

MINUTES

EDUCATION COMMITTEE
JANUARY 31, 1977
3 p.m.

Members Present: Chairman Vergiels
Mrs. Gomes
Mr. Goodman
Mr. Horn
Mr. Kissam
Mr. Rhoads
Mr. Schofield

Guests Present: Frank Gross, Handicapped Persons
Jerry Myers, Washoe County School District
Doug Berry, W.C.S.D.
Dick Wright, W.C.S.D.
Joyce Woodhouse, NSEA
Susan Haase, Nev. Assoc. for Retarded Citizens
Bonni Hickson, Nevada Nurses Assoc.
Ann M. Hibbs, Nevada Nurses Assoc.
Chris Lamphrey, Rehabilitation Div.
Barbara Guzman, Developmental Disabilities
Rick Kuhlmen, Political Action Com.
Kathy Leavitt
Mitch Wright
Joe Newlin, NSEA
Terry Gross, parent
Jane LoCicero, Nevada State Department of Education
James P. Costa, Nevada State Department of Education
Bob Best, Nevada State School Boards Assoc.

Chairman Vergiels called the meeting to order at 3:06 p.m. in Room 214. He announced that on February 9 the committee will hear testimony on AB 9 in 3 p.m. in Room 214. This will be the first hearing on competency-based education and has been arranged with the State Department of Education. At 4 p.m. the committee will have a joint meeting with the Senate Education Committee in the Senate Auditorium on AB 110, lowering the compulsory attendance age from 17 to 16. At 3 p.m. Wednesday, February 23, the committee will hear testimony on AB 151, funding for psychological counseling in elementary schools.

AB 106 - James Costa, Deputy Superintendent of the Nevada Department of Education, read a statement endorsing the state's position on this bill permitting school districts to contract for special education programs for handicapped pupils. This would allow the districts more flexibility in their continuing responsibility of providing education for handicapped children with the use of certificated persons rather than only school employees. A copy of Mr. Costa's statement is attached to the minutes as Exhibit A.

Assembly

AB 107 - Mr. Costa again spoke for the State on this bill which raises upper-age eligibility for handicapped pupil programs, removes references to "minor," and appropriates funds for additional units. The purpose of this bill is to bring the state statute into conformity with federal statute and consistency with NRS Chapter 395 and to amend the language referring to "minors" as "pupils" when referring to persons over 18 and under 21. In answer to questions Mr. Costa stated that now education at the upper age limits is provided on an "available basis" although a pupil may finish the year he is in even though he reaches the age of 18 (21 under the proposed bill), and that money is provided for handicapped pupils by the federal government on the basis of "excess money;" i.e., that portion above the ordinary allowance per pupil is paid by the federal government. A copy of Mr. Costa's statement is attached to the minutes as Exhibit B.

Frank Gross, parent of a handicapped child, told the committee there is a need for this additional age limit because many handicapped persons are late entering the educational system.

AB 108 - Mr. Costa read a statement supporting this bill which lowers the age limit for enrollment of physically handicapped pupils in special education programs. The intent of this act is to bring Nevada law into conformity with federal statute and at the same time provide the "least restrictive" education which Mr. Costa defined as meaning providing the child with the most effective education for his needs whether "main streaming" (spending time in a "normal" classroom) or attending sessions with other handicapped children. A copy of Mr. Costa's statement is attached to the minutes as Exhibit C.

AB 111 Mr. Costa read a statement presenting the State's view on this bill which revises provisions for out-of-district placement for visually or aurally handicapped pupils and clarifies provisions, reiterating the State's intent to educate children adequately first in their own county and, secondly, out of the district or state if necessary, but pointing out the State's concern with the redefining of handicapping conditions and the development of re-institutionalization either or both of which could increase the pupil load of the various school districts and test their resources to provide appropriate services. A copy of his statement and proposed amendments is attached to the minutes as Exhibit D.

On the negative side, Mr. Frank Gross questioned the definition of the multiplied handicapped person, especially the elimination of "mute" as one which might "trap" some pupil who could otherwise leave the state for adequate education. He also questioned whether the parent should not have the right to challenge the decision of

the superintendent as to where his child should go. He questioned the whole concept of limiting qualifications to visual and aural handicaps.

Gerald Myers, Director of Special Education for Washoe County School District, also urged that the qualifier "mute" be retained because there is no other program in the state which might provide for these children.

Mrs. Susan Haase, Executive Director for Nevada Association of Retarded Citizens, presented a paper supporting amendments to AB 111 as submitted by Mrs. Gomes and urged the retention of "mute" to include those with that handicap in an adequate program. A copy of her statement and proposed amendments is included in the minutes as Exhibit E.

The chairman then asked for questions. Mr. Schofield asked the rationale for eliminating "mute" and why the definitions were changed. Mr. Costs interpreted the intent of the original law as applying to a person who is deaf and dumb rather than one who is deaf and/or dumb and this bill proposes clarification of provisions for visually and aurally handicapped. To be more inclusive, he suggested another bill might better be written.

In answer to Mr. Horn's request for a definition of "mute," he was told it is a "person who does not utter sound," but that this is now an obsolete term and no modern definition was offered.

Mr. Vergiels appointed a subcommittee headed by Mr. Schofield to meet this week and discuss the various points of view presented at the hearing. The subcommittee will include Mrs. Gomes, Mr. Rhoads, Mr. Gross, Mrs. Haase, Mr. Costa and Mr. Myers. At this point Mr. Vergiels excused the witnesses.

AB 106 - Mr. Schofield moved and Mr. Horn seconded that AB 106 be passed. The bill was passed unanimously.

AB 107 - Mr. Schofield moved and Mrs. Gomes seconded that AB 107 be passed. The bill was passed unanimously.

AB 108 - Mr. Horn moved and Mr. Schofield seconded that AB 108 be passed. The bill was passed unanimously.

Chairman Vergiels asked Mr. Kissam to prepare a short synopsis on behalf of AB 106 when it comes to the floor. Because of appropriations needed, he requested Mr. Rhoads to rerefer AB 107 to Ways and Means and Mr. Goodman to rerefer AB 108 to Ways and Means.

Mr. Schofield moved that the meeting be adjourned and Mr. Horn seconded. The meeting was adjourned at 4:42 p.m.

Respectfully submitted

Harriet M. Knauff

Harriet M. Knauff
Assembly Attache

GUEST LIST - 1/31/77

III
after
111

III

III
all

NAME (Please print)	REPRESENTING	WISH TO SPEAK	
		Yes	No
Frank Gross	Handicapped Persons	X	
Jerry Myers	WCSD	X	
Ray Perry	WCSD	X	
Dick Wright	WCSD	X	
Loyle Woodhouse	NSEA		✓
Sandra Woodrow	State Board of Education		
Susan Haase	Nev. Assoc. for Retard. Ct.	X	
Bonni Hickson	N.E.V. NURSES ASSOC.		✓
Ann M. Hubbs	Nev Nurses Assoc		
Chris Langston	Rehabilitation Div		✓
Barbara Suggan	DEVELOPMENTAL DISABILITIES		✓
Paul Kuhlman	Pol. Action Comm.		✓
Kathy Leavitt	WCSD VISITOR		✓
Patricia Wright	VISITOR		✓
Joe Newhit	NSEA		✓
Larry Gross	parent		✓
George Lo Cicero	Dept. of Education	✓	
James P. Costa	Dept. of Education	✓	
Bob Best	Nev. State Dept. Sall Beds Assn		✓

59TH NEVADA LEGISLATURE

EDUCATION
LEGISLATION ACTION

DATE January 31, 1977

SUBJECT AB 106 - Permits school districts to contract for special
education programs for handicapped pupils

MOTION:

Do Pass X Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By Mr. Schofield Seconded By Mr. Horn

AMENDMENT:

Moved By _____ Seconded By _____

AMENDMENT:

Moved BY _____ Seconded By _____

VOTE:

	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
GOMES	<u>X</u>	_____	_____	_____	_____	_____
GOODMAN	<u>X</u>	_____	_____	_____	_____	_____
HORN	<u>X</u>	_____	_____	_____	_____	_____
KISSAM	<u>X</u>	_____	_____	_____	_____	_____
RHOADS	<u>X</u>	_____	_____	_____	_____	_____
SCHOFIELD	<u>X</u>	_____	_____	_____	_____	_____
VERGIELS	<u>X</u>	_____	_____	_____	_____	_____

TALLY: 7

ORIGINAL MOTION: Passed X Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes January 31, 1977

59TH NEVADA LEGISLATURE

EDUCATION
LEGISLATION ACTION

DATE January 31, 1977

SUBJECT AB 108 -Reduced lower age limit for enrollment of physically
handicapped minors in special educational programs.

MOTION:

Do Pass x Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By Mr. Horn Seconded By Mr. Schofield

AMENDMENT:

Moved By _____ Seconded By _____

AMENDMENT:

Moved BY _____ Seconded By _____

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
GOMES	<u>X</u>	_____	_____	_____	_____	_____
GOODMAN	<u>X</u>	_____	_____	_____	_____	_____
HORN	<u>X</u>	_____	_____	_____	_____	_____
KISSAM	<u>X</u>	_____	_____	_____	_____	_____
RHOADS	<u>X</u>	_____	_____	_____	_____	_____
SCHOFIELD	<u>X</u>	_____	_____	_____	_____	_____
VERGIELS	<u>X</u>	_____	_____	_____	_____	_____

TALLY: 7

ORIGINAL MOTION: Passed X Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes January 31, 1977

STATEMENT OF
THE DEPARTMENT OF EDUCATION
TO THE

ASSEMBLY COMMITTEE ON EDUCATION

Monday, January 31, 1977

Room 214, 3:00 p.m.

A.B. 106 -- Amends NRS 387.122

Permits school districts to contract for special education programs for handicapped persons.

The effect of NRS 387.122 as presently written is to make school districts responsible for the education of handicapped persons. It requires that all instruction to handicapped persons be delivered by employees of the school districts.

A.B. 106 retains the responsibility for the education of handicapped persons in the school districts, but provides some flexibility for the delivery of the instruction. Ordinarily, this would occur where the pupils are under the care of another agency, and the instructional program must be carried on away from a regular school facility. Under regulations to be developed by the Department of Education, school districts will be able to enter into a contract with other agencies to provide appropriate instruction utilizing qualified people employed by and responsible to those agencies. Such a contract will be approved by the Department of Education only when all the minimum standards prescribed by the State Board of Education are met.

It is not anticipated that there will be any great number of such contracts statewide, but the flexibility provided by A.B. 106 will be a great help in serving handicapped persons wherever they may be.

JPC/mb
1/28/77

STATEMENT OF
THE DEPARTMENT OF EDUCATION
TO THE
ASSEMBLY COMMITTEE ON EDUCATION

Monday, January 31, 1977

Room 214, 3:00 P.M.

A. B. 107 -- Amends NRS 388.440 to 388.520, inclusive,
and NRS 387.123 to 388.124, inclusive

Raises upper-age eligibility for handicapped
pupil programs, removes references to "minor",
and appropriates funds for additional units.

In November, 1975, the Congress of the United States declared it a national policy that a free appropriate public education shall be provided to all handicapped children. This policy is embodied in Public Law 94-142, the Education for All Handicapped Children Act. This Act requires all states to establish a goal to serve all handicapped children ages 3 to 21 by September 1, 1980. The Act stipulates that provisions respecting service to children 3 to 5 and 18-21 may not be applicable if inconsistent with State law.

NRS 388.440 presently limits educational services to handicapped persons under the age of 18.

The State Board of Education has adopted a State Plan for Exceptional Pupil Education which establishes a goal to provide free appropriate public education to all handicapped persons between the ages of 3 and 21 by September 1, 1980.

The purpose of A. B. 107 is two fold:

- 1) To accomplish part of this goal by amending NRS 388.440 to raise the upper age level from 18 to 21. This amendment will also make this chapter consistent with Chapter 395 which presently permits out-of-state placement for deaf and blind persons up to age 21.
- 2) To amend the language referring to "minors", which is no longer appropriate for persons over 18, and make it read simply "pupils".

It is estimated that six additional special education units statewide will be required to serve the pupils between 18 and 21. In accordance with the Department's request and the Governor's recommendation to value each special education unit at \$17,600 in the next biennium, the additional sum of \$105,600 will be required to implement A. B. 107.

JPC:maj
1-31-77

STATEMENT OF
THE DEPARTMENT OF EDUCATION
TO THE
ASSEMBLY COMMITTEE ON EDUCATION

Monday, January 31, 1977

Room 214, 3:00 P.M.

A. B. 108 -- Amends NRS 388.490

Lowers the age limit for enrollment of physically handicapped pupils in special education programs.

In November, 1975, the Congress of the United States declared it a national policy that a free appropriate public education shall be provided to all handicapped children. This policy is embodied in Public Law 94-142, the Education of All Handicapped Children Act. This Act requires that all states establish a goal to serve all handicapped children ages 3 to 21 by September 1, 1980. The Act stipulates that provisions respecting service to children 3 to 5 and 18-21 may not be applicable if inconsistent with State law.

The State Board of Education has adopted a State Plan for Education of Exceptional Pupils which establishes a goal to provide free appropriate public education to all handicapped persons between the ages of 3 and 21 by September 1, 1980.

Chapter 388 of the Nevada Revised Statutes permits the enrollment earlier than age 5 of the aurally and visually handicapped, the mentally retarded and the academically talented. The ages of enrollment for these groups have been set at a time in their lives when a valid evaluation of their handicap can be made and a suitable program of instruction provided.

It has been our experience, consistent with experience across the nation, that the early commencement of handicapped youngsters in educational programs designed specifically for them has resulted in significant progress and achievement. This knowledge is all the more important now because of efforts to provide these youngsters with opportunities to learn in the same rooms with "normal" youngsters of their same ages. If the concept of teaching these pupils in the least restrictive, most effective and efficient environment is to get a fair trial, the handicapped youngsters need to have those few early years in school before their chronological peers join them.

Chapter 388 does not now permit this early schooling for the physically handicapped youngster. A. B. 108 will provide for entry of these youngsters at age 3.

It is estimated that 5 additional special education units will be required to serve the children in this category. In accordance with the Department request and the Governor's recommendation to value each special education unit at \$17,600 in the next biennium, the additional sum of \$88,000 will be required to implement A. B. 108.

STATEMENT OF
THE DEPARTMENT OF EDUCATION
TO THE

ASSEMBLY COMMITTEE ON EDUCATION

Monday, January 31, 1977

A.B. 111 -- Amends Chapter 395

Revises provision for out-of-district placement for visually or aurally handicapped pupils and clarifies provisions.

Before discussing the provisions of A.B. 111 it is important that two principles be clarified.

Nevada Revised Statutes Chapter 387.121 establishes the intent of the legislature as follows:

"The legislature declares that the proper objective of state financial aid to public education is to insure each Nevada child a reasonably equal educational opportunity."

The legislature also established the responsibility to carry out this policy when it offered to "supplement local financial ability to whatever extent necessary in each school district to provide programs of instruction in both compulsory and elective subjects that offer full opportunity for every Nevada child to receive the benefit of the purposes for which public schools are maintained."

In this same chapter the legislature establishes the basic school support formula which includes funding for special education units.

With respect to handicapped pupils, the legislature again declares in NRS 388.450:

"that the basic support guarantee as expressed in NRS 387.122 establishes financial resources sufficient to insure a reasonably equal educational opportunity to handicapped minors living in Nevada."

The trustees of a school district are required by Section 2 of NRS 388.450 to make "such special provisions as may be necessary for the education of handicapped minors," and by Section 3, "to establish uniform rules of eligibility for instruction...subject to...standards...prescribed by the state department of education."

It is abundantly clear by these statutes that the legislature intended as many as possible of Nevada's youthful citizens to receive their educations within the county of their residence. This is principle number one.

But the legislature recognized that it is not always possible to offer all the educational opportunities to one or two youngsters in Nevada's rural counties, nor that it is always possible to provide a program for every need or combination of needs which may arise in either the rural or the urban counties.

With a great deal of foresight and wisdom, the legislature enacted NRS Chapter 395 permitting the placement of educationally needy youngsters in places where

they may have a "reasonably equal educational opportunity." A review of the provisions in the statute over the years gives credibility to the position that Chapter 395 was to be used judiciously and when no other practical or effective local remedy presented itself. This is principle number two.

With these two principles in mind, let us proceed with the examination of NRS Chapter 395 and the revisions proposed by A.B. 111. It must be abundantly clear that the revisions are intended to clarify provisions of NRS 395, and to make administration of it objective and not an object of subjective criticism.

The definitions and qualifications as they presently exist in NRS 395 have caused some difficulty. Several recent developments will contribute further to the difficulty.

One development is the not so recent re-defining of handicapping conditions by the practitioners. The U.S. Department of Health, Education and Welfare, and the Congress in the already oft-mentioned Public Law 94-142, have evolved a whole series of new definitions for handicapping conditions. The word "mute," as such, is not among them. Rather they choose to use "speech impaired," and even then "mute" is not a sub-description.

The condition of being "mute" has never been a primary handicap, even though in earlier times it may have been regarded as such. It is usually a secondary action or reaction to a primary handicapping condition. Deafness and muteness often occur together, even though the person may have all the equipment necessary for speech. Because the person does not hear sound, no sound can be uttered. Muteness can also be present with certain physical, mental, and psychological disorders, but usually as a secondary and not a causal factor.

The Nevada Legislature on March 2, 1869, approved an Act to provide for the education of the Deaf and Dumb and the Blind. This act remained in the law books until 1956 when the school laws were codified. It was during the codification that the "and" between "Deaf and Dumb" was replaced by a comma. The definition of "mute" did not appear in the statutes until 1969 to apparently attempt to clarify the condition. At the same time, the legislature held that persons could not qualify if they were "mentally or physically incapacitated to receive an education or instruction."

Based on the way the statutes were originally written and amended over the years, it seems reasonable to assume that the legislature really intended for benefits to be provided to those whose muteness was associated with deafness.

The second development that will create some concern is the recent de-institutionalization program undertaken by the Department of Human Resources. Many youngsters who were not the responsibility of school districts have now become so. Youngsters who for various mental, physical, and psychological reasons were deemed in need of institutional care are now back in their homes or community shelters. Under the law as already cited in this statement, the school district must provide them with a suitable program of instruction.

It will severely test the ability and resources of the districts to provide appropriate services to them. It will test even more severely the ability, resources, and even the principle, behind NRS 395 to provide appropriate service. Many of these youngsters fit the definition of "mute" as it is presently used in the statute.

The effect of this development may be a great number of requests for placement by state intervention, but most seriously, for most cases--reinstitutionalization. It's ironic that what one state agency seeks to undo, another must redo.

It is not the intent here to be critical of the concept of deinstitutionalization. The State Board agrees that children should receive their educations in the least restrictive environment. Your attention is being directed, however, to the impact it may have under present statutes. There are reasonably firm estimates that at least 100 youngsters who fit the "mute" definition have been returned to their communities. If the school districts and other agencies are unable to respond to their needs, the state will be expected to do so under Chapter 395.

There are presently 35 youngsters placed under Chapter 395--24 deaf, 10 blind, and 1 mute. It now costs \$212,000 a year to keep them placed, but their conditions aren't as serious as those who could become newly qualified. It could take as much as \$1,000,000 more to permit them to be re-institutionalized out-of-state.

Significant progress has been made toward providing educational programs for handicapped youngsters since the statute codification in 1956. The ~~special~~ special education classrooms existing at that time have been increased by succeeding legislatures so that in school year 1976-77 there are 550 special education program units. Likewise, each succeeding legislature has increased the financial allotment for each unit so that in school year 1976-77 that allotment will be \$16,000.

With the \$8,800,000 of special education support supplementing the basic support guarantee in NRS 387.122, Nevada school districts have been able to serve a greater number of children having diverse handicapping conditions. There are 22 units for the aurally handicapped, 19 in Clark County and 3 in Washoe. There are 8 for the visually handicapped, 5 in Clark County and 3 in Washoe. There are 52 for the speech handicapped, 25 in Clark, 14 in Washoe and at least 1 in 9 other counties. Counties not having local speech handicap units are Esmeralda, Eureka, Lander, Pershing, and Storey. None of the counties are completely without services, however, because there are many other agencies which have been helpful. Among these is the University of Nevada, Reno, Speech and Language Pathology and Audiology Clinic. Reportedly this clinic had 13,000 patient contacts last year and provided on-going services to about 1,000 persons.

The school districts have done an excellent job of utilizing the resources given to them for the handicapped. They have been able to serve all but the most severe cases in the aurally and visually handicapped category, and these are usually the victims of multiple handicaps. For this reason the multiply handicapped have been included in A.B. 111, provided they are also aurally or visually handicapped.

A.B. 111 has been drafted to clarify certain provisions and to make the statute workable and not subject to judgment.

It may exclude some youngsters from the benefits of Chapter 395, but not from benefits already available to all handicapped youngsters. This has been done because of extant conditions which the legislature needs to know and about which only the legislature can do something.

Several amendments have been offered by the Department to A.B. 111. These should be explained.

- 1) The deletion of medical services in Section 1.
 - a) The state should not be responsible for any medical expenses that parents of non-handicapped children, or even the parents of handicapped children would bear if the education could be carried out in the hometown of the child.
 - b) Legal counsel has advised the Department that as presently stated, Section 2 could make the state responsible for orthopedic devices, prostheses, surgical procedures, and treatment as a result of accidents.
 - c) The Federal law limits medical services to that which is already covered in Section 11 for evaluation and placement.
- 2) Special Education Unit --
 - a) These changes are consistent with those in A.B. 106.
 - b) NRS 388.520 only lists handicapping conditions. It does not prescribe minimum standards. These are done by regulation.
- 3) Ability to pay
 - a) Deletion of lines 5 and 6, and lines 33 and 34 on page 3, and all of Section 13 has to do with the concept of a "free appropriate public education" which the Federal law states must be provided at no cost to the individual. Deleting these parts will make the bill consistent with this concept.
- 4) Cost sharing

In spite of the concept stated in item 3 above, this provision permits a parent who may wish to participate to do so.
- 5) Medical

Adding subsection 3 to Section 12 clearly states the responsibility for medical costs not inconsistent with those mentioned in the bill.

Amend section 2, page 1, line 3, insert "and" after "board,".

Amend section 2, page 1, line 3, delete "and medical serv".

Amend section 2, page 1, line 4, delete "ices".

Amend section 5, page 1, line 21, delete "employee" and insert "person".

Amend section 5, page 1, line 22, delete "which meets the" and insert "in accordance with".

Amend section 5, page 1, line 23, delete "NRS 388.520 for aurally, visually or multiply handicapped persons" and insert "the state board of education".

Amend section 9, page 3, delete lines 5 and 6.

Amend section 9, page 3, line 7, delete "4" and insert "3".

Amend section 10, page 3, delete lines 29 and 30 and insert "cant's sworn statement that to the best of his knowledge the handicapped person requires placement in a special education".

Amend section 10, page 3, line 32, delete "district; and" and insert "district".

Amend section 10, page 3, delete lines 33 and 34.

Amend section 12, page 4, delete line 24 and insert "by the state, except that an adult handicapped person or a parent, guardian or other person having the care, custody or control of a handicapped person eligible to receive benefits under this chapter may enter into a cost-sharing agreement with the superintendent of public instruction."

*not required
allow at*

3. An adult handicapped person or a parent, guardian or other person having the care, custody or control of a handicapped person eligible to receive benefits under this chapter shall assume responsibility for payment of any and all medical expenses incurred while pursuing the education provided in this chapter."

Amend the bill as a whole by deleting section 13.

Amend section 14, page 5, delete line 39 and insert: "SEC. 13. NRS 395.005, 395.007, and 395.055 are hereby repealed."

Nevada Association for Retarded Citizens

1450 E. Second St.
Reno, Nevada 89502
(702) 322-7255

N.A.R.C.

SUSAN M. HAASE
Executive Director



TO: Assembly Education Committee
FROM: Susan M. Haase
DATE: January 31, 1977
RE: TESTIMONY ON AB111

POSITION: The Nevada Association for Retarded Citizens recommends the amendments to AB111, submitted by Assemblyman Gomes, be incorporated to bring this legislation closer to existing federal regulations.

Our authority for this position is Public Law 94-142, enacted on November 29, 1975, which mandated a free, appropriate public education as a basic right of all handicapped children. The deadline for compliance by the states was set for October 1, 1977. We base our support for the submitted amendments on the two key words: "free" and "all."

According to an extensive discussion of P.L. 94-142 which appeared in the December 30, 1976 issue of the Federal Register, handicapped children are defined as "...being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or as having specific learning disabilities, who because of those impairments need special education and related services."¹ AB 111 not only ignores most of these conditions, but it eliminates Nevada's current consideration of "mute" and limits its intended beneficiaries to only those with sight and/or hearing impairments. Why? Are some handicapping conditions more equal than others?

¹"Education of Handicapped Children and Incentive Grants Program; Assistance to States," Federal Register, vol. 41, no. 252 -- Thursday, December 30, 1976, p. 56977.

It might be argued that we already have quality services in the state for the mentally retarded, for instance, and therefore the only students who might need out-of-district placement would be the deaf and blind mentioned in this legislation. Such an argument has nothing to do with the issue at hand.

AB 111 doesn't address itself to students whose needs are being met. It only affects that individual who can prove that "a unit for his particular handicap and grade or level of education is not available within his school district...."² Once this is done, whether the student has a physical or speech or sight impairment shouldn't make any difference. It is the state's responsibility to either implement an appropriate local program or make arrangements to place the student in another district or state which can serve his needs.

The "free" appropriate public education which is the basic right of all handicapped children dictated the elimination of all references in AB 111 to a parent's ability to pay for his handicapped youngster's education.

²AB 111, p. 3, lines 31-32.

(b) **Public agencies within the State.** The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies (such as Department of Mental Health and Welfare), and (4) State correctional facilities.

(c) **Private schools.** The State educational agency, local educational agencies, and intermediate educational units are responsible for insuring that the rights and protection under this part are given to children referred or placed in private schools by a State or local educational agency.

(20 U.S.C. 1412(1); 1413(a)(1))

§ 121a.3 General provisions regulations.

Assistance under Part B of the Act is subject to Parts 100, 100b, 100c, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 1401-1418)

§ 121a.4 Definitions.

As used in this part:

"Free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 121a.220-121a.227 of Subpart C.

(20 U.S.C. 1402(18))

"Handicapped children" means those children evaluated in accordance with §§ 121a.430-121a.433 of Subpart E as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or as having specific learning disabilities, who because of those impairments need special education and related services. The terms used in this definition are defined as follows:

(a) "Deaf" means a hearing impairment which is so severe that the child's hearing is non-functional for the purposes of educational performance.

(b) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(c) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with

deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(d) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by 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., fractures or burns which cause contractures, amputation, cerebral palsy, etc.).

(e) "Other health impaired" means 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.

(f) "Seriously emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, or fears associated with personal or school problems. The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted but not emotionally disturbed.

(g) "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, which 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 handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental cultural, or economic disadvantages.

(h) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(i) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1402(1), (15))

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1401-1418)

"Local educational agency," as defined in § 121.2 of this chapter, includes an intermediate educational unit.

(20 U.S.C. 1402(8), (22))

"Native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b-1(a)(2); 1402(21))

"Parent" includes a parent, a guardian, a surrogate parent appointed under Subpart E, or a person acting as a parent of a child in the absence of a parent or guardian.

(20 U.S.C. 1401-1418)

Comment. 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.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school social work services, parent counseling and training, providing parents with information about child development, and assisting parents in understanding the special needs of their child. The terms used in this definition are defined as follows:

(a) "Audiology" means:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(4) Creation and administration of programs of hearing conservation; and

(5) Counseling and guidance of pupils, parents, and teachers.

(b) "Counseling services" means activities conducted by a certified counselor.

(c) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(d) "Medical services" means procedures performed by a licensed physician to determine a child's need for special education and related services.

(e) "Occupational therapy" means services provided by a licensed occupational therapist.

(f) "Physical therapy," means activities for restoring damaged or atrophied muscles to improve use.

(g) "Psychological services" means:

**DEPARTMENT OF HEALTH, AND
WELFARE**

Office of Education

[45 CFR Parts 100b, 121a, and 121m]

**EDUCATION OF HANDICAPPED CHILDREN
AND INCENTIVE GRANTS PROGRAM**

Assistance to States

The Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare proposes (1) to amend Part 121a of Title 45 of the Code of Federal Regulations (Assistance to States for Education of Handicapped Children), and (2) to add a new Part 121m (Incentive Grants Program for handicapped children ages three through five), and (3) to make certain conforming amendments to Part 100b (General provisions for State-administered programs), to read as set forth below.

The authority for these regulations is contained in Part B of the Education of the Handicapped Act (EHA), as amended by Pub. L. 94-142 (20 U.S.C. 1401, 1402, and 1411 through 1420). Part B of the Act provides formula grant funds to State and local educational agencies to assist them in the education of handicapped children.

Pub. L. 94-142, enacted on November 29, 1975, contains extensive amendments to Part B, including provisions which are designed to assure that all handicapped children have available to them a free appropriate public education, to assure that the rights of handicapped children and their parents are protected, to assist States and localities to provide for the education of handicapped children, and to assess and assure the effectiveness of efforts to educate such children.

Most of the Pub. L. 94-142 amendments to Part B become effective on October 1, 1977. Therefore, the existing regulations in Part 121a, which will remain effective through Fiscal Year 1977, will be completely replaced by the new Part 121a set forth below.

As an incentive to educating handicapped children in the three, four, or five year old range, the Congress established an incentive grant authority, in which funds would be given to States on the basis of the number of children in these age ranges receiving special education and related services. Regulations for this program are proposed as a new Part 121m.

Pub. L. 94-142 also added other requirements that are being dealt with separately from these proposed regulations:

1. Requirements in section 5(b) that the Commissioner develop regulations relating to specific learning disabilities are included in proposed regulations published November 29, 1976 (41 FR 52403). The specific learning disabilities regulations will eventually be included in Part 121a.

2. A new section 607 of the EHA establishes a grant program to assist State and local educational agencies with elimination of architectural barriers. Proposed regulations will be published shortly.

3. A new section 606 of the EHA relating to nondiscrimination in employment of handicapped individuals by recipients of assistance under the EHA is being administered by the Office for Civil Rights. The Conference Report indicates:

It is clear that qualified handicapped individuals who, because of their handicap, are refused employment by recipients of assistance under the Act are fully covered by the prohibition in section 504 of the Rehabilitation Act of 1973. The conferees expect that the Department of Health, Education, and Welfare regulations implementing section 504 will cover employees of such recipients of Federal assistance under this Act. The language of the amendment is designed to underscore the responsibility of the Secretary to pursue vigorously the enforcement of section 504 especially as it relates to the employment of administrators and teachers in programs for the education of handicapped children.

(H.R. Rep. 94-864 at page 54)

4. Revisions to section 653 of the FHA (Centers on Educational Media and Materials for the Handicapped) will be included in revisions to Part 121i to be published in the future.

PUBLIC PARTICIPATION

Because of the potential impact that Pub. L. 94-142 will have on the education of all handicapped children throughout the Nation, and on the agencies that serve them, the Office of Education has been vitally concerned about the need for intensive public participation in the development of implementing regulations.

Therefore, at the time Pub. L. 94-142 was enacted, a decision was made (1) to "take the law to the field" before any writing was done, in order to seek comments and suggestions from parties interested in the education of handicapped children, and (2) to convene a large outside writing group called RIT (regulations input team), to develop concept papers for use in writing the regulations.

The major steps and activities involved in carrying out these public participation objectives are set forth below:

(1) In January, 1976, the Office of Education contracted with the Council for Exceptional Children to develop three mediated tape-slide presentations for use in describing the significance and implication of Pub. L. 94-142 (one was geared to parents, one for general audiences, and one for administrators). Five hundred copies of these packets have been disseminated to State education agencies and major national parent organizations and advocate groups.

(2) In January, 1976, over 1,000 letters were sent to consumer/advocate agencies (a) to provide them with copies of the law and the Congressional Conference Report, and (b) to inform them about proposed public conferences on the law.

(3) During January and February, the Office of Education prepared a discussion guide and input sheets to be used at the various public meetings.

(4) From March through August, the Office of Education conducted or participated in approximately 20 public

meetings about the law on both a geographic and special interest basis. Approximately 2,200 people participated in these meetings, and several hundred responses were received. An overview of these meetings is included below.

The first six conferences were regional meetings (conducted in Washington, San Francisco, Denver, Chicago, Boston, and Atlanta) attended by State and local educational agency personnel and representatives of parent coalitions.

In July, pilot meetings were conducted in four regions of the country (Tampa, Durham, New Hampshire, Minneapolis, and San Diego) for key policy makers in the States, including representatives from the Governors' offices, State legislators, and State educational agency personnel.

A series of other public meetings were conducted for (a) representatives from all colleges and universities who receive training grants in special education, (b) nonspecial education personnel in local school districts, (c) school board representatives, and (d) parent-advocate organizations.

In addition, Office of Education staff were principal speakers at a number of major national conferences (including meetings of the Council for Exceptional Children and the American Psychological Association). These conferences involved thousands of people who have a direct interest in the education of handicapped children.

During the month of May, the Office of Education staff reviewed, analyzed and prepared the written comments received during the first eleven input meetings, and subsequently divided the comments into twelve broad topical areas in the law (e.g., individualized education program, least restrictive environment, and free appropriate public education).

(6) On June 7-9, the Office of Education convened a large national writing group of approximately 170 people, composed of parents, advocates, handicapped persons, representatives of special interest groups (e.g., AFT, NFA, private schools), and administrators of State and local programs. The group was divided into twelve writing teams to develop concept papers on the major topics in the law. Each writing team was provided copies of the comments and questions received during the input meetings, together with the legislative history for each topic. The twelve completed products developed by the RIT, served as the basis for these regulations.

During the months of July-November, the Office of Education prepared several redrafts of the concept papers and continued to seek inputs on each of these drafts from the RIT and other interested parties.

MINIMUM REGULATIONS

A basic issue relating to the entire regulations package is concerned with the amount of detail and degree of specificity that is best suited to these regulations. During the input meetings a few commenters expressed the need for a great

Proposed Amendments to AB 111 - Amendment No. 14A

Amend section 7, page 2, line 7, delete open bracket.

Amend section 7, page 2, delete line 8 and insert:

"[legally deaf or mute] mute or has a loss in hearing of 80 decibels or more in the".

Amend section 8, page 2, line 13, delete "may" and insert "shall".

Amend section 9, page 3, line 4, insert after the semicolon "and".

Amend section 9, page 3, delete lines 5 and 6.

Amend section 9, page 3, line 7, delete "4" and insert "3."

Amend section 10, page 3, delete lines 29 and 30 and insert:

"cant's sworn statement that to the best of his knowledge the handicapped person requires placement in a special education."

Amend section 10, page 3, line 32, delete "district; and" and insert" "district."

Amend section 10, page 3, delete lines 33 and 34.

Amend section 12, page 4, delete line 24 and insert: "by the state."

Amend the bill as a whole by deleting section 13.

Amend section 14, page 5, delete line 39 and insert:

"Sec. 13. NRS 395.005 and 395.055 are hereby repealed."