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STATEMENT OF
GREGORY J. AHART, DIRECTOR
HUMAN RESOURCES DIVISION
BEFORE THE
SUBCOMMITTEE ON HANDICAPPED
OF THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Mr. Chairman and Members of the Subcommittee. We are pleased to have this opportunity to comment on the results of our review of the implementation of the Education for All Handicapped Children Act of 1975, commonly referred to as the Public Law 94-142 program. Until May 1980, when responsibility for the program was transferred to the Office of Special Education and Rehabilitative Services in the new Department of Education, the 94-142 program was administered by the Office of Education's Bureau of Education for the Handicapped (BEH). A draft of our report was sent to the Secretary of Education in June 1980 and the Department's written comments have been received. We expect to issue the final report to the Congress in several weeks.

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THE PUBLIC LAW 94-142 PROGRAM

Public Law 94-142, dated November 29, 1975, amended the Education of the Handicapped Act (20 U.S.C. 1401 et seq.) to improve educational services in local public schools for children with mental, physical, emotional, and learning handicaps.

The act generally requires that a "free appropriate public education" be available for all handicapped children age 3 to 18 by September 1, 1978, and age 3 to 21 by September 1, 1980. The act also requires schools to (1) evaluate a child's special needs and determine the most appropriate educational environment, (2) develop an individualized education program (referred to as an IEP) tailored to the needs of the child, (3) involve fully the child's parents in the educational decision process, and (4) educate a handicapped child along with nonhandicapped children to the extent it is in the handicapped child's best interests.

From fiscal year 1977 through fiscal year 1980 the amount appropriated for the program increased from $315 million to $874 million. For fiscal year 1981, $922 million was requested. Over that same 5-year period the average grant per handicapped child increased from $72 to $239.

As of December 1, 1979--the most recent count--the number of handicapped children served was about 4 million. Eighty-three percent of these children fell into three categories--speech impaired, learning disabled, and mentally retarded.

SCOPE OF REVIEW

We made our review in 1978 and 1979 at Department of Education headquarters in Washington, D.C., and at State education agencies, local school districts, and schools in 10 States--California, Florida, Iowa, Mississippi, New Hampshire, Ohio, Oregon, South Dakota, Texas, and Washington. In fiscal year 1979 these States reported a combined total of about 1.1 million handicapped children, or nearly 30 percent of the national 94-142 childcount of about 3.7 million. We visited a total of 55 State, local, and other activities, including 38 local school districts with reported enrollments ranging from 13 handicapped students to about 15,000 handicapped students.

CONTROVERSY ON ESTIMATED NUMBER OF HANDICAPPED CHILDREN

Controversy exists over BEH's estimate of the number of school-age handicapped children needing "special education" services--about 6.2 million--compared to 3.9 million children actually identified and reported by the States, as of December 1, 1978. Consequently, BEH is attempting to get States to increase the number of children identified and reported. We believe that BEH's efforts to increase the number of children counted and served have not been tempered sufficiently to avoid identifying and serving, as handicapped, children who do not warrant such treatment.

BEH estimates far exceed actual number of handicapped children reported by States

Before Public Law 94-142 was enacted, BEH estimated that about 6.7 million children, or about 12 percent of the school-age population, were handicapped and needed special education services.

Because of declines in school enrollments since the early 1970s and differences in the age ranges used to define "school age," the 12-percent estimate currently translates to about 6.2 million children. As of December 1978, however, after several years of searching, the States reported counting about 3.9 million handicapped children. The difference between this actual count and the BEH estimate amounts to about 2.3 million children who, if the BEH estimate is correct, are handicapped but have either not been identified or accounted for under the 94-142 program.

This difference has generated serious controversy among BEH, State officials, researchers, and others. BEH, in defense of its 12-percent estimate, asserts that the States' childfind efforts have not been adequate. However, State officials, researchers, and others contend that BEH's estimate is significantly overstated.

BEH gave the Congress statistics that were discussed in hearings in 1975, indicating that more than 8 million handicapped children up to age 21 (including 6.7 million age 6 to 19) required special education and related services, of which:

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

--About 4.25 million children (3.1 million age 6 to 19) were receiving an inappropriate education or no education at all. Of these, about 1.75 million were said to be excluded entirely from schooling.

The Congress relied on the BEH estimate and also used the 12-percent estimate to develop a major control element in 94-142's entitlement formula. Under the law each State's childcount may be no greater than 12 percent of its total school-age population, age 5 to 17. This provision was included to assure that States would not overcount and mislabel children as handicapped.

In our opinion, the BEH estimate was questionable when provided to the Congress. The estimate still has not been validated. A number of reports prepared for the Federal Government before 1975, and used by BEH to develop its estimate, clearly pointed out the incompleteness, noncomparability, and other reliability limitations of the handicap prevalence estimates available at that time.

In addition to various studies, BEH had "counts" of the numbers of handicapped children in each State reported by State education agencies (SEAs) in the late 1960s. However, a 1970 BEH-funded study stated that in 39 States the counts were not counts at all, but projections based on national prevalence figures developed by a researcher in the 1950s.

Although its estimate was based on data of questionable reliability, BEH continues to use it. In a January 1979 report to the Congress, BEH concluded that since only 3.8 million handicapped children were being served by the States, over 2.3 million handicapped children remained to be served. When it prepared this report, BEH had a July 1978 draft study of prevalences of handicapping conditions prepared by SRI International which, using more

up-to-date information, estimated that about 7 percent of children age 3 to 21 were handicapped. Also, the report concluded that BEH's 12-percent estimate was too high.

Actual State counts for fiscal years 1977, 1978, and 1979 averaged about 7.5 percent of the school population. Not only were the national averages well below BEH's estimate, but the counts of 57 of the 58 States and other grantees were also lower.

Although no reliable estimate of the number of unserved handicapped children exists, States and local education agencies (LEAs) readily acknowledge that some handicapped children have yet to to be identified. However, they believe that the number remaining unidentified is relatively small and is far less than BEH's estimate of 2.3 million.

BEH shows little concern for possible mislabeling and overcounting of children

In September 1978, BEH launched a major "new initiative" to reduce the discrepancy between the number of handicapped children counted and its 12-percent estimate by trying to get States to increase the 94-142 count.

BEH officials contacted at least 50 States and territories which counted less than 10 percent to "strongly urge" them to accept BEH technical assistance on increasing the childcount. BEH plans also called for asking States to set specific numerical targets for increasing their childcounts, and following this up with monitoring and assessment activities, including "careful review" of States' annual program plans before awarding grants, and "special site visits" to key States.

Furthermore, under the new initiative all BEH discretionary programs, which provide grants for such activities as technical assistance through Regional Resource Centers, model demonstration projects, and research and development projects, were to be refocused to emphasize finding and serving more handicapped children. BEH officials also contacted advocate groups, urging them to become more involved in finding and serving handicapped children. BEH has placed special national emphasis on increasing the count of speech-impaired children, a category which, as we discuss in the next section, already includes many children whose eligibility is unclear.

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

Overcounting children or improperly labeling them as handicapped can have at least two major adverse consequences. First, State counts would be inflated and the appropriation and distribution of Federal funds could be affected. Second, and even more important, children would be erroneously labeled as handicapped and this could have a stigmatizing effect that could be very difficult for the children to overcome.

QUESTIONS ON ELIGIBILITY CRITERIA NEED TO BE RESOLVED

Data obtained in our review raised questions about the eligibility of children with minor impairments who may not require

"special education," as that term is defined in the law. Although these eligibility questions affect children with various types of impairments, they are especially applicable to children with minor impairments who require only speech therapy. Of the 3.7 million children counted for funding and served under the 94-142 program as of December 1, 1978, the largest group, about 1.2 million, were classified as "speech impaired" and were receiving only speech therapy. States were expected to receive about $253 million in fiscal year 1980 Federal grant funds for these children. These children included many who were receiving therapy for such impairments as lisping, stuttering, and word pronunciation problems (e.g., they said "wabbit" instead "rabbit," "pasketti" instead of "spaghetti," or "bud" for "bird"), as well as many children whose voice tones were low, high, nasal, harsh, or hoarse.

The law, its legislative history, and implementing regulations are unclear on whether all of these speech-impaired children should have been counted as handicapped for Federal funding.

Unclear definitions in the law and legislative history

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

According to the definitions from the act, "special education" is instruction that is specially designed to meet a handicapped child's unique education needs--needs which cannot be met through

a regular classroom program and therefore require different or added instructional procedures. "Related services" are those supplementary services that may be needed to correct, treat, or reduce the impact of the child's impairment and thus improve the child's ability to benefit from "special education." The law explicitly lists speech pathology (often used interchangeably with the term speech therapy) as a "related service."

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

Although the eligibility of children receiving only "related services" is not specifically authorized in the act, program regulations provide that, under certain conditions, "related services"

such as speech therapy, can be considered as "special education" and thus make a child eligible even though he or she is not receiving any other services.

Insufficient guidance in program regulations

Program regulations attempt to clarify the eligibility question by stating that, ordinarily, children who are receiving only "related services" are not eligible for the program. The regulations provide, however, that a service specifically listed in the act as a "related service" may be considered as "special education" if (1) the service meets the act's general definition of "special education" and (2) is considered "special education" rather than a "related service" under State standards. In a key provision, the regulations require that to be considered as "handicapped," a child must have an impairment which is severe enough to adversely affect the child's educational performance. However, BEH had not established criteria for applying the adverse effect requirement, nor did its regulations require the States to establish their own criteria.

During our fieldwork BEH officials told us that they had not issued any guidance to the States on the nature and the meaning of the adverse effect requirement, since no State or LEA had specifically sought an interpretation of the requirement.

LEAs are not applying an adverse effect test

According to officials in 18 of 28 LEAs where we discussed the issue, LEA policy or practice did not require that a child's

speech impairment adversely affect his or her educational performance to count the child for 94-142 funding. It appeared that most children whose speech attracted attention in any way, or caused a social or behavioral problem, were receiving speech therapy and were being counted for 94-142 funding. LEA officials also stated that the effect that a child's speech impairment has on educational performance is not readily apparent and, in many cases, it would be difficult or time consuming to prove adverse effect.

In contrast to Federal program regulations, the regulations of at least four States we visited specifically allowed LEAs to classify children as speech impaired for State funding purposes even if the impairment did not adversely affect their performance in the classroom. Two other States specifically instructed their LEAs to count all children receiving speech therapy in the 94-142 childcount.

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

Most speech-impaired children might not meet an adverse effect test

In addition to finding that most States we visited did not apply the required adverse effect test, we found significant differences between the nature and extent of services provided to

speech-impaired children and the services provided to all other handicapped children.

For example, most children counted as speech impaired spend little time with their therapists compared with the time other handicapped children spend with their special education teachers. According to a January 1979 BEH report to the Congress, the average speech therapist in the Nation served 44 children--three times as many as teachers of all other handicapped children.

Also, officials in 28 of 30 LEAs we reviewed told us that most of their children receive an average of 1 to 1-1/2 years of speech therapy, usually in kindergarten and grades 1 to 3. Several of these officials stated that speech defects are usually corrected quickly. This is not generally true for children who have other handicapping disabilities.

Finally, most children classified as speech impaired spend significantly less time receiving special services outside the regular classroom than do other handicapped children and rarely, if ever, is the speech-impaired child's regular classroom program modified.

These factors, along with comments by LEA officials, raise questions on whether the speech impairments of most of these children adversely affected their educational performance and whether they would have met the eligibility requirement in program regulations if it had been applied.

94-142 program not designed for children receiving speech therapy only

Some LEAs were experiencing problems applying 94-142 requirements, especially the IEP requirement, to children classified as speech impaired.

Some LEA officials told us that the IEP process was not appropriate for children who receive only speech therapy. They complained, among other things, that the IEP process forces a school district to label children as handicapped who are really not handicapped, that preparing and processing the IEP often takes almost as much time and effort as remedying the child's speech defect, and that in the past, some LEAs stopped providing speech services altogether for several days or weeks to prepare and process IEPs.

Effect on childcounts by failing to apply an adverse effect test

As discussed previously, many of the children whom States and LEAs classified as speech impaired might not have met an adverse effect test and therefore might not have been eligible to be counted for 94-142 funding. We do not know exactly how many of these children have been counted. Officials at 10 of the LEAs told us that, if they applied an "adverse effect on educational performance" requirement, their count of speech-impaired children would be reduced substantially (by 33 to 75 percent.) Also, school districts in one State we visited--New Hampshire--were

counting children as handicapped for Federal funding only when their progress in the regular classroom was significantly impeded by their impairment. State and local officials in New Hampshire stated that many children were receiving speech therapy for minor speech defects, mainly articulation problems, but they were not counted as handicapped for 94-142 funds.

Mr. Chairman, we are not questioning whether certain children need speech therapy. That is an educational decision. What we are questioning is whether the Congress intended that all children receiving speech therapy be served under the 94-142 program as handicapped children.

INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS NOT MET

Public Law 94-142 requires LEAs to establish an IEP for each handicapped child. Each IEP is to contain information on the present levels of educational performance; annual goals, including short-term instructional objectives; specific educational services to be provided; the projected date for initiation and anticipated duration of such services; and appropriate criteria and evaluation procedures for determining whether instructional objectives are being achieved. The IEP is to be developed at a meeting attended by the child's parents, the child's teacher, and an LEA representative. In its implementing regulations, the Office of Education required that IEPs be in effect on October 1, 1977, and at the beginning of each school year thereafter, for

every handicapped child, before "special education and related services" are provided.

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

LEA officials in 15 of 28 LEAs where we discussed this issue, after the notification from BEH, claimed that their IEPs described all services needed by a child regardless of current availability. In most of these LEAs, however, we found IEPs that omitted needed services shown on the child's other records.

LEA officials in the other 13 LEAs candidly admitted that a child's IEP would not show needed special education or related services that the LEA does not or cannot provide. Some officials expressed the fear that an LEA that lists unavailable services in an IEP might be sued or forced to provide services it cannot afford or cannot provide for some other reason. Other officials stated that they do not want to hurt parent-school relations by telling parents, through an IEP, that their child needs a service which the LEA is unable to provide.

LEAs had considerable difficulty preparing IEPs that met 94-142 requirements. In mid-1978 we reviewed 456 IEPs prepared by 23 LEAs in six States. Overall, 78 percent of the IEPs did not meet the act's content requirements--65 percent lacked information on one or more elements and another 13 percent had vague or general statements.

Also, 52 percent of the 456 IEPs lacked evidence that all required participants attended the IEP meeting. The member of the IEP team missing most often was the LEA representative. Nonetheless, officials in 13 LEAs told us that they believed the IEP process has improved parent-school relations or has increased parents' understanding of their children's education.

LEAs had great difficulty meeting the October 1, 1977, deadline. Only 10 of the 30 LEAs came reasonably close to meeting the date. We examined 350 IEPs that should have been completed by October 1, 1977, and found that at least 46 percent were late.

Program regulations forbid counting handicapped children for 94-142 funding who do not have a completed IEP on the day of the count. However, most LEAs we visited improperly counted handicapped children who had no IEPs and those whose IEPs did not meet the act's requirements.

In addition to the newness of the IEP requirements, one reason that LEAs did not meet the requirements was the lack of guidance and instructions from BEH.

FREE APPROPRIATE PUBLIC EDUCATION NOT YET AVAILABLE TO ALL HANDICAPPED CHILDREN

The paramount goal of Public Law 94-142 was to make free appropriate public education available to every handicapped child.

However, officials in 16 of 21 LEAs where we discussed program goals, candidly admitted that they did not expect to be able to provide an appropriate education to their handicapped children age 3 to 18 for at least 3 to 6 years beyond the September 1, 1978, deadline.

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

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

Most State special education funding was also not increasing rapidly enough to enable LEAs to fully serve all handicapped children in the near future. For example, California was moving to a

new funding program, called Master Plan, that a State special education official said would not provide adequate funding of special education until at least the 1981-82 school year.

Further, the growth of Federal funds has not kept pace with amounts authorized in the act. For fiscal years 1979 and 1980, the President's combined budget requests for 94-142 were nearly $1.9 billion below the act's full funding authorization levels.

In congressional testimony, States, LEAs, and handicapped children's advocate groups have consistently pointed out their belief that reducing Federal funding so far below authorization levels means that the Federal Government is failing to live up to its commitment. In response, Federal education officials have pointed out that education is a fundamental State responsibility, that the increase in Federal support of special education over the past 5 years has been dramatic, and that the amounts requested are all that the Federal budget can support at this time.

STATE AND FEDERAL PROGRAM MANAGEMENT AND ENFORCEMENT PROBLEMS

Our review showed that many of the difficulties in adequately and promptly implementing the act's requirements occurred because of State and Federal management problems.

States need to improve their capability to carry out Public Law 94-142

At the time of our fieldwork, many SEAs had not adequately fulfilled their responsibilities for ensuring the proper implementation of Public Law 94-142. Technical assistance provided by

SEAs was often late and ineffective and SEAs had done little monitoring.

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

Problems in monitoring LEAs also occurred and as a result, LEAs in several States did not benefit from the assistance and direction that earlier SEA monitoring visits could have provided them.

Many SEAs recognized the increased responsibilities placed on them by Public Law 94-142 and the need for additional special education staff to administer the program. Because the act did not provide additional Federal funds to hire more staff, many SEA special education officials tried to obtain State funding to supply the staff needed. However, few requests for additional State-funded positions had been approved at the time of our fieldwork.

Since each State participating in the 94-142 program must submit an annual program plan containing assurances that the State will carry out the provisions of the act, and since the Secretary of Education must evaluate and approve the State's plan before grant funds are released, a vehicle exists that would enable the Department to assess, at least in part, the adequacy and capability of the SEA to fulfill its responsibilities.

Initial Federal administration of the program was inadequate

In our opinion, some of the problems in implementing the 94-142 program might have been avoided or reduced had BEH adequately or promptly carried out its management responsibilities.

For example, the 94-142 legislation required that program regulations be published by January 1, 1977. Proposed regulations were published on December 30, 1976, only 2 days before the statutory deadline. However, States and LEAs were under no obligation to comply with these draft requirements. Final regulations were not published until August 23, 1977, only 39 days before October 1, 1977, the date that States and LEAs were to be in full compliance with most of the act's procedural requirements.

The act also requires the Department to provide States with technical assistance and training, to approve State program plans, and to monitor State and LEA program activities for compliance with the law and regulations. Our review, which included discussions with BEH, State, and LEA officials, indicated that BEH had problems performing these activities, thus contributing to the startup problems.

For example, BEH did not provide promised guidance and instructions, leaving SEAs and LEAs to design and develop their own procedures, manuals, and forms. Also, BEH took an average of 10 months to approve State plans for the 10 States we visited, although it had led States to believe that the process would be completed in 30 to 45 days. Finally, BEH did not make the required

comprehensive evaluations of States' compliance with the free appropriate public education requirement of Public Law 94-142.

While we believe that BEH has improved in some of these areas, increased emphasis by BEH at the beginning of the program could have enabled SEAs and LEAs to implement the new law more effectively and with less confusion.

GAO PROPOSALS FOR IMPROVING 94-142

Our draft report on the implementation of the 94-142 program contained a number of proposals which, if properly implemented, should help to improve the program. Two were addressed to the Congress; the remainder were addressed to the Secretary of Education. The Department has provided written comments on all of our proposals.

Proposals to the Congress

Our draft report contains a proposal that the Congress clarify whether, and under what conditions, children who are receiving only speech therapy or other services currently cited in the law as "related services" are eligible for coverage under the 94-142 program. Our draft report states that in resolving this matter, the Congress should consider whether current departmental regulations, which provide that children are eligible only if their impairments adversely affect their educational performance, represent a reasonable interpretation of congressional intent.

The Department did not concur with our proposal and stated that it believed it is already clear that handicapped children who receive only speech therapy services are eligible for

coverage under Public Law 94-142. The Department pointed out that the term "speech impaired" has been included in the definition of handicapped children since the inception of the State grant program in 1966, and that throughout the 14-year history of the program speech therapy has been recognized in the special education community as a basic "special education" service.

We agree that the term "speech impaired" is included in the law. Although it may be clear to the education community, as the Department asserts, in our opinion it is not clear in the law or its legislative history whether children receiving only minor amounts of speech therapy services are to be considered as handicapped and eligible for Federal funding under the 94-142 program. Based on (1) our review of the legislation and legislative history (2) the increased number of children being provided speech therapy services today compared with 14 years ago, and (3) the manner in which LEAs are classifying children as speech impaired, we believe the Congress should clarify whether, and under what conditions, children who are receiving only speech therapy or other related services are eligible for coverage under Public Law 94-142.

We are also proposing that the Congress consider the conflict between (1) the statutory purpose and timetable for providing each handicapped child with free appropriate public education and (2) the problems States and LEAs are having, and will probably continue to have, in meeting those objectives. Our draft report states that if considerable additional delays in reaching the goals

are not acceptable, the Congress may wish to consider providing (1) incentives to stimulate increased State and local funding or (2) increased Federal funding for the program. On the other hand, if the Congress finds that existing goals and deadlines are too stringent, considering potential fund and staff availability, it may wish to consider modifying the act's timetables or scope of coverage.

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

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

We are aware that the 94-142 program has been the subject of extensive congressional hearings. However, the Congress has not yet acted to resolve a basic problem--the inability of the States to provide free appropriate public education to all handicapped children within the deadlines established in the act. We believe

that additional perspective and direction should be provided by the Congress to all levels of the education community, particularly since both the 1978 and 1980 deadlines for compliance with the act have passed. Hence, we are providing the Congress additional information for its consideration in resolving the issues regarding program goals, deadlines for implementation, and funding.

Proposals to the Secretary of Education

Our draft report also includes a number of proposals to the Secretary of Education. These proposals are included as an attachment to this statement.

Regarding the controversy on the estimated number of handicapped children, the Department agreed with our proposals (1) to fully evaluate the effectiveness of LEA programs and processes for identifying, evaluating, and serving all handicapped children needing services, (2) to assist States and LEAs to eliminate deficiencies, and (3) to reconsider the validity of the 12-percent prevalence estimate. However, the Department did not agree that it should discontinue, at least temporarily, the use of the 12-percent rate as a basis for encouraging States to increase the number of children counted and served.

The Department stated that while it recognizes that the 12-percent estimate was not definitive, to date there is no compelling data that would justify revising the estimate. In fact, the Department believes there are "strong indications" that the 12-percent prevalence estimate is reasonable, pointing to 4 States having counts over 10 percent. Also, the Department stated that

SEAs and LEAs may not be doing all they can to identify handicapped children and it believes that the 12-percent figure is useful as a general guide in determining whether all handicapped children are served. Finally, the Department stated that it places equivalent emphasis on States' procedural safeguards to prevent misclassifications.

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

The Department cited four States as a "strong indication" that the 12-percent estimate is reasonable. Our draft report points out, however, that 54 other States and jurisdictions had counts under 10 percent. Also, our report points out that even if the States have not identified all handicapped children, State and LEA officials believe that the number of unidentified children is far below BEH's estimate.

Finally, the Department stated that in its program oversight activities it reviews a State's procedures for preventing misidentification and cited one instance where a large number of children were removed from the childcount. In our opinion, this

after-the-fact review at the State level is not sufficient to overcome the thrust of BEH's efforts, under its "new initiative," to get States to increase their count of handicapped children. We believe that a more effective approach would be for the Department to discontinue, at least temporarily, its reliance on the 12-percent estimate as the basis for encouraging States to serve more handicap children, and focus instead on updating the national prevalence rate and working to eliminate the barriers to full identification and service.

Regarding the need to resolve questions on eligibility criteria for children receiving only speech therapy, the Department agreed with our proposals to (1) define the terms "adverse effect" and "educational performance" as they relate to children's eligibility and (2) monitor and enforce the "adverse effect on educational performance" requirement. The Department also agreed with our proposals to improve the IEP process.

Regarding the need for improved State management of the program, the Department did not concur that States should be required to document in their annual program plans, and demonstrate to the Secretary's satisfaction, that they are able to meet the commitments in their plans and carry out their responsibilities under the law. The Department agreed, however, that Federal administration of the program needed (1) strengthening through better evaluations of States' compliance with the free appropriate public education requirements of the act and (2) better, more timely, Federal administrative and management actions.

This concludes our statement, Mr. Chairman. We will be happy to answer any questions you may have.

U.S. GENERAL ACCOUNTING OFFICE PROPOSALS TO THE SECRETARY OF EDUCATION CONCERNING THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

CONTROVERSY ON ESTIMATED NUMBER OF HANDICAPPED CHILDREN

We propose that the Secretary:

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

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

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

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

QUESTIONS ON ELIGIBILITY CRITERIA NEED TO BE RESOLVED

Pending action on our proposal to the Congress, we propose that the Secretary either modify the regulations to define the terms "adverse effect" and "educational performance" and provide guidance to States and LEAs on applying the requirement or provide guidelines under which States must establish their own criteria for applying the requirement.

We also propose that the Secretary monitor and enforce the "adverse effect on educational performance" requirement in the Department of Education's program oversight activities, and notify SEA and LEA officials that handicapped children, including children who receive only speech therapy or other related services, are not eligible to be counted unless the adverse effect test has been demonstrated and documented.

INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS NOT MET

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

We propose also that the Secretary:

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

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

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

We propose that the Secretary require States to document in their State program plans, and demonstrate to the Secretary's satisfaction, that they are able to meet the commitments in their plans and carry out their responsibilities under Public Law 94-142.

INITIAL FEDERAL ADMINISTRATION OF THE PROGRAM WAS INADEQUATE

We propose that the Secretary evaluate States' compliance with the free appropriate public education requirement of Public Law 94-142, and use the evaluations to determine what additional actions, including withholding funds as provided for in the act, need to be taken to assure that States are effectively implementing the act.

In addition, since the Federal Government's role in helping State and local grantees to revise or start new Federal programs can be of critical importance if the programs are to be implemented quickly and effectively and congressional mandates are to be met, we propose that the Secretary emphasize the importance of (1) timely issuance of regulations, (2) providing technical assistance, (3) reviewing State plans, and (4) making monitoring visits.