

"(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

"(f) The child is assessed in all areas related to the suspected disability, including, if appropriate health, vision, hearing social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. "

34 C.F.R. section 300.533 provides:

"(a) In interpreting evaluation data and in making placement decisions, each public agency shall-

"(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical conditions, social or cultural background, and adaptive behavior;

"(2) Ensure that information obtained from all of these sources is documented and carefully considered;

"(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

"(4) Ensure that the placement decision is made in conformity with the LRE rules in Secs. 300.550-300.554.

"(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Secs. 300.340-300.350."

34 C.F.R. section 300.540 provides, in pertinent part:

"In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Sec. 300.532, each public agency shall include on the multidisciplinary evaluation team-

"(a)(l) The child's regular teacher; or

"....."

"(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. "

34 C.F.R. section 300.541 provides, in pertinent part:

"(a) A team may determine that a child has a specific learning disability if—

"(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels, and

"(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas-

" (i) Oral expression;

" (ii) Listening comprehension;

"(iii) Written expression;

"(iv) Basic reading skills;

" (v) Reading comprehension;

" (vi) Mathematics calculation; or

" (vii) Mathematics reasoning.

"....."

34 C.F.R. section 300.542 provides:

"(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

"(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age."

34 C.F.R. Section 300.543 provides:

"(a) The team shall prepare a written report of the results of the evaluation.

"(b) The report must include a statement of-

"(1) Whether the child has a specific learning disability;

"(2) The basis for making the determination;

"(3) The relevant behavior noted during the observation of the child;

"(4) The relationship of that behavior to the child's academic functioning;

"(5) The educationally relevant medical findings, if any;

"(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

"'(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

"(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. "

10. Eligibility Criteria for Specific Learning Disabilities
State Law

5 C.C.R. section 3030 provides, in pertinent part:

"A pupil shall qualify as an individual with exceptional needs . . . if the results of the assessment . . . demonstrate that the degree of the pupil's impairment . . . requires special education . . . The decision as to the whether or not the assessment results demonstrate that the degree of the pupil's impairment requires special education shall be made by the individualized education program team . . . The individualized education program team shall take into account all the relevant material which is available on the pupil. No single score or product of scores shall be used as the sole criterion for the decision of the individualized education program team as to the pupil's eligibility for special education. No single score or product of scores shall be used as the sole criterion for the decision of the individualized education program team as to the pupil's eligibility for special education. The specific processes and procedures for implementation of these criteria shall be developed by each Special Education Local Plan Area and be included in the local plan pursuant to Section 56220(a) of the Education Code,

"....

"(j) A pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical

calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas. . . .

" . . . . . .

"(4) The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, . . . which takes into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:

"(A) . . . standardized tests . . . .

"(B) When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.

"(C) If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

" 1. Data obtained from standardized assessment instruments;

"2. Information provided by the parent;

"3. Information provided by the pupil's present teacher;

"4. Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;

"5. Consideration of the pupil's age, particularly for young children; and

"6. Any additional relevant information.

"(5) The discrepancy shall not be primarily the result of limited school experience or poor school attendance. "

11. Definition of Severely Handicapped
Federal Law

20 U.S.C. section 1401(a)(l)(i) provides:

"(a) As used in this chapter-

"(l)(A) The term 'children with disabilities' means children-

'"(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

" . . . . . *.....*..... "

34 C.F.R. 300.7(b) provides in pertinent part:

"(b) The terms used in this definition are defined as follows:

"(1) 'Autism' means a developmental disability significantly affecting verbal and nonverbal communications and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance, as defined in paragraph (b)(9) of this section.

"(2) 'Deaf-blindness' means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

"(3) 'Deafness' means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

"(4) 'Hearing impairment' means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

"(5) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

"(6) 'Multiple disabilities' means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc .), the combination of which causes such severe educational problems that they cannot be accommodated in special

education programs solely for one of the impairments. The term does not include deaf-blindness.

"(7) 'Orthopedic impairment' means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"(8) 'Other health impairment' means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that aversely affects a child's educational performance.

"(9) 'Serious emotional disturbance' is defined as follows:

> "(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance-
>
> "....
>
> " (ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.

"(10) 'Specific learning disability' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

"(11) 'Speech or language impairment' means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.

"(12) 'Traumatic brain injury' means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

"(13) 'Visual impairment including blindness' means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. "

11. Definition of Severely Handicapped
State Law

Education Code section 56030.5 provides:

" 'Severely disabled' means individuals with exceptional needs who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, severe mental retardation, and those individuals who would have been eligible for enrollment in a development center for handicapped pupils under Chapter 6 (commencing with Section 56800) of this part as it read on January 1, 1980."

12. Extended School Year
Federal Law

20 U.S.C. section **1401(a)(18)** provides:

"(a) As used in this chapter—

" . . . .*................*....*.* ....

"(18) The term 'free appropriate public education' means special education and related services that-

"(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 appropriate preschool, elementary, or secondary school education in the State involved, and

"(D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

" . . . . ..*................... . ..*........*.. . . . ..*.................... .... "

20 U.S.C. section 1414(a)(5) provides:

" (a) Requisite features

"A local educational agency or an intermediate educational unit which desires to receive payments under section 1411 (d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

" ....

"(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 1477(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually.

" ...."

34 C.F.R. section 300.346(a)(4) provides:

" (a) General

"The IEP for each child must include—

" ..... * ..... * ..... * ..... * ..... * ..... *.

"(4) The projected dates for initiation of services and the anticipated duration of the services;

" ..... *-..... * ..... ** ..... "

12. Extended School Year
State Law

Education Code section 56345(b)(5) provides:

"(b) When appropriate, the individualized educational program shall also include, but not be limited to, all of the following:

" ..... ** a ..... a ..... '.....

"(5) Extended school year services when needed, as determined by the individualized educational program team.

" ..* ... a ..... * ..... * ..... * ..... *. "

5 C.C.R. section 3043 provides in pertinent part:

"Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. . . . The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

" ..... * ..... * ..... * * * ... . ** ....

"(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:

"(1) A maximum of 55 instructional days excluding holidays shall be allowed for individuals in special classes or centers for the severely handicapped; and

"(2) A maximum of 30 instructional days excluding holidays shall be allowed for all other eligible pupils needing extended year.

"(e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subsection (d)(1) and (2).

"(f) An extended year program, when needed, as determined by the Individualized Education Program team, shall be included in the pupil's individualized education program. "

13. Interim Placements
Federal Law

20 U.S.C. section 1412(6) provides:

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

" .....

"(6) The State educational agency shall be responsible for assuring that the requirements of this subchapter are carried out and that all educational programs for children with disabilities 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 children with disabilities in the State educational agency and shall meet education standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

" ....."

20 U.S.C. section 1414(a)(5) provides:

" (a) Requisite features

"A local educational agency or an intermediate educational unit which desires to receive payments under section 1411 (d) of this title for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

" .....***...*.... a..... .....*.....

"(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 1477(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually.

" ....."

34 C.F.R. section 300.342 provides:

"(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

'"(b) An IEP must—

" (1) Be in effect before special education and related services are provided to a child; and

"(2) Be implemented as soon as possible following the meetings under Sec. 300.343."

13. Interim Placements
State Law

Education Code section 56325, 1980 version, provides:

"(a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part may place the pupil in a comparable program for a period not to exceed 30 days. Such an interim placement may be made without complying with subdivision (a) of Section 56321.

"(b) Before the expiration of the 30-day period, such interim placement shall be reviewed by the individual educational program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred. "

Education Code section 56325 currently provides:

"(a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources, which may be implemented without complying with subdivision (a) of Section 56321, or a new individualized education program, developed pursuant to Section 56321.

"(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

"(c)Whenever a pupil described in subdivision (a) is placed in a residential nonpublic, nonsectarian school, the special education local plan area making the placement shall continue to be responsible for the funding of the placement for the remainder of the school year. "

5 C .C.R. section 3067 provided (section repealed **12/4/1995):**

"(a) The contracting public education agency and nonpublic school or agency shall notify parents of their responsibility to report each change in residence. Such notice by the contracting public education agency shall be in writing and given at the time nonpublic school or agency placement is recommended. Such notice shall include an explanation that the contract for services is between the contracting public agency and nonpublic school or agency and obligates no other public agency in the event of a residence change.

"(b) When an individual receiving services under this article changes residence, and such change constitutes a change of public education agencies, the following shall occur:

"(1) The parent shall immediately report the change of residence to the administrator of both the former and new public school and the nonpublic school or nonpublic agency. Failure to do so may result in the parent having the fiscal responsibility until written notification is made, if the parent's failure was willful.

"(2) The contracting nonpublic school or nonpublic agency shall immediately notify the superintendent of the public education agencies in both former and new residence areas.

"(3) The superintendent or designee of the public education agency making payments to the nonpublic school or nonpublic agency shall immediately notify the new public education agency for the individual's change of residence. This notice shall include a copy of the individuals records, including the individualized education program and the contract for services with the nonpublic school or nonpublic agency.

"(c) The pupil's individualized education program shall be reviewed by the new public education agency within fifteen (15) workdays of the receipt of the records. The new public education agency may make an interim placement if it has a comparable public school program that it reasonably believes can meet the pupil's needs for services, including frequency and other considerations as identified in the pupil's individualized education program. Or it may allow the pupil to remain at the nonpublic school or agency during the time necessary to complete the individualized education program review. In such case, interim payment shall be made pursuant to paragraph (e) of this section.

"(d) The following factors shall be considered by the individualized education program team in determining the continued appropriateness of the nonpublic school or agency:

" (1) No appropriate public education program is available.

"(2) To move the individual at the time of the change of residence would be harmful to the health, welfare, or educational progress of the individual.

"(3) The nonpublic school or agency continues to be within a reasonable distance and/or travel time from the home of the individual.

"(4) Other contingencies which necessitate the individual remaining at the nonpublic school as determined by the individualized education program team.

'"(e) If the individual remains in the nonpublic school or nonpublic agency during the period required to review the pupil's individualized education program, pursuant to paragraph (c), and the individual is registered in the new public education agency, the per diem rate in effect in the prior contract shall be honored by the receiving public education agency and continued until a new contract is negotiated.

"(f) After the review has been conducted and if the individualized education program team determines that no appropriate public education program is available, the new public education agency shall negotiate a new contract for nonpublic school services.

"(1) When the new contract is negotiated, the nonpublic school or non-public agency shall adjust the first claim following negotiation of the contract to account for any changes between the interim rate and the final per diem rate.

"(2) The per diem rate or the rates for related services shall not be increased by the nonpublic school or nonpublic agency during the then current school year.

"(g) The financial responsibility of the former public education agency shall terminate on the last day of the individual's residence in that district."

14. Governance Structure
Federal Law

20 U.S.C. section 1401(a)(18) and (a)(22) provide:

"(a) As used in this chapter—

"……

"(18) The term 'free appropriate public education' means special education and related services that-

"(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 in conformity with the individualized education program required under section 1415(a)(5) of this title.

"……

"(22) The term 'intermediate educational unit' means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.

"…… ……"

20 U.S.C. section 1411(c)(l), (c)(2)(A), (c)(4)(A), and (d) provide:

"……

"(c) Distribution and use of grant funds by States for fiscal years ending September 30, 1979, and thereafter

"(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter-

"(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) except as provided in paragraph (4), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 1412(3) of this title.

"(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (l)(A)-

"(i) an amount which is equal to the greater of-

"(1) 5 per centum of the total amount of funds received under this part by such State; or

"(II) $450,000;

"may be used by such State for administrative costs related to carrying out the provisions of sections 1412 and 1413 of this title; and

"(ii) the part remaining after use in accordance with clause (i) shall be used by the State

"(I) to provide support services and direct services in accordance with the priorities established under section 1412(3)of this title, and

"(II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

" .....

"(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if-

"(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

"(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 1414 of this title.

"(d) Allocation of funds within States to local educational agencies and intermediate educational units

"From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(l)(B) or subsection (c)(l)(B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount available under subsection (b)(l)(B) or subsection (c)(l)(B), as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part. "

20 **U.S.C. section 1412 provides in pertinent part:**

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

"(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

"(2) The State has developed a plan pursuant to section 1413(b) of this title in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that-

"(A) there is established

"(i) a goal of providing full educational opportunity to all children with disabilities,

"(ii) a detailed timetable for accomplishing such a goal, and

"(iii) a description for the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

'"(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities 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. section 1413(a)(l) provides:**

" (a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its State educational agency, its State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall-

"{ 1) set forth policies and procedures designed to assure that funds paid to the State under this subchapter will be expended in accordance with the provisions of this

subchapter, with particular attention given to the provisions of sections 14 11 (b), 1411(c), 1411(d), 1412(2), and 1412(3) of this title.

"....."

20 U.S.C. section 1414(a)(l), (a)(2)(B)(i), and (c)(l) provide:

" (a) Requisite features

"A local educational agency or an intermediate educational unit which desires to receive payments under section 141 l(d) of this title for any fiscal year shall submit an application to the appropriate state educational agency. Such application shall—

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs. . . .

"....."

" (2) provide satisfactory assurance that—

"....."

"(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter-

"(i) shall be used to pay only the excess costs directly attributable to the education of children with disabilities. . . .

"....."

" (c) Consolidated applications

"(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 141 l(c)(4)(A)(i) of this title or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

"....."

34 C.F.R. section 300.190(b), (c) provide:

"....."

"(b) Required applications

"An SEA may require LEAs to submit a consolidated application for payments under Part B of the Act if the SEA determines that an individual application submitted by an LEA will be disapproved because—

"(1) The agency's entitlement is less than the $7,500 minimum required by section 61 l(c)(4)(A)(i) of the Act (§300.360(a)(1)); or

"(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

"(c) Size and scope of program

'"The SEA shall establish standards and procedures for determinations under paragraph (b)(2) of this section."

34 **C.F.R.** section 300.226 provides:

"Each application must include procedures to ensure that, in meeting the goal under Sec. 300.222, the LEA makes provision for participation of and consultation with parents or guardians of children with disabilities. "

34 C.F.R. section 300.345 provides in pertinent part:

"(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate. . . .

" ..... "

34 C.F.R. section 300.360 provides:

"(a) An SEA may not distribute funds to an LEA, and shall use those funds to ensure the provision of FAPE to children with disabilities residing in the area served by the LEA, if the LEA, in any fiscal year—

"(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

"(2) Does not submit an application that meets the requirements of §§ 300.220-300.240;

"(3) Is unable or unwilling to establish and maintain programs of FAPE;

"(4) Is unable or unwilling to be consolidated with other LEAs in order to establish and maintain those programs; or

"(5) Has one or more children with disabilities who can best be served by a regional or state center designed to meet the needs of those children.

"(b) In meeting the requirements in paragraph (a) of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

"(c) The excess cost requirements of §§ 300.182-300.186 do not apply to the SEA."

34 C.F.R. section 300.600 provides:

"(a) The SEA is responsible for ensuring-

"(1) That the requirements of this part are carried out; and

"(2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency-

"(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

"(ii) Meets the education standards of the SEA (including the requirements of this part).

"(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

"(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. "

14. Governance Structure
State Law

Education Code section 56170, 1984 version, provided (repealed 1997):

"The governing board of a school district shall elect to do one of the following:

"(a) If of sufficient size and scope, under standards adopted by the board, submit to the superintendent, in accordance with Section 56200, a local plan for the education of all individuals with exceptional needs residing in the district.

"(b) In conjunction with one or more districts, submit to the superintendent, in accordance with Section 56200, a local plan for the education of individuals with exceptional needs residing in those districts. The plan shall, through joint powers agreements or other contractual agreements, include all of the following:

"(1) Provision of a governance structure and any necessary administrative support to implement the plan.

"(2) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing within the special education services region.

"(3) Designation of a responsible local agency or alternative administrative entity to perform such functions as the receipt and distribution of regionalized services funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of the service required by the plan.

"(c) Join with the county office, to submit to the superintendent a plan in accordance with Section 56200 to assure access to special education and services to all individuals with exceptional needs residing in the geographic area served by the plan. The county office shall coordinate the implementation of such plan, unless otherwise specified in the plan. Such plan shall, through contractual agreements, include all of the following:

"(1) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing within the geographical area served by the plan.

"(2) Designation of the county office, of a responsible local agency, or of any other administrative entity to perform such functions as the receipt and distribution of regionalized services funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of theses services required by the plan.

"(d) the service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area.

"(e) Nothing in this section shall be construed to limit the authority of any county office and any school district or group of school districts to enter into contractual agreements for services relating to the education of individuals with exceptional needs. "

Education Code section 56171, 1981 version, provided (repealed in 1997):

"In developing a local plan under Section 56170, each district shall:

"(a) Involve special and regular teachers selected by their peers and parents selected by their peers in an active role.

"(b) Cooperate with the county office and other school districts in the geographic areas in planning its option under Section 56170 and, commencing with fiscal year 1982-83 and each fiscal year thereafter, notify the county office of its intent to elect an alternative option from those specified in Section 56170, at least one year prior to the proposed effective date of the implementation of such alternative plan.

""(c) Cooperate with the county office to assure that the plan is compatible with other local plans in the county and any county plan of a contiguous county.

"(d) Join with the county office in countywide planning pursuant to subdivision (a) of Section 56140.

"(e) Submit to the county office for review any plan developed under subdivision (a), or (b) of Section 56170."

Education Code section 56192 provides:

"The corntnunity advisory committee shall be composed of parents of individuals with exceptional needs enrolled in public or private schools, parents of other pupils enrolled in school, pupils and adults with disabilities, regular education teachers, special education

teachers and other school personnel, representatives of other public and private agencies, and persons concerned with the needs of individuals with exceptional needs."

Education Code section 56194 provides:

"The community advisory committee shall have the authority and fulfill the responsibilities that are defined for it in the local plan. The responsibilities shall include, but need not be limited to, all the following:

"(a) Advising the policy and administrative entity of the district, special education local plan area, or county office, regarding the development, amendment, and review of the local plan. The entity shall review and consider comments from the community advisory committee.

"(b) Recommending annual priorities to be addressed by the plan.

"(c) Assisting in parent education and in recruiting parents and other volunteers who may contribute to the implementation of the plan.

"(d) Encouraging community involvement in the development and review of the local plan.

"(e) Supporting activities on behalf of individuals with exceptional needs.

"(f) Assisting in parent awareness of the importance of regular school attendance. "

Education Code section 56780

"(a) Funds for regionalized services shall be apportioned to the administrative agency of special education local plan areas. As a condition of receiving for regionalized services, the administrative agency shall assure that all functions listed below are performed in accordance with the governance structure of the special education local plan area.

" (1) Coordination of the special education local plan area.

" (2) Coordinated system of identification and assessment.

"(3) Coordinated system of procedural safeguards.

"(4) Coordinated system of personnel development.

" (5) Coordinated system of curriculum development.

"(6) Coordinated system of internal program review.

"(7) Coordinated system of data collection and management.

"(8) Coordinated system of evaluation of the effectiveness of the local plan.

"(9) Coordination of interagency agreements.

"(10) Coordination of services to medical facilities.

"(11) Coordination of services to licensed children's institutions and foster homes.

"(12) Preparation of special education local plan area reports.

"(13) Incidental expenses of the community advisory committee.

"(14) Coordination of transportation.

"(15) Coordination of career and vocational education.

"(16) Assurance of full educational opportunity.

"(b) Direct instructional support may be provided by program specialists in accordance with Section 56368."

Education Code section 56781

"(a) Commencing with the 1982-83 fiscal year and each fiscal year thereafter, the superintendent shall multiply the average of the unduplicated pupil counts for the fall and spring semesters of the ten current fiscal year, not to exceed 10 percent of the enrollment in kindergarten and grades 1 to 12, inclusive, in the local plan, by forty-four dollars (444), as adjusted pursuant to Section 56782.

"(b) Funds received pursuant to this section shall be expended only for the following purposes:

" (1) Program specialists.

"(2) Regionalized services as defined pursuant to subdivision (c) of Section 56220.

"(3) Instructional personnel services units in excess of those funded pursuant to Article 2 (commencing with Section 56170) of Chapter 7. Units funded pursuant to this section shall not be considered part of the base number of units funded or operated for any district, county office, or local plan area for the purposes of the growth tests specified in Section 56728.6."

Education Code section 56782

"For the 198 l-82 fiscal year, and for each fiscal year thereafter, the superintendent shall apportion funds for regionalized services, other than program specialists, as enumerated in subdivision (c) of Section 56220 by multiplying the average of the total unduplicated counts for the fall and spring semesters of the then current fiscal year in the local plan, not to exceed 10 percent of the enrollment in kindergarten and grades 1 to 12, inclusive, in the local plan, by twenty-five ($25)."

Education Code section 56783

"For fiscal year 1983-84, the amounts per unduplicated pupil proved pursuant to Sections 56781 and 56782 shall be increased by 8 percent. Commencing with the 1984-85 fiscal year and in each fiscal year thereafter, the amounts per unduplicated pupil provided pursuant to Sections 56781 and 56782 shall be increased annually by the statewide average percentage inflation adjustment computed for revenue limits of school districts."

15. Non-Public Schools—
Individualized Service Agreements
Federal Law

20 U.S.C. section 1400(c) provides:

"..... .....*.....*.....

"(c) Purpose

"It is the purpose of this chapter to assure that all children with disabilities have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities. "

20 U.S.C. section 1401(a)(18) and (20) provide:

"(a) As used in this chapter—

"

"(18) The term 'free appropriate public education' means special education and related services that—

"(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 in conformity with the individualized education program required under section 1415(a)(5) of this title.

"

"(20) The term 'individualized education program' means a written statement for each child with a disability 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 provisions of, specially designed instruction to meet the unique needs of children with disabilities. . . .

"

20 U.S.C. section 1412(5)(B) provides:

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

" .....

"(5) The State has established

" .....

"(B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular classroom environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

" ....."

20 U.S.C. section 1413(a)(4)(A) and (B) provide:

" (a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its state educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall include-

" .....

"(4) set forth policies and procedures to assure-

"(A) that, to the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this subchapter by providing for such children special education and related services; and

" (B) that-

"(i) children with disabilities in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this subchapter) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the

provision of special education and related services to all children with disabilities within such State; and

"(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies. . . .

"……"

34 C.F.R. section 300.346(a) provides:

" (a) General

"The IEP for each child must include-

"(1) A statement of the child's present levels of educational performance;

"(2) A statement of annual goals, including short-term instructional objectives;

"(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

"(4) The projected dates for initiation of services and the anticipated duration of the services; and

"(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

"……"

34 C.F.R. section 300.348(c) provides:

"……

"(c) Responsibility

"Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA."

34 C.F.R. section 300.349 provides:

"If a child with a disability is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall-

"(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child, in accordance with §300.343; and

"(b) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to

ensure participation by the private school, including individual or conference telephone calls. "

34 C.F.R. section 300.401 provides:

"Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

"(a) Is provided special education and related services—

"(1) In conformance with an IEP that meets the requirements of §§300.340-300.350;

"(2) At no cost to the parents; and

"(3) At a school or facility that meets the standards that apply to the SEA and LEA's (including the requirements of this part); and

"(b) Has all of the rights of a child with a disability who is served by a public agency. "

34 C.F.R. section 300.402 provides:

"In implementing $300.401, the SEA shall—

"(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

"(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

"(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. "

34 C.F.R. section 300.450 provides:

"As used in this part, 'private school children with disabilities' means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.400-300.402."

34 C.F.R. section 300.551 provides:

"(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

"(b) The continuum required in paragraph (a) of this section must—

"(1) Include the alternative placements listed in the definition of special education under 5300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

"(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement."

34 C.F.R. section 300.600 provides:

"(a) The SEA is responsible for ensuring—

"(1) That the requirements of this part are carried out; and

"(2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency-

"(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

"(ii) Meets the education standards of the SEA (including the requirements of this part).

"(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

"(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State. "

15. Non-Public Schools—
Individualized Service Agreements
State Law

Education Code section. 56365(a) provides:

" (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

"....."

Education Code section 56366(a)(2) provides:

"It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

"(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

"……

"(2) The master contract shall include an individual services agreement for each pupil placed by a district, special education local plan area, or county office that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

"Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

"At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administration or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

"……"

16-A. Parental Notice and Access to Records
Federal Law

20 U.S.C. section 1415(a) and (b)(l) provide:

"(a) Establishment and maintenance

"Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

" (b) Required procedures; hearing

"(1) The procedures required by this section shall include, but shall not be limited to-

" . . . .*.....***.*.. .....

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit-

"(i) proposes to initiate or change, or

"'(ii) refuses to initiate or change,

"the identification, evaluation, or educational placement of the chi ld or the provision of a free appropriate public education to the child.

" ....."

34 C.F.R. section 300.504(a), (b) and (c) provide:

" (a) Notice

"Written notice that meets the requirements of Sec. 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency-

"(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

"(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child

"(b) Consent; procedures if a parent refuses consent

" (1) Parent consent must be obtained before—

" (i) Conducting a preplacement evaluation; and

"(ii) Initial placement of a child with a disability in a program providing special education and related services.

"(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

" .....

"(c) Additional State consent requirements

"In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide a child with FAPE.

" ....."

16-A. Parent Notice and Access to Pupil Records
State Law

Education Code section 49060 provides in pertinent part:

"It is the intent of the Legislature to resolve the potential conflicts between California law and the provisions of [the Family Educational Rights and Privacy Act of 1974] Public Law 93-380 regarding parental access to, and the confidentiality of, pupil records in order to insure continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records. . . ."

Education Code section 49061(e) provides in pertinent part:

"As used in this chapter:

" ....

"(e) 'Access' means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record."

Education Code section 49065 provides:

"Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record."

Education Code section 49069 provides in pertinent part:

"Parents . . . have an absolute right to access any and all pupil records. . . . "

"Each school shall adopt procedures for the granting of requests by parents for copies of all pupil records pursuant to Section 49605, or to inspect and review records during regular school hours, provided that the requested access shall be granted no later than five days following the date of the request. . . . "

Education Code section 56329 provides in pertinent part:

"The parent of the pupil shall be provided with written notice that he or she may obtain, upon request, a copy of the findings of the assessment or assessments conducted pursuant to Section 56321. This notice may be provided as part of the assessment plan given to parents pursuant to Section 56321. . , .

"……..…… . ..*.....**.....……"

Education Code section 56504 provides:

"'The parent shall have the right and opportunity to examine all school records of the child and to receive copies pursuant to this section and to Section 49065 within five days after such request is made by the parent, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing such records, but if this cost effectively prevents the parent from exercising the right to receive such copy or copies the copy or copies shall be reproduced at no cost. "

Family Educational Rights and Privacy Act, section 99.11 provides in pertinent part:

'"(a) Unless the impositions of a fee effectively prevents a parent . . . from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record . . .

"(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student, "

Government Code section 6253 provides in pertinent part:

'Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. . , , "

Government Code section 6256 provides in pertinent part:

> "Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. . . ."

Government Code section 6257 provides:

> "Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law. "

16-B. Written Parental Consent
Federal Law

20 U.S.C. section 1415(b)(l)(C) provides:

"..... .....

"(b) Required procedures; hearing

"(1) The procedures required by this section shall include, but shall not be limited to—

" .....

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit-

"(i) proposes to initiate or change, or

" (ii) refuses to initiate or change,

"the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

".....*..... ..*.*.*.....**.....** "

34 C.F.R. section 504(b), (c) provides:

" .....

"(b) Consent; procedures if a parent refuses consent

"(1) Parent consent must be obtained before-

"(i) Conducting a preplacement evaluation; and

"(ii) Initial placement of a child with a disability in a program providing special education and related services.

"(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

" ...*.....*..... ...**.....*..

" (c) Additional State consent requirements

"In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide a child with FAPE.

" .....*.....*.....*..... "

16-B. Written Parental Consent
State Law

Education Code section 56321, 1982 version, provided:

"(a) Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil shall be given, in writing, a proposed assessment plan within 15 within of the referral for assessment. A copy of the notice of parent rights shall be attached to the assessment plan.

"(b) The proposed assessment plan given to parents shall meet all the following requirements:

"(1) Be in language easily understood by the general public.

"(2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.

"(3) Explain the types of assessments to be conducted.

"(4) State that no individualized education program will result from the assessment without the consent of the parent.

"(c) No assessment shall be conducted unless the written consent of the parent is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of such consent."

Note: The 1982 version above made minor technical changes to the 1980 version. For this reason both 1980 and 1982 versions are not reproduced in this addendum.

Education Code section 56321 currently provides:

"(a) Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil shall be given, in writing, a proposed assessment plan within 15 within of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent agrees, in writing, to an extension. However, in any event, the assessment place shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15-daytime shall recommence on the date that the pupil's regular schooldays reconvene. A copy of the notice of parent rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the Individuals with Disabilities Education Act (20 US .C. Sec. 1400 and following), and the rights and procedures contained in Chapter 5 (commencing with Section 56500), shall be included in the notice of parent rights, including information on the procedures for

requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate.

"(b) The proposed assessment plan given to parents shall meet all the following requirements :

"(1) Be in language easily understood by the general public.

"(2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.

"(3) Explain the types of assessments to be conducted.

"(4) State that no individualized education program will result from the assessment without the consent of the parent.

"(c) No assessment shall be conducted unless the written consent of the parent is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. "

Education Code section 56346, 1980 version, provided:

"No pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts which make participation in the program necessary or desirable, and of the contents of the individualized education plan, and after such notice, consents, in writing, to all or part of the individualized education program. If the parent does not consent to all the components of the individualized education program, then those components of the program to which the parent has consented may be implemented so as not to delay providing instruction and services to the pupil. Components to which the parent has not consented may become the basis for a due process hearing pursuant to Chapter 5 (commencing with Section 56500). The parent may withdraw consent at any time after consultation with a member of the individualized education program team and after he or she has submitted written notification to an administrator. "

Education Code section 56346 currently provides:

"(a) No pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts that make participation in the program necessary or desirable, and of the contents of the individualized education program, and after this notice, consents, in writing, to all or part of the individualized education program. If the parent does not consent to all the components of the individualized education program, then those components of the program to which the parent has consented may be implemented so as not to delay providing instruction and services to the pupil.

"(b) If the district, special education local plan area, or county office determines that the part of the proposed special education program to which the parent does not consent is necessary to provide a free appropriate public education to the pupil, a due process hearing shall be initiated pursuant to Chapter 5 (conx-nencing with Section 56500), unless a prehearing mediation conference is held. During the pendency of the due process hearing,' the district, special education local plan area, or county office may reconsider the proposed individualized education program, may choose to meet informally with the parent pursuant to subdivision (b) of Section 56502, or may hold a mediation conference pursuant to Section 56500.3 to resolve any issue or dispute. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding on the parties. While a prehearing mediation conference or due process hearing is pending, the pupil shall remain in his or her then-current placement unless the parent and the district, special education local plan area, or county office agree otherwise. "

Education Code section 56506(e), provides:

"……

"(e) Written parental consent pursuant to Section 56321 shall be obtained before any assessment of the pupil is conducted unless the public education agency prevails in a due process hearing relating to such assessment.

"……"

17. Payment of Attorney's Fees
Federal Law

20 U.S.C. section 1415 provides in pertinent part:

"(a) Establishment and maintenance

"Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b) Required procedures; hearing

"(1) The procedures required by this section shall include, but shall not be limited to—

" .....*.....

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

"(c) Review of local decision by State educational agency

"If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Enumeration of rights accorded parties to hearings

"Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded—

"(1) the right to be accompanied and advised by counsel and by individuals with special knowledge and training with respect to the problems of handicapped children, . . ."

"(e) Civil Action; jurisdiction

" .....*.....

"(4)(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party.

"..... *..... "

17. Payment of Attorney's Fees
State Law

Education Code section 56507, 1980 version, provided in pertinent part:

"(a) Except as provided in subdivisions (b) and (c), the public agency shall not use the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof, during any part of a mediation conference or state hearing.

"(b) The public education agency may initiate the use of the services of an attorney for actual presentation of written argument, oral argument, evidence, or any combination thereof, during a mediation conference or state hearing, provided that all of the following requirements are satisfied:

"....

"(3) The public education agency bears only those costs of the services of an attorney provided to the parent for which the parent is required to pay. However, in no case shall such costs to the agency be greater than the cost to the agency for its own attorney services, including the cost of preparation and advice.

"...."

Education Code section 56507, 1982 amendments:

The pertinent amendment, throughout the section, was the change from "mediation conference or state hearing" to "mediation conference, individualized education program meeting, or state hearing. "

Education Code section 56507, current version, provides in pertinent part:

"'(a) If either party to a due process hearing intends to be represented by an attorney in the state hearing, notice of that intent shall be given to the other party at least 10 days prior to the hearing. The failure to provide that notice shall constitute good cause for a continuance.

"(b) An award of reasonable attorneys' fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction pursuant to paragraph (4) of subsection (e) of Section 1415 of Title 20 of the United States Code. "

18. Resource Specialist Program
Federal Law

20 U.S.C. section 1401(a)(18) provides:

"(a) As used in this chapter—

" . . ..*.....*.....*..... . . . ..*.*.*.....

"(18) The term 'free appropriate public education' means special education and related services that-

"(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 appropriate preschool, elementary, or secondary school education in the State involved, and

"(D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

" .....*..... .....a..... ....."

20 U. S . C . section 1412(5)(B) provides:

"In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

" ....*..... .....*..... ..*.....*..*..... . . . .***

"(5) The State has established

" .....**.....

"(B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular classroom environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

" ....*.....*..... ....."

20 U.S.C. section 1413(a)(14) provides:

"(a) Requisite features

"Any State meeting the eligibility requirements set forth in section 1412 of this title and desiring to participate in the program under this subchapter shall submit to the Secretary, through its state educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall include-

"……

"(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this subchapter are appropriately and adequately prepared and trained, including-

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.

"……"

34 C.F.R. section 300.346(a) provides:

"(a) General

"The IEP for each child must include-

"(1) A statement of the child's present levels of educational performance;

"(2) A statement of annual goals, including short-term instructional objectives;

"(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

"(4) The projected dates for initiation of services and the anticipated duration of the services; and

"(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether short term instructional objectives are being achieved.

"……"

34 C.F.R. section 300.551(a) and (b)(2) provide:

"(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

"(b) The continuum required in paragraph (a) of this section must—

"(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement."

18. Resource Specialist Program
State Law

Education Code section 56361 (1980 version) provided:

"The continuum of program options shall include all of the following:

"(a) A resource specialist program pursuant to Section 56362.

"(b) Designated instruction and services pursuant to Section 56363.

"(c) Special classes and centers pursuant to Section 56364.

"(d) Nonpublic, nonsectarian school services pursuant to Section 56365.

"(e) State special schools pursuant to Section 56367."

Education Code section 56361 (1991 version) added subsection (f) to the above:

"(f) Instruction in settings other than classrooms where specially designed instruction may occur."

Education Code section 56361 (1996 version) provided:

"The continuum of program options shall include all of the following:

"(a) Regular education programs consistent with subparagraph (B) of paragraph (5) of Section 1412 and clause (iv) of subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code and implementing regulations

"(b) A resource specialist program pursuant to Section 56362.

"(c) Designated instruction and services pursuant to Section 56363.

"(d) Special classes and centers pursuant to Section 56364.

"(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

"(f) State special schools pursuant to Section 56367.

"(g) Instruction in settings other than classrooms where specially designed instruction may occur. "

Education Code section 56361 provides:

"The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

"(a) Regular education programs consistent with subparagraph (B) of paragraph (5) of Section 1412 and clause (iv) of subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code and implementing regulations

"(b) A resource specialist program pursuant to Section 56362.

"(c) Designated instruction and services pursuant to Section 56363.

"(d) Special classes and centers pursuant to Section 56364.

"(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

"(f) State special schools pursuant to Section 56367.

"(g) Instruction in settings other than classrooms where specially designed instruction may occur.

"(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

"(i) Instruction using telecommunication, and instruction in home, in hospitals, and in other institutions to the extent required by federal law or regulation."

Education Code section 56362 provides:

"(a) The resource specialist program shall provide, but not be limited to, all of the following:

"(1) Provision for a resource specialist or specialists who shall provide instruction and services for those pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a schoolday.

"(2) Provision of information and assistance to individuals with exceptional needs and their parents.

"(3) Provision of consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.

"(4) Coordination of special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.

"(5) Monitoring of pupil progress on a regular basis, participation in the review and revision of individualized education programs, as appropriate, and referral of pupils

who do not demonstrate appropriate progress to the individualized education program team.

"(6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

"(b) The resource specialist program shall be under the direction of a resource specialist who is a credentialed special education teacher, or who has a clinical services credential with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, as defined by rules and regulations of the Commission on Teacher Credentialing and who has demonstrated the competencies for a resource specialist, as established by the Commission on Teacher Credentialing .

"(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56221 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds 28 pupils.

"(d) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.

"(e) Resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.

"(f) At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide. "

Amendments

1981 Amendment: (1) Added "or who has a clinical services credential with special class authorization" in subd (b); and (2) substituted subd (d) for former subd (d) which read: "(d) Each resource specialist shall be provided with one or more instructional aides. "

1982 Amendment: (1) Substituted second sentence in subd (c) for former second sentence which read "The average caseload for resource specialists shall be no more than 24 pupils, and no resource specialist shall have a caseload which exceeds 28 pupils."; (2) redesignated former subds (e) and (f) to be subds (d) and (e); (3) redesignated former subd (d) to be subd (f); and (4) add "At least" in subd (f).

1997 Amendment: Amended subsection (c) changing the Education Code section cited from 56221 to 56195.8.

19. Ten Percent (10%) Restriction of Total Enrollment
Federal Law

20 U.S.C. 1411 provides in pertinent part:

" (a) Formula for determining maximum State entitlement

"(1) Except as provided in paragraph (5) and in section 1419 of this title, the maximum amount of the grant to which a State is entitle under this subchapter for any fiscal year shall be equal to-

"(A) the number of children with disabilities aged 3-5, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 1419 of this title and the number of children with disabilities aged 6-21, inclusive, in a State who are receiving special education and related services as so determined; multiplied by—

"..... *.....

"(B)(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States; except that no State shall receive an amount which is less than the amount which such State received under this subchapter for the fiscal year ending September 30, 1997.

" ....."

19. Ten percent (10%) Restriction of Total Enrollment
State Law

Education Code section 56760 provides, in pertinent part:

"The annual budget plan, required by subdivision (3) of Section 56200, shall comply with the following proportions, unless a waiver is granted by the superintendent pursuant to Section 5676 1 :

"(a) The district, special education local plan area, or county office, shall estimate the pupils to be served in the subsequent fiscal year by instructional personnel service. The estimate shall be computed as the ratio of pupils to be served by instructional personnel service to the enrollment of pupils in kindergarten and grades 1 to 12, inclusive, of the districts and county offices participating in the plan.

"(1) The ratio of pupils funded by the state by instructional personnel service during the regular school year, including pupils for whom education and services are provided for by contract with nonpublic, nonsectarian schools, to the enrollment in kindergarten and grades to 1 to 12, inclusive, shall not exceed 0.10.

" ....."

Education Code section 56762 provides:

> "The superintendent shall adopt rules and regulations to ensure that apportionments made pursuant to this chapter shall be paid on account of no more than 10 percent of the statewide enrollment in kindergarten and grades 1 to 12, inclusive, for the then current fiscal year. "