

SENATE COMMITTEE ON HUMAN
RESOURCES AND FACILITIES

APRIL 6, 1977

The meeting was called to order at 8:06 A.M. in Room 323 on Wednesday, April 6, 1977, with Senator Jack Schofield in the Chair.

PRESENT: Chairman Jack Schofield
Vice-Chairman Joe Neal
Senator William Raggio
Senator Richard Blakemore
Senator Wilbur Faiss
Senator William Hernstadt

GUESTS: Jim Costa, Department of Education
Robert I. Rose, Nevada State Education Association
Frank Daykin, Legislative Counsel Bureau
Robert Cox, Legal Counsel for Washoe Co. Sch. District
Senator Thomas R.C. Wilson, S.B. 376
Robert Petroni, Legal Counsel for Clark County
John Hawkins, Carson City School District
Vernon Rowley, Carson City School District

A.B. 107

Mr. Jim Costa of the Department of Education read his submitted statement to the Committee, (Exhibit "A").

Chairman Schofield asked that it be made part of the record that Ms. Ann Hibbs, representing the Nevada Nurses' Association, wished to be recorded as supporting both A.B. 107 and A.B. 108.

Mr. Costa said that this fiscal note is an additional request to the Executive budget, as six more units. Mr. Costa also provided a copy of the Public Law 94-142 (Exhibit "B"), so the Committee could be aware of the requirements. Senator Blakemore asked if the monies out of this Act are apportioned? Mr. Costa responded that the money must be spent in areas where there are students, who are not now receiving any education.

Chairman Schofield asked what would happen if this was not enacted? Mr. Costa said if this is not done by the State, then Secion 504 of the Rehabilitation Act will affect what happens next. This section prohibits the discrimination against handicapped persons of all ages for any reasons, under any conditions, and this could result in the termination in education funds for the handicap programs. If this occured, it would mean jeopardizing about \$6 million flow-through funds to school districts.

Senator Raggio asked if this Act included the "gifted child"? Mr. Costa said yes. Senator Raggio stated that he didn't read it that way in the handout explaining the Public Law, and he wants to know if it does apply to them.

Senator Raggio asked if there is a "gifted child" program now for the ages 18 to 21? Mr. Costa said the State's current program starts with the earlier ages instead. Senator Raggio said do you think that these additional six units will adequately handle the extension to 21 years? Mr. Costa said this will handle the children that have been identified as not receiving any other education. They number 304, and are in nine places where there should be a handicap pupil program.

Senator Raggio asked if the Federal government makes some arbitrary percentage for allocation? Mr. Costa said that the funding cannot exceed 12% of the identified handicapped, and 2% of those with specific learning disabilities. He said that the Federal Government is also working on defining "specific learning disabilities". Senator Raggio asked if that is a realistic percentage? Mr. Costa said that in the State by the 5th month of school instruction this year, there are 6,243 youths in special education out of a total enrollment of 140,000 (approx. 5%).

A.B. 108

Mr. Costa read his submitted statement to the Committee, (Exhibit "C").

--Senator Hernstadt entered the room--

Senator Raggio asked why these two bills were not recommended to the Governor? Mr. Costa said because the "child count" was not completed until February, 1977. Mr. Costa said that the Assembly Ways & Means Committee has already included this extra funding in the Executive Budget.

Senator Raggio said this doesn't seem to mandate the entrance of a 3 year old. Mr. Costa said he wasn't sure why it is permissive, except that the compulsory attendance ages are 7 to 17 for all children.

Senator Raggio: Motion to Do Pass A.B. 107 &
A.B. 108, and re-refer to Finance
Senator Faiss: 2nd the Motion.

The Motion passed. (Senator Neal - Absent for the vote)
(Exhibits "D" & "E")

S.B. 239 (Exhibit "F")

Senator Hernstadt: Motion to "Do Kill"
Senator Faiss: 2nd the Motion.

The Motion Passed. (Chairman Schofield voted "NO" --
Senator Neal was absent for the vote.)

S.B. 376

Mr. Robert I. Rose of the Nevada State Education Association, testified in favor of S.B. 376. This bill will give parents the opportunity to provide information on issues pertinent in the school districts. The State School Board is under the Nevada Administrative Procedures Act (NRS 233-B), which requires an orderly process when the Board adopts and promulgates regulations.

Senator Raggio requested that Mr. Frank Daykin come up to the Committee and give his opinion about these regulations. Senator Hernstadt asked if Mr. Rose saw any problem in the mechanics of filing all of these regulations by July 1, 1977? Mr. Rose said it was his understanding that this would apply to all subsequent action.

Senator Raggio asked how is the adoption of regulations handled now by the local boards? Mr. Rose said it varies by the county, but in Washoe County they put the agenda out to the press, but this is not a required process.

Mr. Frank Daykin of the Legislative Counsel Bureau said there is no statute governing the adoption of regulations by local governments. He continued, that this bill if enacted, would make the school trustees to act in the same way that State agencies are required to act under Chapter 233-B. He said that in relation to S.B. 62, this would not conflict with that, nor would this bill impose any restrictions on these regulations, because these still would not be adopted under the Administrative Procedure Act, but rather 'in the same manner'. Senator Hernstadt asked if this applied only to new regulations? Mr. Daykin said it applied only to new regulations. Senator Hernstadt felt that an amendment requiring that all regulations should be filed was in order. Mr. Daykin said that he remembered that they gave the State agencies about 90 days after the 1st of July to file their regulations, and any regulation not so filed had no legal affect.

Mr. Robert Cox, Legal Counsel for the Washoe County School District, said he is in opposition of this bill. Most districts have procedures for regulation adoption which allows for full public hearings. Mr. Cox said that subjecting the School Districts to the Administrative Procedures Act is overly onerous in the conduct of the district's business.

Mr. Cox said this is an attempt to make regulations negotiable items by placing them under this Act, as there has been a great effort by teachers in the past to do this. One of the areas that Mr. Cox saw as a problem is the time frame of thirty days, as it has to be an 'emergency' to pass a regulation without the thirty day notice.

Senator Hernstadt asked if he could, as an ordinary citizen, go to the District Administrator's office and have access to these regulations? Mr. Cox said these are readily available. Senator Raggio said there is no uniform method of adopting regulations. Mr. Cox said he represented Washoe, Lyon, Lander and Humboldt counties and each of those has procedures for promulgation and notice.

Senator Raggio asked why is there an objection to adopt a uniform method? He said, "I sense an over-reaction to this." Senator Raggio gave an example of an individual or a group who wanted to present a matter to be adopted as a regulation; he said the districts might accommodate the request, but they are not compelled to do so. Mr. Cox said the Administrative Procedures Act doesn't require adoption, it just requires a response within thirty days if one adopts or denies. Mr. Cox said that many regulations have come as a result of a request, and he repeated that this would be used to discuss areas that are not negotiable.

Senator Blakemore asked if County Commissioners have to operate under NRS 233-B too? Senator Raggio said the County Commissioners do not adopt regulations, they enact ordinances.

Senator Raggio said that he doesn't look at this as "teacher" legislation, but as something for the citizens who are bound by these regulations. Mr. Cox responded that he had only said this measure had teacher implications.

Senator Raggio commented that he is surprised at the resistance of having to conform to a procedure that other regulatory agencies conform to. He said under NRS 233-B.060, you have to give a thirty day notice prior to the adoption of intended action and, "I can't see what is so onerous?"

Mr. Cox said he thought sixty days is too long a period to react, and every time immediate action is needed, do they need to declare an "emergency", allow it to be in effect for 120 days, and in the mean time put in a regulation that would have the same form and substance?

Senator Wilson said that as the sponsor of this bill, he doesn't find the proposition so terribly shocking. Senator Raggio explained to Senator Wilson that the Washoe County School District objected to the bill because they saw it as a device whereby the teachers could petition for a hearing. Mr. Cox said this was certainly part of the Nevada State Education Association's

platform. Senator Wilson said this is not the thrust of the bill; it is to provide an adequate chance for notice and hearing for citizens.

Senator Raggio and Mr. Cox discussed in length the problem of a notice requirement.

Mr. Bob Petroni of Clark County School District, said that there is a nationwide regulatory procedure which is a service that is purchased, and comes in a series. Some of the areas such as grading and curriculum can be found in more than one series. Mr. Petroni also asked if this would be like the Administrative Procedures Act in regards to appeal and court review?

Senator Hernstadt asked if these regulations have the same affect as the law? Mr. Petroni answered if they are not in conflict with State law. Senator Hernstadt asked if presently could the Clark County Trustees enact this without notice? Mr. Petroni said that is possible; and he had no objection to a prior notice. Mr. Cox said that it may be possible, but most districts have policies which give the intent of the regulations; however, he heard 'prior notice' as the real problem in this hearing.

Senator Raggio asked if the districts have had problems with teachers demanding hearings? Mr. Cox said, "I can indicate that they have tried to open up negotiation matters...in every possible way." Mr. Cox also said if this is needed, why were educational institutions noted as an exception when this was first enacted? Senator Raggio asked if Mr. Cox was referring to NRS 233-B.030, specifically the universities? Mr. Cox said yes, that is correct.

Mr. John Hawkins, of the Carson City School District, stated that in NRS 233-B, the State Board is not under the Act in regards to a legal contest. Mr. Hawkins said his District may have a problem with mailing notices within the thirty day time limit.

(Senator Neal entered the room.)

Senator Blakemore said if this applies to school boards, it ought to apply to counties. Senator Hernstadt said counties enact ordinances and the boards enact regulations which have the same force as law.

Mr. Vernon Rowley, also of the Carson City School District, said that this law is clearly discriminatory and excludes all other agencies of local government. Senator Raggio said that the boards would not be under the Act, but would proceed in a 'similar manner'. Mr. Cox asked, what is the distinction? If it is the same 'manner' doesn't it have to be done in the same way, with the same appeal procedure?

The bill was held for further discussion.

S.B. 117 (Exhibit "G")

Senator Neal: Do Pass and Re-refer to Finance
Senator Faiss: 2nd the Motion

Discussion:

Senator Neal said we should be part of the compact, because we don't have all the knowledge within our State boundries.

Senator Schofield said he has attended some of these meetings and was able to come back and make contributions to the local schools.

Senator Hernstadt said his only question is why are the fees for membership so high? Senator Schofield said that he would check on this.

The Motion passed. (Senator Raggio: "NO")

A.B. 145 (Exhibit "H")

Senator Raggio: Motion for indefinite postponement
Senator Faiss: 2nd the Motion

Discussion:

The Committee reviewed the theory of sending a juvenile to an adult penal institution.

The Motion passed. (Senator Schofield: "NO")

S.B. 324 (Exhibit "I")

Senator Hernstadt: Motion to defer to A.B. 400 and have indefinite postponement of S.B. 324
Senator Neal: 2nd the Motion

The Motion passed.

A.B. 400

The Committee discussed that the Senate Committee on Legislative Functions was discussing SCR 14, which was also an alternative to the competency-based examinations. Chairman Schofield said they would hold A.B. 400 until he could report the action taken on SCR 14.

S.B. 204 (Exhibit "J")

Senator Raggio: Motion for indefinite postponement
Senator Faiss: 2nd the Motion

The Motion passed.

S.B. 354

Mr. Cox said that he was representing the Trustees and Superintendents Associations and he went through each change in the bill. He stated that administrators are dealt with as probationary and post-probationary, but they are not defined as such in the law. Mr. Cox said that this bill would also add two exceptions where a letter of admonition would not be required: "(b)" immorality, and "(j)" evident unfitness of service.

Senator Raggio said his concern is that if "immorality" is included, this could be misused because it cannot be defined. Mr. Cox said this does not preclude the right of a hearing, and the protection lies in the hearing process.

Mr. Cox discussed the change that gives the Superintendent the discretion that it is not a requirement that he suspend a teacher for a felony or sex offense. Senator Neal asked what is the logic behind not paying the teacher while he is suspended? Mr. Cox said because they are not on their teaching duties, but if that charge against them is exonerated, the back pay will be made.

Mr. Cox said the last section of the bill is to make the distinction between a tenured and a non-tenured teacher.

Senator Raggio asked Mr. Cox and Mr. Petroni if they had any objection on S.B. 352, to changing the wording to those teachers who "were newly hired"? Mr. Petroni said his only problem is to define "newly hired".

The meeting adjourned at 10:58 a.m.


SEN. JACK SCHOFIELD, CHAIRMAN


SHEBA LYNN WOOLLEY, SECRETARY

EXHIBIT "A"

STATEMENT OF
THE DEPARTMENT OF EDUCATION
TO THE

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

Tuesday, April 5, 1977

Room 323, 9:00 A.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 for each year of the biennium will be required to implement A.B. 107.

Education for All Handicapped Children Act

P.L. 94-142

By Don Barbacovi, AASA legislative intern.

On November 29, 1975, President Ford signed into law the Education for All Handicapped Children Act, P.L. 94-142. This legislation contains extensive amendments to the Education of the Handicapped Act (EHA), particularly Part B which provides assistance to the states in the initiation, expansion, and improvement of programs for the education of the handicapped.

With the passage of P.L. 94-142, the role of the federal government in the education of the handicapped has significantly increased, and the responsibilities of local and state education agencies has been dramatically altered. The law includes provisions designed to ensure that all handicapped children have a free and appropriate public education available, to ensure that the rights of handicapped children and their parents are protected, and to assist state and local education agencies in providing this education.

The proposed regulations to implement P.L. 94-142 has been developed with considerable public participation and input, to a degree heretofore unheard of in government circles. A fundamental issue addressed by many of the participants concerned the amount of detail and the degree of specificity necessary to implement the new law. A majority of participants expressed a concern that the Bureau of Education for the Handicapped (BEH) would tend to over-regulate. However, in the preamble to the proposed regulations BEH states that, "Since the Statute is already so specific on many points, and since the law does not become fully effective until Oct. 1, 1977, the Department feels that the most rational approach to follow is (1) to write minimum regulations at this time, and (2) to amend and revise such regulations as need and experience dictate." Consequently such items as criteria for eligibility for special education services (except specific learning disabilities), specific timelines for due process procedures, and forms developed by state or local education agencies are still within the domain of the state and local education agency.

The following series of questions and answers are based on a fourth draft of the proposed rules and regulations to be published in late December or early January. Because of the length of the proposed regulations this summary does not attempt to address all sections. Furthermore, this is not intended to be an indepth analysis of the proposed regulations; but rather an effort to sensitize school personnel to the scope of P.L. 94-142 which has been labeled a "Civil Rights Act for the Handicapped."

SCOPE

What Is the Purpose of P.L. 94-142?

P.L. 94-142 purports to:

- insure that all handicapped children have available to

them a free appropriate public education which includes special education and related services to meet their unique need;

- insure that the rights of handicapped children and their parents are protected;
- assist states and localities in providing for the education of all handicapped children; and
- assess and insure the effectiveness of efforts to educate those children.

Who Will Pay for These Expanded Services?

To assist the state and local education agencies the federal government has authorized expenditure levels that could reach \$3.16 billion by fiscal year 1982.

Who Is Covered?

State and local education agencies are required to serve all handicapped children ages three to 18 by Sept. 1, 1978, and ages three to 21 by Sept. 1, 1980. However, services for those children ages three to five and 18-21 may not be applicable if such a requirement is inconsistent with state law or practice, and court orders. Nevertheless, every state must make a free appropriate public education available to all handicapped children ages six to 17.

Who Is Handicapped?

"Handicapped children" means those children evaluated by qualified professionals as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or children with specific learning disabilities. However, within each state, there is a statutory limit of 12 percent on the number of handicapped children identified and a two percent limit on specific learning disabilities.

Who Is Responsible?

The provisions of P.L. 94-142 apply to all states and trust territories and to all political subdivisions within the state involved in the education of handicapped children. These subdivisions include (1) the state education agency, (2) all local and intermediate education agencies, (3) other state agencies such as the Departments of Mental Health and Welfare, state correctional facilities and (4) those private schools who have handicapped children referred or placed by a state or local education agency.

What Is a Free Appropriate Public Education?

A free appropriate public education refers to 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, (c) include preschool, elementary school, or secondary school education, and (d) are provided in conformity with an individualized education program.

What Is Meant by Related Services?

Related services means transportation and such developmental, corrective, and other support services as are required to help a handicapped child benefit from special education. This includes speech pathology and audiology, psychological services, physical and occupational therapy, early identification and assessment of handicapped conditions in children, school social work services, counseling services (including parent counseling and training, providing parents with information about child development, and assisting parents in understanding the special needs of their child), and medical services for diagnostic or evaluation purposes.

Are There Conditions for Assistance?

To obtain assistance, states must submit an annual program plan. This plan must assure a free appropriate public education for all handicapped children within the prescribed timelines and give assurances relating to such items as public participation, types of facilities, personnel and services, confidentiality of personally identifiable information, procedural safeguards, least restrictive alternatives, monitoring procedures, and numerous other stipulations.

For local education agencies to receive payments under the act, they must submit an application to the state education agency. Each local application must include provisions relevant to:

- confidentiality of personally identifiable information;
- assurances of full educational opportunity goals;
- personnel development;
- parent involvement in plan development;
- handicapped participation in regular education programs in the least restrictive alternative;
- assurances that federal dollars are used for excess cost;
- public accessibility to records and information;
- individualized educational plans; and
- procedural safeguard guarantees.

What Is Meant by a Full Educational Opportunities Goal?

Each state and local education agency must take steps to insure that handicapped children have available to them the variety of programs and services available to nonhandicapped children, including art, music, industrial arts, home economics, vocational education, physical education and nonacademic and extracurricular services and activities.

Are There Priorities in the Use of Part B Funds?

There are two priorities, the first being those handicapped children who are not receiving any education, and secondly, those handicapped children who are "underserved." That is, those children within each disability with the most severe handicaps who are receiving some, but not all, of the special education and related services specified in the individualized education programs of those children.

Can a State Use Local Education Allocations To Provide Direct Services to Handicapped Children?

A state can use the payments which would have been available to a local education agency and provide special education and related services directly to handicapped children residing in the area served by the local education

agency, if the state determines that the local agency (a) is unable or unwilling to establish and maintain programs of free appropriate public education, (b) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain programs, or (c) has one or more handicapped children who can best be served by a regional or state center designed to meet the needs of such children.

INDIVIDUALIZED EDUCATION PROGRAMS

What Is an Individualized Education Plan (IEP)?

The term IEP means a written statement (program) for each handicapped child which includes: (a) statement of present levels of educational performance, (b) statement of annual goals, including short term instructional objectives, (c) statement of specific educational services to be provided, (d) statement regarding extent to which child will be able to participate in regular programs, (e) projected date for initiation and anticipated duration of such services, and (f) appropriate objective criteria and evaluation procedures for determining, at least on an annual basis, whether instructional objectives are being met.

Who Has the Responsibility for Developing the IEP?

Local and intermediate education agencies must develop, or revise, whichever is appropriate, an IEP program for every handicapped child at the beginning of the school year, and review (or if appropriate, revise) its provisions periodically, but at least annually.

How Is the IEP Developed?

The IEP is developed in a planning conference, which the local education agency is responsible for initiating. For a handicapped child who is currently receiving special education, a planning conference must be held early enough so that the IEP is developed by the beginning of the next school year. For a handicapped child who is not currently receiving special education, an individualized planning conference must be held within thirty days of a formal determination that the child is handicapped.

Who Participates in the Planning Conference?

Local education agencies shall insure that an individualized planning conference at the minimum includes the following participants:

- a representative of the local education agency (other than child's teacher) who is in the field of school administration, supervision or special education and meets state certification requirements;
- the child's teacher or teachers, special or regular;
- one or both of the child's parents; and
- where appropriate, the child.

What Is the Local Education Agency's Responsibility for Parent Participation in the IEP Process?

Each local education agency must take steps to insure that one or both parents are present at the planning meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed upon time and place. If neither parent can attend, the local education agency must use other methods to insure parent participation, including individual or conference telephone calls. Furthermore, the local education agency shall take whatever action is necessary to insure that the parent under-

stands the proceedings, including making arrangements for interpreters for parents who are deaf or whose native language is other than English.

Can a Planning Conference Be Held Without a Parent in Attendance?

Planning conferences may be held without parents if:

- a parent furnishes a written waiver of both parents' right to participate, or
- the local education agency is unable to convince the parents that they should attend. In this case, the local education agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as:
 - (1) detailed records of telephone calls made or attempted and the results of those calls,
 - (2) copies of correspondence sent to the parents and any responses received, and
 - (3) detailed records of visits made to the parents' home or place of employment and the results of those visits.

PERSONNEL DEVELOPMENT

Does P.L. 94-142 Provide a System of Personnel Development?

The law does provide for a comprehensive system of personnel development via the state's annual program plan which must include a description of programs and procedures to develop and implement such a system. The plan must include the inservice training of general and special educational instructional and support personnel, detailed procedures to insure that all personnel necessary to carry out the purposes of the Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating information to teacher and administrators of programs for handicapped children, to assist them in providing an appropriate education.

Are There Incentives for Classroom Personnel To Pursue Extra Learning?

The proposed regulations stipulate that the states annual program plan must provide for the use of incentives to insure participation by teachers, such as released time, payment for participants, options for academic credit, salary credit, certification renewal, or updating professional skills.

PRIVATE SCHOOLS

Who Is Responsible for the Development of the IEP for Children Placed in Private Schools?

If a local or intermediate education agency places, or has placed, a child in a private school setting then that agency is responsible for the development of the IEP. Furthermore, that agency shall insure that provision is made for a representative from the private school, which may be the child's teacher, to participate in the planning conference.

What Responsibilities Do Local Education Agencies Have in Placing Handicapped Children in Private Schools?

If a handicapped child is placed in or referred to a private school or facility by the state or local education agency they must (a) provide special education and related services in conformance with an IEP which (b) is provided at no cost to the parents or guardians, (c) meets education

standards of the state educational agency which apply to public agencies, and (d) have all the rights of a handicapped child that are served by a public agency.

Who Has Fiscal Responsibility for Handicapped Children in Private Schools?

If a handicapped child is placed in or referred to a private school or facility, the financial responsibility for the child's education remains with the state or local education agency. If a handicapped child has available a free appropriate public education in a local education agency that is in or readily accessible from the child's home community, and the parents choose to place the child in a private school, neither the state nor the local education agency is required to pay for the child's education. However, the child benefits to the extent other children in private schools benefit.

PROCEDURAL SAFEGUARDS

Are There Due Process Procedures for Parents and Children?

There are a number of specific procedures written into the law, and expanded in the proposed regulations, to protect the rights of children and parents. These safeguards include: due process, nondiscriminatory testing, least restrictive alternative, native language, confidentiality and the right to representation.

May Parents of Handicapped Children Obtain an Evaluation Independent of That Provided by the Education Agency?

The parents of a handicapped child must be afforded the opportunity to obtain an independent educational evaluation. If the parent initiates the evaluation procedure the education agency is not required to pay for the evaluation. However, the results of such an evaluation must be considered by the education agency in any decision made with respect to the child's education and may be presented as evidence at a hearing regarding the child.

Are There Times When the Local or State Education Agency Will Be Required To Pay for an Independent Evaluation?

If the parent requests that an independent evaluation be provided by the local or state education agency and the agency grants the requests, the cost must be at public expense. However, if the agency does not grant the parents' request and the parent presents a complaint, the question of an independent evaluation at public expense may be subject to a hearing.

When Are Education Agencies Required To Give Parents Prior Notice?

Written notice must be given to the parents of a handicapped child before the education agency (a) proposes to initiate (or refuses to initiate) or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education, and (b) parental consent must be obtained before a formal evaluation is conducted.

What Needs To Be Included in This Notice?

The prior notice must describe in detail the proposed action and reasons for it. In the event of a refusal by the education agency, the agency must be prepared to identify

the evaluation procedures, texts, records, or reports on which the refusal is based, and inform the parents of their right to a hearing to challenge the proposal or refusal. Furthermore, the notice must be provided in the native language of the parent, unless it is clearly not feasible to do so.

When Is a Formal Evaluation Necessary?

A formal evaluation must be conducted before any action is taken with respect to: (a) the initial placement or denial of a handicapped child in a special education program, or (b) the transfer or denial of transfer of a child from a special education program to full-time regular class placement. Furthermore, any change in a child's special education placement (self-contained special class to resource room) must be based on: (a) the child's current individualized education program, (b) any other information relating to the child's current educational performance, and (c) existing formal evaluation information which is not more than two years old.

Who Determines That a Child Is Handicapped?

The interpretation of the evaluation data and the subsequent determination of the child's educational placement are made by a group of persons knowledgeable about the child, the meaning of the evaluation results, the placement options and the personnel available to provide special education and related service.

What Is Meant by the Least Restrictive Environment?

Each state educational agency shall insure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

ALLOCATION OF FUNDS

How Will a State Receive Funds Under P.L. 94-142?

Each state is entitled to an amount equal to the number of handicapped children aged three through 21 in the state who are receiving special education and related services multiplied by the applicable percentage of the national average per pupil expenditure (approximately \$1,250). The percentages are:

Fiscal 1978	5 percent	\$387 million
Fiscal 1979	10 percent	\$775 million
Fiscal 1980	20 percent	\$1.2 billion
Fiscal 1981	30 percent	\$2.32 billion
Fiscal 1982	40 percent	\$3.16 billion

Remember that these are *authorized spending levels*, and monies must still be appropriated.

How Will the State Distribute the Money It Receives?

Of the funds received by any state for fiscal year 1978, 50 percent may be used by the state and 50 percent must be distributed to local educational agencies in the state. Of the funds received by any state for fiscal year 1979 and thereafter, 25 percent may be used by the state and 75 percent must be distributed to the local educational agencies in the state.

What Can the State Do With the Money It Receives?

The proposed regulations stipulate that the funds may be used for:

- approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children,
- administration of the annual program plan and for planning at the state level, and
- technical assistance to local education agencies.

What Can a Local Education Agency Do With the Money It Receives?

A local education agency must use the money it receives to pay for the "excess cost" of educating handicapped children. Excess costs mean those costs which are for special education and related services, and which are above the costs of regular education for an elementary or secondary school student in the local education agency.

What If a Local Education Agency Is Serving All Its Handicapped Students?

If a state determines that a local education agency is adequately providing a free appropriate public education to all handicapped children residing within its boundaries, the state may reallocate funds made available to local education agencies to other local agencies within the state that are not adequately providing special education and related services to the handicapped.

May Funds Received Under the Act Be Used To Supplement or Supplant Local and State Funds?

If the state education agency provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the U.S. Commissioner of Education may waive the requirement that funds must be expended on "excess costs."

May the Commissioner Withhold Payments?

The U.S. Commissioner may withhold funds given to the state educational agency if that agency has substantially failed to comply with some of the major requirements of this Act. Furthermore the Commissioner may, after notifying the state educational agency, withhold further payments to the state under the federal programs specifically designed for handicapped children under the following titles:

- Part A of Title I of the Elementary Secondary Education Act,
- Title III of the Elementary Secondary Education Act (innovative programs) and its successor, Part C, Educational Innovation and Support, Section 431 of P.L. 93-380, and
- The Vocational Education Act.

Specific Learning Disabilities

The proposed regulations implementing the specific learning disabilities section were published in the *Federal Register*, Nov. 29, 1976, page 52404. A 120-day comment period has been set "in order to provide the public the opportunity to critically evaluate not only the specific requirement of the proposed regulations, but to examine the efficacy of this approach in determining the existence of specific learning disabilities as well." Comments must be received by March 28, 1977. ■

EXHIBIT "C"

STATEMENT OF

THE DEPARTMENT OF EDUCATION

TO THE

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

Tuesday, April 5, 1977

Room 323, 9:00 A.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 for each year of the biennium will be required to implement A.B. 108.

A. B. 107**ASSEMBLY BILL NO. 107—COMMITTEE ON EDUCATION**

JANUARY 20, 1977

Referred to Committee on Education

SUMMARY—Raises upper age limit of eligibility in educational programs for handicapped pupils. (BDR 34-117)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: Contains appropriation.EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to public instruction; raising the upper age limit of eligibility in educational programs for handicapped pupils; making an appropriation; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 388.440 is hereby amended to read as follows:
 2 388.440 As used in NRS 388.440 to 388.520, inclusive, ["handi-
 3 capped minor"] "*handicapped pupil*" means any person under the age of
 4 [18] 21 years who deviates either educationally, academically, physically,
 5 socially or emotionally so markedly from normal growth and development
 6 patterns that he cannot progress effectively in a regular school program
 7 and therefore needs special instruction or special services.
- 8 SEC. 2. NRS 388.450 is hereby amended to read as follows:
 9 388.450 1. The legislature declares that the basic support guarantee
 10 as expressed in NRS 387.122 establishes financial resources sufficient to
 11 insure a reasonably equal educational opportunity to handicapped
 12 [minors] *pupils* residing in Nevada.
- 13 2. Subject to the provisions of NRS 388.440 to 388.520, inclusive,
 14 the board of trustees of a school district shall make such special provisions
 15 as may be necessary for the education of handicapped [minors.] *pupils*.
- 16 3. The board of trustees of a school district shall establish uniform
 17 [rules of] *regulations concerning* eligibility for instruction under the spe-
 18 cial education programs provided for by NRS 388.440 to 388.520, inclu-
 19 sive. The [rules and] regulations [shall be] *are* subject to such standards
 20 as may be prescribed by the state department of education.
- 21 SEC. 3. NRS 388.460 is hereby amended to read as follows:
 22 388.460 [No minor shall be] *A pupil is not* required to take advan-
 23 tage of the special provisions for the education of handicapped [minors]
 24 *pupils* if the parent or guardian of the [minor] *pupil* files a statement with

Original bill is 7 pages long.
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a copy of the complete bill.

*

A. B. 108**ASSEMBLY BILL NO. 108—COMMITTEE ON EDUCATION**

JANUARY 20, 1977

Referred to Committee on Education

SUMMARY—Reduces lower age limit for enrollment of physically handicapped minors in special educational programs. (BDR 34-118)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: Contains Appropriation.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to public instruction; reducing the lower age limit for enrollment of physically handicapped minors in special programs; making an appropriation; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 388.490 is hereby amended to read as follows:
 2 388.490 1. Except as provided in subsections 2, 3, 4 [and 5.], 5
 3 and 6, handicapped minors may be admitted at the age of 5 years to
 4 special programs established for such minors, and their enrollment or
 5 attendance may be counted for apportionment purposes.
 6 2. Aurally handicapped minors may be admitted at any age under
 7 5 to special programs established for such minors, and their enrollment
 8 or attendance may be counted for apportionment purposes.
 9 3. Visually handicapped minors may be admitted at any age under
 10 5 to special programs established for such minors, and their enrollment
 11 or attendance may be counted for apportionment purposes.
 12 4. *Physically handicapped minors may be admitted at the age of 3*
 13 *years to special programs established for such minors, and their enroll-*
 14 *ment or attendance may be counted for apportionment purposes.*
 15 5. Academically talented minors may be admitted at the age of 4
 16 years to special programs established for such minors, and their enroll-
 17 ment or attendance may be counted for apportionment purposes.
 18 [5.] 6. Mentally retarded minors may be admitted at the age of
 19 3 years to special programs established for such minors, and their enroll-
 20 ment or attendance may be counted for apportionment purposes.
 21 SEC. 2. 1. There is hereby appropriated from the state general fund
 22 to the state department of education to provide for additional attendance
 23 in special programs for physically handicapped minors, the sum of
 24 \$88,000 for the fiscal year beginning July 1, 1977, and ending June 30,

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.

S. B. 239

SENATE BILL NO. 239—COMMITTEE ON JUDICIARY

FEBRUARY 17, 1977

Referred to Committee on Education, Health and Welfare and State Institutions

SUMMARY—Provides for overnight and extended visits between prisoners and their immediate families. (BDR 16-632)

FISCAL NOTE: Local Government Impact: No. State or Industrial Insurance Impact: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to the Nevada state prison; providing for overnight and extended visits between prisoners and their immediate families; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 209 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 1. *The board shall, by regulation, adopt a plan for overnight and*
- 4 *extended visits between eligible prisoners and members of their immediate*
- 5 *families.*
- 6 2. *To acquire and maintain adequate accommodations for the family*
- 7 *members and prisoners during the visits, the board may accept gifts from*
- 8 *private sources, receive contributions from any prisoners' fund and apply*
- 9 *such public money as may be available for the purpose.*
- 10 3. *The warden shall establish a system to determine eligibility of*
- 11 *individual prisoners for participation in the visits and shall grant the*
- 12 *privilege to as many prisoners in all facilities of the prison as is possible*
- 13 *commensurate with security.*
- 14 4. *The immediate family members who may be allowed to make*
- 15 *overnight or extended visits are limited to a prisoner's spouse (except a*
- 16 *common law spouse), parents, stepparents, foster parents, grandparents,*
- 17 *brother or sister, legitimate children, stepchildren, and any foster relative*
- 18 *approved by the warden. The warden may require that a family member*
- 19 *who is a minor be accompanied by an adult family member.*
- 20 5. *A prisoner who is otherwise eligible for family visits shall not be*
- 21 *denied such visits as a penalty for violation of a prison rule or regulation*
- 22 *not directly related to visiting.*
- 23 6. *The privileges of family visiting shall not be withdrawn from all*
- 24 *prisoners because of any violation of prison rules or regulations by partic-*
- 25 *ular prisoners.*

S. B. 117

SENATE BILL NO. 117—COMMITTEE ON EDUCATION,
HEALTH AND WELFARE AND STATE INSTITUTIONS

JANUARY 21, 1977

Referred to Committee on Education, Health and Welfare
and State Institutions

SUMMARY—Provides for participation in compact on education. (BDR 34-123)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to education; providing for participation by the State of Nevada
in the Compact for Education; creating a Nevada education council; and pro-
viding other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

1 SECTION 1. Title 34 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 4, inclu-
3 sive, of this act.

4 SEC. 2. The State of Nevada hereby enters into the Compact for Edu-
5 cation. The form and contents of the compact are substantially as pro-
6 vided in this section:

7
8 COMPACT FOR EDUCATION
9

10 Article I

11 Purpose and Policy.

12 A. It is the purpose of this compact to:

13 1. Establish and maintain close cooperation and understanding
14 among executive, legislative, professional educational and lay leader-
15 ship on a nationwide basis at the state and local levels.

16 2. Provide a forum for the discussion, development, crystalliza-
17 tion and recommendation of public policy alternatives in the field of
18 education.

19 3. Provide a clearing house of information on matters relating to
20 educational problems and how they are being met in different places
21 throughout the Nation, so that the executive and legislative branches
22 of state government and of local communities may have ready access
23 to the experience and record of the entire country, and so that both

Original bill is 7 pages long.
Contact the Research Library for
a copy of the complete bill.

A. B. 145

**ASSEMBLY BILL NO. 145—COMMITTEE ON
HEALTH AND WELFARE**

JANUARY 25, 1977

Referred to Committee on Health and Welfare

SUMMARY—Provides for transfer of certain inmates of Nevada youth training center to Southern Nevada Correctional Center. (BDR 16-29)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT authorizing the transfer of certain inmates of the Nevada youth training center to the Southern Nevada Correctional Center.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 210 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 *When a treatment plan for an inmate who is 18 years of age or older*
- 4 *indicates that a transfer to the Southern Nevada Correctional Center*
- 5 *would be beneficial, the superintendent may order the transfer with the*
- 6 *consent of the warden of the state prison and the approval of the com-*
- 7 *mitting court.*
- 8 SEC. 2. NRS 210.010 is hereby amended to read as follows:
- 9 210.010 [The following words shall have the following meaning
- 10 within the purview of] *As used in NRS 210.010 to 210.290, inclusive,*
- 11 *[and shall be so construed:] and section 1 of this act:*
- 12 1. "Administrator" means the administrator of the youth services
- 13 agency in the department of human resources.
- 14 2. "Board" means the youth training center advisory board.
- 15 3. "Director" means the director of the department of human
- 16 resources.
- 17 4. "School" means the Nevada youth training center. [, heretofore
- 18 established and maintained for the care of minors adjudged delinquent
- 19 and committed thereto.]
- 20 5. "Superintendent" means the superintendent of the school.

S. B. 324

SENATE BILL NO. 324—SENATOR HERNSTADT

MARCH 8, 1977

Referred to Committee on Education, Health and Welfare
and State Institutions

SUMMARY—Requires periodic comprehensive examinations of public school
pupils to determine competency in specified subjects. (BDR 34-1061)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to public schools; requiring periodic comprehensive examinations
of pupils to determine their competency in specified subjects; and providing
other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. Chapter 389 of NRS is hereby amended by adding
- 2 thereto a new section which shall read as follows:
- 3 1. *In all public schools of this state, periodic comprehensive examina-*
- 4 *tions shall be conducted to determine the competency of pupils in each of*
- 5 *the following subject matter areas:*
- 6 (a) *Reading.*
- 7 (b) *Writing.*
- 8 (c) *Mathematics.*
- 9 (d) *American history.*
- 10 (e) *American government.*
- 11 (f) *Basic economics.*
- 12 (g) *Basic logic and reasoning.*
- 13 2. *Specific subject matter examinations shall be administered either*
- 14 *at the end of the school year or at the end of certain courses ending mid-*
- 15 *year for grades 3, 6, 9, 10, 11 and 12, but a pupil shall not be required*
- 16 *to take an examination in any subject area not included in the curriculum*
- 17 *for his grade in the year immediately preceding the examination. If a*
- 18 *pupil fails to pass any of his examinations at the end of grades 3, 6, 9,*
- 19 *10 or 11, he shall not be promoted to the next grade until he is able,*
- 20 *through repetition of the work of the previous year or remedial study, to*
- 21 *pass such examination. If a pupil fails to pass any of his examinations at*
- 22 *the end of grade 12, he shall not be graduated until he is able, through*
- 23 *repetition of the work of the previous year or remedial study, to pass*
- 24 *that examination.*

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.

S. B. 204

SENATE BILL NO. 204—SENATORS YOUNG, RAGGIO,
GOJACK, NEAL, BLAKEMORE AND BRYAN

FEBRUARY 9, 1977

Referred to Committee on Education, Health and Welfare and
State Institutions

SUMMARY—Requires periodic testing of public school pupils to determine
competency in specified subjects. (BDR 34-631)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to public schools; requiring periodic examinations of pupils to
determine their competency in specified subjects; and providing other matters
properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. Chapter 389 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 1. *In all public schools of this state, periodic examinations shall be*
4 *conducted to determine the competency of pupils in:*
5 (a) *Reading.*
6 (b) *Writing.*
7 (c) *Computation.*
8 (d) *American history.*
9 (e) *American government.*
10 2. *The examinations for competency shall be conducted at the end*
11 *of grades 6, 8, 10 and 12. If a pupil fails to pass any of the examinations*
12 *conducted at the end of grades 6, 8 or 10, he shall repeat the school work*
13 *of the previous year unless he is able, through remedial study, to pass the*
14 *examination before entering the next grade. If a pupil fails to pass the*
15 *examination conducted at the end of grade 12, he shall not be awarded*
16 *a diploma until he is able, through remedial study, to pass that examina-*
17 *tion.*
18 3. *The state board of education:*
19 (a) *Shall prescribe standard examinations to be administered pursuant*
20 *to subsection 1.*
21 (b) *May require examinations for competency in additional subjects.*