Hearing Date: January 25, 2013
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ITEM 5
PROPOSED PARAMETERS AND GUIDELINES

AND

STATEMENT OF DECISION

Education Code Sections 250, 251, 262.3
Statutes 1982, Chapter 1117; Statutes 1988,
Chapter 1514; Statutes 1998, Chapter 914

California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631, and 4632
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Uniform Complaint Procedures (K-12)
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Solana Beach School District, Claimant

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LAO Report on Education 2005

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117; Statutes 1988, Chapter 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417; Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123; Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and Statutes 2002, Chapter 1102

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Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51

Filed on July 23, 2003 by

Solana Beach School District, Claimant.

Case No.: 03-TC-02

Uniform Complaint Procedures (K-12)

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

(Adopted September 28, 2012)

(Served October 5, 2012)

(Corrected October 17, 2012)

CORRECTED STATEMENT OF DECISION

Pursuant to California Code of Regulations, title 2, section 1188.2(b), the attached corrected statement of decision of the Commission on State Mandates is hereby issued to correctly reference Education Code section 52500 on pages 3, 4, and 23. The corrections are made in strikeout.

Heather Halsey, Executive Director

Dated: October 18, 2012

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4 Government Code Sections 11135, 11136, 11137, 11138, and 11139 Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117; Statutes 1988, Chapter 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417; Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123; Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and Statutes 2002, Chapter 1102 California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630, 4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and 4670 Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51 Filed on July 23, 2003 by Solana Beach School District, Claimant.	Case No.: 03-TC-02 *Uniform Complaint Procedures (K-12)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted September 28, 2012)* *(Served October 5, 2012)* *(Corrected October 17, 2012)*

CORRECTED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 28, 2012. Art Palkowitz appeared on behalf of Solana Beach School District. Susan Geanacou appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 7-0.

Summary of Findings

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

The Commission found that some of the notices and complaint procedures constitute federal mandates in regard to specific types of unlawful discrimination. In addition, the Commission found that some of the educational programs subject to the compliant procedures pled in the test claim are provided on a voluntary basis by school districts. As a result, the Commission concluded that the complaint procedures are not reimbursable for purposes of resolving complaints arising from these voluntary programs.

However, the Commission also found that some of the test claim statutes and regulations impose reimbursable state-mandated programs on school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 for the activities listed on pages 41 through 45, under section IV of the analysis titled "Conclusion."

COMMISSION FINDINGS

Chronology

07/23/2003	Claimant, Solana Beach School District, filed test claim *Uniform Complaints Procedures* (03-TC-02) with the Commission on State Mandates (Commission)[1]
09/03/2003	The Department of Education (CDE) filed request for extension of time for comments on test claim
09/08/2003	Commission staff granted the CDE's extension of time for comments to October 3, 2003
10/02/2003	The CDE filed request for extension of time for comments on test claim
10/03/2003	Commission staff granted the CDE's extension of time for comments to November 5, 2003
10/28/2003	The Department of Finance (Finance) filed request for extension of time for comments on test claim
11/05/2003	The CDE filed comments on the test claim
11/07/2003	Commission staff granted Finance's extension of time for comments to February 7, 2004
12/05/2003	Claimant filed response to the CDE comments
01/08/2007	Claimant filed supplemental information for the test claim

[1] Potential period of reimbursement begins on July 1, 2002, the start of the 2002-2003 fiscal year. See Government Code section 17557(e).

04/30/2012	Commission staff requested additional information from parties
05/08/2012	Finance requested an extension of time for the submittal of additional information
05/11/2012	Commission staff granted Finance's extension of time for submittal of additional information to June 11, 2012
05/14/2012	The CDE requested an extension of time for the submittal of additional information
05/16/2012	Commission staff granted the CDE's extension of time for submittal of additional information to June 15, 2012
06/07/2012	Claimant filed response to Commission staff's request for additional information
06/15/2012	The CDE filed response to the Commission staff's request for additional information
08/08/2012	Commission staff issued the draft staff analysis
09/12/2012	Commission staff issued the final staff analysis and proposed statement of decision
09/27/2012	Finance submitted a late filing commenting on the final staff analysis and proposed statement of decision

I. Background

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving complaints arising in a school district.[2] These procedures are used to process two types of complaints: (1) complaints that allege violations of federal or state law governing specific educational programs;[3] and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

Education Code section 200 et seq. and Government Code section 11135 et seq. prohibit discrimination on the basis of race, ethnic group identification, national origin, religion, disability, sex, sexual orientation, and age, in school districts and entities that receive state funding. Government Code section 11138 requires the CDE to adopt rules and regulations as are necessary to carry out the purpose and provisions of Government Code section 11135 et seq.

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[2] All references to "school districts" mean K-12 school districts and county offices of education, unless otherwise specified.

[3] The programs subject to the complaint procedures pled are: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 52500~~0~~ – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

Education Code section 261 provides that the provisions Education Code section 200 et seq. are to be implemented pursuant to the regulations and procedures adopted pursuant to Government Code section 11138, which governs the filing and handling of written complaints of prohibited discrimination.

California Code of Regulations, title 5, sections 4600 et seq. comprise the regulations adopted by the CDE to carry out the purpose of Government Code section 11135 et seq., and Education Code section 200 et seq. In addition to being the complaint process for unlawful discrimination, title 5, sections 4600 et seq., also set forth the process for complaints alleging violations of the following educational programs: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 52500~~0~~ – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, § §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

The claimant alleges reimbursable costs associated with specific provisions of Education Code section 200 et seq., Government Code section 11139, and the title 5 regulations establishing the compliant process for violations of educational programs and allegations of unlawful discrimination by school districts.

II. Positions of the Parties and Interested Parties

A. Claimant's Position

The claimant contends that the test claim statutes and regulations impose reimbursable state-mandated costs reimbursable by the state for school districts and county offices of education to engage in state-mandated new programs or higher levels of service related to establishment and implementation of uniform complaint procedures. These activities include having a written policy on sexual harassment, displaying and distributing the district's policy on sexual harassment, investigating complaints alleging noncompliance with specific educational programs or alleging unlawful discrimination, providing an opportunity for complainants and district representatives to present information relevant to the complaints, writing and providing to complainants a written decision containing the findings and disposition of complaints; and appearing and defending civil actions brought by persons alleging violations of the specific educational programs or unlawful discrimination.

On December 5, 2003, in response to the CDE's comments, the claimant argues that the state has imposed requirements in excess of those imposed by federal law on school districts. As a result, the claimant argues that these requirements, which exceed of federal law, create reimbursable mandates.

The claimant did not comment on the draft staff analysis.

B. Department of Education's Position

The CDE argues that a number of the statutes and regulations pled by the claimant impose activities already required by federal law. As a result, the CDE's questions whether the alleged

activities are federally mandated, and therefore not reimbursable under article XIII B, section 6 of the California Constitution.[4]

In response to the Commission staff's request for additional information regarding the existence of a complaint process prior to the process established by the title 5 regulations claimed, the CDE argues that federal law already required or anticipated many of the requirements of the title 5 regulations. However, the CDE does not identify a pre-existing complaint process established by the CDE.

The CDE did not file comments on the draft staff analysis.

C. Department of Finance's Position

Finance filed late comments on this test claim on the eve of the hearing. Staff did not have time to address those comments in this analysis.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[5] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[6]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[7]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or

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[4] CDE asserts that the claimant has not provided a copy of relevant portions of federal statutes that may impact the alleged mandate, and therefore, questions the completeness of the test claim filing. On August 5, 2003, Commission staff found the test claim filing to be complete, as a result, it is unnecessary to revisit this procedural issue. Instead, this analysis will focus on the substantive issue of whether or not the test claim statutes and regulations impose reimbursable state-mandated new programs or higher levels of service pursuant to article XIII B, section 6 of the California Constitution.

[5] *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81.

[6] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[7] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, at p. 874.

b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[8]

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[9]

4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity. [10]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[11] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[12] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[13]

A. Do the Test Claim Statutes and Regulations Impose a State-Mandated New Program or Higher Level of Service on School Districts within the Meaning of Article XIII B, Section 6 of the California Constitution?

The claimant has pled various code sections and regulations addressing the prohibition against unlawful discrimination, the complaint procedures used to process complaints of unlawful discrimination and complaints alleging violations of specific educational programs. In the claimant's December 5, 2003 response to the CDE comments, the claimant indicates that code sections and regulations not included in "Part III, Costs Mandated By The State" section of the test claim filing, are "not alleged to contain any new programs or higher levels of service" by the claimant.[14] The following code sections and regulations are not included in the "Part III, Costs Mandated By The State" section of the test claim: (1) Education Code sections 200, 220, 260,

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[8] *San Diego Unified School Dist., supra,* 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[10] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[11] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[12] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[13] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[14] Exhibit C, comments filed by the claimants in response to comments filed by the California Department of Education, dated December 5, 2003. The claimant cites to Exhibit A, test claim filing, dated July 23, 2003, "Part III, Costs Mandated By the State," commencing at p. 39.

and 261; (2) Government Code sections 11135, 11136, 11137, and 11138; and (3) California Code of Regulations, title 5, sections 4600, 4610, 4630, 4640, 4651, and 4664. These code sections and regulations provide background information for the code sections and regulations alleged to contain new programs or higher levels of service by the claimant.[15]

The following conclusions can be drawn in regard to code sections and regulation sections not included in the "Part III, Costs Mandated By The State" section of the test claim filing based on the claimant's test claim filing and response to the CDE comments: (1) the claimant does not allege that the code sections or regulations impose reimbursable state-mandated new programs or higher levels of service; and (2) there is no evidence in the record of any costs associated with the code sections and regulations not included in the section.

Although the following code sections and regulations help to define the activities claimed for reimbursement, the Commission finds that there is no evidence in the record that these code sections and title 5 regulations impose reimbursable state-mandated new programs or higher levels of service: (1) Education Code sections 200, 220, 260, and 261; (2) Government Code sections 11135, 11136, 11137, and 11138; and (3) California Code of Regulations, title 5, sections 4600, 4610, 4630, 4640, 4651, and 4664.

The remaining test claim statutes and regulations address requirements associated with the prohibition of unlawful discrimination and the procedures to process complaints alleging violations of antidiscrimination laws, including federal laws. As a result, prior to discussing whether the test claim statutes and regulations impose state-mandated new programs or higher levels of service on school districts, the federal laws relevant to this test claim are summarized below.

(1) Federal Antidiscrimination Laws that are Relevant to the Determination of Whether the Test Claim Statutes and Regulations Impose State-Mandated Activities.

Article XIII B, section 6 of the California Constitution requires reimbursement only when the state mandates a new program or higher level of service. Reimbursement under article XIII B, section 6 is not required when costs are mandated by federal law. The court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[16]

Also, the courts have held that state rules or procedures, including those that may exceed the plain language of a federal mandate, may, under certain circumstances, be considered mandated

[15] The Education Code and Government Code sections generally set forth legislative intent regarding the prohibition against unlawful discrimination. The California Code of Regulations sections provide the purpose and scope of the applicability of the regulations, and set forth timelines for a complainant to file a complaint and for actions taken by the Department of Education.

[16] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

by federal law and not be eligible for reimbursement under article XIII B, section 6. The California Supreme Court in *San Diego Unified School Dist.* found that "for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the underlying federal mandate," and not be reimbursable under article XIII B, section 6.[17]

It is important to note that this test claim alleges activities associated with school districts policies on discrimination and the adoption of complaint procedures to address, among other things, unlawful discrimination in school district programs and activities. Although school districts are subject to many federal antidiscrimination laws,[18] some of these laws do not require the adoption of an internal complaint process or activities related to a district's antidiscrimination policies. As a result, the following analysis will only address federal laws that impose requirements relevant to the allegations in this test claim.[19]

The following federal laws are relevant here: (1) section 504 of the Rehabilitation Act of 1973 and its implementing regulations (34 C.F.R. § 104); (2) the Age Discrimination Act of 1975; (3) Title IX of the Education Amendments of 1972 and its implementing regulations (34 C.F.R. § 106); (4) Title II of the Americans with Disabilities Act of 1990 (ADA); and the General Education Provisions Act (GEPA) and its implementing regulations (34 C.F.R., § 76). Generally, these federal laws require local governments to provide notice to various individuals of the antidiscrimination policies and grievance procedures for bringing a complaint; to adopt and publish a grievance procedure that provides a prompt and equitable resolution of a complaint; and to provide written assurance of compliance with the antidiscrimination laws to the state agencies administering federal funding.

a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)

In 1973, Congress enacted the Rehabilitation Act of 1973, section 504 (Section 504) (29 U.S.C. § 794) to extend the protections of the Civil Rights Act of 1964 to the disabled.[20] Section 504 prohibits discrimination on the basis of physical or mental disability with respect to "any program or activity receiving federal financial assistance." It states the following:

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be

[17] *San Diego Unified School Dist. supra,* 33 Cal.4th 859, 890.

[18] For example, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.); the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.); section 504 of the Rehabilitation Act (29 U.S.C. § 794); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); and the Age Discrimination Act (42 U.S.C. § 6101).

[19] Federal antidiscrimination laws that do not require any activities alleged in this test claim will not be addressed. For example, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), which seeks to eliminate discriminatory employment practices, does not require school districts to develop an internal grievance procedure. Instead, the Equal Employment Opportunity Commission was created as the agency with the initial enforcement responsibility of Title VII.

[20] *Lloyd v. Regional Transp. Authority* (1977) 548 F.2d 1277, 1285.

> excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity.[21]

Section 504 and its implementing regulations apply to all recipients of federal financial assistance, including school districts. The U.S. Department of Education, Office of Civil Rights, the agency responsible for enforcing Section 504 in school districts, adopted 34 Code of Federal Regulations part 104 et seq. to implement Section 504. The federal law extends to all of the operations of a school district, not just the program receiving federal financial assistance.[22]

Compliance with Section 504 and its implementing regulations is a condition on the receipt of federal financial assistance.

> In this regard, section 504 [of the Rehabilitation Act] is similar to other statutes placing conditions on the receipt of federal funding…Congress may attach reasonable conditions to federal financial assistance. The recipients of federal funding are not thereby obligated to accept the conditions, however, because they "may terminate their participation in the program and thus avoid" the conditions imposed by the statute. [Citation omitted.][23]

Thus, school districts are not legally compelled to comply with the Section 504.

The courts, however, have acknowledged that federal financial assistance to education is pervasive, such that Section 504 is applicable to virtually all public educational programs in this state and other states.[24] Additionally, courts have noted that Congress enacted Section 504 as essentially a codification of the equal protection rights of citizens with disabilities. Violations of Section 504 can result, and resulted, in the termination of federal funding to the program in which noncompliance was found.[25] Along with the termination of federal financial assistance,

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[21] Title 29 United States Code section 794(a) (Pub.L.No. 105-220 (Aug. 7, 1998)).

[22] *Consolidated Rail Corp. v. Darrone* (1984) 465 U.S. 624, finding that federal assistance did not need to have a primary purpose to promote employment in order for section 504 to apply to employment practices. *Leake v. Long Island Jewish Medical Center* (E.D.N.Y. 1988) 695 F.Supp. 1414, finding that section 504 applied to all operations of an entity receiving federal financial assistance, not just the specific program receiving assistance.

[23] *Greater Los Angeles Council on Deafness, Inc,* (9th Cir. 1987) 812 F.2d 1103, 1111, fn. 11.

[24] *Hayes, supra,* 11 Cal.App.4th 1564, 1584.

[25] Title 29 United States Code section 794a incorporates Title 42 U.S.C 2000d-1, which authorizes the termination of federal financial assistance to the program in which noncompliance is found. 34 Code of Federal Regulations part 104.61 incorporates the procedures to effect compliance found in 34 Code of Federal Regulations part 100.6-100.10, which authorize the termination of federal financial assistance for failure to comply with regulations promulgated under section 504. See, *Freeman v. Cavazos* (11th Cir. 1991) 939 F.2d 1527, 1531, in which the court found that federal funding of a school district was properly discontinued, noting that compliance with any regulation promulgated under section 504 may be obtained by the termination of or refusal to grant or to continue assistance to a recipient of federal assistance. See also, *Fells v. Brooks* (D.D.C. 1981) 522 F.Supp. 30, 34, in finding that resort to

school districts face litigation by the Attorney General for violations of Section 504 and its implementing regulations.[26] Further, litigation by an aggrieved individual is available for violations of Section 504 and possibly for violations of its implementing regulations.[27] In light of the penalties and legal consequences for failing to comply with Section 504, and the purpose of Section 504, the Commission finds that school districts are practically compelled to comply with the requirements of Section 504 and its implementing regulations.[28]

As relevant to this test claim, Section 504 and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one person to coordinate efforts to comply with 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7(a) (May 9, 1980)).
2. Adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7(b) (May 9, 1980).)
3. Take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees of school district programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the school district of the identification of the employee responsible for coordinating the districts efforts to comply with 34 Code of Federal Regulations part 104, which prohibits discrimination based on disability. (34 C.F.R. § 104.8, (a) (Nov. 13, 2000).)

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administrative remedies by individual complainants is not required nor intended under section 504 and its implementing regulations, the court noted that federal assistance had been withdrawn from a school district.

[26] Title 29 United States Code section 794a, subdivision (a)(2), incorporating by reference Title 42 United States Code section 2000d et seq. and Title 42 United States Code section 2000e-5, which authorize litigation for violations of section 504 of the Rehabilitation Act.

[27] Although Title 42 United States Code section 2000e-5 authorizes litigation by aggrieved individuals for violations of section 504 of the Rehabilitation Act, district courts in the 9th Circuit have split on whether a private cause of action arises from noncompliance with the regulations implementing section 504. see *Huezo v. Los Angeles Community College Dist*. (C.D. Cal. 2008) 672 F.Supp.2d 1045, 1054, in which a 9th Circuit district court, after noting a split between federal circuits and between district courts within the 9th Circuit, found that there is no private cause of action to enforce self-evaluation regulations implementing the ADA and Section 504 of the Rehabilitation Act. Citing to the Supreme Court's decision in *Alexander v. Sandoval* (2001) 532 U.S. 275, the court found that a regulation by regulation analysis, as opposed to an analysis of the regulations as a whole, is required in order to determine if a regulation exhibits a Congressional intent to create a private right of action.

[28] *City of Sacramento v. State of California*, supra, 50 Cal.3d at p. 76, setting forth the factors to determine whether a federal mandate exists.

b. Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.)

The Age Discrimination Act of 1975 (codified at 42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. 110) prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.[29] Although the Age Discrimination Act of 1975 explicitly excludes employment discrimination from its scope,[30] as further discussed below, employment discrimination is not subject to the complaint procedures alleged in this test claim.

As a result, as relevant to this test claim, the Age Discrimination Act defines "programs or activities" in the same manner as Title IX, Title VI, and Section 504. Thus, the Age Discrimination Act extends to all of the operations of a college, not just the program receiving federal financial assistance.

As noted above, courts have acknowledged that federal financial assistance to education is pervasive.[31] Also like Section 504, Title IX, and Title VI, violations of the Age Discrimination Act can result in the termination of federal funding to the program in which noncompliance is found.[32] In addition, school districts face litigation by the Attorney General to enforce the Age Discrimination Act and its implementing regulations.[33] Thus, the Commission finds that the Age Discrimination Act constitutes a federal mandate.

As relevant to this test claim, the Age Discrimination Act and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one employee to coordinate efforts to comply with and carry out the school district's responsibilities under the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.), including investigation of any complaints that the school district receives alleging violations of the Act and its implementing regulations. (34 C.F.R. § 110.25(a) (Nov. 13, 2000).)
2. Notify school district beneficiaries, in a continuing manner, of information regarding the provisions of the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.).

   Notice must identify the responsible employee by name or title address, and telephone number. (34 C.F.R. § 110.25(b) (Nov. 13, 2000).)
3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.). (34 C.F.R. § 110.25(c) (Nov. 13, 2000).)

c. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)

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[29] Title 42 United States Code section 6102.

[30] Title 42 United States Code section 6103, subdivision (c)(1).

[31] *Hayes, supra,* 11 Cal.App.4th 1564, 1584.

[32] Title 42 United States Code section 6104 (Pub.L.No. 96-88 (Oct. 17, 1979)) and 34 Code of Federal Regulations part 110.35 (Nov. 13, 2000).

[33] *Ibid.*

Title IX of Education Amendments of 1972 (Title IX) (codified at 20 U.S.C. § 1681 et seq.) and its implementing regulations (34 C.F.R. § 106 et seq.) prohibit discrimination on the basis of sex under any education program or activity receiving federal financial assistance.[34] Title IX applies to school districts as recipients of federal financial assistance.[35] Courts and the Office for Civil Rights (OCR) of the United States Department States Department of Education have recognized claims of sexual harassment as part of Title IX's prohibition against gender discrimination.[36] Also, the OCR interprets Title IX and its implementing regulations as prohibiting sexual harassment based on sexual orientation in certain situations. Specifically, OCR states:

> Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX ….[37]

Thus, the prohibition and associated requirements regarding discrimination on the basis of sex includes sexual harassment on the basis of sexual orientation in certain instances.

Like Section 504, compliance with Title IX is a condition of receipt of all federal financial assistance, and as a result, school districts are not *legally* required to comply with the provisions of Title IX. However, school districts face practical compulsion to comply with Title IX and its implementing regulations. A failure to comply with Title IX and its implementing regulations can result in the termination of federal financial assistance to the program in which

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[34] Title 20 United States Code sections 1681 and 1687; 34 Code of Federal Regulations part 106.51; *North Haven Bd. of Ed. v. Bell* (1982) 456 U.S. 512, 530-535. See also, *Sharif by Salahuddin v. New York State Educ. Dept.* (S.D.N.Y. 1989) 709 F.Supp. 345, 360 fn. 34, noting that Congress broadened the scope of title 20 United States Code section 1687 with the 1988 adoption of the Civil Rights Restoration Act, such that receipt of federal financial assistance results in institution-wide application of Title IX.

[35] *Hayes, supra*, 11 Cal.App.4th 1564, 1584, noting the pervasiveness of federal financial assistance in education.

[36] *Davis v. Monroe County Bd. of Educ., supra*, 526 U.S. at 650; *Franklin v. Gwinnet County Public Schools, supra*, 503 U.S. at 75; and Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, (Jan. 2001), pgs. 3-4.

[37] Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, *supra*, at pg. 12. See also, *Nichols v. Azteca Restaurant Enterprises, Inc.* (9th Cir. 2001) 256 F.3d 864, 874-875, in which the court overturned its finding in *DeSantis v. Pacific Telephone & Telegraph Co., Inc.* (9th Cir. 1979) 608 F.2d 327, that discrimination based on a stereotype that a man "should have a virile rather than an effeminate appearance" does not fall within Title VII's purview. See *OONA, R.-S v. McCaffrey* (9th Cir. 1998) 143 F.3d 473, 476-477, finding that Title VII standards apply to hostile environment claims under Title IX.

noncompliance is found.[38] Further, the principal objectives of Title IX are to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those discriminatory practices.[39] Thus, the Commission finds that school districts are practically compelled to comply with the requirements of Title IX (20 U.S.C. § 1681 et seq.) and its implementing regulations. As a result, the Commission finds the requirements of Title IX and its implementing regulations constitute a federal mandate (34 C.F.R. § 106 et seq.).

As relevant to this discussion, Title IX and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one employee to coordinate efforts to comply with and carry out the responsibilities under 34 Code of Federal Regulations part 106, which implement Title IX, including the investigation of any complaint communicated to the school district alleging its noncompliance with part 106 or alleging any action that would be prohibited by part 106. (34 C.F.R. § 106.8(a) (May 9, 1980).)
2. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate school district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8(a) (May 9, 1980).)
3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8(b) (May 9, 1980).)
4. Implement specific and continuing steps to notify students and parents of elementary and secondary school students, and employees that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner. (34 C.F.R. § 106.9(a) (Nov. 13, 2000).)
5. Prominently include a statement of the policy prohibiting discrimination on the basis of sex, required under 34 Code of Federal Regulations part 106.9, subdivision (a), in each announcement, bulletin, catalog, application form which it makes available to any person listed in part 106.9, subdivision (a), including students and parents of elementary and secondary school students, and employees. (34 C.F.R. § 106.9(b) (Nov. 13, 2000).)

d. Title II of the Americans with Disabilities Act (42 U.S.C. § 12131-12134)

Title II of the ADA (codified at 42 U.S.C. §§ 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) generally prohibit the exclusion of individuals from participation in or the denial of benefits to individuals of the services, programs, or activities of a public entity due to disability, or for the entity to subject an individual to discrimination based on disability. This prohibition applies to school districts as "public entities" without regard to the receipt of any

[38] Title 20 United States Code section 1682. See *Dougherty County School System v. Bell* (5th Cir. 1982) 694 F.2d 78, 81, finding that deferring school's federal funding must be done on a program by program basis.

[39] *Id*. at p. 704.

federal funds. As a result, the plain language of Title II of the ADA imposes a federal mandate upon school districts.

As relevant to this discussion, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) impose the following activities on school districts:

1. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 28 Code of Federal Regulations part 35 et seq., including any investigation of any non-employment related complaint communicated to it alleging noncompliance with part 35 or alleging any actions that would be prohibited by part 35. (28 C.F.R. § 35.107(a) (July 26, 1991).)
2. Make available to all interested individuals the name, office address, and telephone number of the employee or employees responsible for the school districts efforts to comply with and carry out the responsibilities under 28 Code of Federal Regulations part 35 et seq. (28 C.F.R. § 35.107(a) (July 26, 1991).)
3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107, subd. (b) (July 26, 1991).)

e. General Education Provisions Act (20 U.S.C. §§ 1221-1234i)

Among other things, the General Education Provisions Act (GEPA) (20 U.S.C. §§ 1221-1234i) and its implementing regulations (34 C.F.R, § 76 et seq.) set forth general conditions which school districts must comply with to receive federal education funds under programs administered by the U.S. Department of Education.[40] Failure to comply with the GEPA conditions can trigger the U.S. Department of Education's initiation of a process which could result in the withdrawal of all federal education funds.[41] As noted by the court in *Hayes*, federal assistance to education is pervasive.[42] In addition, the Commission has previously noted that funding provided under Title I of the Elementary and Secondary Education Act, which is one of the programs subject to the GEPA, exceeded $1 billion and that this funding has been relied on for over 40 years.[43] In light of the penalties for failing to comply with the GEPA and its

[40] The programs include the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act.

[41] 20 U.S.C. §§ 1234-1234i and 34 Code of Federal Regulations part 76.901.

[42] *Hayes*, *supra*, 11 Cal.App.4th at p. 1584. As an example, the court cites to Education Code sections 12000-12405, 49540 et seq., and 92140 et seq., which set forth provisions regarding the administration of federal programs by the State Board of Education, participation in the federal child care food program, and participation in federal programs for education in agriculture and mechanical arts.

[43] Statement of decision for *Pupil Suspensions II, Pupil Expulsions II, and Educational Services Plan for Expelled Pupils* (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09) test claims, adopted August 1, 2008, at <http://www.csm.ca.gov/sodscan/052011sod.pdf> as of July 30, 2012.

implementing regulations, and the length of time that federal educational funding has been relied on, the Commission finds that school districts are practically compelled to comply with the GEPA and its implementing regulations.

As relevant to this test claim, the GEPA mandates school districts to submit a general application to the state agency or board administering federal funds with assurances that the district will administer each program subject to the GEPA in accordance with all applicable statutes, regulations, program plans, and applications.[44] The regulations implementing the GEPA require school districts to comply with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, and their implementing regulations.[45] These federal laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age. Thus, school districts are required to provide assurance that programs receiving federal education funds are provided in compliance with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, which prohibit discrimination on the basis of race, color, national origin, sex, disability, and age.

In addition, the GEPA requires school districts to provide an assurance to the state agency or board that the district will make such reports and maintain and provide access to such records as the state agency or board deem necessary to perform their duties.[46] The duties of state agencies or boards include monitoring of agencies, institutions, and organizations responsible for carrying out each program subject to the GEPA, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.[47] Thus, school districts are required to provide compliance reports to state agencies or boards administering federal education funding as may be required by those state agencies or boards.

As relevant to this discussion, the GEPA (20 U.S.C. §§ 1221-1234i) and its implementing regulations (34 C.F.R, § 76 et seq.) impose the following activities on school districts:

1. Provide a written assurance to state agencies or boards administering federal education funding that programs receiving federal education funding are provided in compliance with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, which prohibit discrimination on the basis of race, color, national origin, sex, disability, and age. (20 U.S.C. § 1232e(b)(1).)
2. Provide compliance reports to state agencies or boards administering federal education funding, as may be required by the agencies or boards. (20 U.S.C. § 1232e(b)(4).)

(2) Some of the Test Claim Statutes and Regulations Impose State-Mandated New Programs or Higher Levels of Service on School Districts that Exceed the Requirements of Federal Law.

Some of the test claim statutes and regulations pled in this test claim impose activities that are mandated by the federal antidiscrimination laws described above and, thus, are not reimbursable under article XIII B, section 6 of the California Constitution. In addition, some of the activities

[44] Title 20 United States Code section 1232e(b)(1).

[45] 34 Code of Federal Regulations part 76.500.

[46] Title 20 United States Code section 1232e(b)(4).

[47] Title 20 United States Code section 1232d(b)(3)(A).

pled are triggered by the school district's discretionary decision to offer certain optional educational programs. As described further below, activities required by a statute or regulation that are triggered by a local discretionary decision are not eligible for reimbursement. Finally, some activities that are mandated by the state are not new and, thus, do not impose a new program or higher level of service.

The following analysis addresses the test claim statutes and regulations in two separate sections. The first section addresses the test claim statutes, which provide for the general prohibition against discrimination and various notices regarding an individual's rights in regard to this prohibition. The second section addresses the test claim regulations, which set forth the local and state level complaint procedures to handle complaints alleging both discrimination complaints and complaints alleging violations of specific educational programs. For the reasons below, the Commission partially approves this test claim for those activities that constitute a state-mandated new program or higher level of service.

a. Policies, Notices, and Assurances Regarding Unlawful Discrimination, and Notices Regarding Civil Remedies (Ed. Code, §§ 231.5, 250, 251, 253, 262.3, and 262.4; Gov. Code, § 11139).

Education Code sections 231.5, 250, 251, 253, 262.3, and 262.4; and Government Code section 11139 address: (1) a district's written policy on sexual harassment; (2) a written assurance by districts regarding compliance with antidiscrimination laws; (3) the provision of notice regarding any possible civil remedies; and (4) the enforcement of the prohibition of discrimination by civil action.

(i) Written Policy on Sexual Harassment (Ed. Code, § 231.5).

Section 231.5 identifies as the policy of the State of California that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. In light of this policy, section 231.5 requires school districts to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies. Specifically, section 231.5 requires school districts to engage in the following activities:

1. Have a written policy on sexual harassment, which includes information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies. It is intended that the written policy is included as part of a school district's regular policy statement rather than distributed as an additional written document. (Ed. Code, § 231.5(b) and (c) (Stats. 1998, ch. 914).)
2. Display the written policy in a prominent location in the main administrative building or other area of the campus or school site. (Ed. Code, § 231.5(d) (Stats. 1998, ch. 914).)
3. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session. (Ed. Code, § 231.5(e) (Stats. 1998, ch. 914).)
4. Provide faculty members, administrative staff, and support staff with the written policy on sexual harassment at the beginning of each year or at the time a new employee is hired. (Ed. Code, § 231.5(f) (Stats. 1998, ch. 914).)

5. Include a copy of the policy in any publication of the school that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the school. (Ed. Code, § 231.5(g) (Stats. 1998, ch. 914).)

However, as discussed above, Title IX imposes a federal mandate on school districts to have a written policy prohibiting discrimination on the basis of sex, which includes sexual harassment.[48] School districts are federally mandated to adopt a grievance procedure for allegations of discrimination on the basis of sex, and to notify all students and employees of the procedures for reporting discrimination on the basis of sex.[49] Also school districts are federally mandated to continually notify all students and employees of the school district's policy against discrimination on the basis of sex, or engaging in sexual harassment.[50] In addition, school districts are federally mandated to include a statement of its policy prohibiting discrimination on the basis of sex in each announcement, bulletin, catalog, application form which it makes available to any person, including students and parents of elementary and secondary school students, and employees.[51] Thus, the requirements to have a written policy on sexual harassment that includes a grievance procedure, to provide the policy to students and employees, and to include the policy in any publication that sets forth the rules, regulations, and procedures, and standards of conduct for the school constitute federal mandates and are not reimbursable under article XIII B, section 6 of the California Constitution.[52]

Additionally, although the federal mandates on school districts to notify students, parents, and employees, in a continuing manner, does not specifically require notice by displaying the policy in a prominent location in the main administrative building, the Commission finds that displaying the policy implements the federal mandate to take continuing steps to provide notification of the policy and is part and parcel of the federal law.

In *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist.*) the California Supreme Court addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The issue in *San Diego Unified School Dist.* was whether procedural due process activities imposed by the test claim statute were reimbursable when a school district sought to expel a pupil. The court recognized that federal due process law requires school districts to comply with federal procedural steps, such as notice and a hearing, to safeguard the rights of a pupil when the pupil is subject to an expulsion from school. The Education Code statute pled in the test claim mandated procedures on school districts to implement federal due process requirements. The test claim statute also required school districts to comply with additional procedures that were not

[48] 34 Code of Federal Regulations part 106.9(b).

[49] 34 Code of Federal Regulations part 106.8(a).

[50] 34 Code of Federal Regulations part 106.9(a).

[51] 34 Code of Federal Regulations part 106.9(b).

[52] These activities correspond to Education Code section 231.5 (b), (c), (e), (f), and (g).

expressly required by federal law; i.e. "primarily various notice, right of inspection, and recording rules."[53]

The court held that all procedures set forth in the test claim statute, including those that exceed federal law, are considered to have been adopted to implement a federal due process mandate and, thus, the costs were not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17556.[54] The court held that for purposes of ruling upon a request for reimbursement, "challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis – should be treated as part and parcel of the underlying federal mandate."[55]

The court made this finding in regard to state procedures to provide an expulsion hearing to students facing a discretionary expulsion. In making its finding, the court states:

> [T]he Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate.[56]

Similarly, the displaying of a district's policy in a prominent location is a reasonable articulation of incidental procedures of the federal mandate to take continuing steps to provide notice, which is de minimis in context of providing notice on a *continuing* basis. Thus, the requirement to display the district's policy on sexual harassment in a prominent location in the main administrative building or other area of the campus or school site constitutes a federal mandate not subject to article XIII B of the California Constitution. Thus, the Commission finds that Education Code section 231.5 does not impose a state-mandated new program or higher level of service.

(ii) Assurance of Compliance with Antidiscrimination Laws (Ed. Code, §§ 250, 251, and 253).

Section 250 requires school districts to provide a written assurance to state agencies extending state financial assistance or student financial aid that each program or activity conducted by the district will be conducted in compliance with state laws prohibiting discrimination. "State

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[53] *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 873, footnote 11, and 890. As stated in footnote 11 of the court's decision, the excess activities in the *San Diego Unified School Dist.* case included (1) the adoption of rules and regulations, (2) the inclusion of several notices in the notice of expulsion hearing, (3) allowing the pupil or the parent to inspect and obtain copies of documents to be used at the hearing, (4) sending written notice on the rights and obligations of the parents, (5) maintenance of a record of each expulsion, and (6) recording of the expulsion order and the cause thereof in the student's mandatory interim record.

[54] *Id.* at page 888.

[55] *Id.* at page 890.

[56] *San Diego Unified School Dist., supra*, 33 Cal.4th at p. 889.

financial assistance" and "student financial aid" are defined to include federal funds administered by a state agency.[57] To meet this requirement, section 250 provides that a single assurance, not more than one page in length and signed by an appropriate responsible official of the school district may be provided for all the programs and activities conducted by an educational institution. To be clear, the activity required by Education Code section 250 is not *compliance* with state law prohibiting discrimination. Rather, the activity required is the *provision of a written assurance*, intended to be not more than one page in length for all programs and activities.

Read in context with section 250, section 251 requires districts to provide compliance reports to the CDE regarding the prohibition of unlawful discrimination in a district's activities, as may be required by the CDE, and to make those reports open for inspection during the normal business hours of the district.

As discussed above in the section of this analysis addressing the relevant federal laws, school districts are federally mandated to provide state agencies administering federal education funds with a general assurance that its programs that utilize federal education funding comply with federal antidiscrimination laws.[58] Specifically, federal law requires school districts to provide a written assurance that its programs comply with federal laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age.[59] Additionally, federal law mandates school districts to provide compliance reports to state agencies or boards administering federal education funding, as may be required by the state agencies or boards.[60]

Similarly, state antidiscrimination law prohibits discrimination on the basis of race, national origin, disability, sex, and age. As a result, providing a written assurance of compliance and compliance reports as may be required by the CDE regarding the prohibition of discrimination on the basis of race, national origin, disability, sex, and age constitutes a federal mandate that is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, state antidiscrimination laws also require assurance that a school district is complying with the prohibition of discrimination on the basis of religion and sexual orientation, which is not required by federal law.[61] Also, providing compliance reports to the CDE regarding the prohibition of discrimination on the basis of religion and sexual orientation, as may be required by the CDE, is not required by federal law. As a result, the provision of an assurance that a school district is complying with the prohibition of discrimination on the basis of religion and sexual orientation and the provision of compliance reports as may be required by the CDE constitute state-mandated activities.

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[57] Education Code sections 213 and 214.

[58] Title 20 United States Code section 1232e.

[59] 34 Code of Federal Regulations part 76.500. Providing that a school district shall comply with Title VI of the Civil Rights Act (45 U.S.C. § 2000d et seq; and 34 CFR § 100 et seq), which prohibits discrimination on the basis of race, color, or national origin. In addition, part 76.500 requires districts to comply with Title IX, Section 504, and the Age Discrimination Act.

[60] Title 20 United States Code section 1232e(b)(4).

[61] Education Code section 200.

In addition, these state-mandated activities impose unique requirements on school districts in order to implement the state's policy against unlawful discrimination within schools. Prior to the 1998 amendment of sections 250 and 251, school districts were not required to engage in the activities mandated by the sections.[62] Thus, the Commission finds that Education Code sections 250 and 251 impose the following state-mandated new programs or higher levels of service on school districts:

1. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation.[63] (Ed. Code, § 250 (Stats. 1998, ch. 914).)
2. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)

In contrast, the Commission finds that the activity of making the compliance reports available for public inspection during regular business hours pursuant to Education Code section 251, and the activities alleged to be imposed by Education Code section 253 do not constitute state-mandated new programs or higher levels of service.

The claimant also asserts that the provision in section 251 to make the compliance reports available for public inspection during regular business hours imposes a new program or higher level of service on school districts. However, prior to 1975, "public records" of school districts were required to be open to inspection at all times during district office hours.[64] In addition, since before 1975 "public records" has been defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic."[65] The content of the compliance report specifically relates to the "public's business" and is prepared and retained by the district. As a result, the compliance report constitutes a "public record" and the requirement to make it available for public inspection is not new.

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[62] Exhibit A, *supra*, p. 4-5, and 13. The claimant cites to Statutes 1982, chapter 1117; and Statutes 1998, chapter 914. The 1982 version of section 250 only required school districts to provide assurance of compliance with laws prohibiting discrimination on the basis of sex. In 1998, the Legislature expanded the scope of the assurance required by Section 250 to include all forms of unlawful discrimination. Section 251 remained substantively unchanged between 1982 and 1998. Immediately prior to the enactment of sections 250 and 251 in 1982 and section 250's amendment in 1998, school districts were not required to engage in the activities mandated by the sections.

[63] Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

[64] Government Code section 6253 (Stats. 1974, ch. 544).

[65] Government Code section 6252 (Stats. 1970, ch. 575).

Section 253 requires the State Superintendent of Public Instruction to include specific information in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent, and for the Superintendent to annually review school districts for compliance with "sex discrimination" laws. The claimant asserts that section 253 requires school districts to comply with the sex discrimination provisions of state law as included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction and to cooperate with the Superintendent if selected in his or her annual review for compliance with "sex discrimination" laws.[66] However, the plain language of section 253 does not impose any activities on school districts. Rather, section 253 imposes activities on the State Superintendent of Public Instruction to include specific information in the Coordinated Compliance Review Manual and to review school districts for compliance with "sex discrimination" laws in fiscal years in which sufficient funds have been appropriated. None of the activities contained in section 253 are directed toward school districts. Thus, the Commission finds that Education Code section 253 does not require school districts to engage in any activities.

(iii) Notification of Possible Civil Remedies (Ed. Code, § 262.3)

Education Code section 262.3 addresses the rights of individuals that have filed a complaint of unlawful discrimination with a school district, and the notification these individuals receive regarding civil law remedies that may be available. Education Code section 262.3 requires school districts to engage in the following activities:

1. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
2. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

The activities required by Education Code sections 262.3(b) are not required by federal law. As a result, the Commission finds that the above activities constitute state-mandated activities. Additionally, section 262.3 imposes unique duties upon school districts to advise individuals that have filed complaints alleging unlawful discrimination of the available civil law remedies. The claimant has pled Statutes 1988, chapter 1514, which amended Education Code sections 260 and 262, and added sections 262.1, 262.2, 262.3, and 265.[67] The state-mandated activities listed above were originally contained in Education Code section 265 as added by Statutes 1988, chapter 1514. Immediately prior to the enactment of this test claim statute, school districts were not required to engage in the above activities. Thus, the Commission finds that the above listed activities constitute state-mandated new programs or higher levels of service.

[66] Exhibit A, test claim, dated July 23, 2003, pgs. 41-2.

[67] Exhibit A, test claim filing, *supra*, "test claim form," and p. 6.

(iv) Enforcement of the Prohibition of Discrimination by Civil Action (Ed. Code, § 262.4 and Gov. Code, § 11139)

Education section 262.4 and Government Code section 11139 provide that specific provisions of state law prohibit discrimination in educational programs on the basis of specific characteristics. As further discussed below, the Commission finds that Education Code section 262.4 and Government Code section 11139 do not require school districts to engage in any activities.

Education Code section 262.4 provides, "[Chapter 2 of part 1 of division 1 of title 1 of the Education Code] may be enforced through a civil action." The chapter referenced in section 262.4 consists of Education Code sections 200-283 which prohibit discrimination on a variety of bases, and require specific acts of state and local entities to enforce or comply with this prohibition. Despite the requirements that may be in Chapter 2, the plain language of Education Code section 262.4 *does not* require school districts to engage in any activity. Rather, it provides individuals the ability to enforce Chapter 2 and its prohibitions through civil action.

Similarly, Government Code section 11139 provides in relevant part, "This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies." The article referenced by section 11139 consists of Government Code sections 11135-11139.7, which prohibit discrimination on a variety of bases. However, like Education Code section 262.4, the plain language of Government Code section 11139 does not impose any activities on school districts. Instead, section 11139 provides individuals the ability to enforce sections 11135-11139.7 through civil action.

Therefore, the Commission finds that Education Code section 262.4 and Government Code section 11139 does not impose any state-mandated new programs or higher levels of service on school districts within the meaning of article XIII B, section 6 of the California Constitution.

b. Uniform Complaint Procedures (Cal. Code Regs., tit. 5, §§ 4611, 4620, 4621, 4622, 4631, 4632, 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670)

The title 5 regulations analyzed in this section set forth some of the complaint procedures adopted by the CDE to govern the filing and handling of complaints of prohibited discrimination *and* complaints of violations of seven educational programs discussed immediately below.

(i) Complaint Procedures Scope of Applicability (Cal. Code Regs., tit. 5, § 4610)

Although the claimant does not allege title 5 section 4610 to impose any state-mandated new programs or higher levels of service, section 4610 establishes the scope of the complaints that are to be processed with the procedures set forth in title 5 section 4600 et seq.

In regard to complaints of unlawful discrimination, section 4610 provides that the complaint procedures apply to the filing of complaints alleging unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or activity conducted by" a school district.[68] However, this does not include complaints of employment discrimination, which are instead required to be forwarded to the State

[68] California Code of Regulations, title 5, section 4610 (Register 92, No. 3).

Department of Fair Employment and Housing.[69] In addition, as further discussed below, in section (b)(ii) of this analysis (titled "Complaint Process"), some of the complaint procedures are mandated by federal law to the extent that they apply to complaints alleging discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. But as applicable to complaints alleging discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), the procedures are not mandated by federal law. Also, the activity of forwarding information to the State Superintendent of Public Instruction regarding a decision by the district that was appealed to the Superintendent, is not mandated by any federal antidiscrimination laws, and thus, constitutes a state-mandated activity.

In addition to being the complaint procedures for allegations of unlawful discrimination, the regulations comprise the complaint procedures that apply to alleged violations of the following programs: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 52500~~0~~ – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300). However, not all of these educational programs are required by law.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.[70] The court held that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[71] In addition, the court in *Kern High School Dist*. left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled.[72]

As a result, it is necessary to determine whether school district participation in any of the seven educational programs listed above is required by law.[73] If a school district is not required to participate in one of the educational programs, the downstream requirement imposed by the title 5 regulations to process complaints alleging violations of the voluntary program using the complaint process set forth in title 5 section 4600 et seq., are not mandated by the state.

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[69] California Code of Regulations, title 5, section 4611 (Register 92, No. 3).

[70] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

[71] *Id.* at p. 743.

[72] *Id.* at pg. 731.

[73] For purposes of this discussion, it is not important whether the educational programs are required by state law or by federal mandate. This discussion only addresses whether school districts are required to engage in the complaint procedures set forth by the test claim regulations in regard to specified educational programs. The extent that any of the activities imposed by the test claim regulations are mandated by federal law will be discussed later in this analysis.

(a) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 52500 – 52616.5)

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis.[74] The only exceptions are adult English classes and classes in citizenship. The plain language of Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.[75] Similarly, the plain language of Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.[76] The language of the code sections is not limited to districts already voluntarily maintaining adult education programs. Where the terms of a statute are unambiguous, the plain meaning of the language governs and an intent that cannot be found in the words of the statute cannot be found to exist.[77] As a result, adult education programs are provided on a voluntary basis, *except* for adult English classes and classes in citizenship when requested by a specified number of people.[78]

Under *Kern High School Dist*., a school district's underlying discretionary decision to provide adult basic education programs, other than adult English classes and citizenship classes, triggers any subsequent requirement to process complaints. Thus, school districts are not mandated by the state to process complaints alleging violations of adult basic education programs established pursuant to Education Code sections 8500-8538 and 52500-552616.5, with the exception of adult English classes and citizenship classes provided pursuant to Education Code sections 52540 and 52552.

(b) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a))

The consolidated categorical aid programs listed in Education Code section 64000(a) consist of 14 state and federal aid programs that provide funding for a variety of purposes ranging from bilingual education to safe and drug free schools and communities. Section 64000 describes how a school district receives funding for these programs, providing in relevant part:

> (b) Each school district that *elects to apply* for any of these state funds shall submit to the department, for approval by the state board, a single consolidated

[74] Education Code section 52301 allows the county superintendent of schools of each county, with the consent of the state board, to establish and maintain a regional occupational center, or regional occupational program (ROC/P) in the county to provide education and training in career technical courses. Education Code sections 52501, 52502, and 52503 allow high school districts or unified school districts to establish and maintain adult education classes and/or schools.

[75] Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

[76] Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

[77] *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

[78] On September 27, 2012, the Department of Finance submitted a late filing arguing all adult education programs, including English and citizenship classes, are provided on a voluntary basis. A copy of the filing was provided to the Commission and the public during the September 28, 2012 hearing.

application for approval or continuance of those state categorical programs subject to this part. (Emphasis added.)

(c) Each school district that *elects to apply* for any of these federal funds may submit to the department for approval, by the state board, a single consolidated application for approval or continuance of those federal categorical programs subject to this part. (Emphasis added.)

As shown by the language above, districts elect to apply for and receive funding from the consolidated categorical aid programs listed in Education Code section 64000(a). Thus, school districts are not legally required to participate in the consolidated categorical aid programs. In addition, there is no evidence in the record that districts are practically compelled to engage in the programs. Thus, the requirement to process complaints alleging violations of a consolidated categorical aid program using the complaint process set forth in the test claim regulations is triggered by a school district's underlying discretionary decision to participate in the consolidated categorical aid programs. As a result, under *Kern High School Dist*., any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of any of the consolidated categorical aid programs as listed in Education Code section 64000(a).

(c) Migrant Children Education (Ed. Code, §§ 54440 – 54445)

In *Kern High School Dist.* the California Supreme Court found the Migrant Children Education Programs (Ed. Code, § 54440 et seq.) to be a voluntary educational program.[79] Thus, under *Kern High School Dist*., any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of the Migrant Children Education program.

(e) Vocational Education (Ed. Code, §§ 52300 – 52480)

Education Code sections 52300 through 52480 set forth various vocational education programs in which school districts can voluntarily participate. The voluntary nature of the programs is indicated by the plain language of the code sections. For example, Education Code section 52301 provides that a county superintendent of schools "*may* establish and maintain, . . ., a regional occupational center, or regional occupational program" and that any school districts maintaining high schools are authorized to cooperate in the establishment of the center or program. Likewise, Education Code section 52450 et seq. creates a state program of agricultural career technical education, which a school district "*may, at their option*, include as part of the curriculum of that district."[80] The remaining code sections in Education Code sections 52300-52480 contain similar language or provisions indicating the optional nature of the programs. Thus, under *Kern High School Dist*., any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of Vocational Education established pursuant to Education Code section 52300 through 52480.

(f) Child Care Development (Ed. Code, §§ 8200 – 8493)

Education Code sections 8200 through 8493 (Child Care and Development Services Act) establish a program under which various entities, both public and private, can contract with the

[79] *Kern High School Dist., supra,* 30 Cal.4th 727, 733.

[80] Education Code section 52450.

CDE to provide child care development services.[81] Public and private agencies are authorized to apply for a contract to provide child care development services, but are not required to do so. As a result, under *Kern High School Dist*., any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of child care development services provided pursuant to Education Code sections 8200-8493.

(g) Child Nutrition Programs (Ed. Code, §§ 49490 – 49560)

Under Education Code section 49550, each school district maintaining any K-12 grades must provide each needy pupil enrolled with one nutritionally adequate free or reduced price meal during each school day. The remaining code sections in Education Code sections 49490 through 49560 establish funded nutrition programs in which school districts can participate in order to meet or supplement the requirement to provide a free or reduced price meal during each school day. Although, school districts are authorized to participate in the various programs set forth in Education Code sections 49490 – 49560, they are not mandated by the state to do so. School districts are only required to provide one nutritionally adequate free or reduced price meal during each school day pursuant to Education Code section 49550. Thus, under *Kern High School Dist*., any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of child nutrition programs provided pursuant to Education Code sections 49490-49560, with the exception of section 49550.

(h) Special Education (Ed. Code, §§ 56000 – 56885 and 59000 – 59300)

Under state and federal law, a free appropriate public education shall be available to individuals with exceptional needs. Education Code sections 56000 – 56885 and 59000 – 59300 set forth the rights of various parties in relation to special education, the administrative duties of state and local entities in regard to the provision of special education, and a variety of special education programs required or authorized to be offered by state and local entities.

Title 5 section 4610 provides that the complaint process applies to special education programs established pursuant to Education Code sections 56000 – 56885 and 59000 – 59300. Generally, school districts are required by law to provide the special education programs and comply with the requirements set forth in those code sections. However, school districts are not required to offer programs provided pursuant to Education Code sections 56390 – 56392, 56400 – 56414, 56452 – 56474, 56475 – 56476, 56846 – 56847, and 59000-59300.

Education Code sections 56390 – 56392 provide school districts with the authority to award an individual with exceptional needs a certificate or document of educational achievement or completion. The provision of a certificate is not intended to eliminate an opportunity for an individual with exceptional needs to earn a standard diploma. Although school districts are given this authority, they are not required to utilize the authority. As a result, a school district voluntarily provides this certificate and any subsequent complaints processed through the

[81] See Education Code section 8208, defining "applicant or contract agency" to mean school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter." See also, California Code of Regulations, title 5, section 18000 et seq., describing the process for application for, and award of, a contract.

uniform complaint procedures are triggered by this voluntary decision and not mandated by the state.

Education Code sections 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847 provide for family empowerment centers on disabilities, career and vocation programs, transition services, and project workability, interagency agreements entered into by the Superintendent, and the Superintendent's autism advisory committee. However, the activities or provisions of these code sections apply to the state or private individuals. As a result, these code sections do not impose any requirements on school districts.

Similarly, Education Code sections 59000 – 59300 establish state operated schools for severely handicapped students, including schools for the deaf (Ed. Code, § 59000 et seq.) and the blind (Ed. Code, § 59100 et seq.), and diagnostic centers to provide various services including pupil assessments (Ed. Code, § 59200 et seq.).[82] Thus, the test claim regulations as they relate to Education Code sections 59000 – 59300, direct the state to engage in specific activities, but do not impose any activities on school districts.

Based on this discussion, school districts are required to provide special education programs pursuant to Education Code sections 56000 – 56885, except for programs provided pursuant to Education Code sections 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847.

In summary, the Commission finds that complaints regarding the following educational programs listed in title 5 section 4610 are required by state law on the limited bases discussed above: (1) adult basic education; (2) child nutrition; and (3) special education. To the extent the complaint process activities discussed below are required, they are only mandated by the state for complaints alleging violations of these educational programs *and* complaints of unlawful discrimination not mandated by federal law.

(ii) Complaint Process

The title 5 regulations setting forth the uniform complaint procedures includes processes on the school district level (Cal. Code Regs., tit. 5, §§ 4620, 4621, 4631, and 4632) and the state (Superintendent/the CDE) level (Cal. Code Regs., tit. 5, §§ 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670).

On the school district level, the complaint process involves a complainant filing a complaint with the school district alleging unlawful discrimination or a violation of the educational programs described in California Code of Regulations, title 5, section 4610.[83] Prior to the initiation of an official investigation into the complaint, local mediation may be conducted if offered by the school district to resolve complaints. If mediation is unsuccessful, or does not occur, the school

[82] *Lucia Mar Unified School Dist. v Honig* (1988) 44 Cal.3d 830, 832. See also, Education Code sections 59002, 59102, and 59202, providing that the administration of these schools and centers is under the State Department of Education/Superintendent of Public Instruction.

[83] The Commission notes that any state-mandated new programs or higher levels of service found in this part of the analysis, is limited by the findings that some of the educational programs listed in California Code of Regulations, title 5, section 4610 are not mandated by the state.

district superintendent conducts an investigation and prepares a written decision containing the school district's findings and disposition of the complaint.

The state level complaint process is initiated in two ways: (1) direct state intervention; and (2) appeal of the school district's decision to the Superintendent by a complainant. Regardless of how the state complaint process is initiated, the state is required to offer state mediation to resolve the dispute, which either party can waive. If mediation is waived or is unsuccessful, the Superintendent initiates an investigation. An investigation includes the request of documentation regarding the allegations, and interviews of the involved persons, as appropriate, to determine the facts of the case. In addition, the parties involved are given an opportunity to present information. After the investigation, an investigation report containing findings of facts, conclusions, and any required/recommended corrective actions, is mailed to the parties. After receipt of the state's investigation report, the complainant or the school district may request reconsideration by the Superintendent. Upon determination by the state that a school district has violated the provisions of Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600), the Superintendent notifies the school district of the action the Superintendent will take to effect compliance.

The following will analyze whether the complaint process imposes state-mandated new programs or higher levels of service on school districts.

(a) Referring Complaint Issues to Other Appropriate State or Federal Agencies (Cal. Code Regs., tit. 5, § 4611)

Title 5 section 4611 provides direction to the CDE and school districts to refer specific types of complaints exempt from the complaint procedures established by the test claim regulations to other appropriate state or federal agencies.

As amended in Register 93, number 51, section 4611 excludes the following complaints from the school district complaint procedures set forth in title 5, section 4600 et seq. and requires school districts to refer the complaints to the following specific agencies for resolution:

1. Allegations of child abuse to the applicable County Department of Social Services, Protective Services Division or appropriate law enforcement agency. (Cal. Code Regs., tit. 5, § 4611(a) (Register 92, No. 3).)
2. Health and safety complaints regarding a Child Development Program to the Department of Social Services (DSS) for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities. (Cal. Code Regs., tit. 5, § 4611(b) (Register 92, No. 3).)
3. Discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue. (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)
4. Complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and

Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)[84]

5. Employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH). The complainant must be notified by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)
6. Allegations of fraud to the responsible CDE Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

The claimant has pled the activity of referring allegations of child abuse to the applicable county agency or appropriate law enforcement agency as added in 1991 and last amended in 1993.[85] However, in order for an activity to constitute a new program or higher level of service it has to be new as compared with the legal requirements in effect immediately before the adoption of the regulation.[86] Immediately before the adoption of the regulation in 1991, the Child Abuse and Neglect Reporting Act (commencing with Pen. Code, § 11164) already required districts to report suspected instances of child abuse to a child protective agency, which includes local law enforcement or county welfare departments.[87] As a result, the Commission finds that the requirement to refer allegations of child abuse to other appropriate agencies does not constitute a new program or higher level of service.

In addition, as discussed above, child development programs are established by school districts on a voluntary basis. As a result, receiving and then referring health and safety complaints regarding child development programs is triggered by the underlying voluntary decision to establish such a program. Thus, based on *Kern High School Dist.*, the Commission finds that referring such complaints to the DSS or the appropriate child development regional administrator is not a state-mandated new program or higher level of service.

In regard to the remaining types of complaints, referring these complaints to the specified state and federal agencies is not a result of an underlying voluntary decision by the school district. In addition, referring these complaints to the specified agencies is not mandated by federal law. Also, referring these complaints imposes unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. This requirement did not exist immediately prior to the adoption of this regulation. As a result, the Commission finds that California Code of Regulations, title 5, section 4611 imposes the following state-mandated new programs or higher levels of service:

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[84] California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

[85] Exhibit A, *supra*, p. 24. This coincides with Register 92, number 3; and Register 93, No. 51.

[86] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[87] Penal Code section 11164 et seq. (Stats. 1987, ch. 1071).

1. Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue. (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)
2. Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)[88]
3. Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)
4. Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

(b) Local Agency Compliance and Complaint Procedures (Cal. Code Regs., tit. 5, §§ 4620, 4621, 4622, 4631, and 4632)

This section analyzes the title 5 sections that set forth the complaint procedures at the school district level. Section 4620 states the responsibility that districts have to ensure compliance with state and federal laws and regulations and to investigate complaints of a district's failure to comply with state and federal laws in accordance with the procedures set out in the regulations pled. However, title 5 section 4620 does not, in and of itself, require school districts to engage in a specific activity. Rather, the actual activities taken to meet a school district's responsibility are set forth in the subsequent regulations (Cal. Code Regs., tit. 5, §§ 4621 – 4632), which were pled by the claimant.

These regulations include activities such as the adoption of policies and procedures for the investigation and resolution of complaints, notifying interested parties of these policies and procedures, the actual investigation of complaints, the preparation of a written decision containing the findings and disposition of the complaint, and forwarding information to the State Superintendent when notified that a district decision has been appealed to the state.

As a reminder, any activity required by the complaint procedures discussed below are limited to non-employment discrimination complaints, complaints alleging discrimination for which federal law does not require a district complaint procedures, and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847). In addition, the complaints that are

[88] California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

processed through the policies and procedures adopted by school districts *do not* include complaints of employment discrimination, which are to be referred to the DFEH pursuant to title 5 section 4611.

1) Adoption of Policies and Procedures (Cal. Code Regs., tit. 5, § 4621)

Title 5 section 4621 addresses the adoption of policies and procedures for the investigation and resolution of complaints of alleged discrimination or violations of the educational programs specified in Title 5 section 4610.[89] Based on the plain language of section 4621, school districts are required to engage in the following *one-time* activity:

> Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints. Adoption is to occur within one year from the effective date of Chapter 5.1 of title 5 of the California Code of Regulations (September 25, 1992) by submission of the policies and procedures to the governing board for adoption.
>
> Policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate.
>
> Policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)[90]

The types of complaints processed through the complaint procedures are limited by the types of discrimination prohibited by state law that exceed the prohibitions of federal law. Federal law mandates the adoption of district level complaint procedures and policies for discrimination on the basis of specific characteristics. As addressed in the federal law section of this analysis, Section 504 of the Rehabilitation Act, Title IX, the Age Discrimination Act and Title II of the ADA mandate school districts to adopt policies and procedures for the investigation and resolution of complaints of discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. These laws also mandate school districts to identify the employee responsible for compliance with the regulations implementing the federal prohibitions against discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. Thus, as applicable to complaints regarding discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, the activities required by title 5 sections 4621(a) and 4621(b) regarding the adoption of policies and procedures for the investigation and resolution of complaints and the inclusion of the identity of the person responsible for the complaint process in the policies and procedures constitute a federal mandate not subject to article XIII B of the California Constitution.

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[89] As discussed above, any activities found to constitute state-mandated new programs or higher levels of service are limited by the findings that some of the educational programs set forth in California Code of Regulations, title 5, section 4610 are not mandated.

[90] Exhibit A, *supra*, p. 25. The 1991 addition of this regulation cited to by the claimant coincides with Register 92, number 3.

However, as applicable to complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the mandated education programs discussed above, the activity is not mandated by federal law. As a result, subject to the limitations discussed above, the Commission finds the activity imposed by title 5 sections 4621(a) and (b) constitutes a state-mandated activity.

Also, the above activity imposes a unique requirement on school districts and does not apply generally to all residents and entities in the state. Moreover, it implements the state policy against unlawful discrimination and violations of specified educational programs. Immediately prior to the adoption of title 5 section 4621, as added in 1991, school districts were not required to engage in the activity mandated by section 4621. Thus, the activity constitutes a state-mandated new program or higher level of service.

It must be noted that the adoption of policies and procedures was required to be done within one year of the effective date of Chapter 5.1 of title 5 of the California Code of Regulations. The effective date was September 25, 1991, thus this one-time activity should have been done by September 25, 1992, which is outside of the reimbursement period that starts on July 1, 2002. However, new district formation may have occurred during the period of reimbursement, and thus, the adoption of policies and procedures would have had to occur outside of the timeframe set forth in the regulations and within the period of reimbursement.

Thus, the Commission finds that the following one-time activity imposed by title 5 section 4621 constitutes a state-mandated new program or higher level of service for school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year, but only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847):

> Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.
>
> Policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

2) Notification of District Procedures (Cal. Code Regs., tit. 5, § 4622)

Title 5 section 4622 requires school districts to notify various individuals of the districts' complaint procedures. Specifically, section 4622 requires school districts to engage in the following activities:

1. Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures, including the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600). The annual notice shall include: (1) the identity of the person(s) responsible for processing complaints; and (2) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)
2. The annual notification shall, when necessary, be in the primary language of the recipient pursuant to Education Code section 48985. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

However, as discussed in the federal law section of this analysis, federal law mandates school districts to, in a continuing manner, notify individuals of the district complaint procedures and the identity of the individual responsible for processing complaints of discrimination on the basis of disability, sex, and age.[91] Although the federal mandate on school districts to notify students, parents, and employees, in a continuing manner, does not specifically require annual notification, the Commission finds that the annual notifications implement and are part and parcel of the federal mandate.[92]

Title 5 section 4622's specification that the *continuing* notice will be on an annual basis is a reasonable articulation of incidental procedural protections of the federal mandate, which is de minimis in context of providing notice on a *continuing* basis. Thus, as applicable to complaints regarding discrimination on the basis of age, disability, and sex, the activity required by title 5 section 4622 to provide annual notification of the district's complaint process constitutes a federal mandate not subject to article XIII B of the California Constitution.

As applicable to non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the mandated education programs discussed above (i.e. adult basic education for English and citizenship, a child nutrition program for the provision of one free or reduced price meal each school day to each needy pupil, and special education), this activity is not mandated by federal law. In addition, the requirement that the annual notification be in the primary language of the recipient, when necessary, does not constitute a federal mandate. As a result, subject to the limitations discussed above, the Commission finds the activities imposed by title 5 section 4622 constitute state-mandated activities.

In order to determine if the state-mandated activities constitute "new programs or higher levels of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on the school district to implement a state policy. In addition, the requirements must be new in comparison to the legal requirements in effect immediately prior to the enactment of the mandate. Here, the state-mandated activities impose

[91] 34 Code of Federal Regulations parts 104.8, 106.9, and 110.25.

[92] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 890.

unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs.

As applicable to special education programs established pursuant to Education Code section 56000 et seq., however, the requirement to annually notify students, employees, parents or guardians of its complaint process is not new. Immediately, prior to the adoption of title 5 section 4622 in 1991,[93] former California Code of Regulations, title 5, section 3081 established complaint procedures specifically for complaints regarding special education programs established pursuant to Education Code section 56000 et seq. These procedures were replaced by the uniform complaint process pled in this test claim, and contain many of the same requirements. Specifically, prior to 1991, former title 5 section 3081, already required school districts to annually notify individuals, agencies, and organizations of their right to file a complaint pursuant to the established complaint process.[94] Thus, as applicable to special education programs established pursuant to Education Code section 56000 et seq., the requirement to provide annual notification of the complaint process does not constitute a new program or higher level of service.

Similarly, the requirement to provide the annual notice in the primary language of the recipient, in specific circumstances, is not a new requirement. Prior to the adoption of title 5 section 4622, *all notices* were already subject to the Education Code section 48985 requirement to provide notices in the primary language of the recipient under specific circumstances. Thus, providing the annual notification in the primary language of the recipient does not impose a new program or higher level of service.

However, the requirement to provide annual notice regarding a district's complaint process, excluding complaints regarding special education programs, and unlawful discrimination on the basis of disability, age, and sex, did not exist prior to the adoption of title 5 section 4622 in 1991.[95] Thus, this activity constitutes a new program or higher level of service.

Based on the above discussion, the Commission finds that the following activity imposed by title 5 section 4622 constitutes a state-mandated new program or higher level of service only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):

> Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

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[93] Exhibit A., test claim, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

[94] Former California Code of Regulations, title 5, section 3081(a)(1) (Register 88, No. 15).

[95] Exhibit A., test claim, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

3) Investigation and Disposition of Complaints (Cal. Code Regs., tit. 5, § 4631)

Title 5 section 4631 sets forth the complaint procedures for school districts to address allegations of discrimination or of violations of the specified educational programs. Based on the plain language of section 4631, school districts are required to engage in the following activities:

1. Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

2. Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

   The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

3. The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

The claimant alleges that section 4631 also requires school districts to attempt to resolve complaints through mediation prior to the initiation of a formal compliance investigation. The source of this alleged requirement is section 4631(d). However, the plain language of subdivision (d) provides that school districts "*may* establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation." Based on the plain language of subdivision (d), school districts are authorized to establish procedures allowing for mediation, but are not required to do so. Thus, based on the plain language, the Commission finds that section 4631 does not require school districts to engage in any mediation related activities.

In addition, federal law mandates school districts to have complaint procedures, which include investigations into complaints that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, sex, and age.[96] As discussed above, the

[96] 34 Code of Federal Regulations part 104.7(b) and 28 Code of Federal Regulations part 35.107(b), implement Section 504 of the Rehabilitation Act and Title II of the ADA prohibiting discrimination on the basis of disability. 34 Code of Federal Regulations part 110.25(c) implements the Age Discrimination Act, which prohibits non-employment discrimination on the basis of age. 34 Code of Federal Regulations part 106.8(a) and (b) implements Title IX which prohibits discrimination on the basis of sex.

California Supreme Court has found that rules or procedures that are intended to implement an applicable federal law, and whose costs are de minimis in context, should be treated as part and parcel of the underlying federal mandate.[97] The court made this finding where the Legislature adopted various incidental procedural protections designed to make an underlying federal right enforceable and to set forth procedural details that were not expressly articulated. These incidental procedural protections included: (1) the adoption of rules and regulations pertaining to pupil expulsions; (2) the inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the district, and (b) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing; (3) allowing upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing; and (4) sending written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, and (b) the right to appeal the expulsion to the county board of education.[98]

Similarly, as applicable to complaints of discrimination on the basis of age, disability, and sex, the requirements of title 5 section 4631 were intended to implement federal law by setting forth incidental procedural details not expressly articulated. The requirements to complete the investigation into complaints within 60 days of receiving the complaint, prepare a written decision and provide it to the complainant, and to provide an opportunity for parties to provide information relevant to the complaint are reasonably articulated procedural protections designed to make the underlying federal right to a prompt and equitable complaint process enforceable and to set forth procedural details not expressly articulated. In addition, viewed in the context of the requirement to have a complaint process providing for *prompt* and *equitable* resolution of complaints, these incidental activities are de minimis in nature. Thus, as applicable to complaints of discrimination on the basis of age, disability, and sex, the activities required by title 5 section 4631 constitute a federal mandate not subject to article XIII B, section 6 of the California Constitution.

However, as applicable to complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the education programs discussed above (i.e. adult basic education for English and citizenship, a child nutrition program for the provision of one free or reduced price meal each school day to each needy pupil, and special education), these activities are not mandated by federal law. As a result, subject to the limitations discussed above, the Commission finds the activities imposed by title 5 section 4631 constitute state-mandated activities.

In addition, the state-mandated activities imposed by title 5 section 4631 impose unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. As applicable to complaints of unlawful discrimination, as limited above, and complaints regarding adult basic education and child nutrition programs, as limited above, the requirements did not exist prior to the adoption of

[97] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890.

[98] *Id.* at p. 873.

title 5 section 4622 in 1991.[99] Thus, for these complaints the activities constitute new programs or higher levels of service.

However, as discussed above, former title 5 section 3081, which existed immediately before title 5 section 4631, required complaint procedures for complaints of violations of special education programs established pursuant to Education Code section 56000. These procedures included the requirement to conduct an investigation into the complaint and the preparation of a district decision that included the district's findings, conclusions, rationale, and corrective actions, if necessary.[100] In addition, districts were required to provide the complainant a copy of its decision, and notify the complainant of his or her right to appeal the decision.[101] In addition, the process was required to provide an opportunity for the complainant and school district representatives to present information relevant to the complaint.[102] As a result, as applicable to complaints regarding special education programs established pursuant to Education Code section 56000 et seq., the state-mandated activities *do not* constitute new programs or higher levels of service.

Based on the above discussion, the Commission finds that the following activities imposed by title 5 section 4631 constitute state-mandated new programs or higher levels of service but only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):

1. Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

2. Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

   The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

3. The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

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[99] Exhibit A., test claim, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

[100] Former California Code of Regulations, title 5, section 3081(f)(1) (Register 88, No. 15).

[101] Former California Code of Regulations, title 5, section 3081(f)(1) and (2) (Register 88, No. 15).

[102] Former California Code of Regulations, title 5, section 3081(g)(1) (Register 88, No. 15).

4) Forwarding Information to the Superintendent (Cal. Code Regs., tit. 5, § 4632)

A complainant is authorized to appeal a school district's Decision to the Superintendent.[103] If a complainant utilizes this authority, title 5 section 4632 requires school districts to forward specified information to the Superintendent upon notification by the Superintendent of the appeal. Specifically, section 4632 requires school districts to engage in the following activity:

> Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

This activity is not mandated by federal law. Thus, the Commission finds the above activity constitutes a state-mandated activity for non-employment discrimination complaints alleging unlawful discrimination on any basis and for the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847).

In addition, this activity imposes a unique requirement on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. Also, as applicable to non-employment discrimination complaints of unlawful discrimination, as limited above, and complaints regarding adult basic education and child nutrition programs, as limited above, the requirements did not exist prior to the adoption of title 5 section 4622 in 1991.[104] Thus, for these complaints, the requirement to forward specified information to the State Superintendent constitutes a new program or higher level of service.

However, as applicable to special education programs established pursuant to Education Code section 56000, the state-mandated activity is not new as compared to the requirements in effect immediately before the adoption to title 5 section 4632 in 1991. Former California Code of Regulations, title 5, section 3081(i), already required school districts to provide the specified information to the State Superintendent if a complainant appealed a school districts decision on a complaint regarding special education programs to the State Department of Education. Thus, the state-mandated activity does not constitute a new program or higher level of service as applicable to complaints regarding special education programs established pursuant to Education Code section 56000 et seq.

Based on the above discussion, the Commission finds that the above activity constitutes a state-mandated new program or higher level of service for non-employment discrimination complaints

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[103] California Code of Regulations, title 5, section 4652 (Register 92, No. 3).

[104] Exhibit A., test claim, *supra,* p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

alleging unlawful discrimination and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550).

(c) State Complaint and Resolution Procedures (Cal. Code Regs., tit. 5, §§ 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670)

The claimant alleges that title 5 sections 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670 impose reimbursable state-mandated programs on school districts, including: (1) cooperating with the State Superintendent in mediation or investigations if the Superintendent intervenes directly into a complaint or if a district's decision on complaint is appealed to the Superintendent; (2) cooperating with state investigators by providing various documents and information regarding the allegations of a complaint to the investigators; (3) requesting reconsideration of an investigation report by the state; and (4) "appearing and presenting evidence in a court of competent jurisdiction when the Superintendent files an action seeking an order compelling compliance with provisions of the chapter."[105] However, for the reasons discussed below, the Commission finds that the title 5 regulations discussed in this section do not mandate new programs or higher levels of service on school districts.

First, the plain language of the regulations discussed in this section of the analysis does not impose any activities on school districts. Rather, the regulations authorize complainants to appeal a school district's decision and findings regarding allegations of the school district violating state or federal law to the State Superintendent.[106] In addition, the regulations impose requirements on the State Superintendent to investigate school districts if a complainant appeals a school district's decision or if specific conditions exist that require the State Superintendent to intervene without waiting for a school district action or complainant appeal.[107] After the CDE issues its investigation report, a complainant or school district is authorized to request reconsideration by the Superintendent, but is not required to seek reconsideration.[108] If the Superintendent finds that a school district is in violation of the provisions of Chapter 5.1 of the title 5 regulations (commencing with section 4600), the Superintendent is then authorized to take specified actions to seek compliance by the school district.[109] Thus, the plain language of the regulations does not require *school districts* to engage in any activities.

Second, even if the plain language required school district to engage in the activities alleged by the claimant, those activities do not constitute a "program" under article XIII B, section 6 of the California Constitution. A mandated activity constitutes a "program" when it: (1) carries out the governmental function of providing a service to the public; or (2) imposes unique requirements

[105] Exhibit A. *Id.* at pgs. 47-48.

[106] California Code of Regulations, title 5, section 4652 (Register 92, No. 3).

[107] California Code of Regulations, title 5, section 4650, 4660, 4661, 4662, and 4663 (Register 92, No. 3).

[108] California Code of Regulations, title 5, section 4665 (Register 92, No. 3).

[109] California Code of Regulations, title 5, section 4670 (Register 92, No. 3).

on local agencies or school districts and does not apply generally to all residents and entities in the state.[110]

The claimant generally alleges that the regulations impose a reimbursable program on school districts to cooperate with the state's investigation into allegations by a complainant that a school district has violated state or federal law. The Commission presumes this allegation is based on the language in title 5 section 4663, which sets forth the actions the state will take if a complainant or school district refuses to cooperate with the investigation. Section 4663 provides in relevant part:

> Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.[111]

However, as indicated by the language above, the state complaint resolution process applies equally to the school district being investigated and the complainant, which can be a private individual.[112] Thus, cooperating with the state's investigation is not a unique requirement imposed on school districts. As a result, even if the language of the regulations specifically required school districts to cooperate with the state's investigation, the Commission finds that this activity does not constitute a "program" under articles XIII B, section 6 of the California Constitution.

In addition, the claimant alleges that title 5 section 4670 imposes a state-mandate program on school districts to "[appear] and [present] evidence in a court of competent jurisdiction when the Superintendent files an action seeking an order compelling compliance with the provisions of [Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600)." In other words, the claimant alleges that appearing and presenting evidence in court in order to oppose an order to compel the school district to comply with state law constitutes a "program" under article XIII B, section 6 of the California Constitution.

The claimant has not provided, nor can the Commission find, an argument to explain why appearing and presenting evidence in court in order to oppose an order to compel a school district to comply with state law provides a service to the public. Additionally, facing litigation for allegations of failing to meet one's legal obligations is not a unique requirement imposed on school districts. Both private and public individuals and entities face litigation to compel compliance with their legal obligations. In fact, the primary judicial function of courts is to

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[110] *San Diego Unified School Dist., supra,* 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[111] California Code of Regulations, title 5, section 4663(b) (Register 92, No. 3). The Commission must make this presumption because the language of the regulations is directed at the Superintendent and the claimant does not specifically identify the language requiring cooperation with the Superintendent's investigation.

[112] California Code of Regulations, title 5, section 4600 (Register 92, No. 3). Defining "Complainant" to include "any individual, including a person's duly authorized representative or a interested third party . . . ."

enforce legal obligations and redress injuries to legal rights by the determination of controversies between litigants, both private and public.[113] Thus, the Commission finds that the activity alleged by the claimant to be mandated by title 5 section 4670 does not constitute a "program" under article XIII B section 6 of the California Constitution.

B. The Test Claim Statutes and Regulations Impose Costs Mandated by the State Within the Meaning of Government Code Sections 17514 and 17556.

The final issue is whether the state-mandated activities impose costs mandated by the state,[114] and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service." "Any increased costs" for which a claimant may seek reimbursement include both direct and indirect costs.[115] Government Code section 17564 requires reimbursement claims to exceed $1,000 to be eligible for reimbursement.

The claimant estimates that the Solana Unified Beach School District "incurred more than $1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2002 through June 30, 2003" to implement all duties alleged by the claimant to be mandated by the state.[116] Thus, the claimant has met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

In addition, none of the statutory exceptions listed in Government Code section 17556 apply to the state-mandated new programs or higher levels of service found in the analysis above. As a result, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on employers within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

IV. Conclusion

For the reasons discussed above, the Commission finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

1. Assurance of Compliance with Antidiscrimination Laws in Excess of Federal Law, and Notices Regarding Civil Remedies (Ed. Code, §§ 250, 251, and 262.3)

    a. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws

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[113] 16 California Jurisprudence Third (2002) Courts, section 30, p. 387, citing *Warner v. F. Thomas Parisian Dyeing & Cleaning Works* (1895) 105 Cal. 409, 412.

[114] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[115] Government Code section 17564.

[116] Exhibit A, test claim, *supra*, Exhibit 1 Declaration of Ellie Topolovac, Superintendent of Solana Beach School District.

prohibiting discrimination on the basis of religion and sexual orientation.[117] (Ed. Code, § 250 (Stats. 1998, ch. 914).)

b. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)

c. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

d. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

2. Uniform Complaint Procedures

a. Referral of Complaints to Appropriate Entities (Cal. Code Regs., Tit. 5, § 4611)

(1) Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue.[118] (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)

(2) Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)[119]

(3) Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)

[117] Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

[118] The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

[119] California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

(4) Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621)

Only school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year are mandated to engage in the below activity, but *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847):[120]

Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

The policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

c. Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

[120] This activity *is not reimbursable for* complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):[121]

(1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

(2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

(3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

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[121] These activities *are not reimbursable for* complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

(4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

d. Forwarding of Information to the Superintendent of Public Instruction Regarding Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):[122]

Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

[122] "Unlawful discrimination" as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

RE: **Corrected Statement of Decision**

Uniform Complaint Procedures, 03-TC-02
Education Code Section 200 et al.
Solana Beach School District, Claimant

On September 28, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: October 18, 2012

Heather Halsey, Executive Director

Proposed for Adoption: April 19, 2013
J:\MANDATES\2003\TC\03-tc-02 (Uniform Complt Proc)\PsGs\draft expedited ps&gs.docx

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Education Code Sections 250, 251, 262.3

Statutes 1982, Chapter 1117; Statutes 1988, Chapter 1514; Statutes 1998, Chapter 914

California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631, and 4632

Register 92, Number 3; Register 93, Number 51

Uniform Complaint Procedures (K-12)
03-TC-02

I. SUMMARY OF THE MANDATE

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

On September 28, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 250, 251, and 262.3, and sections 4611, 4621, 4622, 4631, and 4632 of the Title 5 regulations impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, including county boards of education, and excluding community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Solana Beach School District filed the test claim on July 23, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

1. Assurance of Compliance with Antidiscrimination Laws in Excess of Federal Law, and Notices Regarding Civil Remedies (Ed. Code, §§ 250, 251, and 262.3)

    a. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation.[1] (Ed. Code, § 250 (Stats. 1998, ch. 914).)

[1] Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

b. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)

c. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

d. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

2. Uniform Complaint Procedures

a. Referral of Complaints to Appropriate Entities (Cal. Code Regs., Tit. 5, § 4611)

(1) Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue.[2] (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)

(2) Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)[3]

(3) Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)

(4) Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

[2] The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

[3] California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621)

Only school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year are mandated to engage in the below activity, but *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847):[4]

(1) Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

The policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

c. Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education

[4] This activity *is not reimbursable for* complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):[5]

(1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

(2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

(3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

(4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

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[5] These activities *are not reimbursable for* complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

d. Forwarding of Information to the Superintendent of Public Instruction Regarding Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):[6]

(1) Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

[6] "Unlawful discrimination" as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[7] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

[7] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

Received
October 16, 2012
Commission on
State Mandates

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

October 19, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Adopted Statement of Decision and Draft Expedited Parameters and Guidelines
Uniform Complaint Procedures (K-12), 03-TC-02
Education Code Section 200 et al.
Solana Beach School District, Claimant

Dear Ms. Halsey:

The State Controller's Office reviewed and recommends no changes to the proposed parameters and guidelines for the Uniform Complaint Procedures (K-12) program.

Should you have any questions regarding the above, please contact Eduardo Antonio at (916) 327-0755 or e-mail eantonio@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursements Section

Received
October 25, 2012
Commission on
State Mandates

DEPARTMENT OF FINANCE
EDMUND G. BROWN JR. ▪ GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 25, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

As requested in your letter of October 5, 2012, the Department of Finance (Finance) has reviewed the proposed parameters and guidelines for the Commission on State Mandates Test Claim 03-TC-02 titled "Uniform Complaint Procedures" submitted by the Solana Beach School District (claimant).

As the result of our review, we have concluded that the proposed parameters and guidelines appear to be consistent with the Statement of Decision adopted by the Commission on September 28, 2012.

In regards to offsetting revenues and reimbursements, we provide on the attached spreadsheet a list of Budget Act appropriations for fiscal years 2002-03 through 2012-13 for the following programs: Adult Basic Education, Child Nutrition, and Special Education. These appropriations represent funding available for both mandated and discretionary activities. It is Finance's position that these appropriations should be considered offsetting revenues, to the extent that school districts and county offices of education used these funds for activities found to be state-reimbursable mandates by the Commission under this test claim. Therefore, Finance requests that these funds be referenced in the parameters and guidelines (Section VII. Offsetting Revenues and Reimbursements) and for claims to be reduced accordingly.

Pursuant to Section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Lenin Del Castillo, Principal Program Budget Analyst, at (916) 445-0328.

Sincerely,

Nick Schweizer
Program Budget Manager

Attachment

Received
October 25, 2012
Commission on
State Mandates

Uniform Complaint Procedures (K-12), 03-TC-02
Funding History for Adult Education, Child Nutrition, and Special Education

Program Ed Code Sections Budget Act Items	Adult Basic Education 8500-8538; 52500-52616.5 6110-156-0001, 6110-156-0890	*	Child Nutrition Programs 49490-49560 6110-203-0001, 6110-201-0890	*	Special Education Programs 56000-56885; 59000-59300 6110-161-0001, 6110-161-0890	*
BA Appropriations						
2002-03	**$ 673,864,000**		**$ 1,485,288,000**		**$ 3,509,442,000**	
GF	$ 582,038,000	N	$ 71,632,000	N	$ 2,711,073,000	N
FF	$ 91,826,000		$ 1,413,656,000		$ 798,369,000	
2003-04	**$ 619,044,000**		**$ 1,518,173,000**		**$ 3,637,478,000**	
GF	$ 536,850,000	N	$ 73,308,000	N	$ 2,686,728,000	N
FF	$ 82,194,000		$ 1,444,865,000		$ 950,750,000	
2004-05	**$ 645,248,000**		**$ 1,696,883,000**		**$ 3,809,582,000**	
GF	$ 563,533,000	N	$ 80,079,000	N	$ 2,718,608,000	N
FF	$ 81,715,000		$ 1,616,804,000		$ 1,090,974,000	
2005-06	**$ 681,266,000**		**$ 1,702,067,000**		**$ 4,039,066,000**	
GF	$ 602,054,000	N	$ 85,263,000	N	$ 2,890,022,000	N
FF	$ 79,212,000		$ 1,616,804,000		$ 1,149,044,000	
2006-07	**$ 736,439,000**		**$ 1,720,177,000**		**$ 4,217,007,000**	
GF	$ 657,571,000	N	$ 93,092,000	N	$ 3,065,640,000	N
FF	$ 78,868,000		$ 1,627,085,000		$ 1,151,367,000	
2007-08	**$ 784,995,000**		**$ 1,768,303,000**		**$ 4,320,349,000**	
GF	$ 707,821,000	N	$ 123,281,000	N	$ 3,158,993,000	N
FF	$ 77,174,000		$ 1,645,022,000		$ 1,161,356,000	
2008-09	**$ 801,790,000**		**$ 1,882,342,000**		**$ 4,290,437,000**	
GF	$ 726,664,000	Y	$ 125,685,000	N	$ 3,116,298,000	N
FF	$ 75,126,000		$ 1,756,657,000		$ 1,174,139,000	
2009-10	**$ 825,060,000**		**$ 2,168,961,000**		**$ 5,010,082,000**	
GF	$ 745,978,000	Y	$ 134,044,000	N	$ 3,149,874,000	N
FF	$ 79,082,000		$ 2,034,917,000		$ 1,860,208,000	
2010-11	**$ 835,742,000**		**$ 2,311,613,000**		**$ 4,338,899,000**	
GF	$ 745,978,000	Y	$ 151,532,000	N	$ 3,106,681,000	N
FF	$ 89,764,000		$ 2,160,081,000		$ 1,232,218,000	
2011-12	**$ 835,637,000**		**$ 2,357,413,000**		**$ 4,346,204,000**	
GF	$ 745,978,000	Y	$ 155,232,000	N	$ 3,117,119,000	N
FF	$ 89,659,000		$ 2,202,181,000		$ 1,229,085,000	
2012-13	**$ 837,274,000**		**$ 2,505,305,000**		**$ 4,455,822,000**	
GF	$ 745,978,000	Y	$ 156,624,000	N	$ 3,220,353,000	N
FF	$ 91,296,000		$ 2,348,681,000		$ 1,235,469,000	

*** GF amount subject to Control Section 12.42 reduction? Y/N**

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January 9, 2013

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Uniform Complaint Procedures
Claim 03-TC-02

Dear Ms. Halsey:

The following is a response to the Department of Finance letter dated October 25, 2012.

Department of Finance requests that the following programs be considered for offsetting revenues and reimbursements: Adult Basic Education, Child Nutrition, and Special Education. The Commission on State Mandates approved the above matching test claim for the following activities: (1) Assurance of Compliance with Anti-Discrimination Laws in Excess of Federal Law and Notices Regarding Civil Remedies; (2) Uniform Complaint Procedures: (A) Referral of Complaints to Appropriate Entities; (B) Adoption of Policies and Procedures for the Investigation of Complaints; (C) Notification of Complaint Procedures, and Investigation and Disposition of Complaints; (D) Forwarding of information to the Superintendent of Public Instruction Regarding Appealed District Decisions.

Although the above activities may involve the education programs of adult basic education, child nutrition, and special education, the Department of Finance provides no authority the programs funding shall be an offset for activities approved by the Commission for this claim.

Accordingly, Claimant requests that the Commission on State Mandates deny the Department of Finance's request that the following programs (list programs) Adult Basic Education, Child Nutrition and Special Education not be offsetting revenues when filing reimbursable claims. Furthermore, the State Controller's Office in their October 19, 2012 letter recommended no changes to the proposed Parameters and Guidelines.

The Department of Finance on September 27, 2012, made a similar request that was denied by the staff and not included in the Commission's decision.

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Uniform Complaint Procedures
Claim 03-TC-02

Thank you for your cooperation.

Very truly yours,

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation

Arthur M. Palkowitz

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Assembly Bill No. 602

CHAPTER 854

An act to amend Sections 44903.7, 48915.5, 56100, 56140, 56156.5, 56167, 56190, 56200, 56325, 56342, 56360, 56361, 56362, 56366.2, 56441.14, and 56500 of, to amend and repeal Sections 56210, 56213, 56214, 56214.5, 56217, 56218, 56364, and 56370 of, to amend, repeal, and add Sections 56211, 56212, 56425, 56425.5, 56426, 56426.1, 56426.2, 56426.25, 56426.4, 56427, 56429, and 56430 of, to add Sections 56364.5, 56366.9, and 56432 to, to add Chapter 2.5 (commencing with Section 56195) and Chapter 7.2 (commencing with Section 56836) to, and to add Article 1.1 (commencing with Section 56205) to Chapter 3 of, Part 30 of, to add and repeal Sections 56202 and 56832 of, to add and repeal Chapter 7.1 (commencing with Section 56835) of Part 30 of, to repeal Sections 56448 and 56449 of, to repeal Article 6 (commencing with Section 56170) of Chapter 2 of, to repeal Article 1 (commencing with Section 56200) and Article 2 (commencing with Section 56220) of Chapter 3 of, Part 30 of, and to repeal Chapter 4.3 (commencing with Section 56400) and Chapter 7 (commencing with Section 56700) of Part 30 of, the Education Code, relating to special education, and making an appropriation therefor.

[Approved by Governor October 10, 1997. Filed with Secretary of State October 10, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 602, Davis. Poochigian and Davis Special Education Reform Act.

Existing law sets forth a method for determining apportionments for the purposes of special education programs operated by school districts, county superintendents of schools, and special education local plan areas (SELPAs). That method is based in part on amounts based on personnel costs that are computed pursuant to statutory formulas, amounts based on support services costs that are computed pursuant to statutory formulas, and amounts specifically computed for early education for individuals with exceptional needs younger than 3 years of age, nonpublic, nonsectarian schools and agencies, individuals having low-incidence disabilities, and licensed children's institutions. The number of instructional personnel services units that may be claimed are computed for teachers for special day classes and centers, instructional aides, and resource specialists, on the basis of the ratio of those positions to a specified number of pupils.

This bill would enact the Poochigian and Davis Special Education Reform Act and would make legislative findings and declarations with respect to the problems arising from the existing method of

financing special education and related services. The bill would declare the intent of the Legislature to establish a new method for financing special education that is based on the pupil population in each SELPA. The bill would further declare the intent of the Legislature that the new funding method, among other things, ensures greater equity in funding among SELPAs, avoids unnecessary complexity, requires fiscal and program accountability, and avoids financial incentives to inappropriately place pupils in special education. The bill would also contain a legislative finding and declaration that an areawide approach to special education services delivery through administration by SELPAs best serves differing population densities and provides local flexibility, as specified. The bill would also declare the intent of the Legislature to equalize funding among SELPAs.

This bill, to accomplish the intent of the Legislature, would do the following:

(1) This bill would repeal the existing method of computing special education apportionments and make numerous conforming changes to other provisions of law, including the repeal and amendment of supporting statutes relating to the funding of special education programs. The bill would set forth a new method for making apportionments, as follows:

(a) A method for computing one-time equalization adjustments to special education apportionments to school districts and county offices of education that is based upon computed amounts per each type of special education services unit would be established. The bill would require the Superintendent of Public Instruction (superintendent) to compute special education services unit rates (unit rates) for that purpose for teachers of special day classes and centers for pupils who are severely disabled, unit rates for instructional aides for pupils who are severely disabled, unit rates for teachers of special day classes and centers for pupils with exceptional needs who are not severely disabled, unit rates for instructional aides for pupils with exceptional needs who are not severely disabled, unit rates for resource specialists, and unit rates for designated instruction and services. Those unit rates would be based on amounts computed by the superintendent for the 1995–96 fiscal year. Those unit rates would be averaged for services to pupils who are not severely disabled, except with respect to the unit rates for instructional aides. The superintendent would be required to compute statewide average unit rates for the purposes of equalization adjustments. Based upon those computations, the superintendent would be required, for the 1997–98 fiscal year only, to make computations to determine the amount of equalization adjustments, if any, to be made to the special education funding. These equalization adjustments computed for the 1997–98 fiscal year would only be funded to the

extent funds are appropriated for that purpose and would not create any future entitlements for equalization.

(b) Commencing in the 1998–99 fiscal year and each fiscal year thereafter, allocations of funds would be made to SELPAs and the administrator of each SELPA would be responsible for the fiscal administration of the annual budget allocation plan for special education programs and the allocation of state and federal funds to the school districts and county offices of education composing the SELPA in accordance with the local plan.

(c) For the 1998–99 fiscal year, each SELPA would be entitled to, at a minimum, an amount equal to the amount received per unit of average daily attendance in the 1997–98 fiscal year from specified state, local, and federal revenues for the purpose of special education for preschool pupils (ages 3 to 5 years), special education for pupils enrolled in kindergarten and grades 1 to 12, inclusive, and the amounts received for equalization, as described in subdivision (a), as adjusted for inflation, and equalization to the statewide target amount, changes in enrollment, and for the incidence of special disabilities, if applicable.

(d) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount of funding computed for each SELPA would be subject to adjustment for changes in enrollment, equalization to the statewide target amount, inflation, and for the incidence of special disabilities, as specified. For purposes of equalization, each SELPA that would receive an amount per unit of average daily attendance for a fiscal year, as defined, that is below the statewide target amount per unit of average daily attendance for SELPAs, as computed, would be entitled to an equalization adjustment for that fiscal year. Adjustments for equalization would continue through and including the fiscal year in which all SELPAs are funded, at a minimum, at the statewide target amount, as adjusted for inflation. The superintendent would be required to make various computations to determine the amounts available for the purposes of equalization and the amount of the equalization adjustment for each SELPA.

(e) Funding for licensed children’s institutions would continue to be computed as required by existing law.

(f) The method of funding for nonpublic, nonsectarian school contracts would be revised. The State Department of Education would be required to administer an extraordinary cost pool to protect SELPAs from the extraordinary costs associated with single placements in nonpublic, nonsectarian schools. The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education would be required to conduct a study, as specified, of nonpublic school and nonpublic agency costs with a final report to the appropriate policy and fiscal committees of the Legislature on or before May 1, 1998.

(g) Low-incidence funding would continue to be computed as required by existing law.

(h) The method of allocating funds for regionalized operations and services and the direct instructional support of program specialists would be revised.

(2) This bill would require each SELPA to submit a revised local plan on or before the time it is required to submit a local plan as specified. Until the superintendent approves the revised local plan, the SELPA would be required to continue to operate under the reporting and accounting requirements prescribed by the State Department of Education for the special education finance provisions repealed by this bill. The department would be required to issue transition guidelines on the accounting requirements that SELPAs would be required to follow, including, but not necessarily limited to, guidelines pertaining to accounting for instructional personnel service units and caseloads. The bill would prohibit the State Board of Education from approving any proposal to divide a SELPA into 2 or more units unless either equalization among SELPAs has been achieved or the division has no net impact on state costs for special education, provided, however, that a proposal may be approved if it was initially submitted prior to January 1, 1997.

(3) This bill would require each SELPA to administer the revised local plans described in (2) and the allocation of funds. The bill would require SELPAs that do not have approved revised local plans to continue to distribute funds under the methods set forth in existing law, as specified.

(4) This bill would revise the requirements for a SELPA that requests a designation as a necessary small SELPA.

(5) This bill would repeal provisions requiring the termination of the state's participation in special education programs for individuals with exceptional needs between the ages of 3 and 5 years if certain conditions occur.

(6) This bill would make some of the numerous necessary conforming substantive and technical changes to provisions of law relating to special education.

(7) To the extent that this bill would place new requirements on SELPAs, school districts, and county offices of education with respect to governance of SELPAs and the distribution of funds to SELPAs, this bill would impose a state-mandated local program.

(8) The bill would make legislative findings and declarations that the federal Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, contains specified provisions and that state and local education agencies are required to abide by federal laws.

(9) This bill would require the Office of the Legislative Analyst, in conjunction with the Department of Finance and the State Department of Education, to conduct a study of the distribution of

severe and costly disabilities and the Office of the Legislative Analyst, the Department of Finance, and the State Department of Education to submit a report of their findings to the appropriate policy and fiscal committees of the Legislature on or before June 1, 1998.

(10) This bill would require the State Department of Education to convene a working group to develop recommendations for improving the compliance of state and local education agencies with state and federal special education laws and regulations and to submit a report of the recommendations to the appropriate policy and fiscal committees of the Legislature on or before September 1, 1998.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(12) This bill would provide that funding for this bill is contingent upon the enactment of an appropriation in the annual Budget Act, but would appropriate $100,000 from specified federal funds for the purpose of the Office of the Legislative Analyst, the Department of Finance, and the State Department of Education conducting the study of nonpublic school and nonpublic agency costs and $200,000 from specified federal funds for the purpose of the Office of the Legislative Analyst contracting for the request for proposal and study of the distribution of severe and costly disabilities.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be known and may be cited as the Poochigian and Davis Special Education Reform Act.

(b) The Legislature hereby finds and declares the following:

(1) On December 1, 1995, approximately 9.4 percent of the 5,467,224 pupils enrolled in kindergarten and grades 1 to 12, inclusive, in California required some form of special education programming or service.

(2) Significant inequities in funding for special education exist in California. Special education funding derives from the value of a local education agency's various instructional personnel services unit rates plus the funds it generates from multiplying the total unit values by the agency's support services ratio. Since these values and ratios vary greatly among the local education agencies, widely disparate funding amounts are generated for the same type of program among local education agencies.

(3) In the 1994–95 fiscal year, the following range in funding amounts existed for each of the four types of instructional personnel services units providing services to the nonseverely disabled:

Unit Type	Lowest	Highest
Special classes and centers	$31,137	$80,044
Resource specialists	$26,064	$84,579
Designated instruction and services	$30,080	$91,760
Instructional aides	$ 9,601	$49,883

(4) The range in funding amounts in the 1994–95 fiscal year was even greater for instructional personnel services units for special education services for severely disabled pupils in special education classes, as follows:

Unit Type	Lowest	Highest
Special classes and centers	$31,137	$89,181
Instructional aides	$ 9,601	$55,577

(5) Equalization aid has not been provided to correct the disparities in special education funding since the Master Plan for Special Education was enacted for statewide implementation in 1980. Consequently, funding figures, based primarily on expenditures made in the base year 1979–80, are still being used.

(6) In recent years, some additional money has been provided to school districts to equalize revenue limit funding for regular education programs, and school districts with lower base revenue limits have had those revenue limits increased, resulting in those school districts attaining a base revenue limit that is closer to the statewide average.

(7) In February 1994, the Legislative Analyst, in the ''Analysis of the 1994–95 Budget Bill,'' cited a number of major problems with the state's current special education funding formula. Among the shortfalls cited included:

(A) Unjustified funding variation among local education agencies.

(B) Unnecessary complexity.

(C) Constraint on local innovation and on responses to changing requirements.

(D) Inappropriate fiscal incentives related to special education placements.

(8) The current method of funding special education programs unduly influences the manner and methods through which special education services are provided and inhibits the ability of local education agencies to appropriately individualize the provision of special education services to individuals with exceptional needs.

(9) Existing law provides for the annual calculation of additional instructional personnel services necessary to address the enrollment

growth in special education programs. Over the last four years, the number of additional instructional personnel service units actually funded to address the enrollment growth has been well under one-half the number for which the calculation provides:

Fiscal Year	Calculated Need	Amount Funded	Percent Funded
1993-94	$ 87,259,893	$ 30,376,332	34.8
1994-95	106,704,203	51,947,000	48.7
1995-96	99,634,692	31,589,000	31.7
1996-97	134,444,158	56,887,715	42.3

(10) Individuals with exceptional needs and their families are protected by provisions of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations relating thereto. These protections include, but are not limited to, the following:

(A) Individuals with exceptional needs shall be identified, located, and appropriately evaluated in a nondiscriminatory manner.

(B) Individuals with exceptional needs have the right to a free appropriate public education pursuant to an individualized education program developed by local education agency representatives in partnership with the individual's parents.

(C) Individuals with exceptional needs and their families shall receive prior notification whenever a local educational agency intends or refuses to initiate the evaluation of the individual with exceptional needs.

(D) Whenever a local educational agency intends to change the educational placement of an individual with exceptional needs, the individual with exceptional needs and his or her family may review the contents of any records or other materials used to make educational decisions regarding the individual with exceptional needs.

(E) Due process protections, including the protection of seeking redress in the courts.

(11) The protections set forth in paragraph (10) and other requirements of federal law and regulations shall not be adversely affected or negated by any changes to state law which may occur from this act.

SEC. 2. It is the intent of the Legislature, in enacting this act, to accomplish the following:

(a) To establish a funding mechanism that:

(1) Ensures greater equity in funding among special education local plan areas so that pupils with exceptional needs receive the necessary level of services regardless of their geographical location.

(2) Eliminates financial incentives to inappropriately place pupils in special education programs.

(3) Recognizes the interaction among funding for special education programs and services, revenue limits for school districts, and funding for categorical programs.

(4) Phases in the newly developed funding formula on a gradual basis so as not to disrupt educational services to pupils enrolled in general or special education programs.

(5) Requires fiscal and program accountability in a manner that ensures effective services are provided to pupils who require special education services in compliance with federal laws and regulations and ensures that federal and state funds are used for the intended special education purposes.

(6) Establishes a funding formula that is understandable and avoids unnecessary complexity.

(b) To recognize and establish the following principles to guide the new funding mechanism:

(1) Allocations to special education local plan areas encourage and support an areawide approach to service delivery that incorporates collaborative administration and coordination of special education services within an area, allows for the tailoring of the organizational structures to differing population densities and demographic attributes, and provides local flexibility for the planning and provision of special education services in an efficient and cost-effective manner.

(2) Allocations to special education local plan areas are best based on a neutral factor such as total pupil population in the special education local plan area.

(3) Local education agencies need the flexibility to adopt innovative approaches to the delivery of special education services.

(c) It is also the intent of the Legislature that alternative delivery systems that include effective schoolwide and districtwide screening practices, the development of effective teaching and intervention strategies, and regular and special education program collaboration, including team teaching, consultation, and home-school partnerships, be fully utilized in the identification process so as to prevent pupils from needing special education services.

(d) It is further the intent of the Legislature that the new funding mechanism based on total pupil population, does not create, in any way, a disincentive to identify and serve pupils with exceptional needs or eliminate or reduce the continuum of placement options.

SEC. 3. The Legislature further finds and declares as follows:

(a) It is the intent of the Legislature to equalize special education program funding imbalances among local education agencies in the

1997–98 fiscal year, pursuant to Chapter 7.1 (commencing with Section 56835) of Part 30 of the Education Code, only to the extent that funds are provided for that purpose in the Budget Act of 1997 or in this act. It is further the intent of the Legislature to implement a population-based funding formula in the 1998–99 fiscal year, pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code, to allocate special education program funds instead of instructional personnel service units to the special education local plan areas, and to equalize per-pupil funding among the special education local plan areas over a multiyear period, only to the extent that funds are appropriated for those purposes in the annual Budget Act.

(b) As part of the new special education funding system, this act proposes to achieve local administrative savings by simplifying the administrative processes of the current funding system that govern the activities of special education local plan areas, school districts, and county offices of education. Specifically, this act eliminates the process-intensive J-50 claim system that drains local resources away from providing services to completing numerous, lengthy reports in order to secure state funding for special education. To ensure program accountability when the resource-based funding system is replaced by the population-based funding system, this act also provides for additional information to be included in each local plan that will provide the public and other units of government specific information on how services shall be provided and funded. The Legislature finds and declares that the administrative savings resulting from this act will more than offset any increased costs from any new administrative workload resulting from this act.

(c) It is further the intent of the Legislature that the funds provided for equalization entitlements pursuant to this act shall fully compensate any mandated costs associated with maintaining pupil caseload for the purpose of any cost claim filed with the Commission on State Mandates.

SEC. 4. Section 44903.7 of the Education Code is amended to read:

44903.7. When a local plan for the education of individuals with exceptional needs is developed or revised pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, the following provisions shall apply:

(a) Whenever any certificated employee, who is performing service for one employer, is terminated, reassigned, or transferred, or becomes an employee of another employer because of the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, the employee shall be entitled to the following:

(1) The employee shall retain the seniority date of his or her employment with the district or county office from which he or she

was terminated, reassigned, or transferred, in accordance with Section 44847. In the case of termination, permanent employees shall retain the rights specified in Section 44956 or, in the case of probationary employees, Sections 44957 and 44958, with the district or county office initiating the termination pursuant to Section 44955.

(2) The reassignment, transfer, or new employment caused by the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, shall not affect the seniority or classification of certificated employees already attained in any school district that undergoes the reorganization. These employees shall have the same status with respect to their seniority or classification, with the new employer, including time served as probationary employees. The total number of years served as a certificated employee with the former district or county office shall be credited, year for year, for placement on the salary schedule of the new district or county office.

(b) All certificated employees providing service to individuals with exceptional needs shall be employed by a county office of education or an individual school district. Special education local plan areas or responsible local agencies resulting from local plans for the education of individuals with exceptional needs formulated in accordance with Part 30 (commencing with Section 56000) shall not be considered employers of certificated personnel for purposes of this section.

(c) Subsequent to the reassignment or transfer of any certificated employee as a result of the reorganization of special education programs, pursuant to Chapter 797 of the Statutes of 1980, that employee shall have priority, except as provided in subdivision (d), in being informed of and in filling certificated positions in special education in the areas in which the employee is certificated within the district or county office by which the certificated employee is then currently employed. This priority shall expire 24 months after the date of reassignment or transfer, and may be waived by the employee during that time period.

(d) A certificated employee who has served as a special education teacher in a district or county office and has been terminated from his or her employment by that district or county office pursuant to Section 44955, shall have first priority in being informed of and in filling vacant certificated positions in special education, for which the employee is certificated and was employed, in any other county office or school district that provides the same type of special education programs and services for the pupils previously served by the terminated employee. For a period of 39 months for permanent employees and 24 months for probationary employees from the date of termination, the employee shall have the first priority right to reappointment as provided in this section, if the employee has not attained the age of 65 years before reappointment.

SEC. 5. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivision (b) or (d) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified disability.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term ''pupil with previously identified exceptional needs,'' as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding Section 56321, subdivision (e) of Section 56506, or any other provision of law, parental consent is not required prior to conducting a preexpulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the local board to expel.

(c) Each local educational agency, pursuant to the requirements of Section 56195.8, shall develop procedures and timelines governing expulsion procedures for individuals with exceptional needs.

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings, following the completion of a preexpulsion assessment pursuant to subdivision (e), through actual participation, representation, or a telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and local educational agency within the period, if any, of the pupil's preexpulsion suspension. A telephone conference call may be substituted for the meeting. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. The notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to three additional

schooldays pursuant to this subdivision. Each parent may request that the meeting be postponed for up to three additional schooldays. If a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the local educational agency notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond 10 consecutive schooldays unless agreed to by the parent, or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive schooldays and chooses not to participate, the meeting may be conducted without the parent's participation.

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a preexpulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability.

In addition to the preexpulsion educational assessment results, the individualized education program team shall also review and consider the pupil's health records and school discipline records. The parent, pursuant to Section 300.504 of Title 34 of the Code of Federal Regulations, is entitled to written notice of the local educational agency's intent to conduct a preexpulsion assessment. The parent shall make the pupil available for the assessment at a site designated by the local educational agency without delay. The parent's right to an independent assessment under Section 56329 applies despite the fact that the pupil has been referred for expulsion.

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

(h) No expulsion hearing shall be conducted for an individual with exceptional needs until all of the following have occurred:

(1) A preexpulsion assessment is conducted.

(2) The individualized education program team meets pursuant to subdivision (a).

(3) Due process hearings and appeals, if initiated pursuant to Section 1415 of Title 20 of the United States Code, are completed.

(i) Pursuant to subdivision (a) of Section 48918, the statutory times prescribed for expulsion proceedings for individuals with exceptional needs shall commence after the completion of paragraphs (1), (2), and (3) in subdivision (h).

(j) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent.

SEC. 6. Section 56100 of the Education Code is amended to read:

56100. The State Board of Education shall do all of the following:

(a) Adopt rules and regulations necessary for the efficient administration of this part.

(b) Adopt criteria and procedures for the review and approval by the board of local plans. Local plans may be approved for up to four years.

(c) Adopt size and scope standards for determining the efficacy of local plans submitted by special education local plan areas, pursuant to subdivision (a) of Section 56195.1.

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department that affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents in assessing an individual pupil’s education program and the appropriateness of the special education services.

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

(k) Adopt rules and regulations regarding the ownership and transfer of materials and equipment, including facilities, related to transfer of programs, reorganization, or restructuring of special education local plan areas.

SEC. 7. Section 56140 of the Education Code is amended to read:

56140. County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56200 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

SEC. 8. Section 56156.5 of the Education Code is amended to read:

56156.5. (a) Each district, special education local plan area, or county office shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed

children's institutions and foster family homes located in the geographical area covered by the local plan.

(b) In multidistrict and district and county office local plan areas, local written agreements shall be developed, pursuant to subdivision (f) of Section 56195.7, to identify the public education entities that will provide the special education services.

(c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals with exceptional needs residing in foster family homes shall be the responsibility of the district in which the foster family home is located. If a county office is not a part of the special education local plan area, special education services for individuals with exceptional needs residing in licensed children's institutions, pursuant to this subdivision, shall be the responsibility of the responsible local agency or other administrative entity of the special education local plan area. This program responsibility shall continue until the time local written agreements are developed pursuant to subdivision (f) of Section 56195.7.

SEC. 9. Section 56167 of the Education Code is amended to read:

56167. (a) Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office in which the hospital or facility is located, as determined in local written agreements pursuant to subdivision (e) of Section 56195.7.

(b) For the purposes of this part, ''health facility'' shall have the definition set forth in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

SEC. 10. Article 6 (commencing with Section 56170) of Chapter 2 of Part 30 of the Education Code is repealed.

SEC. 11. Section 56190 of the Education Code is amended to read:

56190. Each plan submitted under Section 56195.1 shall establish a community advisory committee. The committee shall serve only in an advisory capacity.

SEC. 12. Chapter 2.5 (commencing with Section 56195) is added to Part 30 of the Education Code, to read:

CHAPTER 2.5. GOVERNANCE

Article 1. Local Plans

56195. Each special education local plan area, as defined in subdivision (d) of Section 56195.1, shall administer local plans

submitted pursuant to Chapter 3 (commencing with Section 56200) and shall administer the allocation of funds pursuant to Chapter 7.2 (commencing with Section 56836).

56195.1. The governing board of a district shall elect to do one of the following:

(a) If of sufficient size and scope, under standards adopted by the board, submit to the superintendent a local plan for the education of all individuals with exceptional needs residing in the district in accordance with Chapter 3 (commencing with Section 56200).

(b) In conjunction with one or more districts, submit to the superintendent a local plan for the education of individuals with exceptional needs residing in those districts in accordance with Chapter 3 (commencing with Section 56200). The plan shall include, through joint powers agreements or other contractual agreements, all the following:

(1) Provision of a governance structure and any necessary administrative support to implement the plan.

(2) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the special education local plan area.

(3) Designation of a responsible local agency or alternative administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(c) Join with the county office, to submit to the superintendent a local plan in accordance with Chapter 3 (commencing with Section 56200) to assure access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. The county office shall coordinate the implementation of the plan, unless otherwise specified in the plan. The plan shall include, through contractual agreements, all of the following:

(1) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the geographical area served by the plan.

(2) Designation of the county office, of a responsible local agency, or of any other administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(d) The service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area.

(e) Nothing in this section shall be construed to limit the authority of a county office and a school district or group of school districts to enter into contractual agreements for services relating to the education of individuals with exceptional needs; provided that, except for instructional personnel service units serving infants, until a special education local plan area adopts a revised local plan approved pursuant to Section 56836.03, the county office of education or school district that reports a unit for funding shall be the agency that employs the personnel who staff the unit, unless the combined unit rate and support service ratio of the nonemploying agency is equal to or lower than that of the employing agency and both agencies agree that the nonemploying agency will report the unit for funding.

56195.3. In developing a local plan under Section 56195.1, each district shall do the following:

(a) Involve special and general teachers selected by their peers and parents selected by their peers in an active role.

(b) Cooperate with the county office and other school districts in the geographic areas in planning its option under Section 56195.1 and each fiscal year, notify the department, impacted special education local plan areas, and participating county offices of its intent to elect an alternative option from those specified in Section 56195.1, at least one year prior to the proposed effective date of the implementation of the alternative plan.

(c) Cooperate with the county office to assure that the plan is compatible with other local plans in the county and any county plan of a contiguous county.

(d) Submit to the county office for review any plan developed under subdivision (a) or (b) of Section 56195.1.

56195.5. (a) Each county office and district governing board shall have authority over the programs it directly maintains, consistent with the local plan submitted pursuant to Section 56195.1. In counties with more than one special education local plan area for which the county office provides services, relevant provisions of contracts between the county office and its employees governing wages, hours, and working conditions shall supersede like provisions contained in a plan submitted under Section 56195.1.

(b) Any county office or district governing board may provide for the education of individual pupils in special education programs maintained by other districts or counties, and may include within the special education programs pupils who reside in other districts or counties. Section 46600 shall apply to interdistrict attendance agreements for programs conducted pursuant to this part.

Article 2. Local Requirements

56195.7. In addition to the provisions required to be included in the local plan pursuant to Chapter 3 (commencing with Section 56200), each special education local plan area that submits a local plan pursuant to subdivision (b) of Section 56195.1 and each county office that submits a local plan pursuant to subdivision (c) of Section 56195.1 shall develop written agreements to be entered into by entities participating in the plan. The agreements need not be submitted to the superintendent. These agreements shall include, but not be limited to, the following:

(a) A coordinated identification, referral, and placement system pursuant to Chapter 4 (commencing with Section 56300).

(b) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(c) Regionalized services to local programs, including, but not limited to, all of the following:

(1) Program specialist service pursuant to Section 56368.

(2) Personnel development, including training for staff, parents, and members of the community advisory committee pursuant to Article 3 (commencing with Section 56240).

(3) Evaluation pursuant to Chapter 6 (commencing with Section 56600).

(4) Data collection and development of management information systems.

(5) Curriculum development.

(6) Provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

(d) A description of the process for coordinating services with other local public agencies that are funded to serve individuals with exceptional needs.

(e) A description of the process for coordinating and providing services to individuals with exceptional needs placed in public hospitals, proprietary hospitals, and other residential medical facilities pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2.

(f) A description of the process for coordinating and providing services to individuals with exceptional needs placed in licensed children’s institutions and foster family homes pursuant to Article 5 (commencing with Section 56155) of Chapter 2.

(g) A description of the process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools pursuant to Section 56150.

(h) A budget for special education and related services that shall be maintained by the special education local plan area and be open to the public covering the entities providing programs or services

within the special education local plan area. The budget language shall be presented in a form that is understandable by the general public. For each local educational agency or other entity providing a program or service, the budget, at minimum, shall display the following:

(1) Expenditures by object code and classification for the previous fiscal year and the budget by the same object code classification for the current fiscal year.

(2) The number and type of certificated instructional and support personnel, including the type of class setting to which they are assigned, if appropriate.

(3) The number of instructional aides and other qualified classified personnel.

(4) The number of enrolled individuals with exceptional needs receiving each type of service provided.

56195.8. (a) Each entity providing special education under this part shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to subdivision (b) or (c) of Section 56195.1 or Section 56195.7. The policies need not be submitted to the superintendent.

(b) The policies shall include, but not be limited to, all of the following:

(1) Nonpublic, nonsectarian services, including those provided pursuant to Sections 56365 and 56366.

(2) Review, at a general education or special education teacher's request, of the assignment of an individual with exceptional needs to his or her class and a mandatory meeting of the individualized education program team if the review indicates a change in the pupil's placement, instruction, related services, or any combination thereof. The procedures shall indicate which personnel are responsible for the reviews and a timetable for completion of the review.

(3) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(4) Resource specialists pursuant to Section 56362.

(5) Transportation, where appropriate, which describes how special education transportation is coordinated with regular home-to-school transportation. The policy shall set forth criteria for meeting the transportation needs of special education pupils. The policy shall include procedures to ensure compatibility between mobile seating devices, when used, and the securement systems required by Federal Motor Vehicle Safety Standard No. 222 (49 C.F.R. 571.222) and to ensure that schoolbus drivers are trained in the proper installation of mobile seating devices in the securement systems.

(6) Information on the number of individuals with exceptional needs who are being provided special education and related services.

(7) Caseloads pursuant to Chapter 4.45 (commencing with Section 56440) of Part 30. The policies, with respect to caseloads, shall not be developed until guidelines or proposed regulations are issued pursuant to Section 56441.7. The guidelines or proposed regulations shall be considered when developing the caseload policy. A statement of justification shall be attached if the local caseload policy exceeds state guidelines or proposed regulations.

(c) The policies may include, but are not limited to, provisions for involvement of district and county governing board members in any due process hearing procedure activities conducted pursuant to, and consistent with, state and federal law.

56195.9. The plan for special education shall be developed and updated cooperatively by a committee of representatives of special and regular teachers and administrators selected by the groups they represent and with participation by parent members of the community advisory committee, or parents selected by the community advisory committee, to ensure adequate and effective participation and communication.

SEC. 13. Section 56200 of the Education Code is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), and this part.

(b) A description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(c) (1) A description of the governance and administration of the plan, including the role of county office and district governing board members.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56170, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other

alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

(i) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

SEC. 14. Section 56202 is added to the Education Code, to read:

56202. This article shall only apply to districts, county offices, and special education local plan areas that have not had a revised local plan approved pursuant to Section 56836.03.

This article shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 15. Article 1.1 (commencing with Section 56205) is added to Chapter 3 of Part 30 of the Education Code, to read:

Article 1.1. State Requirements

56205. Each special education local plan area shall submit a local plan to the superintendent under this part. The local plan shall contain all the following:

(a) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(b) (1) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single

district plan, and a description of the elected officials to whom the governing body or individual is responsible.

(2) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(3) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(4) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(A) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(B) The allocation from the state of federal and state funds to the special education local plan area or to local education agencies within the special education local plan area.

(C) The operation of special education programs.

(D) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(E) The preparation of program and fiscal reports required of the special education local plan area by the state.

(5) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9 and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special and regular teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(c) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in paragraph (1) of subdivision (b).

(d) A description of an alternative resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision,

and other activities specified within the plan. Any arbitration shall be conducted by the department.

(e) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(f) An annual budget allocation plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget allocation plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the local plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process established pursuant to paragraph (3) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56222. The annual budget plan shall separately identify the allocations for all of the following:

(1) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(2) Administrative costs of the plan.

(3) Special education services to pupils with severe disabilities and low incidence disabilities.

(4) Special education services to pupils with nonsevere disabilities.

(5) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(6) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(7) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(g) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments to the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process established pursuant to paragraph (3) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56222. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools regardless

of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(h) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(i) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(j) A description of the process being utilized to meet the requirements of Section 56303.

(k) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(*l*) The local plan, budget allocation plan, and annual service plan shall be written in language that is understandable to the general public.

56206. As a part of the local plan submitted pursuant to Section 56205, each special education local plan area shall describe how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve pupils in isolated sites and maximizes the opportunities to serve pupils in the least restrictive environments.

56207. (a) No educational programs and services already in operation in school districts or a county office of education pursuant to Part 30 (commencing with Section 56000) shall be transferred to another school district or a county office of education or from a county office of education to a school district unless the special education local plan area has developed a plan for the transfer which addresses, at a minimum, all of the following:

(1) Pupil needs.

(2) The availability of the full continuum of services to affected pupils.

(3) The functional continuation of the current individualized education programs of all affected pupils.

(4) The provision of services in the least restrictive environment from which affected pupils can benefit.

(5) The maintenance of all appropriate support services.

(6) The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies.

(7) The means through which parents and staff were represented in the planning process.

(b) The date on which the transfer will take effect may be no earlier than the first day of the second fiscal year beginning after the date on which the sending or receiving agency has informed the other agency and the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205, unless the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205 unanimously approves the transfer taking effect on the first day of the first fiscal year following that date.

(c) If either the sending or receiving agency disagree with the proposed transfer, the matter shall be resolved by the alternative resolution process established pursuant to subdivision (d) of Section 56205.

56208. This article shall apply to special education local plan areas that are submitting a revised local plan for approval pursuant to Section 56836.03 or that have an approved revised local plan pursuant to Section 56836.03.

SEC. 16. Section 56210 of the Education Code is amended to read:

56210. (a) It is the intent of the Legislature in enacting this article to ensure that individuals with exceptional needs residing in special education local plan areas with small or sparse populations have equitable access to the programs and services they may require. It is further the intent of the Legislature to provide a guaranteed minimum level of authorized instructional personnel service units to special education local plan areas with small or sparse populations and the means through which these special education local plan areas may achieve planned orderly growth and maintenance of services through the local planning process. It is also the intent of the Legislature to relieve special education local plan areas with small or sparse populations from the burdensome dependency upon the annual waiver authority of Sections 56728.6, 56728.8, and 56761 so that individuals with exceptional needs residing in those areas may have equitable access to required programs and services.

(b) It is the further intent of the Legislature in enacting this article that special education local plan areas with small or sparse populations be provided with supplemental funding to facilitate their ability to perform the regionalized service functions listed in Section 56780 and provide the direct instructional support of program specialists in accordance with Section 56368.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 56211 of the Education Code is amended to read:

56211. (a) A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56195.1, which includes all of the school districts located in the county submitting the plan, except those participating in a countywide special education local

plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small or sparse populations set forth in Section 56212, is eligible to request that designation in its local plan application and may request exemption for the three-year period covered by its approved plan from compliance with one or more of the standards, ratios, and criteria specified in subdivision (b). In requesting the designation in its local plan application, the special education local plan area shall include a maintenance of service section, pursuant to Section 56213, in which it may request authorization to operate pursuant to the provisions of this article for the three-year period covered by its approved local plan. Each request shall specify which of the standards, ratios, proportions, and criteria for which any exemption is requested, and why compliance with the standards, ratios, proportions, and criteria would prevent the provision of a free appropriate public education or would create undue hardship.

(b) An eligible special education local plan area submitting a local plan application pursuant to this section may request exemption from the standards, ratios, and criteria set forth in Sections 56728.6, 56728.8 and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 56211 is added to the Education Code, to read:

56211. A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56195.1, which includes all of the school districts located in the county submitting the plan, except those participating in a countywide special education local plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small populations set forth in Section 56212, is eligible to request that designation in its local plan application.

This section shall become operative on July 1, 1998.

SEC. 19. Section 56212 of the Education Code is amended to read:

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a small or sparsely populated special education local plan area in one of the following categories:

(a) A necessary small special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and which includes all of the school districts located in the county or counties participating in the local plan.

(b) A sparsely populated special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 25,000, in which the combined pupil density

ratio is not more than 20 pupils in those grades per square mile, and which includes all of the school districts located in the county submitting the plan except those that are participants in a countywide special education local plan area located in an adjacent county.

(c) A special education local plan area with a sparsely populated county in which a special education local plan area includes all of the districts in two or more adjacent counties and in which at least one of the counties would have met the criteria set forth in subdivision (a) or (b) of this section if the districts and the county office of education had elected to submit a single county plan.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 56212 is added to the Education Code, to read:

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a necessary small special education local plan area if its total reported units of average daily attendance in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and if it includes all of the school districts located in the county or counties participating in the local plan.

This section shall become operative on July 1, 1998.

SEC. 21. Section 56213 of the Education Code is amended to read:

56213. (a) Each eligible special education local plan area that submits a local plan pursuant to Section 56211 and that elects exemptions from the standards, ratios, proportions, and criteria set forth in Sections 56728.6, 56728.8, and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units shall, for the duration of its local plan, retain, as minimum annual authorization, the number of authorized instructional personnel service units, and portions thereof, that it reported as operated at the second principal apportionment of the fiscal year immediately preceding the initial year of implementation of the local plan submitted pursuant to this article.

(b) In addition to the contents required to be included in the local plan pursuant to Section 56200, a local plan application submitted pursuant to this article shall include a maintenance of service section in which the eligible special education local plan area shall project the type and total number of additional instructional personnel service units, and portions thereof, it will require for each year of the duration of the local plan, the locations in which instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that

becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 56214 of the Education Code is amended to read:

56214. Each small or sparsely populated special education local plan area which anticipates that its service needs will require instructional personnel service units, or portions thereof, in excess of those authorized in its approved local plan may submit, prior to March 1 of any year, an amendment to the maintenance of service section of its local plan in which it may request an increase in its total number of authorized instructional personnel service units beginning in the following year. The amendment shall project the type and total number of additional instructional personnel service units, and portions thereof, the small or sparsely populated special education local plan area will require for each remaining year of the duration of the local plan, the locations in which additional instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23. Section 56214.5 of the Education Code is amended to read:

56214.5. A special education local plan area which ceases meeting the criteria set forth in Sections 56211 and 56212 during any year in which the local plan area is implementing an approved local plan pursuant to this article shall retain the exemptions authorized pursuant to Section 56213 and the then current level of authorized instructional personnel service units for the following year.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 56217 of the Education Code is amended to read:

56217. Plans and amendments submitted pursuant to this article shall be approved by the State Board of Education prior to the implementation of those plans and amendments.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 56218 of the Education Code is amended to read:

56218. Instructional personnel service units authorized pursuant to this article shall not increase the statewide total number of instructional personnel service units for the purposes of state apportionments unless an appropriation specifically for an increase in the number of instructional personnel service units is made in the

annual Budget Act or other legislation. If an appropriation is made, instructional personnel service units authorized pursuant to this article shall be included in the increased number of units and shall be funded only by the appropriation and no other funds may be apportioned for them.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 26. Article 2 (commencing with Section 56220) of Chapter 3 of Part 30 of the Education Code is repealed.

SEC. 27. Section 56325 of the Education Code is amended to read:

56325. (a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources, which may be implemented without complying with subdivision (a) of Section 56321, or a new individualized education program developed pursuant to Section 56321.

(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

(c) Whenever a pupil described in subdivision (a) is placed and residing in a residential nonpublic, nonsectarian school, the special education local plan area making that placement shall continue to be responsible for the funding of the placement for the remainder of the school year.

SEC. 28. Section 56342 of the Education Code is amended to read:

56342. The individualized education program team shall review the assessment results, determine eligibility, determine the content of the individualized education program, consider local transportation policies and criteria developed pursuant to paragraph (5) of subdivision (b) of Section 56195.8, and make program placement recommendations.

Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing

board of the district and special education local plan area for review and recommendation regarding the cost of the placement.

The local governing board shall complete its review and make its recommendations, if any, at the next regular meeting of the board. A parent or representative shall have the right to appear before the board and submit written and oral evidence regarding the need for nonpublic school placement for his or her child. Any recommendations of the board shall be considered at an individualized education program team meeting, to be held within five days of the board's review.

Notwithstanding Section 56344, the time limit for the development of an individualized education program shall be waived for a period not to exceed 15 additional days to permit the local governing board to meet its review and recommendation requirements.

SEC. 29. Section 56360 of the Education Code is amended to read:

56360. Each special education local plan area shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services, as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and federal regulations relating thereto.

SEC. 30. Section 56361 of the Education Code is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (B) of paragraph (5) of Section 1412 and clause (iv) of subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes and centers pursuant to Section 56364.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 31. Section 56362 of the Education Code is amended to read:

56362. (a) The resource specialist program shall provide, but not be limited to, all of the following:

(1) Provision for a resource specialist or specialists who shall provide instruction and services for those pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a schoolday.

(2) Provision of information and assistance to individuals with exceptional needs and their parents.

(3) Provision of consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.

(4) Coordination of special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.

(5) Monitoring of pupil progress on a regular basis, participation in the review and revision of individualized education programs, as appropriate, and referral of pupils who do not demonstrate appropriate progress to the individualized education program team.

(6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(b) The resource specialist program shall be under the direction of a resource specialist who is a credentialed special education teacher, or who has a clinical services credential with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, as defined by rules and regulations of the Commission on Teacher Credentialing and who has demonstrated the competencies for a resource specialist, as established by the Commission on Teacher Credentialing.

(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56195.8 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds 28 pupils.

(d) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.

(e) Resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.

(f) At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide.

SEC. 32. Section 56364 of the Education Code is amended to read:

56364. (a) Special classes and centers that enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when education in regular

classes with the use of supplementary aids and services cannot be achieved satisfactorily due to the nature or severity of the exceptional need.

In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes and centers shall meet standards adopted by the board.

(b) This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to that section.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 33. Section 56364.5 is added to the Education Code, to read:

56364.5. (a) Special classes and centers that enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll pupils when the nature or severity of the disability precludes their participation in the regular school program for all or significant portions of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily due to the nature or severity of the exceptional needs.

(b) In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes and centers shall meet standards adopted by the board.

(c) This section shall only apply to special education local plan areas that have had a revised local plan approved pursuant to Section 56836.03.

SEC. 34. Section 56366.2 of the Education Code is amended to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.3, 56366.6, and

56366.7. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Article 4 (commencing with Section 56836.20) of Chapter 7.2 of Part 30 or for the certification requirements pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the State Board of Education, the superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out of state, and the specific section waived pursuant to this section.

SEC. 35. Section 56366.9 is added to the Education Code, to read:

56366.9. A licensed children's institution at which individuals with exceptional needs reside shall not require as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned or operated by a licensed children's institution. Those services may only be provided if the special education local plan area determines that alternative educational programs are not available.

SEC. 36. Section 56370 of the Education Code is amended to read:

56370. A transfer of special education programs from a school district to the county superintendent of schools or to other school districts, or from the county superintendent of schools to school districts, shall not be approved by the Superintendent of Public Instruction if the transfer would result in diminishing the level of services or the opportunity of the affected pupils to interact with the

general school population, as required in the individualized education programs of the affected pupils.

This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to this section.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Chapter 4.3 (commencing with Section 56400) of Part 30, of the Education Code is repealed.

SEC. 38. Section 56425 of the Education Code is amended to read:

56425. As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980–81 fiscal year, shall continue to operate early education programs in the 1981–82 fiscal year and each fiscal year thereafter.

If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the district or county office shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred.

A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 39. Section 56425 is added to the Education Code, to read:

56425. As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980–81 fiscal year, shall continue to operate early education programs in the 1981–82 fiscal year and each fiscal year thereafter.

If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the

district or county office shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred.

A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Section 56432.

This section shall become operative on July 1, 1998.

SEC. 40. Section 56425.5 of the Education Code is amended to read:

56425.5. The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs that provide educational services with active parent involvement can significantly reduce the potential impact of many disabling conditions, and positively influence later development when the child reaches schoolage.

Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 41. Section 56425.5 is added to the Education Code, to read:

56425.5. The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs that provide educational services with active parent involvement, can significantly reduce the potential impact of many disabling conditions, and positively influence later development when the child reaches schoolage.

Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement

activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

This section shall become operative on July 1, 1998.

SEC. 42. Section 56426 of the Education Code is amended to read:

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall include, as program options, home-based services pursuant to Section 56426.1, and home-based and group services pursuant to Section 56426.2 and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1471 to 1485, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 56426 is added to the Education Code, to read:

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall include, as program options, home-based services pursuant to Section 56426.1, and home-based and group services pursuant to Section 56426.2 and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1471 to 1485, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

SEC. 44. Section 56426.1 of the Education Code is amended to read:

56426.1. (a) Home-based early education services funded pursuant to Sections 56427, 56428, and 56728.8 shall include, but not be limited to, all of the following:

(1) Observing the infant's behavior and development in his or her natural environment.

(2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

(4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.

(5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.

(6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

(b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 45. Section 56426.1 is added to the Education Code, to read:

56426.1. (a) Home-based early education services funded pursuant to Sections 56427, 56428, and 56432 shall include, but not be limited to, all of the following:

(1) Observing the infant's behavior and development in his or her natural environment.

(2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

(4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.

(5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.

(6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

(b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.

(c) This section shall become operative on July 1, 1998.

SEC. 46. Section 56426.2 of the Education Code is amended to read:

56426.2. (a) Early education services funded pursuant to Sections 56427, 56428, and 56728.8 shall be provided through both home visits and group settings with other infants, with or without the parent. Home-based and group services shall include, but not be limited to, all of the following:

(1) All services identified in subdivision (a) of Section 56426.1.

(2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Opportunities for infants to socialize and participate in play and exploration activities.

(4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.

(5) Access to various developmentally appropriate equipment and specialized materials.

(6) Opportunities for family involvement activities, including parent education and parent support groups.

(b) Services provided in a center under this chapter shall not include child care or respite care.

(c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.

(d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.

(e) Group services shall be provided on a ratio of no more than four infants to one adult.

(f) Parent participation in group services shall be encouraged.

(g) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 47. Section 56426.2 is added to the Education Code, to read:

56426.2. (a) Early education services funded pursuant to Sections 56427, 56428, and 56432 shall be provided through both home visits and group settings with other infants, with or without the parent. Home-based and group services shall include, but not be limited to, all of the following:

(1) All services identified in subdivision (a) of Section 56426.1.

(2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Opportunities for infants to socialize and participate in play and exploration activities.

(4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.

(5) Access to various developmentally appropriate equipment and specialized materials.

(6) Opportunities for family involvement activities, including parent education and parent support groups.

(b) Services provided in a center under this chapter shall not include child care or respite care.

(c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.

(d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.

(e) Group services shall be provided on a ratio of no more than four infants to one adult.

(f) Parent participation in group services shall be encouraged.

(g) This section shall become operative on July 1, 1998.

SEC. 48. Section 56426.25 of the Education Code is amended to read:

56426.25. The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56728.8, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized family service plan, provided that no change in the level of entitlement to state funding under this part thereby results.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 56426.25 is added to the Education Code, to read:

56426.25. The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56432, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized family service plan, provided that no change in the level of entitlement to state funding under this part thereby results.

This section shall become operative on July 1, 1998.

SEC. 50. Section 56426.4 of the Education Code is amended to read:

56426.4. (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56728.8 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:

(1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.

(2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.

(3) Parent support groups to share similar experiences and possible solutions.

(4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.

(b) The frequency of family involvement activities shall be at least once a month.

(c) Participation by families in family involvement activities shall be voluntary.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 51. Section 56426.4 is added to the Education Code, to read:

56426.4. (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56432 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:

(1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.

(2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.

(3) Parent support groups to share similar experiences and possible solutions.

(4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.

(b) The frequency of family involvement activities shall be at least once a month.

(c) Participation by families in family involvement activities shall be voluntary.

(d) This section shall become operative on July 1, 1998.

SEC. 52. Section 56427 of the Education Code is amended to read:

56427. (a) Not less than two million three hundred twenty-four thousand dollars ($2,324,000) of the federal discretionary funds appropriated to the State Department of Education under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.

(b) Programs ineligible to receive funding pursuant to Section 56425 or 56728.8 may receive funding pursuant to subdivision (a).

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 53. Section 56427 is added to the Education Code, to read:

56427. (a) Not less than two million three hundred twenty-four thousand dollars ($2,324,000) of the federal discretionary funds appropriated to the State Department of Education under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.

(b) Programs ineligible to receive funding pursuant to Section 56425 or 56432 may receive funding pursuant to subdivision (a).

(c) This section shall become operative on July 1, 1998.

SEC. 54. Section 56429 of the Education Code is amended to read:

56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56728.8 is conditioned upon the approval by the superintendent of a local plan for early education services, which approval shall apply for not less than one, nor more than four years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that

becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 55. Section 56429 is added to the Education Code, to read:

56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56432 is conditioned upon the approval by the superintendent of a local plan for early education services, which approval shall apply for not less than one, nor more than four, years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

SEC. 56. Section 56430 of the Education Code is amended to read:

56430. (a) Early education services may be provided by any of the following methods:

(1) Directly by a local educational agency.

(2) Through an interagency agreement between a local educational agency and another public agency.

(3) Through a contract with another public agency pursuant to Section 56369.

(4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonsectarian agency pursuant to Section 56366.

(5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

(b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of individual infants under the contract shall not require specific approval by the governing board of the district or the county office.

(c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56728.8. Early education programs shall not be funded pursuant to any of Sections 56740 to 56743, inclusive.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 57. Section 56430 is added to the Education Code, to read:

56430. (a) Early education services may be provided by any of the following methods:

(1) Directly by a local educational agency.

(2) Through an interagency agreement between a local educational agency and another public agency.

(3) Through a contract with another public agency pursuant to Section 56369.

(4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonsectarian agency pursuant to Section 56366.

(5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

(b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of individual infants under the contract shall not require specific approval by the governing board of the district or the county office.

(c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56432.

(d) This section shall become operative on July 1, 1998.

SEC. 58. Section 56432 is added to the Education Code, to read:

56432. (a) For the 1998–99 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to individuals with exceptional needs younger than three years of age at the second principal apportionment of the prior fiscal year, as long as the pupil count of these pupils divided by the number of instructional personnel service units is not less than the following:

(1) For special classes and centers—12, based on the unduplicated pupil count.

(2) For resource specialist programs—24, based on the unduplicated pupil count.

(3) For designated instruction and services—12, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

(b) A special education local plan area shall be eligible for state funding of instructional personnel service units for services to individuals with exceptional needs younger than three years of age in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the superintendent.

(c) The superintendent shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria that shall include, but not be limited to, the following:

(1) Changes in the total number of pupils younger than three years of age enrolled in special education programs.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

(d) Infant programs in special classes and centers funded pursuant to this item shall be supported by two aides, unless otherwise required by the superintendent.

(e) Infant services in resource specialist programs funded pursuant to this item shall be supported by one aide.

(f) When units are allocated pursuant to this subdivision, the superintendent shall allocate only the least expensive unit appropriate.

(g) Notwithstanding Sections 56211 and 56212, a special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall give priority to the following factors:

(1) Applications from special education local plan areas for waivers for a period not to exceed three years to specifically maintain or increase the level of special education services necessary to address the special education service requirements of individuals with exceptional needs residing in sparsely populated districts or attending isolated schools designated in the application.

(A) Sparsely populated districts are school districts that meet one of the following conditions:

(i) A school district or combination of contiguous school districts in which the total enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive, and in which one or more of the school facilities is an isolated school.

(ii) A school district or combination of contiguous school districts in which the total pupil density ratio is less than 15 pupils, kindergarten and grades 1 to 12, inclusive, per square mile and in which one or more of the school facilities is an isolated school.

(B) Isolated schools are schools with enrollments of less than 600 pupils, kindergarten and grades 1 to 12, inclusive, that meet one or more of the following conditions:

(i) The school is located more than 45 minutes average driving time over commonly used and well-traveled roads from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(ii) The school is separated, by roads that are impassable for extended periods of time due to inclement weather, from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iii) The school is of a size and location that, when its enrollment is combined with the enrollments of the two largest schools within an average driving time of not more than 30 minutes over commonly used and well-traveled roads, including schools in adjacent special

education local plan areas, the combined enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iv) The school is the one of normal attendance for a severely disabled individual, as defined in Section 56030.5, or an individual with a low-incidence disability, as defined in Section 56026.5, who otherwise would be required to be transported more than 75 minutes, average one-way driving time over commonly used and well-traveled roads, to the nearest appropriate program.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, or similar facilities that serve children younger than three years of age and are within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

(h) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If that growth appropriation is made, units authorized by the superintendent pursuant to this section are subject to the restrictions that the units shall be funded only by that growth appropriation and no other funds may be apportioned for the units.

(i) The superintendent shall monitor the use of instructional personnel service units retained or authorized by the granting of waivers pursuant to subdivision (h) to ensure that the instructional personnel service units are used in a manner wholly consistent with the basis for the waiver request.

(j) This section shall become operative on July 1, 1998.

SEC. 59. Section 56441.14 of the Education Code is amended to read:

56441.14. Criteria and options for meeting the special education transportation needs of individuals with exceptional needs between the ages of three and five, inclusive, shall be included in the local transportation policy required pursuant to paragraph (5) of subdivision (b) of Section 56195.8.

SEC. 60. Section 56448 of the Education Code is repealed.

SEC. 61. Section 56449 of the Education Code is repealed.

SEC. 62. Section 56500 of the Education Code is amended to read:

56500. As used in this chapter, ''public education agency'' means a district, special education local plan area, or county office, depending on the category of local plan elected by the governing board of a school district pursuant to Section 56195.1, or any other public agency providing special education or related services.

SEC. 63. Section 56832 is added to the Education Code, to read:

56832. (a) This chapter shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute,

that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

(b) Notwithstanding subdivision (a), this chapter, as it existed on December 31, 1998, shall apply until June 30, 2001, for the purpose of recertifications of amounts funded under this chapter.

SEC. 64. Chapter 7.1 (commencing with Section 56835) is added to Part 30 of the Education Code, to read:

CHAPTER 7.1. EQUALIZATION FOR 1997–98 FISCAL YEAR

56835. It is the intent of the Legislature in enacting this chapter to provide a mechanism for computing a one-time equalization adjustment for local educational agencies providing special education and related services. It is further the intent of the Legislature to make equalization adjustments pursuant to this chapter for the 1997–98 fiscal year only to the extent funds are appropriated for that purpose. This chapter shall not be construed to establish any equalization entitlement in any fiscal year subsequent to the 1997–98 fiscal year.

56835.01. For the purposes of computing equalization adjustments for the 1997–98 fiscal year, the superintendent shall make the following computations to determine the special education services unit rates for services provided to pupils who are severely disabled and pupils who are not severely disabled for each district and each county office as follows:

(a) To determine the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled for the school district or county office of education, make the following computations:

(1) Add one to the support services quotient for severely disabled pupils for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (c) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for special day classes computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (a) of Section 56721, subdivision (a) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(3) Subtract the amount computed in subdivision (c) from the rate computed in paragraph (2). This is the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled to be used for the purpose of computing equalization adjustments for the district or county office pursuant to this chapter.

(b) For the purpose of computing, pursuant to subdivision (d), the average special education services unit rate for services to pupils

who are not severely disabled, make the following computations for each district and county office:

(1) Determine the special education services unit rate for teachers of special day classes and centers for pupils with exceptional needs who are not severely disabled by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for special day classes computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (a) of Section 56721, subdivision (a) of 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for teachers of special day classes and centers for pupils who are not severely disabled reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(2) Determine the special education services unit rate for resource specialists for the district or county office by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for resource specialists computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (b) of Section 56721, subdivisions (d) and (e) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for resource specialists reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(3) Determine the special education services unit rate for designated instruction and services by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled computed for the annual apportionment for the 1995–96 fiscal year pursuant to

subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for designated instruction and services computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (c) of Section 56721, subdivision (f) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for designated instruction and services reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(c) For each district and county office, divide the amount computed pursuant to Article 6 (commencing with Section 56750) of Chapter 6 for the district or county office by the total number of instructional personnel services units reported for the types of special education services units specified in subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) for the annual apportionment for the 1995–96 fiscal year.

(d) For each district and county office, to determine the average special education services unit rate for services to pupils who are not severely disabled, make the following computations:

(1) Add the amounts computed for services to pupils who are not severely disabled pursuant to subparagraph (C) of paragraph (1), subparagraph (C) of paragraph (2), and subparagraph (C) of paragraph (3) of subdivision (b).

(2) Add the total number of instructional personnel services units for teachers of special day classes and centers for pupils who are not severely disabled, resource specialists, and designated instruction and services reported for the district or county office for the annual apportionment for the 1995–96 fiscal year.

(3) Divide the amount computed in paragraph (1) by the number computed in paragraph (2).

(4) Subtract the amount computed in subdivision (c) from the rate computed in paragraph (3). This is the average special education services unit rate for services to pupils who are not severely disabled for the district or county office.

56835.02. For the purposes of computing equalization adjustments for the 1997–98 fiscal year, the superintendent shall make the following computations to determine the special education services unit rates for instructional aides for pupils with exceptional needs for each district and each county office:

(a) To determine the special education services unit rate for instructional aides for pupils who are severely disabled for the district or county office, make the following computations:

(1) Add one to the support services quotient for severely disabled pupils for the annual apportionment for the 1995–96 fiscal year

computed pursuant to subdivision (c) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for instructional aides computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (d) of Section 56721, Sections 56722, 56723, and 56724, and subdivision (c) of Section 56828.

(b) To determine the unit rate for instructional aides for pupils with exceptional needs who are not severely disabled for the district or county office, make the following computations:

(1) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for instructional aides computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (d) of Section 56721, Sections 56722, 56723, and 56724, and subdivision (c) of Section 56828.

56835.03. For the 1997–98 fiscal year only, the superintendent shall make the following computations to determine the amounts of the equalization adjustment, if any, for the types of special education services units described in Sections 56835.01 and 56835.02 for each district and county office:

(a) To arrive at the statewide average unit rate for each type of special education services unit for the 1995–96 fiscal year, as computed for districts and county offices pursuant to Sections 56835.01 and 56835.02, perform the following computations:

(1) Make the following computations to determine the statewide average unit rates for districts for the following types of special education services units:

(A) To determine the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled:

(i) Multiply the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for each district pursuant to subdivision (a) of Section 56835.01 by the total number of instructional personnel services units reported for teachers of special day classes and centers for pupils who are severely disabled for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for teachers of special day classes and centers for pupils who are severely

disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(B) To determine the statewide average unit rate for special education services to pupils who are not severely disabled:

(i) Multiply the average special education services unit rate for services to pupils who are not severely disabled computed for each district pursuant to subdivision (d) of Section 56835.01 by the total number of instructional personnel services units for pupils who are not severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for special education services to pupils who are not severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(C) To determine the statewide average unit rate for instructional aides for pupils who are severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are severely disabled computed for each district pursuant to subdivision (a) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(D) To determine the statewide average unit rate for instructional aides for pupils who are not severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are not severely disabled computed for each district pursuant to subdivision (b) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who not are severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(2) Make the following computations to determine the statewide average special education services unit rates for county offices for the following types of special education services units:

(A) To determine the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled:

(i) Multiply the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for each county office pursuant to subdivision (a) of Section 56835.01 by the total number of instructional personnel services units reported for teachers of special day classes and centers for pupils who are severely disabled for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for teachers of special day classes and centers for pupils who are severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(B) To determine the statewide average unit rate for special education services to pupils who are not severely disabled:

(i) Multiply the average special education services unit rate for services to pupils who are not severely disabled computed for each county office pursuant to subdivision (d) of Section 56835.01 by the total number of instructional personnel services units reported for pupils who are not severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for special education services to pupils who are not severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(C) To determine the statewide average unit rate for instructional aides for pupils who are severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are severely disabled computed for each county office pursuant to subdivision (a) of Section 56835.02 by

the total number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(D) To determine the statewide average unit rate for instructional aides for pupils who are not severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are not severely disabled computed for each county office pursuant to subdivision (b) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(b) Make the following computations to determine the difference between the unit rate computed for each type of special education services unit for each district and county office and the statewide average unit rate computed in subdivision (a) for each type of special education services unit for districts and county offices:

(1) For each district, make the following computations:

(A) Subtract the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for the district pursuant to subdivision (a) of Section 56835.01 from the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled computed pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

(B) Subtract the average special education services unit rate for services to pupils who are not severely disabled computed for the district pursuant to subdivision (d) of Section 56835.01 from the statewide average unit rate for services to pupils who are not severely

disabled computed pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(C) Subtract the special education services unit rate for instructional aides for pupils who are severely disabled computed for the district pursuant to subdivision (a) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are severely disabled computed pursuant to subparagraph (C) of paragraph (1) of subdivision (a).

(D) Subtract the special education services unit rate for instructional aides for pupils who are not severely disabled computed for the district pursuant to subdivision (b) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are not severely disabled computed pursuant to subparagraph (D) of paragraph (1) of subdivision (a).

(2) For each county office, make the following computations:

(A) Subtract the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for the county office pursuant to subdivision (a) of Section 56835.01 from the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled computed pursuant to subparagraph (A) of paragraph (2) of subdivision (a).

(B) Subtract the average special education services unit rate for services to pupils who are not severely disabled computed for the county office pursuant to subdivision (d) of Section 56835.01 from the statewide average unit rate for services to pupils who are not severely disabled computed pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(C) Subtract the special education services unit rate for instructional aides for pupils who are severely disabled computed for the county office pursuant to subdivision (a) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are severely disabled computed pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

(D) Subtract the special education services unit rate for instructional aides for pupils who are not severely disabled computed for the county office pursuant to subdivision (b) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are not severely disabled computed pursuant to subparagraph (D) of paragraph (2) of subdivision (a).

(c) For each district and county office, multiply the difference in the unit rate determined for each type of special education services unit pursuant to subdivision (b) by the total number of units of that type of special education services unit that were reported for the district or county office at the annual apportionment for the 1995–96 fiscal year.

(d) For each district and county office, add the amounts computed pursuant to subdivision (c) for the district or county office that are zero or greater. Each district and county office having an amount that is zero or greater shall receive an equalization adjustment in the amount computed pursuant to subdivision (g).

(e) Total the amounts computed pursuant to subdivision (d) for each district and county office to determine the total statewide amount necessary to fully fund this section in the 1997–98 fiscal year.

(f) Divide the amount that is actually appropriated for the 1997–98 fiscal year for the purpose of equalization pursuant to this chapter by the amount computed pursuant to subdivision (e) to determine the percentage of the amount computed for each district and county office pursuant to subdivision (d) that will be funded pursuant to this section.

(g) For the 1997–98 fiscal year to determine the amount of the equalization adjustment to apportion to each eligible district and county office pursuant to this section, multiply the amount computed pursuant to subdivision (d) by the percentage computed pursuant to subdivision (f). The superintendent shall apportion an equalization adjustment for the 1997–98 fiscal year in the amount equal to that product to the district or county office.

56835.04. (a) The data certified by the State Department of Education to the Controller for the 1995–96 fiscal year with respect to apportionments computed under Chapter 7 (commencing with Section 56700) shall be used for the purposes of making computations based upon the 1995–96 fiscal year pursuant to this chapter.

(b) For purposes of this chapter, information reported ''for the 1995–96 annual apportionment'' means the data meeting the requirements of subdivision (a), as certified in March 1997.

56835.05. (a) The department shall continuously monitor and review all special education programs approved under this chapter to assure that all funds appropriated to districts and county offices under this chapter are expended for the purposes intended.

(b) Funds apportioned to districts and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.

56835.06. Regardless of when this act becomes effective, it is the intent of the Legislature to make the apportionments for the equalization adjustments computed pursuant to this chapter for the entire 1997–98 fiscal year.

56835.07. This chapter shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 65. Chapter 7.2 (commencing with Section 56836) is added to Part 30 of the Education Code, to read:

CHAPTER 7.2. SPECIAL EDUCATION FUNDING

Article 1. Administration

56836. Commencing with the 1998–99 fiscal year and for each fiscal year thereafter, apportionments to special education local plan areas for special education programs operated by, and services provided by, districts, county offices, and special education local plan areas shall be computed pursuant to this chapter.

56836.01. Commencing with the 1998–99 fiscal year and each fiscal year thereafter, the administrator of each special education local plan area, in accordance with the local plan approved by the superintendent, shall be responsible for the following:

(a) The fiscal administration of the annual budget allocation plan for special education programs of school districts and county superintendents of schools composing the special education local plan area.

(b) The allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities.

(c) The reporting and accounting requirements prescribed by this part.

56836.02. (a) The superintendent shall apportion funds from Section A of the State School Fund to districts and county offices of education in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205, unless the local plan approved by the superintendent specified that they be apportioned to the administrative unit of the special education local plan area. If the local plan specifies that the funds be apportioned to the administrative unit of the special education local plan area, the administrator of the special education local plan area shall, upon receipt, distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205. Unless the local plan approved by the superintendent specifies an alternative method of distributing state and local funds among the participating local educational agencies, the funds shall be distributed by the special education local plan area as allocated instructional personnel service units and operated as computed in Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, or Chapter 7.1 (commencing with Section 56835).

(b) The superintendent shall apportion funds for regionalized services and program specialists from Section A of the State School Fund to the administrative unit of each special education local plan area. Upon receipt, the administrator of a special education local plan area shall direct the administrative unit of the special education local plan area to distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205.

56836.03. (a) On or after January 1, 1998, each special education local plan area shall submit a revised local plan. Each special education local plan area shall submit its revised local plan not later than the time it is required to submit its local plan pursuant to subdivision (b) of Section 56100 and the revised local plan shall meet the requirements of Chapter 3 (commencing with Section 56200).

(b) Until the superintendent has approved the revised local plan and the special education local plan area begins to operate under the revised local plan, each special education local plan area shall continue to operate under the programmatic, reporting, and accounting requirements prescribed by the State Department of Education for the purposes of Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998. The department shall develop transition guidelines, and, as necessary, transition forms, to facilitate a transition from the reporting and accounting methods required for Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, and related provisions of this part, to the reporting and accounting methods required for this chapter. Under no circumstances shall the transition guidelines exceed the requirements of the provisions described in paragraphs (1) and (2). The transition guidelines shall, at a minimum, do the following:

(1) Describe the method for accounting for the instructional service personnel units and caseloads, as required by Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998.

(2) Describe the accounting that is required to be made, if any, for the purposes of Sections 56030, 56140, 56156.5, 56361.5, 56362, 56363.3, 56365.5, 56366.2, 56366.3, 56370, 56441.5, 56441.7, and 56447.

(c) Commencing with the 1997–98 fiscal year, through and including the fiscal year in which equalization among special education local plan areas has been achieved, the board shall not approve any proposal to divide a special education local plan area into two or more units, unless the division has no net impact on state costs for special education; provided, however, that the board may approve a proposal that was initially submitted to the department prior to January 1, 1997.

56836.04. (a) The superintendent shall continuously monitor and review all special education programs approved under this part to assure that all funds appropriated to special education local plan areas under this part are expended for the purposes intended.

(b) Funds apportioned to special education local plan areas pursuant to this chapter shall be expended exclusively for programs operated under this part.

56836.05. Apportionments made under this part shall be made by the superintendent as early as practicable in the fiscal year. Upon order of the superintendent, the Controller shall draw warrants upon

the money appropriated, in favor of the eligible special education local plan areas.

Article 2. Computation of Apportionments

56836.06. For the purposes of this article, the following terms or phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) ''Average daily attendance reported for the special education local plan area'' means the total of the following:

(1) The total number of units of average daily attendance reported for the second principal apportionment pursuant to Section 41601 for all pupils enrolled in the district or districts that are a part of the special education local plan area.

(2) The total number of units of average daily attendance reported pursuant to Section 41601 for all pupils enrolled in schools operated by the county office or offices that compose the special education local plan area, or for those county offices that are a part of more than one special education local plan area, that portion of the average daily attendance of pupils enrolled in the schools operated by the county office that are under the jurisdiction of the special education local plan area.

(b) ''Special education local plan area'' includes the school district or districts and county office or offices of education composing the special education local plan area.

(c) ''The fiscal year in which equalization among special education local plan areas has been achieved'' means the first fiscal year in which each special education local plan area is funded at or above the statewide target amount per unit of average daily attendance, as computed pursuant to Section 56836.11.

56836.08. (a) For the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998–99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998–99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155).

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155) and increased pursuant to subparagraph (D) if the adjusted funding per unit of average daily attendance of the special education local plan area is below the statewide target amount per unit of average daily attendance as determined pursuant to subparagraphs (A) to (C), inclusive, as follows:

(A) Calculate the adjusted amount of funding per unit of average daily attendance for each special education local plan area, measured in dollars and cents, using the methodology contained in subdivision (a) of Section 56836.10, except that the amount used from the computation in Section 56836.09 shall be reduced by the amount computed pursuant to Article 2.5 (commencing with Section 56836.155).

(B) Determine the statewide target amount per unit of average daily attendance, measured in dollars and cents and rounded up to the nearest 50 cents ($0.50), as computed pursuant to subdivision (a) of Section 56836.11.

(C) The adjusted funding per unit of average daily attendance is below the statewide target amount if the amount calculated pursuant to subparagraph (A), subtracted from the amount calculated pursuant to subparagraph (B), yields a positive value.

(D) If the computation made pursuant to subparagraph (C) yields a positive value, increase the special disabilities adjustment in

the 1999–2000 fiscal year and each year thereafter by the percent increase in growth in average daily attendance reported by the special education local plan area and the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the applicable fiscal year.

(E) Inclusion of the special disabilities adjustment in the total funding of a special education local plan area shall neither change nor be included in the computation of equalization funding pursuant to Section 56836.12 or the computations made after this computation that precede the computation in Section 56836.12.

(c) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes allocated to the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated to the special education local plan area pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998–99 fiscal year, and commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998–99 fiscal year, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997–98 fiscal year computed pursuant to paragraph (3) of Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) For the 1999–2000 fiscal year and each fiscal year thereafter, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

56836.09. For the purpose of computing the amount to apportion to each special education local plan area for the 1998–99 fiscal year,

the superintendent shall compute the total amount of funding received by the special education local plan area for the 1997–98 fiscal year as follows:

(a) Add the following amounts that were received for the 1997–98 fiscal year:

(1) The total amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to the special education local plan area for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive.

(2) The total amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to the special education local plan area for the purposes of providing preschool and related services to individuals with exceptional needs who are ages 3 to 5 years, inclusive, pursuant to Chapter 4.45 (commencing with Section 56440).

(3) The total amount of property taxes allocated to the special education local plan area pursuant to Section 2572.

(4) The total amount of General Fund moneys allocated to the special education local plan area pursuant to Chapter 7 (commencing with Section 56700) plus the total amount received for equalization pursuant to Chapter 7.1 (commencing with Section 56835), as those chapters existed on December 31, 1998.

(5) The total amount of General Fund moneys and federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to another special education local plan area for any pupils with exceptional needs who are served by the other special education local plan area but who are residents of the special education local plan area for which this computation is being made.

(b) Add the following amounts received in the 1997–98 fiscal year:

(1) The total amount determined for the special education local plan area for the purpose of providing nonpublic, nonsectarian school services to licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities for the 1997–98 fiscal year pursuant to Article 3 (commencing with Section 56836.16).

(2) The total amount of General Fund moneys and federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated for any pupils with exceptional needs who are served by the special education local plan area but who do not reside within the boundaries of the special education local plan area.

(3) The total amount of General Fund moneys allocated to the special education local plan area to perform the regionalized

operations and services functions listed in Article 6 (commencing with Section 56836.23) and to provide the direct instructional support of program specialists in accordance with Section 56368.

(4) The total amount of General Fund moneys allocated to the special education local plan area for individuals with exceptional needs younger than three years of age pursuant to Chapter 7 (commencing with Section 56700), as that chapter existed on December 31, 1998.

(5) The total amount of General Fund moneys allocated to local education agencies within the special education local plan area pursuant to Section 56771, as that section existed on December 31, 1998, for specialized books, materials, and equipment for pupils with low-incidence disabilities.

(c) Subtract the sum computed in subdivision (b) from the sum computed in subdivision (a).

56836.10. (a) The superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the 1998–99 fiscal year:

(1) Divide the amount of funding for the special education local plan area computed for the 1997–98 fiscal year pursuant to Section 56836.09 by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(2) Add the amount computed in paragraph (1) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the fiscal year in which the computation is made:

(1) For the 1999–2000 fiscal year, divide the amount of funding for the special education local plan area computed for the 1998–99 fiscal year pursuant to subdivision (a) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year.

(2) For the 2000–01 fiscal year, and each fiscal year thereafter, divide the amount of funding for the special education local plan area computed for the prior fiscal year pursuant to subdivision (b) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year.

56836.11. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the statewide target amount per unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area pursuant to Section 56836.09 for the 1997–98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997–98 fiscal year.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997–98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year to determine the statewide target amount for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

56836.12. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Subtract the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (a) of Section 56836.10 from the statewide target amount per unit of average daily attendance determined pursuant to subdivision (a) of Section 56836.11.

(2) If the remainder computed in paragraph (1) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(b) Commencing with the 1999–2000 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Add to the amount per unit of average daily attendance computed for the special education local plan area pursuant to

subdivision (b) of Section 56836.10 for the fiscal year in which the computation is made the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the fiscal year in which the computation is made.

(2) Subtract the amount computed pursuant to paragraph (1) from the statewide target amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 56936.11 for the fiscal year in which the computation is made.

(3) If the remainder computed in paragraph (2) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year.

56836.13. Commencing with the 1998–99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount available for making equalization adjustments for the fiscal year in which the computation is made:

(a) Determine the amounts of funds equal to the increase in federal funds, if any, appropriated in the annual Budget Act for the purposes of equalizing funding for special education local plan areas pursuant to this chapter. The increase shall be computed by subtracting the amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for the fiscal year in which the computation is made from the amount available to the state from those funds for the prior fiscal year.

(b) Subtract the amount computed in subdivision (a) from the amount of funds provided for increased costs to the state in administering the special education program.

(c) Add to the amount in subdivision (b), the amount of additional funds, if any, appropriated in the fiscal year for which the computation is made in the annual Budget Act for the purposes of equalizing funding for special education local plan areas pursuant to this chapter.

56836.14. Commencing with the 1998–99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the actual amount of the equalization adjustment for each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance:

(a) Add the amount determined for each special education local plan area pursuant to Section 56836.12 for the fiscal year in which the computation is made to determine the total statewide aggregate amount necessary to fund each special education local plan area at

the statewide target amount per unit of average daily attendance for special education local plan areas.

(b) Divide the amount computed in subdivision (a) by the amount computed pursuant to Section 56836.13 to determine the percentage of the total amount of funds necessary to fund each special education local plan area at the statewide target amount per unit of average daily attendance for special education local plan areas that are actually available for that purpose.

(c) To determine the amount to allocate to the special education local plan area for a special education local plan area equalization adjustment, multiply the amount computed for the special education local plan area pursuant to Section 56836.12, if any, by the percentage determined in subdivision (b).

56836.15. (a) In order to mitigate the effects of any declining enrollment, commencing in the 1998–99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding

reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

Article 2.5. Computation of Adjustment

56836.155. (a) For the 1998–99 fiscal year, prior to calculating the apportionment in Article 2 (commencing with Section 56836.06), the superintendent shall perform the following calculation:

(1) Determine for each special education local plan area the number of pupils with exceptional needs with the special disabilities specified in subdivision (b) for pupils residing in the special education local plan area based on the April 1996 pupil count.

(2) Determine for each special education local plan area the total reported incidence of all disabilities for pupils of age 3 to 22 years, inclusive, excluding pupils in placements as described in paragraph (1) of subdivision (b).

(3) Determine the statewide total of reported incidence of special disabilities determined pursuant to paragraph (1).

(4) Determine the statewide total reported incidence of all disabilities determined pursuant to paragraph (2).

(b) For the purposes of paragraph (1) of subdivision (a), the superintendent shall use the count of all pupils with exceptional needs of age 3 to 22 years, inclusive, exclusive of placements in paragraph (1) and inclusive of the disabilities in paragraph (2).

(1) Pupils in state operated programs, nonpublic schools, and out-of-home placements.

(2) Pupils with low-incidence disabilities of autistic, hard of hearing, deaf, visually impaired, deaf, blind, and severe orthopedic impairment, except that, for the purposes of subdivision (a), pupils in the disability category of orthopedic impairment shall be used in the absence of special education local plan area counts of only severe orthopedic impairment. To the count of low-incidence disabilities, also add pupils in the disability category of traumatic brain injury.

(c) Calculate, for each special education local plan area, the reported incidence of special disabilities as a percentage of its total reported incidence of all disabilities by dividing the amount in paragraph (1) of subdivision (a) by the amount in paragraph (2) of

subdivision (a). The percentage amount is to be expressed to the accuracy of one hundredth of a percentage point.

(d) Calculate the statewide total of reported incidence of special disabilities as a percent of the statewide total incidence of all disabilities by dividing the amount in paragraph (3) of subdivision (a) by the amount in paragraph (4) of subdivision (a). The percent amount is to be expressed to the accuracy of one hundredth of a percentage point.

(e) For each special education local plan area whose percentage of special disabilities calculated pursuant to subdivision (c) is greater than the statewide percent of special disabilities pursuant to subdivision (d), determine the number of excess pupils in the special education local plan area as follows:

(1) Multiply the statewide percent of special disabilities calculated in subdivision (d) by the count by the special education local plan area of all disabilities determined pursuant to paragraph (2) of subdivision (a).

(2) Subtract the amount calculated in paragraph (1) from the count by the special education local plan area of special disabilities determined pursuant to paragraph (1) of subdivision (a). Round this number to the nearest whole number.

(f) Multiply the number of excess pupils calculated in subdivision (e) by one thousand dollars ($1,000). This is the amount that each special education local plan area having excess pupils is to receive as a special disabilities adjustment in the 1998–99 fiscal year and that is to be included in the total amount of funding received by the special education local plan area pursuant to Section 56836.08.

Article 3. Licensed Children’s Institutions

56836.16. (a) For the 1980–81 fiscal year and each fiscal year thereafter, the superintendent shall apportion to each district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and services, or both, to pupils in licensed children’s institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, and (2) the state and federal income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, shall not exceed the cost of master contracts with nonpublic, nonsectarian schools and agencies to provide special education and designated instruction and services for these pupils, as determined by the superintendent.

(b) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency master contract or individual services agreement for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

56836.17. (a) The superintendent may reimburse each district and county office of education providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 for assessment and identification costs for pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities who are placed in state-certified nonpublic, nonsectarian schools.

(b) Actual costs under this section shall not include either administrative or indirect costs, or any proration of support costs.

(c) The total amount reimbursed statewide under this section shall not exceed the amount appropriated for these purposes in any fiscal year. If the superintendent determines that this amount is insufficient to reimburse all claims, the superintendent shall prorate the deficiency among all districts or county offices submitting claims.

56836.18. (a) The superintendent shall establish and maintain an emergency fund for the purpose of providing relief to special education local plan areas when a licensed children's institution, foster family home, residential medical facility, or other similar facility serving individuals with exceptional needs opens or expands in a special education local plan area during the course of the school year which impacts the special education local plan area, or when a pupil is placed in a facility for which no public or state-certified nonpublic program exists within the special education local plan area in which the pupil's individualized education program can be implemented during the course of the school year and impacts the educational program.

(b) The special education local plan area in which the impaction occurs shall be responsible for submitting a written request to the superintendent for emergency funding. The written request shall contain, at a minimum, all of the following:

(1) Specific information on the new or expanded licensed children's institution, foster family home, residential medical facility, or other similar facility described in subdivision (a), including information on the new unserved or underserved pupils residing in the facility, or specific information relating to the new unserved or underserved pupils residing in those facilities.

(2) The identification of the steps undertaken demonstrating that no public special education program exists within the special education local plan area capable of programmatically meeting the needs of the identified pupils.

(3) A plan from the special education local plan area describing the services to be provided.

(c) The superintendent shall approve, modify, or disapprove the written request for emergency funding within 30 days of the receipt of the written request and shall notify the special education local plan area administrator, in writing, of the final decision.

(d) It is the intent of the Legislature that appropriations necessary to fund these emergency situations shall be included in the Budget Act for each fiscal year.

Article 4. Nonpublic, Nonsectarian School Contracts

56836.20. (a) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a special education local plan area enters into shall not include any of the following costs that a special education local plan area may incur:

(1) Administrative or indirect costs of the special education local plan area.

(2) Direct support costs for the special education local plan area.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a special education local plan area for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the special education local plan area including the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil’s individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(b) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

56836.21. (a) The State Department of Education shall administer an extraordinary cost pool to protect special education local plan areas from the extraordinary costs associated with single placements in nonpublic, nonsectarian schools. Funds shall be appropriated for this purpose in the annual Budget Act. Special education local plan areas shall be eligible for reimbursement from this pool in accordance with this section.

(b) The threshold amount for claims under this section shall be the lesser of the following:

(1) One percent of the allocation calculated pursuant to Section 56836.08 for the special education local plan area for the current fiscal year for any special education local plan area that meets the criteria in subdivision (a) of Section 56212.

(2) The State Department of Education shall calculate the average cost of a nonpublic, nonsectarian school placement in the 1997–98 fiscal year. This amount shall be multiplied by 2.5, then by one plus the inflation factor computed pursuant to Section 42238.1, to obtain the alternative threshold amount for claims in the 1998–99 fiscal year. In subsequent fiscal years, the alternative threshold amount shall be the alternative threshold amount for the prior fiscal year multiplied by one plus the inflation factor computed pursuant to Section 42238.1.

(c) Special education local plan areas shall be eligible to submit claims for costs of any nonpublic, nonsectarian school placements exceeding the threshold amount on forms developed by the State Department of Education. All claims for a fiscal year shall be submitted by November 30 following the close of the fiscal year. If the total amount claimed by special education local plan areas exceeds the amount appropriated, the claims shall be prorated.

Article 5. Low Incidence Funding

56836.22. (a) Commencing with the 1985–86 fiscal year, and for each fiscal year thereafter, funds to support specialized books, materials, and equipment as required under the individualized education program for each pupil with low incidence disabilities, as defined in Section 56026.5, shall be determined by dividing the total number of pupils with low incidence disabilities in the state, as reported on December 1 of the prior fiscal year, into the annual appropriation provided for this purpose in the Budget Act.

(b) The per-pupil entitlement determined pursuant to subdivision (a) shall be multiplied by the number of pupils with low incidence disabilities in each special education local plan area to determine the total funds available for each local plan.

(c) The superintendent shall apportion the amount determined pursuant to subdivision (b) to the special education local plan area for purposes of purchasing and coordinating the use of specialized books, materials, and equipment.

(d) As a condition of receiving these funds, the special education local plan area shall ensure that the appropriate books, materials, and equipment are purchased, that the use of the equipment is coordinated as necessary, and that the books, materials, and equipment are reassigned to local educational agencies within the special education local plan area once the agency that originally received the books, materials, and equipment no longer needs them.

(e) It is the intent of the Legislature that special education local plan areas share unused specialized books, materials, and equipment with neighboring special education local plan areas.

Article 6. Program Specialists and Administration of Regionalized Operations and Services

56836.23. Funds for regionalized operations and services and the direct instructional support of program specialists shall be apportioned to the special education local plan areas. As a condition to receiving those funds, the special education local plan area shall assure that all functions listed below are performed in accordance with the description set forth in its local plan adopted pursuant to subdivision (c) of Section 56205:

(a) Coordination of the special education local plan area and the implementation of the local plan.

(b) Coordinated system of identification and assessment.

(c) Coordinated system of procedural safeguards.

(d) Coordinated system of staff development and parent education.

(e) Coordinated system of curriculum development and alignment with the core curriculum.

(f) Coordinated system of internal program review, evaluation of the effectiveness of the local plan, and implementation of a local plan accountability mechanism.

(g) Coordinated system of data collection and management.

(h) Coordination of interagency agreements.

(i) Coordination of services to medical facilities.

(j) Coordination of services to licensed children's institutions and foster family homes.

(k) Preparation and transmission of required special education local plan area reports.

(*l*) Fiscal and logistical support of the community advisory committee.

(m) Coordination of transportation services for individuals with exceptional needs.

(n) Coordination of career and vocational education and transition services.

(o) Assurance of full educational opportunity.

(p) Fiscal administration and the allocation of state and federal funds pursuant to Section 56836.01.

(q) Direct instructional program support that may be provided by program specialists in accordance with Section 56368.

56836.24. Commencing with the 1998–99 fiscal year and each year thereafter, the superintendent shall make the following computations to determine the amount of funding for the purposes specified in Section 56836.23 to apportion to each special education local plan area for the fiscal year in which the computation is made:

(a) For the 1998–99 fiscal year the superintendent shall make the following computations:

(1) Multiply the total amount of state General Fund money allocated to the special education local plan areas in the 1997–98 fiscal year, for the purposes of Article 9 (commencing with Section 56780) of Chapter 7, as that chapter existed on December 31, 1998, by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) Divide the amount calculated in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(3) To determine the amount to be allocated to each special education local plan area in the 1998–99 fiscal year, the superintendent shall multiply the amount computed in paragraph (2) by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the 1998–99 fiscal year shall be deemed to have 15,000

units of average daily attendance, and no special education local plan area shall receive less than it received in the 1997–98 fiscal year.

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following calculations:

(1) Multiply the amount determined in paragraph (2) of subdivision (a) by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the current fiscal year.

(2) Multiply the amount determined in paragraph (1) by the number of units of average daily attendance reported for the special education local plan area for the current fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the current fiscal year shall be deemed to have 15,000 units of average daily attendance.

56836.25. Funds received pursuant to this article shall be expended for the purposes specified in Section 56836.23.

SEC. 66. (a) The Legislature finds and declares as follows:

(1) The individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), effective in part upon enactment and in part as further specified in the act, provides as follows:

''Sec. 612. STATE ELIGIBILITY.

(a) In general.--A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

[Language Omitted]

(5) LEAST RESTRICTIVE ENVIRONMENT-

(A) IN GENERAL-To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) ADDITIONAL REQUIREMENT-

(i) IN GENERAL-If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

(ii) ASSURANCE-If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding

mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

[Language Omitted]''

(16) PERFORMANCE GOALS AND INDICATORS—The State—

(A) has established goals for the performance of children with disabilities in the State that—

(i) will promote the purposes of this Act, as stated in section 601(d); and

(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

(17) PARTICIPATION IN ASSESSMENTS—

(A) IN GENERAL-Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local education agency—

(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

(B) REPORTS-The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments.

(ii) The number of those children participating in alternate assessments.

(iii) (I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

(aa) for assessments conducted after July 1, 1998; and

(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

[Language Omitted]''

''Sec. 616. WITHHOLDING AND JUDICIAL REVIEW

(a) WITHHOLDING OF PAYMENTS-

(1) IN GENERAL-Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

(A) that there has been a failure by the State to comply substantially with any provision of this part; or

(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement; the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(2) NATURE OF WITHHOLDING-If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there if no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.''

[Language Omitted]''

(2) State and local education agencies are required to abide by federal laws that are in effect.

(b) This section shall remain in effect only if the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), is not further amended or repealed, and this section is repealed upon any further amendment or repeal of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et

seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17).

(c) It is the intent of the Legislature that this section be reenacted to incorporate any changes to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), as soon as possible after the amendment of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17).

SEC. 67. (a) The Office of the Legislative Analyst, in conjunction with the Department of Finance and the State Department of Education, shall conduct a study to gather, analyze, and report on data that would indicate the extent to which the incidence of disabilities, that are medically defined or severe and significantly above-average in cost, or both, are evenly or unevenly distributed among the population of special education local plan areas. The Office of the Legislative Analyst shall contract for both the development of the request for proposal for the study and for the study itself. The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education, shall submit a report of the contractor's findings and recommendations no later than June 1, 1998, to the Governor and the appropriate policy and fiscal committees of the California State Senate and the California State Assembly. The report shall include, if feasible and appropriate, a method to adjust the funding formula contained in Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code in order to recognize the distribution of disabilities that are medically defined or severe and significantly above-average in cost, or both, among the special education local plan areas. The report shall use the definition of severe orthopedic impairment developed by the State Department of Education pursuant to Section 70.

(b) There is hereby appropriated to the State Department of Education for transfer to the Office of the Legislative Analyst for the 1997–98 fiscal year the sum of two hundred thousand dollars ($200,000) from supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act. The funds are only to be used for the purpose of contracting for the request for proposal and study in subdivisions (a) and (b) and for the purpose of paying any necessary overhead associated with the supervision of the independent contracts. Provision 1 of Item 6110-161-0890 of the 1997–98 Budget Act on funds received over the amount of federal funds budgeted shall only apply to the balance of supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act remaining after the appropriation made by this subdivision is deducted from that supplemental funding.

(c) Of the amount needed to fully fund the equalization formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code as it read on January 1, 1998, fifteen million dollars ($15,000,000) shall be available for an adjustment to that formula pursuant to the results of the study required pursuant to Section 67. The amount actually required to fully fund the adjustment enacted by an act of the Legislature subsequent to the results of the study shall be funded in whole in the 1998–99 fiscal year if eighty million dollars ($80,000,000), or more, in federal funds becomes available, or proportionately less if less federal funds are available, during years of equalization carried out pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code. At the time an adjustment is enacted, the formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code shall also be amended in an act other than the Budget Act to reduce the full funding level by the total cost of the adjustment which may be more or less than fifteen million dollars ($15,000,000) such that the total cost of the formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code plus the adjustment shall equal the cost of the equalization formula as it existed before enacting the adjustment. The adjustment shall be enacted to amend or replace the formula established in Article 2.5 (commencing with Section 56836.155) of Chapter 7.2 of Part 30 of the Education Code and shall not be enacted in addition to the formula established in that article.

SEC. 68. (a) The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education shall conduct a study, in consultation with the other interested parties, of nonpublic school and nonpublic agency costs as compared to the cost of public school placements, the cause of continuing increases in nonpublic school and agency costs, and recommendations for cost containment. In carrying out this study the Office of the Legislative Analyst shall examine the impact on nonpublic school and nonpublic agency costs of children residing in out-of-home placements, and of mediation and due process hearings. The Office of the Legislative Analyst may contract with an independent party to conduct this study on behalf of the Office of the Legislative Analyst. The Office of the Legislative Analyst shall submit a final report of its findings and recommendations on or before May 1, 1998, to the appropriate policy and fiscal committees of the Senate and the Assembly of the California Legislature.

(b) There is hereby appropriated to the State Department of Education for transfer to the Office of the Legislative Analyst for the 1997–98 fiscal year the sum of one hundred thousand dollars ($100,000) from supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act. The funds are only to be used for the purpose of conducting the study in

subdivision (a). Provision 1 of Item 6110-161-0890 of the 1997–98 Budget Act on funds received over the amount of federal funds budgeted shall only apply to the balance of supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act remaining after the appropriation made by this subdivision is deducted from that supplemental funding.

SEC. 69. (a) The State Department of Education shall convene a working group to develop recommendations for improving the compliance of state and local education agencies with state and federal special education laws and regulations. These recommendations shall define how the State Department of Education and local education agencies will assure and maintain compliance of special education laws and regulations in providing services to individuals with exceptional needs. Final recommendations shall include, but not be limited to, state compliance training and technical assistance, state review and monitoring of local compliance, the state complaint process and timetable, state corrective action and follow up, and local and state agency sanctions for noncompliance.

(b) The working group shall include members representing the State Board of Education, the State Department of Education, county offices of education, school districts, special education local plan areas, the Special Education Advisory Commission, the State Department of Education administrative hearing office, the federal Office of Civil Rights or Office for Special Education Programs, organizations advocating for, or consisting of, individuals with exceptional needs and their families, parents of individuals with exceptional needs, and organizations representing school teachers and other support services staff serving individuals with exceptional needs. It is the intent of the Legislature that the working group convened by the State Department of Education shall include a balance of members representing state and local education agencies and employees, and members representing individuals with exceptional needs and their families.

(c) The State Department of Education shall submit a report of the working group's recommendations no later than September 1, 1998, to the Governor and the appropriate policy and fiscal committees of the Senate and the Assembly of the California Legislature.

SEC. 70. On or before January 1, 1998, the State Department of Education shall develop a definition of severe orthopedic impairment for use in the application and distribution of low-incidence funding in the 1998–99 fiscal year.

SEC. 71. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts

that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 72. Funding for this bill, except as provided in Sections 67 and 68 of this bill, shall be contingent upon the enactment of an appropriation in the annual Budget Act.

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Effective: October 5, 2010

United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter I. General Provisions
§ 1401. Definitions

Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(2) Assistive technology service

The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assist-

ive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term "child with a disability" means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term "child with a disability" for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Core academic subjects

The term "core academic subjects" has the meaning given the term in section 9101 of the Elementary and Sec-

ondary Education Act of 1965 [20 U.S.C.A. § 7801].

(5) Educational service agency

The term “educational service agency”--

(A) means a regional public multiservice agency--

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term “elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term “equipment” includes--

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school stu-

dent, as may be appropriate, and which shall be computed after deducting--

(A) amounts received--

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311 et seq.]; and

(iii) under parts A and B of title III of that Act [20 U.S.C.A. § 6811 et seq. and 20 U.S.C.A. § 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term “free appropriate public education” means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Highly qualified

(A) In general

For any special education teacher, the term “highly qualified” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801], except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects ex-

clusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(11) Homeless children

The term “homeless children” has the meaning given the term “homeless children and youths” in section 11434a of Title 42.

(12) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term “individualized family service plan” has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term “infant or toddler with a disability” has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term “institution of higher education”--

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978.

(18) Limited English proficient

The term “limited English proficient” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(19) Local educational agency

(A) In general

The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes--

(i) an educational service agency; and

(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term "native language", when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

(21) Nonprofit

The term "nonprofit", as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, and the Common-

wealth of the Northern Mariana Islands.

(23) Parent

The term “parent” means--

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term “parent organization” has the meaning given the term in section 1471(g) of this title.

(25) Parent training and information center

The term “parent training and information center” means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a dis-

ability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term "Secretary" means the Secretary of Education.

(29) Special education

The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(30) Specific learning disability

(A) In general

The term "specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term “transition services” means a coordinated set of activities for a child with a disability that--

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term “universal design” has the meaning given the term in section 3002 of Title 29.

(36) Ward of the State

(A) In general

The term “ward of the State” means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

CREDIT(S)

(Pub.L. 91-230, Title VI, § 602, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2652; amended Pub.L. 110-315, Title IX, § 941(k)(2)(C), Aug. 14, 2008, 122 Stat. 3466; Pub.L. 111-256, § 2(b)(2), Oct. 5, 2010, 124 Stat. 2643.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

2008 Acts. House Conference Report No. 110-803, see 2008 U.S. Code Cong. and Adm. News, p. 1124.

References in Text

This chapter, referred to in text, originally read “this title”, meaning Title VI of Pub.L. 91-230, Title VI, §§ 601

to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub.L. 89-10, April 11, 1965, 79 Stat. 27, as generally amended by the No Child Left Behind Act of 2001, Pub.L. 107-110, Jan. 8, 2002, 115 Stat. 1425, which is classified principally to chapter 70 of this title, 20 U.S.C.A. § 6301 et seq. Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 is Pub.L. 89-10, Title IX, § 1111(b), as added Pub.L. 107-110, Title I, § 101, Jan. 8, 2002, 115 Stat. 1444, and amended, which is classified to 20 U.S.C.A. § 6311(b)(1). Section 9101 of the Elementary and Secondary Education Act of 1965 is Pub.L. 89-10, Title IX, § 9101, as added Pub.L. 107-110, Title IX, § 901, Jan. 8, 2002, 115 Stat. 1956, which is classified to 20 U.S.C.A. § 7801. For historical perspective on the Act, see Codifications note set out preceding 20 U.S.C.A. § 6301. For complete classification, see Short Title notes set out under 20 U.S.C.A. § 6301 and Tables.

Part A of title I of the Elementary and Secondary Education Act of 1965, referred to in par. (8)(A)(ii), is Pub.L. 89-10, Title I, Part A, §§ 1111 to 1127, as added Pub.L. 107-110, Title I, § 101, Jan. 8, 2002, 115 Stat. 1444, which is classified to part A of subchapter I of chapter 70 of this title, 20 U.S.C.A. § 6311 et seq. Parts A and B of Title III of that Act, referred to in par. (8)(A)(iii), are Pub.L. 89-10, Title III, Parts A and B, § 3101 et seq. and § 3201 et seq., as added Pub.L. 107-110, Title III, § 301, Jan. 8, 2002, 115 Stat. 1690, 1706, which are classified to parts A and B of subchapter III of chapter 70 of this title, 20 U.S.C.A. §§ 6811 et seq. and 6891 et seq.

This subchapter, referred to in par. (10)(E), originally read “this part”, meaning part A of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, §§ 601 to 610, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, which is classified to this subchapter.

The Alaska Native Claims Settlement Act, referred to in par. (13), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, also known as ANCSA, which is classified principally to chapter 33 of Title 43, 43 U.S.C.A. § 1601 et seq.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in par. (17)(B), is Pub.L. 95-471, Oct. 17, 1978, 92 Stat. 1325, as amended, formerly known as the Tribally Controlled College or University Assistance Act of 1978, which is classified principally to chapter 20 of Title 25, 25 U.S.C.A. § 1801 et seq. For complete classification, see Short Title note set out under 25 U.S.C.A. § 1801 and Tables.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the extensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Amendments

2010 Amendments. Subsec. (3)(A)(i). Pub.L. 111-256, § 2(b)(2)(A), struck out "with mental retardation" and inserted "with intellectual disabilities".

Subsec. (30)(C). Pub.L. 111-256, § 2(b)(2)(B), struck out "of mental retardation" and inserted "of intellectual disabilities".

2008 Amendments. Par. (17)(B). Pub.L. 110-315, § 941(k)(2)(C), struck out "the Tribally Controlled College or University Assistance Act of 1978" and inserted "the Tribally Controlled Colleges and Universities Assistance Act of 1978".

Effective and Applicability Provisions

2008 Acts. Except as otherwise provided, Pub.L. 110-315 and the amendments made by such Act shall take effect on Aug. 14, 2008, see Pub.L. 110-315, § 3, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1001.

2004 Acts. Except for par. (10)(A), (C) to (F), which shall take effect on Dec. 3, 2004 for purposes of the Elementary and Secondary Education Act of 1965 [chapter 70 of this title, 20 U.S.C.A. § 6301 et seq.], amendments by Pub.L. 108-446, Title I, which revised this section, are effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1401, Pub.L. 91-230, Title VI, § 602, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 42 and amended Pub.L. 105-244, Title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828, which provided definitions for the chapter, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 602, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2652.

Another prior section 1401, Pub.L. 91-230, Title VI, § 602, Apr. 13, 1970, 84 Stat. 175; Pub.L. 94-142, § 4(a), Nov. 29, 1975, 89 Stat. 775; Pub.L. 98-199, §§ 2, 3(b), Dec. 2, 1983, 97 Stat. 1357, 1358; Pub.L. 99-457, Title IV, § 402, Oct. 8, 1986, 100 Stat. 1172; Pub.L. 100-630, Title I, § 101(a), Nov. 7, 1988, 102 Stat. 3289, 3290; Pub.L. 101-476, Title I, § 101, Title IX, § 901(b)(10) to (20), Oct. 30, 1990, 104 Stat. 1103, 1142, 1143; Pub.L. 102-73, Title VIII, § 802(d)(1), July 25, 1991, 105 Stat. 361; Pub.L. 102-119, §§ 3, 25(a)(1),(b), Oct. 7, 1991, 105 Stat. 587, 605, 607; Pub.L. 103-382, Title III, § 391(f)(1), Oct. 20, 1994, 108 Stat. 4023, which also provided definitions for the chapter, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 602, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 42.

References for Purposes of Pub.L. 111-256, § 2 Amendments

References to intellectual disability as meaning condition previously referred to as mental retardation for pur-

poses of provisions amended by Pub.L. 111-256, § 2, see Pub.L. 111-256, § 2(k), set out as a note under 20 U.S.C.A. § 1400.

Regulations

For purposes of regulations issued to carry out provisions amended by Pub.L. 111-256, references in regulations to mental retardation shall be considered to be references to an intellectual disability, with provisions for amending regulations to conform to that fact, see Pub.L. 111-256, § 3, set out as a note under 20 U.S.C.A. § 1400.

Rule of Construction of Pub.L. 111-256

Pub.L. 111-256 shall be construed to amend provisions of Federal law to substitute “an intellectual disability” for “mental retardation” and substitute “individuals with intellectual disabilities” for “the mentally retarded” or “individuals who are mentally retarded” without any intent to change coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions, or to compel States to change terminology in State laws for individuals covered by such amendments, see Pub.L. 111-256, § 4, set out as a note under 20 U.S.C.A. § 1400.

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64 ALR, Fed. 792, Appropriateness of State Administrative Procedures Under § 615 of Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

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NOTES OF DECISIONS

1. Construction

This chapter is a remedial statute and should be broadly applied and liberally construed in favor of providing appropriate education to handicapped students. Espino v. Besteiro, S.D.Tex.1981, 520 F.Supp. 905. Schools 148(2.1)

2. Rules and regulations

Regulation promulgated by Secretary of Education excluding from definition of medical services, which schools are not required to provide under this chapter except for purposes of diagnosis or evaluation, the services of a school nurse otherwise qualifying as a related service was reasonable interpretation of congressional intent. Irving Independent School Dist. v. Tatro, U.S.Tex.1984, 104 S.Ct. 3371, 468 U.S. 883, 82 L.Ed.2d 664, on remand 741 F.2d 82. Schools 148(4)

Department of Education regulations excluding mapping of cochlear implants from “audiology services” within list of related services were not contrary to the plain language of the Individuals with Disabilities Education Act (IDEA); “audiology services” as used in “related services” provision of IDEA was ambiguous as to whether it encompassed the full panoply of services that might be described as audiology services in other contexts, and agency's mapping regulations embodied a permissible statutory construction which was rationally related to the purposes of the IDEA. Petit v. U.S. Dept. of Educ., C.A.D.C.2012, 675 F.3d 769. Schools 148(4)

School districts did not fail to comply with Individuals with Disabilities Education Act (IDEA) in failing to provide handicapped student with coordinated plan of transition or vocational services that were required under regulations not in existence at time student was receiving transition services. Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) applied to school-aged pretrial detainees' claims of inadequate education, in light of application of Act to state correctional facilities by Department of Education's Office of Special Education and Rehabilitative Services, and absent any showing that Department's regulations were arbitrary or capricious. Donnell C. v. Illinois State Bd. of Educ., N.D.Ill.1993, 829 F.Supp. 1016. Schools 148(2.1)

3. Children with disabilities

A new Massachusetts regulation barring the use of certain aversive interventions on students with disabilities did not render moot an appeal challenging a New York regulation prohibiting all aversive interventions on disabled New York students who attended a Massachusetts residential facility, as violative of the IDEA, the Rehabilitation Act, due process, and equal protection; New York's prohibition on aversive interventions remained in effect and applicable to students. Bryant v. New York State Educ. Dept., C.A.2 (N.Y.) 2012, 2012 WL 3553361. Federal Courts 724

In determining whether student's Ehlers-Danlos Syndrome (EDS) adversely affected his educational performance, in school district's IDEA action challenging determination of Administrative Law Judge (ALJ) that student was still in need of special education services, ALJ applied the wrong legal standard by concluding that the EDS adversely affected the student's educational performance because it caused him to experience pain and fatigue which could affect his educational performance; the correct formulation of the test was not whether something in the abstract could adversely affect the student's educational performance, but whether in reality it did. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 148(2.1)

Allegations that student who was diagnosed with chronic fatigue syndrome and fibromyalgia had disabling physical ailments that limited her strength, vitality, and alertness and made it impossible for her to attend school, and as a result of her inability to attend classes, she required special education in the form of home instruction, was sufficient to support claim that student was a “disabled child” within the meaning of the IDEA. Weixel v. Board of Educ. of City of New York, C.A.2 (N.Y.) 2002, 287 F.3d 138. Schools 148(2.1)

Child suffered from a “serious emotional disturbance” within the meaning of the relevant state and federal regulations, so as to be entitled to free appropriate education under IDEA, and not from mere conduct disorder, where record clearly established that child displayed an inability to learn that was not explained solely by intellectual, sensory, or health factors, and also exhibited both a generally pervasive mood of unhappiness or depression and inappropriate types of behavior or feelings under normal circumstances, both for a long period of time and to a marked degree. Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., C.A.2 (N.Y.) 1998, 145 F.3d 95. Schools 148(3)

Child with orthopedic impairment caused by her cerebral palsy had disability within the meaning of IDEA which adversely affected her educational performance and, thus, school was required to develop individualized education program (IEP) for child which included transition services; child's unique needs included slowness and fatigue when writing and stiffness and lack of dexterity in her right hand and to meet these needs teachers shortened or modified length and nature of her writing assignments, provided her with copies of their notes, and taught her how to type using only her left hand and first finger of her right hand. Yankton School Dist. v. Schramm, C.A.8 (S.D.) 1996, 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

A child who suffers from serious emotional disturbance and/or specific learning disabilities who by reason thereof, needs special education and related services, qualifies under the IDEA as a "child with a disability." Linda E. v. Bristol Warren Regional School Dist., D.R.I.2010, 758 F.Supp.2d 75. Schools 148(3)

High school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder was "child with a disability" as defined by Individuals with Disabilities Education Act (IDEA). Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Student's psychological disorders and learning disabilities, including attention deficit hyperactivity disorder (ADHD) and Asperger's syndrome, did not adversely affect her academic performance, and thus student did not qualify for special education services under Individuals With Disabilities Education Act (IDEA); student was high performing student throughout her public school years, and in seventh grade, before her parents enrolled her in private school, she continued to excel, as evidenced by her 90.5 grade average, and neuro-psychologist retained by parents to evaluate her at onset of seventh grade determined that her academic skills were strong, with reading comprehension and written expression at eighth grade level and math at twelfth grade level. Maus v. Wappingers Cent. School Dist., S.D.N.Y.2010, 688 F.Supp.2d 282. Schools 148(3)

Determination whether student's disability adversely affects his or her "educational performance," as required for student to be eligible for special education benefits under IDEA, is to be assessed by reference to student's academic performance as the principal, if not only, guiding factor, rather than by reference to emotional or behavioral troubles caused by disability. A.J. v. Board of Educ., E.D.N.Y.2010, 679 F.Supp.2d 299. Schools 148(3)

Administrative law judge's determination that student's health issues, which included Ehlers-Danlos Syndrome, had adverse effect on educational performance, as required for services under Individuals with Disabilities Education Act (IDEA) and Wisconsin law, was supported by preponderance of evidence and was not clearly erroneous, although there was evidence that student was performing within average range and had made improvement; tests showed student's body coordination, strength, and agility were below average to low average, and that student would need physical therapy and modifications to physical activities, student's physicians stated that joint instability and resulting pain and fatigue would affect student's ability to perform certain activities fully and safely, and recommended restricting or modifying student's activities at school, and judge included string citations from administrative record that supported decision, including citations to private physical therapist's

testimony and psychologist's testimony. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., W.D.Wis.2009, 592 F.Supp.2d 1059, reversed and remanded 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Student with diabetes mellitus, adjustment disorder, and social anxiety disorder was not a "child with a disability" under federal or state law, as would qualify her for special education and related benefits under Individuals with Disabilities Education Act (IDEA); although student was being treated for diabetes and had been treated at times for emotional problems, those conditions did not affect her educational performance to extent that she required special services and programs, and until student stopped attending classes and making up her work, she was achieving well and did not need specialized instruction. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Fact that college applicant was diagnosed and classified as having a "perceptual impairment," pursuant to state law and the Individuals with Disabilities Education Act (IDEA), and that, as a result, received special education services under an individualized education program (IEP) for many years, did not establish as a matter of law that he was disabled within the meaning of Americans with Disabilities Act (ADA) and Rehabilitation Act. Bowers v. National Collegiate Athletic Ass'n, D.N.J.2008, 563 F.Supp.2d 508. Civil Rights 1019(3)

Child's Asperger's Syndrome adversely affected her educational performance, as required for special education services under IDEA, even though she excelled academically and her behavior for most part was nondisruptive, inasmuch as she experienced problems that were considered under Maine regulations to be related to "educational performance," in that she was withdrawn from peers, had communication deficits, was inflexible, and mutilated herself during school time, demonstrating failure to understand relationship between healthy behaviors and injury prevention. Mr. I v. Maine School Administrative Dist. 55, D.Me.2006, 416 F.Supp.2d 147, affirmed 480 F.3d 1. Schools 148(3)

Junior high school student diagnosed with attention deficit disorder (ADD) who was enrolled in magnet program for gifted children but who skipped class, failed to do homework, smoked dope, and neglected to take his ADD medication did not need special education, and thus, was not a "child with a disability" within meaning of Individuals with Disabilities Education Act (IDEA), even if he was "other health impaired and emotionally disturbed" as also set forth in the definition; rather, what he needed was to commit to doing homework and regularly attending classes. Austin Independent School Dist. v. Robert M., W.D.Tex.2001, 168 F.Supp.2d 635, affirmed 54 Fed.Appx. 413, 2002 WL 31718424. Schools 148(3)

Although child's "average" performance in school was an indication that he did not qualify for special education services, child met three distinct disability classifications under Individual with Disabilities Education Act (IDEA), "other health impaired," speech impaired, and learning disabled; child had regular uncontrolled seizures which affected his alertness in class, stuttered, and had relatively low academic achievements despite an I.Q. of 130, placing him in the "very superior" range of intelligence. Corchado v. Board of Educ. Rochester City School Dist., W.D.N.Y.2000, 86 F.Supp.2d 168. Schools 148(2.1); Schools 148(3)

Student who suffered from speech impairment was "child with disability" and eligible for services under Individuals with Disabilities Education Act (IDEA); although child was performing at age appropriate educational level, his disability was severe enough to affect his educational performance due to his impairment's effect on his overall ability to communicate. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 919 F.Supp. 1173, amended 934 F.Supp. 989. Schools 148(2.1)

Student's orthopedic impairment adversely affected her educational performance for her to be eligible for special education under Individuals with Disability Education Act (IDEA), where she required educational modifications and related services to ensure that classroom instruction was available to her. Yankton School Dist. v. Schramm, D.S.D.1995, 900 F.Supp. 1182, affirmed as modified 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

4. Developmental disability

State violated Education for All Handicapped Children Act by requiring parents to pay any part of living expenses of handicapped children who were placed in private facility on ground of developmental disability rather than educational need; "developmental disability," far from being exempted category, was important subcategory of handicaps covered by Act. Parks v. Pavkovic, C.A.7 (Ill.) 1985, 753 F.2d 1397, certiorari denied 105 S.Ct. 3529, 473 U.S. 906, 87 L.Ed.2d 653, certiorari denied 106 S.Ct. 246, 474 U.S. 918, 88 L.Ed.2d 255. Schools 148(2.1)

5. Handicapped children

Students with chronic asthma, allergies, migraine syndrome, and sinusitis were encompassed within ambit of Individuals with Disabilities Education Act (IDEA), despite students' claim that they did not require "special education and related services" as result of their disabilities but required only "related services." Babicz v. School Bd. of Broward County, C.A.11 (Fla.) 1998, 135 F.3d 1420, certiorari denied 119 S.Ct. 53, 525 U.S. 816, 142 L.Ed.2d 41. Schools 148(2.1)

Seriously emotionally disturbed children are "handicapped" for purposes of the Education of the Handicapped Act. Babb v. Knox County School System, C.A.6 (Tenn.) 1992, 965 F.2d 104, certiorari denied 113 S.Ct. 380, 506 U.S. 941, 121 L.Ed.2d 290. Schools 148(3)

Evidence supported school district's rejection of claim that child was entitled to benefits under the Education for All Handicapped Children's Act as a student who was "seriously emotionally disturbed," even though she was acknowledged to be socially maladjusted, had disrupted classes on various occasions, and had attempted to commit suicide after being suspended from class. A.E. By and Through Evans v. Independent School Dist. No. 25, of Adair County, Okl., C.A.10 (Okla.) 1991, 936 F.2d 472. Schools 155.5(4)

A severely handicapped and profoundly retarded child was a handicapped child in need of special education and related services because of his handicap, and therefore, was entitled under the Education for All Handicapped Children Act to have school district provide him with individualized education program, based on statutory lan-

guage of the Act, its legislative history and case law construing it all. Timothy W. v. Rochester, N.H., School Dist., C.A.1 (N.H.) 1989, 875 F.2d 954, certiorari denied 110 S.Ct. 519, 493 U.S. 983, 107 L.Ed.2d 520. Schools 148(2.1)

Child was not a "handicapped child" entitled to special education under the Education of All Handicapped Children Act, though he had emotional and behavioral difficulties, including depression, where these difficulties did not adversely affect his educational performance, which was satisfactory or above. Doe By and Through Doe v. Board of Educ. of State of Conn., D.Conn.1990, 753 F.Supp. 65. Schools 148(3)

Under either New York or federal law, parents of child who exhibited weak attention span and difficulties in copying from blackboard to his own paper failed to show that child was "handicapped child" within meaning of Education for All Handicapped Children Act (EAHCA) so that school was under no obligation to refer child to committee on special education and remedial program developed by school was both legally sufficient and appropriate for child's academic needs; testimony by child's teachers and school's expert psychological witnesses showed that child had average to above average scores in most areas and that, while he had difficulty with handwriting and attention span, his difficulties did not meet level of "disability." Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958.

Student who had been diagnosed as having AIDS (Acquired Immune Deficiency Syndrome) related complex was not "handicapped" within meaning of Education for All Handicapped Children Act where his learning and behavioral problems were not result of his health condition and, therefore, student and his mother were not required to exhaust administrative remedies before seeking order directing placement of student back in normal classroom setting. Robertson by Robertson v. Granite City Community Unit School Dist. No. 9, S.D.Ill.1988, 684 F.Supp. 1002. Administrative Law And Procedure 229; Schools 148(3); Schools 155.5(3)

The Education for All Handicapped Children Act applies to AIDS victims only if their physical condition is such that it adversely affects their educational performance; that is, their ability to learn and to do the required classroom work. Doe by Doe v. Belleville Public School Dist. No. 118, S.D.Ill.1987, 672 F.Supp. 342. Schools 148(2.1)

Fifteen-year-old learning disabled minor who, since he entered first grade in 1971, had suffered from educational disabilities which greatly impaired his reading and writing skills, whose difficulties were first formally recognized by a school board in 1974 when educational reevaluation disclosed that minor was in fact learning disabled, and who alleged that the reevaluation was deficient in failing to fully identify the extent of the problem, and that the education which minor subsequently received had been deficient due to lack of educational resources within the school system was one of the class for whose special benefit this chapter was enacted. Loughran v. Flanders, D.C.Conn.1979, 470 F.Supp. 110. Schools 148(3)

Special master's Vaccine Act award of compensation for special education and special therapy services without offset for any services provided under Education for All Handicapped Children Act (EAHCA) was not arbitrary and capricious; special master was only required to reduce such an award if there had been actual payment under EAHCA or if special master could reasonably anticipate actual payment. Stotts v. Secretary of Dept. of Health

and Human Services, Cl.Ct.1991, 23 Cl.Ct. 352. Health 389

6. Health impaired children

Student's educational performance was adversely affected by his attention deficit and hyperactivity disorder (ADHD), and therefore, student met requirements of "other health impairment," as required to be a child with a disability under the Individuals with Disabilities Education Act (IDEA), where student's tutor stated student was unable to concentrate and that his concentration improved when student began taking ADHD medication, student initially failed a standardized test required to advance to the seventh grade but passed when allowed to retake while on ADHD medication. Hansen ex rel. J.H. v. Republic R-III School Dist., C.A.8 (Mo.) 2011, 632 F.3d 1024, rehearing and rehearing en banc denied. Schools 148(3)

Evidence supported administrative hearing officer's determination that elementary school student who suffered from attention deficit and hyperactivity disorder was not "other health impaired" and, thus, was not eligible for special education under IDEA; hearing officer found that student's alertness was not affected by disorder and hearing officer's conclusions included references to both student's superior academic performance and his difficulties interacting socially with other children and adults. Lyons by Alexander v. Smith, D.D.C.1993, 829 F.Supp. 414. Schools 155.5(4)

7. Learning disabled

Student, whose truancy and defiance resulted from emotional disability which affected student's learning and prevented her from receiving educational benefit, although student had no cognitive impairment or learning disability, was qualified for special education services under IDEA; Independent Educational Evaluation (IEE) evaluator, school psychologist, and school district's assessment all concluded that student's behavioral and emotional problems needed to be addressed if student was to succeed academically. Independent School Dist. No. 284 v. A.C., by and through her Parent, C.C., C.A.8 (Minn.) 2001, 258 F.3d 769. Schools 148(3)

In IDEA case, ALJ did not err in finding that student did not have specific learning disability in area of "reading fluency" which was not defined in IDEA; taking into consideration words of statute and plain meaning of "fluency," "reading fluency" contained decidedly oral component, although not exclusively oral in its meaning, and therefore oral reading had to be considered in assessing student's reading fluency along with other measures that showed her ability to read easily such as comprehending what she read, and while special education teacher, social worker, learning disabilities teacher and consultant, parents' expert, and student's mother all testified that student had problem or weakness with oral reading, witnesses for school district qualified their testimony with statements that student's overall reading fluency, when taking reading comprehension into consideration, was at her grade level. H.M. ex rel. B.M. v. Haddon Heights Bd. of Educ., D.N.J.2011, 822 F.Supp.2d 439. Schools 148(3)

Student did not have a specific learning disability under the Individuals with Disabilities Education Act (IDEA), even though doctor diagnosed student with general learning disorder, where student's achievement scores exceeded his aptitude scores in all but two areas, the difference in those two areas was small, and teachers described student as "very bright." Nguyen v. District of Columbia, D.D.C.2010, 681 F.Supp.2d 49. Schools

148(3)

Elementary school student's Asperger's Disorder on the Autism spectrum did not adversely affect his educational performance, as required for student to be eligible for special education benefits under IDEA, although disorder caused student to be impulsive, to require frequent redirection, and to exhibit inappropriate social behaviors and peer interactions, where student was performing at average to above average levels in the classroom and was progressing well academically, and there was no evidence that student's behavioral problems were preventing him from reaching his full academic potential. A.J. v. Board of Educ., E.D.N.Y.2010, 679 F.Supp.2d 299. Schools 148(3)

Reports prepared by student's Admission, Review, and Dismissal (ARD) Committee indicating that student's teachers were evaluating her to determine whether she needed speech therapy did not create issue of material fact sufficient to survive school district's motion for summary judgment on student's claim, under Individuals with Disabilities Education Act (IDEA), that she was speech and language impaired and entitled to free appropriate public education (FAPE). Carter by Ward v. Prince George's County Public Schools, D.Md.1998, 23 F.Supp.2d 585. Federal Civil Procedure 2491.5

Child with dyslexia and attention deficit disorder was "learning disabled" within meaning of Individuals with Disabilities Education Act (IDEA), so as to be entitled to receive, at public expense, specially designed instruction to meet his unique needs. Straube v. Florida Union Free School Dist., S.D.N.Y.1991, 778 F.Supp. 774. Schools 148(3)

Under either New York or federal regulations, child was not "learning disabled" during school year in which his overall scores on psychological tests ranged from above average to low average and any below average scores were attributed by expert witnesses to child's personal style and not to physical or mental capabilities. Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958. Schools 148(3)

Student did not have "specific learning disability," and thus her parents were not entitled under Individuals with Disabilities Education Act (IDEA) to reimbursement for tuition they incurred by reason of their decision to send student to private school, where student's achievement levels ranged from low average to superior for child of her age and intelligence, and discrepancy between her achievement scores and intelligence scores was less than two standard deviations. Kruvant v. District of Columbia, C.A.D.C.2004, 99 Fed.Appx. 232, 2004 WL 1156355, Unreported. Schools 154(4)

8. Emotionally disturbed

Student met the eligibility requirements for "emotional disturbance," as required to be a child with a disability under the Individuals with Disabilities Education Act (IDEA), where student received numerous disciplinary referrals over a four-year period for threatening students and teachers and fighting with other students, school's mental health clinician described student as socially unsuccessful due to limited social skills, student consistently struggled to pass his classes and failed standardized test, and student suffered from bipolar disorder. Hansen ex rel. J.H. v. Republic R-III School Dist., C.A.8 (Mo.) 2011, 632 F.3d 1024, rehearing and rehearing en

banc denied. Schools 148(3)

Fact that child is socially maladjusted is not by itself conclusive evidence that child is seriously emotionally disturbed, within meaning of Individuals with Disabilities Education Act (IDEA). Springer v. Fairfax County School Bd., C.A.4 (Va.) 1998, 134 F.3d 659. Schools 148(3)

Disabled student did not suffer any inability to learn that could not be explained by intellectual, sensory, or health factors, as required for student to be designated as "emotionally disturbed" under applicable New York regulations and eligible for Free Appropriate Public Education (FAPE) under IDEA; before student's heavy drug abuse his grades were mediocre, during period when he daily abused drugs he failed several classes, and after he vanquished his drug habit his grades improved, and, even during his heavy drug phase, school district found that his overall cognitive functioning was average, his processing skills were in borderline range, his decoding, math, spelling, and listening comprehension skills were average, and his oral expression skills were in superior range. P.C. v. Oceanside Union Free School Dist., E.D.N.Y.2011, 818 F.Supp.2d 516. Schools 148(3)

Record in IDEA case did not support classification of plaintiffs' minor child as a "child with a disability" under emotional disturbance prong, and they were not entitled to reimbursement for costs of his unilateral out-of-state placement at residential therapeutic school; evidence preponderated that academic problems he presented were result of his truancy, i.e., that he failed his classes because he refused to attend school, and that his refusal behavior was principally the product of a conduct disorder, narcissistic personality tendencies and substance abuse rather than of depression. W.G. v. New York City Dept. of Educ., S.D.N.Y.2011, 801 F.Supp.2d 142. Schools 154(3); Schools 155.5(4)

Student did not have an emotional disturbance within the meaning of the Individuals with Disabilities Education Act (IDEA), even though student suffered from depression and a mood disorder; causal link between student's school performance and alleged emotional disturbance was speculative. Nguyen v. District of Columbia, D.D.C.2010, 681 F.Supp.2d 49. Schools 148(3)

High school student's trichotillomania, self-cutting, and suicide attempt were inappropriate behaviors under otherwise normal circumstances under federal and state regulations, as required to qualify her as seriously emotionally disturbed under Individuals with Disabilities Education Act (IDEA). Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 148(3)

School district's obligation under IDEA to find and evaluate student suspected of having disability was triggered by its knowledge that student had attempted suicide and was hospitalized in ninth grade, that student had been hospitalized for severe suicidal ideation in tenth grade, that student's grades began to deteriorate severely in eighth grade, and by notification of child's medical diagnosis of severe depression and parents' letters to teachers setting forth her condition and its relation to her performance. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 148(3)

Minor who had been sexually abused by relative during his freshman year of high school and experienced slight

decline in academic performance during his sophomore year concomitant with increasing drug use was not a "child with a disability" under IDEA and federal regulations or a "student with a disability" under New York regulations because he did not meet requirements for having an "emotional disturbance"; it was not clear he suffered from inability to learn over long period of time or to marked degree despite highly traumatic experience he suffered, he did not have difficulty building or maintaining satisfactory interpersonal relationships with peers and teachers, though his heightened aggression and worsening substance abuse problem did not represent behavior that could be considered appropriate under normal circumstances they were not enough, without more, to qualify him for classification as emotionally disturbed, and record did not persuasively demonstrate he exhibited generally pervasive mood of unhappiness or depression for long period of time and to marked degree. N.C. ex rel M.C. v. Bedford Cent. School Dist., S.D.N.Y.2007, 473 F.Supp.2d 532, affirmed 300 Fed.Appx. 11, 2008 WL 4874535. Schools 148(3)

Evidence did not support finding that high school student was "seriously emotionally disturbed" as required to entitle him to tuition reimbursement for his placement in private school under Individuals with Disabilities Education Act (IDEA) and regulations thereunder; diagnosis of serious emotional disturbance contained in letter from psychiatrist was made at request of student's parents to persuade juvenile court judge considering student's disposition for car theft to commit him to three-week camp in Idaho instead of period of incarceration or other more stringent penalty and was insufficient to use as basis for factual finding of disability, there was no evidence that student suffered from alcoholism or that his use of alcohol or drugs was sign of emotional disturbance. Springer v. Fairfax County School Bd., E.D.Va.1997, 960 F.Supp. 89, affirmed 134 F.3d 659. Schools 155.5(4)

9. Socially maladjusted

High school student was "socially maladjusted," within meaning of exception to coverage under Individuals with Disabilities Education Act (IDEA), in view of evidence that student suffered only conduct disorder and displayed disregard for social demands or expectations. Springer v. Fairfax County School Bd., C.A.4 (Va.) 1998, 134 F.3d 659. Schools 148(3)

10. Free appropriate public education

Only material failures to implement individualized educational program (IEP) constituted violations of IDEA; there was no statutory requirement of perfect adherence to IEP and there was no reason rooted in statutory text to view minor implementation failures as denials of free appropriate public education (FAPE). Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J, C.A.9 (Or.) 2007, 502 F.3d 811. Schools 148(2.1)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated Rehabilitation Act in connection with their failure to provide disabled students with free appropriate public education (FAPE) required by IDEA and to comply with their Child Find obligations under IDEA, as they showed bad faith or gross misjudgment; defendants knew they were not in compliance with their legal obligations yet failed to change their actions, their relative provision of services under IDEA was lower than that of every state in the country, in most cases significantly so, and their failures were departure from accepted educational practices throughout the country. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84

. Schools 148(2.1)

Autistic student's parents did not meet their burden of proving expired individualized education program (IEP) as implemented did not permit student to benefit educationally consistent with the Individuals with Disabilities Education Act (IDEA), although it was unclear whether school district implemented IEPs with respect to data collection and methodologies during two school years and absence of data reports impacted measuring progress; student received supportive instruction from a wide variety of education specialists, including speech-language pathologist, occupational therapist, physical therapist, and had benefit of integration with his peers and one on one assistant with oversight by district consultant and weekly meetings among specialists. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

Alleged academic progress of behaviorally disabled students was not sole measure of whether students received free appropriate public education (FAPE), within meaning of IDEA, following implementation of emergency regulations by New York State Board of Regents (NYSBR), upon recommendation of New York State Education Department (NYSED), that limited the use of "aversives," including contingent food programs, the use of helmets on some children, mechanical restraints, and the application of electric skin shocks through a graduated electronic decelerator (GED). Alleyne v. New York State Educ. Dept., N.D.N.Y.2010, 691 F.Supp.2d 322. Schools 148(3)

IDEA's definition of free appropriate public education (FAPE) does not require school district to maximize potential of handicapped children; rather, FAPE requires that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Mr. C. v. Maine School Administrative Dist. No. 6, D.Me.2008, 538 F.Supp.2d 298. Schools 148(2.1)

Individualized education plan (IEP) providing for oral hearing impaired child's school day to be divided between mainstream instruction in public school and total communication program at school for deaf, with cued speech interpreter provided at each facility, was "free appropriate education" within meaning of IDEA; placement in full-time oral program for hearing impaired at school for deaf was not required. Brougham by Brougham v. Town of Yarmouth, D.Me.1993, 823 F.Supp. 9. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) requires school districts to supplement their resources in order to meet special needs of children with disabilities, but does not require every conceivable supplementary aid or service to assist child; school districts must provide services of physical, occupational and speech therapists and must assign supplementary teacher's aide to regular classroom, on full-time or part-time basis, if necessary to accommodate children's special needs. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(2.1)

Free appropriate education, as contemplated by Individuals with Disabilities Education Act (IDEA), requires personalized instruction with sufficient support services to permit child to benefit educationally from that instruction. Straube v. Florida Union Free School Dist., S.D.N.Y.1991, 778 F.Supp. 774. Schools 148(2.1)

11. Individual education plan

School district acted in good faith when it relied on current staff members to carry out individualized education programs (IEP) for disabled student during his third-grade year without giving those staff members additional training; earlier IEPs that had correlated with significant progress were carried out by staff with about the same level of training. Alex R., ex rel. Beth R. v. Forrestville Valley Community Unit School Dist. No. 221, C.A.7 (Ill.) 2004, 375 F.3d 603, certiorari denied 125 S.Ct. 628, 543 U.S. 1009, 160 L.Ed.2d 474. Schools 148(2.1)

More stringent individual education plan (IEP) standard of Massachusetts law was applicable in federal court on appeal from state hearing officer's decision, as IDEA incorporated by reference state IEP standards insofar as they were not inconsistent with federal rights. Wanham v. Everett Public Schools, D.Mass.2007, 515 F.Supp.2d 175, amended 550 F.Supp.2d 152. Schools 155.5(2.1)

12. Related services

Continuous nursing services required by quadriplegic, ventilator-dependent student were "related services" that had to be provided by school district during school hours, under Individuals with Disabilities Education Act (IDEA), because such services were supportive services but did not constitute medical services. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(4)

School district's refusal to transport elementary school student, who suffered from epileptic seizures, to day care center outside her designated "cluster site" boundary after school did not violate the Individuals with Disabilities Education Act (IDEA), where parent's request for such transportation was made for personal reasons unrelated to student's educational needs. Fick ex rel. Fick v. Sioux Falls School Dist. 49-5, C.A.8 (S.D.) 2003, 337 F.3d 968, rehearing and rehearing en banc denied. Schools 159.5(4)

Hospital charges incurred by parents of disabled student when they were forced to commit student to a psychiatric hospital for several months, which occurred while Indiana Department of Education (IDOE) was processing individualized education plan (IEP) prepared by local school under Individuals with Disabilities Education Act (IDEA) which recommended that student be placed in a residential facility, were not for "education or related services," within meaning of IDEA, and thus were not reimbursable under agreed order settling class action, in which plaintiffs had alleged that delays in placements by IDOE violated IDEA. Butler v. Evans, C.A.7 (Ind.) 2000, 225 F.3d 887. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) requires transportation of disabled child as service related to child's special education if that service is necessary for child to benefit from special education, even if that child has no ambulatory impairment that directly causes unique need for some form of specialized transport; only education, not related services, had to correlate to "unique needs" associated with child's specific disability. Donald B. By and Through Christine B. v. Board of School Com'rs of Mobile County, Ala., C.A.11 (Ala.) 1997, 117 F.3d 1371. Schools 159.5(4)

Individuals with Disabilities Education Act (IDEA) would require school district to provide psychological counseling services to disabled student, in event student were found in administrative proceeding to have suffered psychological damage from teacher's allegedly misconceived educational strategy; counseling services were among those required by IDEA to be provided if necessary to assist child with disability to benefit from special education, and student's request for monetary damages unavailable under IDEA would not remove proceeding from process mandated by IDEA. Charlie F. by Neil F. v. Board of Educ. of Skokie School Dist. 68, C.A.7 (Ill.) 1996, 98 F.3d 989. Schools 148(3)

Department of Education regulation excluding cochlear implant mapping as service covered under Individuals with Disabilities Education Act (IDEA) did not contravene IDEA, since mapping was not "related service" designed to meet disabled students' unique needs and prepare them for further education, employment, and independent living; regulation was necessary for agency's compliance with IDEA and did not substantively alter protections embodied in prior regulations, and agency properly determined that fitting of hearing devices did not include technical adjustments. Petit v. U.S. Dept. of Educ., D.D.C.2010, 756 F.Supp.2d 11, affirmed 675 F.3d 769. Schools 148(4)

School committee's individualized education programs (IEP) for high school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder were not reasonably calculated to confer meaningful benefit in critical area of independent living skills, thus depriving student of free and appropriate education (FAPE) under Individuals with Disabilities Education Act (IDEA) and Massachusetts law; although IEPs offered social skills class and direct services delivered by special education teacher to address student's organizational deficits, and student received meaningful academic benefit from that support, services were not reasonably calculated to supporting independent living out of high school, such as maintaining self-hygiene and learning transportation skills. Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Although illegal drug use may impede student's ability to take advantage of educational opportunities, drug prevention or intervention by school are not type of "supportive services" required by IDEA in order to provide disabled student with free appropriate public education. Armstrong ex rel. Steffensen v. Alicante School, E.D.Cal.1999, 44 F.Supp.2d 1087. Schools 148(2.1)

The suctioning of a tracheostomy tube is a common, standard maintenance procedure that need not be performed by a physician and therefore is not a "medical service" excluded from school district's obligation to provide related services to disabled child, under the IDEA, even if a nurse is required to perform the procedure, and even if suctioning was to be considered a "medical" service based on Illinois regulations allegedly requiring that a licensed nurse provide the evaluative judgment during child's bus rides regarding whether suctioning was necessary, district was obligated to provide medical services that are "evaluative." Skelly v. Brookfield Lagrange Park School Dist. 95, N.D.Ill.1997, 968 F.Supp. 385. Schools 148(4)

Student whose speech impairment made him "child with a disability" under Individuals with Disabilities Education Act (IDEA) was entitled to weekly speech therapy. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 919 F.Supp. 1173, amended 934 F.Supp. 989. Schools 148(2.1)

Under IDEA, handicapped school student was entitled to transportation, as related service to her individualized education program, from sidewalk of parochial school to her special education classes at public school; school district representatives had agreed that transportation was necessary due to student's lack of mobility, visual impairment and school location. Felter v. Cape Girardeau School Dist., E.D.Mo.1993, 810 F.Supp. 1062, on reconsideration. Schools 8; Schools 159.5(4)

13. Medical services

The phrase "medical services," as excepted from Individuals with Disabilities Education Act (IDEA) definition of related services that must be provided to disabled child by school district, does not embrace all forms of care that might loosely be described as medical in other contexts, such as a claim for an income tax deduction, but refers to those services that must be performed by a physician. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(4)

14. Transition services

Although handicapped student's individualized education plan (IEP) lacked explicit statement of transition services since it did not designate a specific outcome for child when he reached the age of 21 or contain specific set of activities for meeting that outcome, this procedural defect did not deny child free appropriate education under Individuals With Disabilities Education Act (IDEA) where child was not denied transitional services and benefitted from program with which he was provided and IEP completely complied with other requirements of IDEA. Urban by Urban v. Jefferson County School Dist. R-1, C.A.10 (Colo.) 1996, 89 F.3d 720. Schools 148(2.1)

15. Parental placements

Individual with Disabilities Education Act (IDEA) requirements for free appropriate public education are not applicable to parental placements. Florence County School Dist. Four v. Carter By and Through Carter, U.S.S.C.1993, 114 S.Ct. 361, 510 U.S. 7, 126 L.Ed.2d 284. Schools 148(2.1)

Although residential placement was not current educational placement during administrative process began because student's parent had unilaterally placed him there, where no current educational placement had existed, the residential facility was present educational placement to which the "stay put" provisions of Individuals with Disability Education Act (IDEA) applied at the time of judicial hearing. Stockton by Stockton v. Barbour County Bd. of Educ., N.D.W.Va.1995, 884 F.Supp. 201, affirmed 112 F.3d 510. Schools 154(3)

16. Local education agency

Parochial school attended by student who suffered from hearing impairment and learning disability was not a "local education agency" (LEA) within meaning of IDEA, and thus was not subject to liability under IDEA in suit brought by student's parents. Ullmo ex rel. Ullmo v. Gilmour Academy, C.A.6 (Ohio) 2001, 273 F.3d 671. Schools 8

Department of Army was not state or local education agency subject to Individuals with Disabilities Act (IDEA), and thus Department of Defense was not required under IDEA to admit children into Domestic Dependent Elementary and Secondary Schools (DDESS) who lacked fundamental eligibility to attend those schools. Millet v. U.S. Dept. of Army, D.Puerto Rico 2002, 245 F.Supp.2d 344, on reconsideration. Schools 154(2.1)

17. Charter schools

For-profit charter schools were ineligible for federal funding under Individuals with Disabilities Education Act (IDEA) and Elementary and Secondary Education Act (ESEA), which defined eligible schools as "nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law"; natural reading of statute established that only nonprofit schools were eligible for funding, to read statute as including for-profit charter schools would not be rational interpretation, and legislative history conveyed Congress's clear intent to exclude for-profit schools from funding. Arizona State Bd. For Charter Schools v. U.S. Dept. of Educ., C.A.9 (Ariz.) 2006, 464 F.3d 1003. Schools 19(1); Schools 148(2.1)

Under Pennsylvania's statutory scheme, charter schools are independent local educational agencies (LEAs) and assume duty to ensure that free appropriate public education (FAPE) is available to a child with a disability in compliance with IDEA and its implementing regulations. R.B. ex rel. Parent v. Mastery Charter School, E.D.Pa.2010, 762 F.Supp.2d 745, stay denied 2011 WL 121901. Schools 148(2.1)

For-profit charter schools were not eligible to receive federal funds under the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA); provisions of the statutes making nonprofit schools, "including charter schools," eligible for federal funding plainly required charter schools to be nonprofit to receive such funding. Arizona State Bd. for Charter Schools v. U.S. Dept. of Educ., D.Ariz.2005, 391 F.Supp.2d 800. Schools 19(1)

20 U.S.C.A. § 1401, 20 USCA § 1401

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

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United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter II. Assistance for Education of All Children with Disabilities
§ 1411. Authorization; allotment; use of funds; authorization of appropriations

(a) Grants to States

(1) Purpose of grants

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this subchapter.

(2) Maximum amount

The maximum amount of the grant a State may receive under this section--

(A) for fiscal years 2005 and 2006 is--

(i) the number of children with disabilities in the State who are receiving special education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is--

(i) the number of children with disabilities in the 2004-2005 school year in the State who received special

education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

(iii) the rate of annual change in the sum of--

(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

(b) Outlying areas and freely associated States; Secretary of the Interior

(1) Outlying areas and freely associated States

(A) Funds reserved

From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used--

(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this subchapter, but only if the freely associated State meets the applicable requirements of this subchapter, as well as the requirements of section 1411(b)(2)(C) of this title as such section was in effect on the day before December 3, 2004.

(B) Special rule

The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

(C) Definition

In this paragraph, the term “freely associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(2) Secretary of the Interior

From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

(c) Technical assistance

(1) In general

The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this subchapter for each fiscal year to provide technical assistance activities authorized under section 1416(i) of this title.

(2) Maximum amount

The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(d) Allocations to States

(1) In general

After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

(2) Special rule for use of fiscal year 1999 amount

If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or

(4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(3) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation of increase

(i) In general

Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year--

(I) to each State the amount the State received under this section for fiscal year 1999;

(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this subchapter; and

(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding year allocation

No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State's allocation shall be less than the greatest of--

(I) the sum of--

(aa) the amount the State received under this section for fiscal year 1999; and

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

(iii) Maximum

Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(C) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(4) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Amounts greater than fiscal year 1999 allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of--

(i) the amount the State received under this section for fiscal year 1999; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(B) Amounts equal to or less than fiscal year 1999 allocations

(i) In general

If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

(ii) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) State-level activities

(1) State administration

(A) In general

For the purpose of administering this subchapter, including paragraph (3), section 1419 of this title, and the coordination of activities under this subchapter with, and providing technical assistance to, other programs

that provide services to children with disabilities--

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or $35,000, whichever is greater.

(B) Cumulative annual adjustments

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust--

(i) the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004; and

(ii) $800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) Certification

Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 1412(a)(12)(A) of this title are current.

(D) Subchapter III

Funds reserved under subparagraph (A) may be used for the administration of subchapter III, if the State educational agency is the lead agency for the State under such subchapter.

(2) Other State-level activities

(A) State-level activities

(i) In general

Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) Small State adjustment

Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than $850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(iii) Exception

If a State does not reserve funds under paragraph (3) for a fiscal year, then--

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting “9.0 percent” for “10 percent”; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting “9.5 percent” for “10.5 percent”.

(B) Required activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

(C) Authorized activities

Funds reserved under subparagraph (A) may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

(vii) To assist local educational agencies in meeting personnel shortages.

(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of this title to children with disabilities, in schools or local educational agencies identified for improvement under section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including

providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 6311(b)(2)(G) of this title.

(3) Local educational agency risk pool

(A) In general

(i) Reservation of funds

For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)--

(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

(ii) Definition of local educational agency

In this paragraph the term “local educational agency” includes a charter school that is a local educational agency, or a consortium of local educational agencies.

(B) Limitation on uses of funds

(i) Establishment of high cost fund

A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

(ii) Innovative and effective cost sharing

A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i)

for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

(C) State plan for high cost fund

(i) Definition

The State educational agency shall establish the State's definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

(ii) State plan

The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall--

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum--

(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 7801 of this title) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

(iii) Public availability

The State shall make its final State plan publicly available not less than 30 days before the beginning of

the school year, including dissemination of such information on the State website.

(D) Disbursements from the high cost fund

(i) In general

Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

(ii) Use of disbursements

Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

(iii) Appropriate costs

The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's IEP.

(E) Legal fees

The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

(F) Assurance of a free appropriate public education

Nothing in this paragraph shall be construed--

(i) to limit or condition the right of a child with a disability who is assisted under this subchapter to receive a free appropriate public education pursuant to section 1412(a)(1) of this title in the least restrictive environment pursuant to section 1412(a)(5) of this title; or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

(G) Special rule for risk pool and high need assistance programs in effect as of January 1, 2004

Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

(H) Medicaid services not affected

Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.].

(I) Remaining funds

Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

(4) Inapplicability of certain prohibitions

A State may use funds the State reserves under paragraphs (1) and (2) without regard to--

(A) the prohibition on commingling of funds in section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in section 1412(a)(17)(C) of this title.

(5) Report on use of funds

As part of the information required to be submitted to the Secretary under section 1412 of this title, each State shall annually describe how amounts under this section--

(A) will be used to meet the requirements of this chapter; and

(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

(6) Special rule for increased funds

A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

(7) Flexibility in using funds for subchapter III

Any State eligible to receive a grant under section 1419 of this title may use funds made available under paragraph (1)(A), subsection (f)(3), or section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under subchapter III and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under section 1419 of this title and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(f) Subgrants to local educational agencies

(1) Subgrants required

Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 1413 of this title for use in accordance with this subchapter.

(2) Procedure for allocations to local educational agencies

For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

(A) Base payments

The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 1411(d) of this title as section 1411(d) was then in effect.

(B) Allocation of remaining funds

After making allocations under subparagraph (A), the State shall--

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(3) Reallocation of funds

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this subchapter that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

(g) Definitions

In this section:

(1) Average per-pupil expenditure in public elementary schools and secondary schools in the United States

The term “average per-pupil expenditure in public elementary schools and secondary schools in the United States” means--

(A) without regard to the source of funds--

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

(ii) any direct expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(2) State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) Use of amounts by Secretary of the Interior

(1) Provision of amounts for assistance

(A) In general

The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence--

(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

(B) Calculation of number of children

In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the “BIA”) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to October 7, 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this subchapter for those children, in accordance with paragraph (2).

(C) Additional requirement

With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this subchapter are implemented.

(2) Submission of information

The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that--

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 1412 of this title (including monitoring and evaluation activities) and 1413 of this title;

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this subchapter with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 1418 of this title;

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this subchapter, and will fulfill its duties under this subchapter.

(3) Applicability

The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 1416(e)(6) of this title.

(4) Payments for education and services for Indian children with disabilities aged 3 through 5

(A) In general

With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secret-

ary of the Interior to be distributed to tribes or tribal organizations (as defined under section 450b of Title 25) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

(B) Distribution of funds

The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) Submission of information

To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) Use of funds

The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) Biennial report

To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) Prohibitions

None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(5) Plan for coordination of services

The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this chapter. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(6) Establishment of advisory board

To meet the requirements of section 1412(a)(21) of this title, the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 1441 of this title in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall--

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for

Indian infants, toddlers, and children with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (2)(D).

(7) Annual reports

(A) In general

The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(B) Availability

The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

(i) Authorization of appropriations

For the purpose of carrying out this subchapter, other than section 1419 of this title, there are authorized to be appropriated--

(1) $12,358,376,571 for fiscal year 2005;

(2) $14,648,647,143 for fiscal year 2006;

(3) $16,938,917,714 for fiscal year 2007;

(4) $19,229,188,286 for fiscal year 2008;

(5) $21,519,458,857 for fiscal year 2009;

(6) $23,809,729,429 for fiscal year 2010;

(7) $26,100,000,000 for fiscal year 2011; and

(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 611, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

References in Text

This subchapter, referred to in text, originally read "this part", meaning part B of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 611 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662, which is classified to this subchapter.

Public Law 95-134, referred to in subsec. (b)(1)(B), is the Omnibus Territories Act of 1977, Pub.L. 95-134, Oct. 15, 1977, 91 Stat. 1159. The provisions of that law relating to the consolidation of grants are contained in section 501 thereof, which is classified to 48 U.S.C.A. § 1469a.

Subchapter III, referred to in subsec. (e)(1)(D), (7), originally read "part C", meaning part C of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 631 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744, which is classified to subchapter III of this chapter, 20 U.S.C.A. § 1431 et seq.

Title XIX of the Social Security Act, referred to in subsec. (e)(3)(H), is Act Aug. 14, 1935, c. 531, Title XIX, § 1901 et seq., as added July 30, 1965, Pub.L. 89-97, Title I, § 121(a), 79 Stat. 343, and amended, which is classified to subchapter XIX of chapter 7 of Title 42, 42 U.S.C.A. § 1396 et seq.

This chapter, referred to in subsecs. (e)(5)(A), (h)(5), originally read "this title", meaning Title VI of Pub.L. 91-230, Title VI, §§ 601 to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the ex-

tensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Effective and Applicability Provisions

2004 Acts. Amendments by Pub.L. 108-446, Title I, which revised this section, effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1411, Pub.L. 91-230, Title VI, § 611, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 49, relating to allotments, use of funds, and appropriations, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 611, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662.

Another prior section 1411, Pub.L. 91-230, Title VI, § 611, Apr. 13, 1970, 84 Stat. 178; Pub.L. 93-380, Title VI, § 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub.L. 94-142, §§ 2(a)(1) to (3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub.L. 95-561, Title XIII, 1341(a), Nov. 1, 1978, 92 Stat. 2364; Pub.L. 96-270, § 13, June 14, 1980, 94 Stat. 498; Pub.L. 98-199, §§ 3(b), 15, Dec. 2, 1983, 97 Stat. 1358, 1374; Pub.L. 99-159, Title VI, § 601, Nov. 22, 1985, 99 Stat. 904; Pub.L. 99-362, § 2, July 9, 1986, 100 Stat. 769; Pub.L. 99-457, Title II, § 201(b), Title IV, §§ 403, 404, Oct. 8, 1986, 100 Stat. 1158, 1173; Pub.L. 100-630, Title I, § 102(a), Nov. 7, 1988, 102 Stat. 3290; Pub.L. 101-476, Title II, § 201, Title IX, § 901(b)(25) to (32), Oct. 30, 1990, 104 Stat. 1111, 1143; Pub.L. 102-73, Title VIII, § 802(d)(2), (3), July 25, 1991, 105 Stat. 361; Pub.L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607; Pub.L. 102-119, §§ 4, 25(a)(4),(19), (b), Oct. 7, 1991, 105 Stat. 587, 606, 607; Pub.L. 103-382, Title III, § 311, Oct. 20, 1994, 108 Stat. 3931, relating to entitlements and allocations, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 611, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 49.

Authorization of Appropriations

Section 2(e) of Pub.L. 94-142 provided that: “Notwithstanding the provisions of section 611 of the Act [this section] as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated $100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and $200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act [this subchapter], as in effect during such fiscal years.”

Duties and Responsibilities of Secretary of Interior Respecting Funds

Pub.L. 92-318, Title IV, § 421(b)(2), June 23, 1972, 86 Stat. 341, which related to duties and responsibilities of the Secretary of the Interior with respect to funds, for purposes of subchapters I and II [section 821 et seq.] of chapter 24 of this title, this section, and sections 1412 to 1414 of this title, was repealed by Pub.L. 100-297, Title V, § 5352(4), Apr. 28, 1988, 102 Stat. 414.

Handicapped Children Eligible for Services Provided by Bureau of Indian Affairs; Study and Report to Congress

Pub.L. 100-297, Title V, § 5107(b), Apr. 28, 1988, 102 Stat. 369, as amended Pub.L. 100-427, § 2(b)(2), Sept. 9, 1988, 102 Stat. 1604, directed the Comptroller General to conduct a study relating to the numbers of children with disabilities eligible for services provided by the Bureau of Indian Affairs, with a report to be submitted to Congress on the results of the study no later than Apr. 28, 1989.

Rules and Regulations for Determining Specific Learning Disabilities, Diagnostic Procedures, and Monitoring Procedures; Promulgation by Commissioner of Education; Review of Regulations by Congressional Committees

Section 5(b) of Pub.L. 94-142, authorized the Commissioner of Education to prescribe specified rules and regulations to determine specific learning disabilities, diagnostic procedures, and monitoring procedures, subject to review and comment by Congressional Committees.

LAW REVIEW COMMENTARIES

Education for All Handicapped Children Act: Trends and Problems with the “related services” provision. Comment, 18 Golden Gate U.L.Rev. 427 (1988).

Steprelationships in Connecticut. Shirley R. Bysiewicz, 60 Conn.B.J. 378 (1986).

LIBRARY REFERENCES

American Digest System

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CJS Schools and Schools Districts § 965, Generally; Federal Statutes.
CJS Schools and Schools Districts § 965, Generally; Federal Statutes.

RESEARCH REFERENCES

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27 ALR, Fed. 2nd Series 341, Jurisdiction of Court to Award Attorney's Fees as Part of Costs Under Individuals With Disabilities Education Act, 20 U.S.C.A. § 1415(i)(3)(B).

161 ALR, Fed. 1, What Constitutes Services that Must be Provided by Federally Assisted Schools Under the In-

dividuals With Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400 et seq.).

147 ALR, Fed. 613, Construction and Application of 28 U.S.C.A. § 2403 (And Similar Predecessor Provisions), Concerning Intervention by United States or by State in Certain Federal Court Cases Involving Constitutionality Of...

62 ALR, Fed. 376, Exhaustion of State Administrative Remedies Under § 615 of the Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

63 ALR, Fed. 215, Actions, Under 42 U.S.C.A. § 1983, for Violations of Federal Statutes Pertaining to Rights of Handicapped Persons.

64 ALR, Fed. 792, Appropriateness of State Administrative Procedures Under § 615 of Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

54 ALR, Fed. 570, When Does Change in "Educational Placement" Occur for Purposes of § 615(B)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 U.S.C.A. § 1415(B)(1)(C)), Requiring Notice to Parents Prior to Such...

44 ALR, Fed. 148, Construction and Effect of § 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) Prohibiting Discrimination Against Otherwise Qualified Handicapped Individuals in Specified Programs Or...

Encyclopedias

93 Am. Jur. Proof of Facts 3d 1, Parents' or Student's Proof in Action for Educational Services or Tuition Reimbursement Under the Special Education Laws.

99 Am. Jur. Proof of Facts 3d 237, School District's Proof that Services Offered to Student With Disabilities Met Statutory Standards.

Am. Jur. 2d Schools § 400, Financial Assistance.

Treatises and Practice Aids

Americans With Disab. Pract. & Compliance Manual § 11:3, Applicability of 34 C.F.R. Part 300 to State, Local, and Private Agencies.

Americans With Disab. Pract. & Compliance Manual § 11:12, Elementary School; Secondary School; Charter School; Institution of Higher Education.

Americans With Disab. Pract. & Compliance Manual § 11:42, Purpose of Grants.

Americans With Disab. Pract. & Compliance Manual § 11:43, Maximum Amounts.

Americans With Disab. Pract. & Compliance Manual § 11:44, Funds Reserved for Outlying Areas and Freely Associated States, Secretary of Interior, Technical Assistance.

Americans With Disab. Pract. & Compliance Manual § 11:45, Application for Funds by Freely Associated State.

Americans With Disab. Pract. & Compliance Manual § 11:47, Increase in Funds.

Americans With Disab. Pract. & Compliance Manual § 11:48, Decrease in Funds.

Americans With Disab. Pract. & Compliance Manual § 11:49, State Administration.

Americans With Disab. Pract. & Compliance Manual § 11:50, State Administration--Use of Funds for Infants and Toddlers With Disabilities.

Americans With Disab. Pract. & Compliance Manual § 11:51, Other State-Level Activities.

Americans With Disab. Pract. & Compliance Manual § 11:52, Local Educational Agency High Cost Fund.

Americans With Disab. Pract. & Compliance Manual § 11:53, Local Educational Agency High Cost Fund--Sea Development of State Plan.

Americans With Disab. Pract. & Compliance Manual § 11:54, Local Educational Agency High Cost Fund--Limits on Disbursements.

Americans With Disab. Pract. & Compliance Manual § 11:55, Report on Use of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:56, Subgrants Required.

Americans With Disab. Pract. & Compliance Manual § 11:57, Reallocation of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:58, Provision of Amounts for Assistance.

Americans With Disab. Pract. & Compliance Manual § 11:59, Submission of Information.

Americans With Disab. Pract. & Compliance Manual § 11:61, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five.

Americans With Disab. Pract. & Compliance Manual § 11:62, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five--Use of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:63, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five--Biennial Report; Prohibitions.

Americans With Disab. Pract. & Compliance Manual § 11:64, Plan for Coordination of Services.

Americans With Disab. Pract. & Compliance Manual § 11:65, Establishment of Advisory Board.

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Americans With Disab. Pract. & Compliance Manual § 11:311, Responsibility.

Americans With Disab. Pract. & Compliance Manual § 11:312, Annual Report.

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Americans With Disab. Pract. & Compliance Manual § 11:317, Duty to Provide; Eligibility.

Americans With Disab. Pract. & Compliance Manual § 11:394, Identification and Coordination of Services.

West's Federal Administrative Practice § 4806, Special Education--State Grants (Federal Program No. 84.027).

NOTES OF DECISIONS

1. Distribution by States to local districts

The IDEA does not entitle a local school district to reimbursement from the state for some or all of the expense when district must reimburse parents for a disabled child's private education; a local educational agency that has received its share of the federal appropriation must provide for services out of that share, and it cannot collect more from the state by way of contribution, and section of IDEA providing that a state is liable to the same extent as any other public entity does not authorize contribution. Board of Educ. of Oak Park and River Forest High School Dist. No. 200 v. Kelly E., C.A.7 (Ill.) 2000, 207 F.3d 931, certiorari denied 121 S.Ct. 70, 531 U.S.

824, 148 L.Ed.2d 34. Schools 155.5(5)

In light of federal regulations which required state of Missouri to distribute only 75% of discretionary funds to local districts and fact that there was no persuasive evidence that state's handling of such funds resulted in local districts refusing to consider the needs of handicapped children for summer school, District Court would not order state defendants to provide 85% of its discretionary funds to local districts for summer programming for handicapped students. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1984, 599 F.Supp. 926, amended 604 F.Supp. 914, affirmed 780 F.2d 724, certiorari denied 106 S.Ct. 2896, 476 U.S. 1172, 90 L.Ed.2d 982. Schools 155.5(5)

2. State regulations

Emergency regulations adopted by New York State Board of Regents (NYSBR), upon recommendation of New York State Education Department (NYSED), that limited the use of "aversives," including contingent food programs, the use of helmets on some children, mechanical restraints, and the application of electric skin shocks through a graduated electronic decelerator (GED), on students with severe behavioral problems, did not facially violate IDEA; regulations' limitation and gradual phasing out of aversives was consistent with IDEA's focus on positive behavioral modification methods, there existed a split of authority in the professional community as to the benefits of aversives versus positive behavior, United States Department of Education reviewed the finalized regulations and indicated belief that they could be implemented consistent with IDEA, emergency regulations were promulgated after consideration of numerous articles on behavioral interventions, unsolicited public commentary, and consultations with educational experts, emergency passage was warranted based on suit against state authorities alleging aversive abuse at a special education school, and finalized regulations were adopted after three public hearings and a public comment period, during which there was a substantial outcry for the complete prohibition of aversives. Alleyne v. New York State Educ. Dept., N.D.N.Y.2010, 691 F.Supp.2d 322. Schools 148(3)

20 U.S.C.A. § 1411, 20 USCA § 1411

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

END OF DOCUMENT

Effective: July 1, 2005

United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter II. Assistance for Education of All Children with Disabilities
§ 1412. State eligibility

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

(C) State flexibility

A State that provides early intervention services in accordance with subchapter III to a child who is eligible for services under section 1419 of this title, is not required to provide such child with a free appropriate public education.

(2) Full educational opportunity goal

The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) Child find

(A) In general

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

(4) Individualized education program

An individualized education program, or an individualized family service plan that meets the requirements of section 1436(d) of this title, is developed, reviewed, and revised for each child with a disability in accordance with section 1414(d) of this title.

(5) Least restrictive environment

(A) In general

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) Additional requirement

(i) In general

A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

(ii) Assurance

If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) Procedural safeguards

(A) In general

Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.

(B) Additional procedural safeguards

Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this chapter will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) Evaluation

Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 1414 of this title.

(8) Confidentiality

Agencies in the State comply with section 1417(c) of this title (relating to the confidentiality of records and information).

(9) Transition from subchapter III to preschool programs

Children participating in early intervention programs assisted under subchapter III, and who will participate in preschool programs assisted under this subchapter, experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with sections 1414(d)(2)(B) and 1436(d) of this title, an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 1435(a)(10) of this title.

(10) Children in private schools

(A) Children enrolled in private schools by their parents

(i) In general

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(ii) Child find requirement

(I) In general

The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

(II) Equitable participation

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities

In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost

The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period

Such child find process shall be completed in a time period comparable to that for other students attend-

ing public schools in the local educational agency.

(iii) Consultation

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

(iv) Written affirmation

When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) Compliance

(I) In general

A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure

If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) Provision of equitable services

(I) Directly or through contracts

The provision of services pursuant to this subparagraph shall be provided--

(aa) by employees of a public agency; or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

(II) Secular, neutral, nonideological

Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) Public control of funds

The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the

uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(B) Children placed in, or referred to, private schools by public agencies

(i) In general

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) Standards

In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency

(i) In general

Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) Exception

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

(I) shall not be reduced or denied for failure to provide such notice if--

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(11) State educational agency responsible for general supervision

(A) In general

The State educational agency is responsible for ensuring that--

(i) the requirements of this subchapter are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency--

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) Exception

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) Obligations related to and methods of ensuring services

(A) Establishing responsibility for services

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and terms of reimbursement

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any ser-

vices that are also considered special education or related services (such as, but not limited to, services described in section 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(26) relating to related services, 1401(33) relating to supplementary aids and services, and 1401(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through--

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Personnel qualifications

(A) In general

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) Related services personnel and paraprofessionals

The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--

(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.

(C) Qualifications for special education teachers

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 6319(a)(2) of this title.

(D) Policy

In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this subchapter to children with disabilities.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be

highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.

(15) Performance goals and indicators

The State--

(A) has established goals for the performance of children with disabilities in the State that--

(i) promote the purposes of this chapter, as stated in section 1400(d) of this title;

(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 6311(b)(2)(C) of this title;

(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 6311(b)(2)(C)(v)(II)(cc) of this title; and

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 6311(h) of this title.

(16) Participation in assessments

(A) In general

All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 6311 of this title, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(B) Accommodation guidelines

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) Alternate assessments

(i) In general

The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) Requirements for alternate assessments

The guidelines under clause (i) shall provide for alternate assessments that--

(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

(iii) Conduct of alternate assessments

The State conducts the alternate assessments described in this subparagraph.

(D) Reports

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) Universal design

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

(17) Supplementation of State, local, and other Federal funds

(A) Expenditures

Funds paid to a State under this subchapter will be expended in accordance with all the provisions of this subchapter.

(B) Prohibition against commingling

Funds paid to a State under this subchapter will not be commingled with State funds.

(C) Prohibition against supplantation and conditions for waiver by Secretary

Except as provided in section 1413 of this title, funds paid to a State under this subchapter will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(18) Maintenance of State financial support

(A) In general

The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support

The Secretary shall reduce the allocation of funds under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for exceptional or uncontrollable circumstances

The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that--

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.

(D) Subsequent years

If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(19) Public participation

Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(20) Rule of construction

In complying with paragraphs (17) and (18), a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student

attendance or enrollment, or inflation.

(21) State advisory panel

(A) In general

The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) Membership

Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including--

(i) parents of children with disabilities (ages birth through 26);

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) a representative from the State child welfare agency responsible for foster care; and

(xi) representatives from the State juvenile and adult corrections agencies.

(C) Special rule

A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(D) Duties

The advisory panel shall--

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 1418 of this title;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this subchapter; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) Suspension and expulsion rates

(A) In general

The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(i) among local educational agencies in the State; or

(ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies

If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

(23) Access to instructional materials

(A) In general

The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

(B) Rights of State educational agency

Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(C) Preparation and delivery of files

If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after December 3, 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(D) Assistive technology

In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

(E) Definitions

In this paragraph:

(i) National Instructional Materials Access Center

The term "National Instructional Materials Access Center" means the center established pursuant to section 1474(e) of this title.

(ii) National Instructional Materials Accessibility Standard

The term "National Instructional Materials Accessibility Standard" has the meaning given the term in section 1474(e)(3)(A) of this title.

(iii) Specialized formats

The term "specialized formats" has the meaning given the term in section 1474(e)(3)(D) of this title.

(24) Overidentification and disproportionality

The State has in effect, consistent with the purposes of this chapter and with section 1418(d) of this title, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401 of this title.

(25) Prohibition on mandatory medication

(A) In general

The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 1414 of this title, or receiving services under this chapter.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

(b) State educational agency as provider of free appropriate public education or direct services

If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--

(1) shall comply with any additional requirements of section 1413(a) of this title, as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this subchapter to serve those children without regard to section 1413(a)(2)(A)(i) of this title (relating to excess costs).

(c) Exception for prior State plans

(1) In general

If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this subchapter.

(2) Modifications made by State

Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

(3) Modifications required by the Secretary

If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by a Federal court or a State's highest court, or there is an official finding

of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this subchapter.

(d) Approval by the Secretary

(1) In general

If the Secretary determines that a State is eligible to receive a grant under this subchapter, the Secretary shall notify the State of that determination.

(2) Notice and hearing

The Secretary shall not make a final determination that a State is not eligible to receive a grant under this subchapter until after providing the State--

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) Assistance under other Federal programs

Nothing in this chapter permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act [42 U.S.C.A. §§ 701 et seq.,1396 et seq.] with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) By-pass for children in private schools

(1) In general

If, on December 2, 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

(2) Payments

(A) Determination of amounts

If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing--

(i) the total amount received by the State under this subchapter for such fiscal year; by

(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 1418 of this title.

(B) Withholding of certain amounts

Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

(C) Period of payments

The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

(3) Notice and hearing

(A) In general

The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) Review of action

If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's

action, as provided in section 2112 of Title 28.

(C) Review of findings of fact

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Jurisdiction of court of appeals; review by United States Supreme Court

Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 612, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

References in Text

This subchapter, referred to in text, originally read “this part”, meaning part B of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 611 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662, which is classified to this subchapter.

This chapter, referred to in text, originally read “this title”, meaning Title VI of Pub.L. 91-230, Title VI, §§ 601 to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

Subchapter III, referred to in subsec. (a)(1)(C), (9) originally read “part C”, meaning part C of the Individuals

with Disabilities Education Act, Pub.L. 91-230, Title VI, § 631 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744, which is classified to subchapter III of this chapter, 20 U.S.C.A. § 1431 et seq.

Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(11)(A)(iii), (21)(B)(v), is Pub.L. 100-77, Title VII, Subtitle B, § 721 et seq., as added Pub.L. 107-110, Title X, § 1032, Jan. 8, 2002, 115 Stat. 1989, as amended, which is classified principally to part B of subchapter VI of chapter 119 of Title 42, 42 U.S.C.A. § 11431 et seq.

The Controlled Substances Act, referred to in subsec. (a)(25)(A), is Title II of Pub.L. 91-513, Title II, § 101, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (section 801 et seq.) of chapter 13 of Title 21, 21 U.S.C.A. § 801 et seq. For complete classification, see Short Title note set out under 21 U.S.C.A. § 801 and Tables.

The effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (c)(1), is the effective date of Pub.L. 108-446, Dec. 3, 2004, 118 Stat. 2647, which enacted this section. See Pub.L. 108-446, § 302, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1400, which provides an effective date of July 1, 2005 for this section.

Title V of the Social Security Act, referred to in subsec. (e), is Act Aug. 14, 1935, c. 531, Title V, § 501 et seq., as added Aug. 13, 1981, Pub.L. 97-35, Title XXI, § 2192(a), 95 Stat. 818, and amended, which is classified to subchapter V of chapter 7 of Title 42, 42 U.S.C.A. § 701 et seq.

Title XIX of the Social Security Act, referred to in subsec. (e), is Act Aug. 14, 1935, c. 531, Title XIX, § 1901 et seq., as added July 30, 1965, Pub.L. 89-97, Title I, § 121(a), 79 Stat. 343, and amended, which is classified to subchapter XIX of chapter 7 of Title 42, 42 U.S.C.A. § 1396 et seq.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the extensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Effective and Applicability Provisions

2004 Acts. Amendments by Pub.L. 108-446, Title I, which revised this section, effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1412, Pub.L. 91-230, Title VI, § 612, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 60, relating to State eligibility, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 612, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676.

Another prior section 1412, Pub.L. 91-230, Title VI, § 612, Apr. 13, 1970, 84 Stat. 178; Pub.L. 92-318, Title IV, § 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub.L. 93-380, Title VI, §§ 614(b), (f)(1), 615(a), Title VIII, § 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub.L. 94-142, §§ 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; Pub.L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub.L. 99-457, Title II, § 203(a), Oct. 8, 1986, 100 Stat. 1158; Pub.L. 100-630, Title I, § 102(b), Nov. 7, 1988, 102 Stat. 3291; Pub.L. 101-476, Title IX, § 901(b)(33) to (46), (c), Oct. 30, 1990, 104 Stat. 1143, 1144, 1151; Pub.L. 102-119, § 25(a)(5), (b), Oct. 7, 1991, 105 Stat. 606, 607, relating to eligibility requirements, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 612, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 60.

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CJS Schools and Schools Districts § 998, Mainstreaming; Placement in Least-Restrictive Environment.
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CJS Schools and Schools Districts § 1002, Private School and Out-Of-State Placement.
CJS Schools and Schools Districts § 1103, Individuals With Disabilities Education Act.
CJS Schools and Schools Districts § 999, Placement of Child Who Violates Code of Student Conduct.

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NOTES OF DECISIONS

I. GENERALLY

<Subdivision Index>

1. Law governing

The Education of the Handicapped Act (EHA) creates only federal minimum which must be complied with by states regarding provision of services to handicapped children, although states may structure educational programs which exceed the federal level. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(2.1)

Placement of children at private facility by Oregon agency for medical reasons was related to goal of providing children with free appropriate public education in accordance with Education for All Handicapped Children Act, even though children were referred from variety of sources including parents; Mental Health Division of Oregon Department of Human Resources determined which children were admitted and which children remained at facility. Kerr Center Parents Ass'n v. Charles, C.A.9 (Or.) 1990, 897 F.2d 1463, on remand. Schools 154(4)

Massachusetts standard requiring its Department of Education to administer special education programs to assure maximum possible development of child with special needs required a level of substantive benefits superior to that under the Education of the Handicapped Act, §§ 602-620, as amended, 20 U.S.C.A. §§ 1401-1420, and thus, Massachusetts standard would be incorporated into the federal Act to require that individualized implementation plan for adolescent child with Down's Syndrome address child's special educational needs so as to assure his maximum possible development in least restrictive environment consistent with such goal. David D. v. Dartmouth School Committee, C.A.1 (Mass.) 1985, 775 F.2d 411, certiorari denied 106 S.Ct. 1790, 475 U.S. 1140, 90 L.Ed.2d 336. Schools 148(3)

Education of Handicapped Act (EHA) establishes minimum requirements, or floor, that states must meet, but states may exceed that federal minimum; EHA incorporates by reference state standards that exceed federal floor. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900. Schools 148(2.1)

When handicapped student seeks review under Education of the Handicapped Act of state agency's decision regarding appropriate education, state standard for educating the handicapped may be enforced when it exceeds federal standard. Pink by Crider v. Mt. Diablo Unified School Dist., N.D.Cal.1990, 738 F.Supp. 345. Federal Courts 433

When state's special education statute mandates that state and subordinate governmental units provide higher level of educational opportunity for handicapped students, content of term “free appropriate education,” as found in portion of Education of the Handicapped Act which incorporates state standards, necessarily changes. Barwacz v. Michigan Dept. of Educ., W.D.Mich.1987, 674 F.Supp. 1296. Schools 148(2.1)

State regulations enacted pursuant to this chapter do not confer greater rights to therapeutic services than those mandated directly by this chapter. Max M. v. Thompson, N.D.Ill.1984, 592 F.Supp. 1437, on reconsideration 629 F.Supp. 1504. Schools 148(2.1)

2. Construction with other laws

Parent of disabled student failed to state claim for relief under § 1983 based on IDEA violations; parent did not allege facts from which court could infer that District of Columbia Public Schools (DCPS) had custom or practice that was moving force behind alleged IDEA violation, that exceptional circumstances existed, or that normal remedies offered under IDEA were inadequate to compensate student for harm he allegedly suffered. Jackson v. District of Columbia, D.D.C.2011, 826 F.Supp.2d 109. Schools 155.5(2.1)

Student's parents alleged only that school district deemed student eligible for accommodation under Rehabilitation Act, but did not assert that district acted in bad faith or with gross misjudgment or that district denied student access to Free Appropriate Public Education (FAPE) because of his disability, thus precluding parents' claim under Act. P.C. v. Oceanside Union Free School Dist., E.D.N.Y.2011, 818 F.Supp.2d 516. Schools 148(2.1)

Garden-variety IDEA violations did not reasonably suggest existence of bad faith or gross misconduct, and thus did not give rise to viable discrimination claim under Rehabilitation Act. Alston v. District of Columbia, D.D.C.2011, 770 F.Supp.2d 289. Schools 148(2.1)

A school's failure to notify parents of its Individuals with Disabilities Education Act (IDEA) duties could violate the Rehabilitation Act. Taylor v. Altoona Area School Dist., W.D.Pa.2010, 737 F.Supp.2d 474. Schools 148(2.1)

Requirement of Individuals with Disabilities Education Act (IDEA) to provide learning-disabled child with “free appropriate education” does not displace compensation for “special education” authorized under National Childhood Vaccine Injury Act; statutes seek accomplishment of different objectives and, thus, what may suffice as acceptable special education plan under IDEA is not to be taken as measure of compensation awardable under Vaccine Act. Thomas v. Secretary of Department of Health and Human Services, Fed.Cl.1992, 27 Fed.Cl. 384. Health 389

Need of student for behavioral modification for basic education skills was encompassed by IDEA, and so residential placement necessary for those skills was primary responsibility of the state under IDEA, not the Vaccine Act. Taylor By and Through Taylor v. Secretary of Dept. of Health and Human Services, Cl.Ct.1991, 24 Cl.Ct. 433. Health 389

3. Retroactive effect

Court of Appeals would not, in interpreting provisions of prior version of Individuals with Disabilities Education Act (IDEA) governing provision of educational services in parochial school setting, give retroactive effect to amendments thereto, or to rationale behind those amendments. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

IDEA amendments which related to use of federal funds for benefit of children voluntarily enrolled in private schools did not apply retroactively, absent clear indication that Congress intended amendments merely to clarify IDEA, rather than change IDEA. Fowler v. Unified School Dist. No. 259, Sedgwick County, Kan., C.A.10 (Kan.) 1997, 128 F.3d 1431. Schools 8; Schools 148(2.1)

Statute, which requires schools to provide free, appropriate public education for handicapped children, did not become effective until October 1, 1977 and, therefore, conferred no rights upon handicapped student who had been enrolled before effective date. Gallagher v. Pontiac School Dist., C.A.6 (Mich.) 1986, 807 F.2d 75. Schools 10

4. State regulation or control

The public school district's failure to conduct a functional behavioral assessment (FBA), in accordance with New York State regulation, in developing the individualized education program (IEP) for a student diagnosed with autism and other behavioral disabilities was not a procedural violation of the Individuals with Disabilities in Education Act (IDEA) that deprived the student of a free appropriate public education (FAPE); the IEP provided for strategies to address student's behavioral problems, by requiring a personal aide to prompt student to focus during class, and by providing for psychiatric and psychological assessments and services, and the special education teacher did not believe that an FBA was warranted. A.C. ex rel. M.C. v. Board of Educ. of The Chappaqua Central School Dist., C.A.2 (N.Y.) 2009, 553 F.3d 165. Schools 148(3)

Graduation of disabled student violated the IDEA where, at the time of her graduation, student was 18 and had not completed Arkansas's secondary education program, nor had her parent been given prior written notice of the graduation decision or an opportunity challenge it, and where the graduation took place in 1995, before IDEA was amended to provide for the transfer of parental rights to the disabled child at age 18 if child is not adjudicated incompetent. Birmingham v. Omaha School Dist., C.A.8 (Ark.) 2000, 220 F.3d 850, rehearing and rehearing en banc denied. Schools 148(2.1)

New Hampshire administrative regulation requiring public school district to either present acceptable individual-

ized education program or seek administrative enforcement for disabled student was authorized by both Individuals with Disabilities Education Act and state implementing statute. Murphy v. Timberlane Regional School Dist., C.A.1 (N.H.) 1994, 22 F.3d 1186, certiorari denied 115 S.Ct. 484, 513 U.S. 987, 130 L.Ed.2d 396. Schools 155.5(1)

California's statutory scheme mandating that handicapped three to five-year-old students may, when appropriate, be placed in program that only provides designed instruction and services (DIS) without simultaneous special education was not inconsistent with Individuals with Disabilities Education Act (IDEA) and therefore, Court of Appeals would enforce California's statutory scheme. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1); States 18.25

Appropriate educational goals for disabled student under Individuals with Disabilities Education Act (IDEA) and method of best achieving those goals are matters which are to be established in first instance by states; courts must be careful to avoid imposing their view of preferable educational methods upon states, and primary responsibility for formulating education to be accorded disabled child, and for choosing educational method most suitable to child's needs, was left by Congress to state and local educational agencies in cooperation with child's parents or guardian. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 155.5(2.1)

Florida statute governing education of handicapped children did not provide learning disabled high school student with independent state law right to remain in particular school during pendency of proceeding under Individuals with Disabilities Education Act (IDEA) challenging his transfer to another school; statute's use of term “educational assignment” in its “stay put” provision, rather than term “educational placement” employed in IDEA, did not create any substantive rights beyond those enforceable under IDEA. Hill By and Through Hill v. School Bd. for Pinellas County, M.D.Fla.1997, 954 F.Supp. 251, affirmed 137 F.3d 1355. Schools 154(2.1)

Ohio statute permitting county to charge home for tuition for two disabled resident children, although it did not directly permit charging children's nonresident parents, contravened IDEA, which did not permit state which received federal funding to charge parents or guardians of resident disabled children, since home was demanding that parents reimburse it for tuition expense. Wise v. Ohio Dept. of Educ., N.D.Ohio 1994, 863 F.Supp. 570, reversed 80 F.3d 177, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1); States 18.25

New Jersey imposes higher standard of special education than the basic floor required by Individuals with Disabilities Education Act (IDEA) and as a result, local school boards in New Jersey are required to provide educational services according to how the student can best achieve success in learning. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145, 1994 WL 514779. Schools 148(2.1)

While this chapter intrudes somewhat into a state's traditional decision-making role in educating the handicapped, it was not intended to totally supplant a state's prerogative in allocating limited financial resources and, hence, competing interests must be balanced to reach a reasonable accommodation, with consideration given

fact that excessive expenditures to meet the demands of one handicapped child ultimately reduce the amount that can be spent to meet the needs of the other handicapped children. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 148(2.1)

5. Rules and regulations

Term "placement" in IDEA implementing regulation does not mean a particular school, but rather a setting, such as regular classes, special education classes, special schools, home instruction, or hospital or institution-based instruction. White ex rel. White v. Ascension Parish School Bd., C.A.5 (La.) 2003, 343 F.3d 373. Schools 154(2.1)

Regulation adopted pursuant to Education of the Handicapped Act requiring school district to choose location that is "as close as possible" to child's home did not mandate that school district place handicapped child at elementary school nearest to her home, where individualized education program team would not have chosen that school as location of her placement, given inadequate physical access for handicapped children in that school. Schuldt v. Mankato Independent School, Dist. No. 77, C.A.8 (Minn.) 1991, 937 F.2d 1357, rehearing denied, certiorari denied 112 S.Ct. 937, 502 U.S. 1059, 117 L.Ed.2d 108. Schools 154(2.1)

Regulation requiring that handicapped children be given equal opportunity for participation in extracurricular activities conflicts with the Education for All Handicapped Children Act, which only requires that child's individualized educational plan, in its entirety, be reasonably calculated to enable child to receive educational benefits. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1986, 788 F.2d 328, certiorari denied 106 S.Ct. 3297, 478 U.S. 1005, 92 L.Ed.2d 711. Schools 148(2.1)

Regulations giving local school boards the right to initiate due process appeals in IDEA disputes with parents were valid; absent standing for board, decisionmaking authority could be transferred from school board to parents, contravening IDEA, and board's fulfillment of statutory obligations would be impaired, although parents complained that board's right would inconvenience parents who wish to make unilateral placement of student. Yates v. Charles County Bd. of Educ., D.Md.2002, 212 F.Supp.2d 470. Schools 155.5(1)

Approval by United States Department of Education's Office of Special Education Programs (OSEP) of state Board of Education's plan for compliance with least restrictive environment (LRE) requirements of Individuals with Disabilities Education Act (IDEA) did not preclude judicial review of plan for IDEA compliance; IDEA expressly provided for independent judicial review, and both IDEA and other statutes provided private right of action for parents and guardians of disabled students. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 155.5(2.1)

Individuals with Disabilities Education Act (IDEA) imposes dual requirements on states and their school districts; they must provide personalized instruction with sufficient support services to permit child to benefit educationally from that instruction, and construct program in least restrictive educational environment appropriate to needs of child. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Although regulations implementing this chapter direct that placement be as close as possible to child's home and that unless an individualized education program require some other arrangement placement must be at the school the child would attend if not handicapped, county did not violate by placing learning disabled child in a suitable "self-contained" program at a school in a neighboring county as there were limited number of students needing such program, no program existed at school child would normally attend and school to which child would be sent was centrally located although six miles farther from child's home. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 154(2.1)

6. Competing interests

Both strong preference for mainstreaming disabled students and requirement that schools provide individualized programs tailored to specific needs of each disabled child are clearly and strongly reflected in Individuals with Disabilities Education Act (IDEA) as written, and public school officials must devise means to reconcile these conflicting but compelling interests. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

7. Right to education

Education of the Handicapped Act confers upon handicapped child an enforceable substantive right to a free appropriate public education that includes special education and related services designed to meet child's unique needs. Andrews v. Ledbetter, C.A.11 (Ga.) 1989, 880 F.2d 1287. Schools 148(2.1)

Handicapped adolescent's right to education stemmed from provisions of Education of Handicapped Children Act guaranteeing appropriate education to all children between ages of 5 and 18 and Mississippi Constitution and statutes providing for maintenance and establishment of free public schools for all children between 6 and 21 years of age. Jackson v. Franklin County School Bd., C.A.5 (Miss.) 1986, 806 F.2d 623. Schools 148(2.1)

8. Due process

Parents asserted property interest protected by due process when they alleged that county's social services department had placed Medicaid liens on personal injury awards of minor disabled children to recover for costs of education-related services to be provided to children with disabilities as part of their individual education plans under Individuals with Disabilities Education Act (IDEA). Andree ex rel. Andree v. County of Nassau, E.D.N.Y.2004, 311 F.Supp.2d 325. Constitutional Law 4416

9. Proportional services

School district satisfied the requirement of the 1975 Amendment to this chapter, that it provide educational services to handicapped students 18 and older in at least the same proportion as it provides similar services to nonhandicapped peers where ten of 418 handicapped students enrolled in school district were 18 and over and 24 of 3,175 nonhandicapped students enrolled during that year were 18 or over. Timms on Behalf of Timms v. Metropolitan School Dist. of Wabash County, Ind., C.A.7 (Ind.) 1983, 722 F.2d 1310. Schools 148(2.1)

10. Educational agency--Generally

Once local school district informed state department of education that it was unable to provide an appropriate program for severely disabled child who was deaf and blind, and that school district was not a special district, state department became, under Missouri law, direct provider of child's education and thus was required, in order to satisfy its obligation under IDEA and Missouri law to provide child with free appropriate public education (FAPE), to have representative from state department present at child's individualized education program (IEP) meetings. Missouri Dept. of Elementary and Secondary Educ. v. Springfield R-12 School Dist., C.A.8 (Mo.) 2004, 358 F.3d 992. Schools 148(3)

Court, having determined that residential placement was appropriate for severely retarded child, did not err in assigning responsibility to the State Board of Education rather than the local school district. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 154(3)

California Department of Education had responsibility by default under IDEA for providing free appropriate public education (FAPE) to parentless child in absence of any California law designating local entity responsible for that education. Orange County Dept. of Educ. v. A.S., C.D.Cal.2008, 567 F.Supp.2d 1165, question certified 650 F.3d 1268, opinion after certified question declined 668 F.3d 1052. Schools 148(2.1)

Where there were at least two means by which children could be placed at school for mentally retarded, either through local education agency or through Division of Mental Health, state scheme of placement violated federal mandate established by subsec. (6) of this section that there be one centralized agency which assumes responsibility for providing a free and appropriate education to handicapped children. Garrity v. Gallen, D.C.N.H.1981, 522 F.Supp. 171. Schools 154(2.1)

11. ---- Duties of educational agency

Substantial evidence supported ALJ's determination that goals in individualized education program (IEP) prepared for non-cognitively impaired student were not based upon reasoned criteria or student's current skill levels, failed to meet student's need for phonemic awareness, failed to provide measurable standards for success, and failed to use prior term's achievements to set next term's goals, and thus that school district violated its duty under IDEA to provide student with free appropriate public education (FAPE), where psychoeducational evaluation did not provide any indication of what, if any, skills student had in area of mathematics, spelling goal was too vague to determine what area of need it addressed, objectives for each reporting period were too vague to be meaningful, and reading goals did not address phonemic awareness or information as to what questions he was expected to ask or answer. Ravenswood City School Dist. v. J.S., N.D.Cal.2012, 2012 WL 2510844. Schools 155.5(4)

Under Pennsylvania's statutory scheme, charter schools are independent local educational agencies (LEAs) and assume duty to ensure that free appropriate public education (FAPE) is available to a child with a disability in compliance with IDEA and its implementing regulations. R.B. ex rel. Parent v. Mastery Charter School, E.D.Pa.2010, 762 F.Supp.2d 745, stay denied 2011 WL 121901. Schools 148(2.1)

State public education department had obligation to compel school district to provide free and appropriate public education (FAPE) for public-school student who qualified for receipt of special education based on autism, or provide direct services to student, under Individuals with Disabilities Education Act (IDEA); local education agency failed to provide student FAPE for two full school years, state department was on notice through letter from parents and conversation with parent that local agency was not providing FAPE to student, and state department had ample time to compel school district to provide FAPE to student or to provide direct services to student before onset of administrative proceedings. Chavez v. Board of Educ. of Tularosa Municipal Schools, D.N.M.2008, 614 F.Supp.2d 1184, clarification denied, motion to amend denied, affirmed in part , reversed in part 621 F.3d 1275. Schools 148(2.1)

Once Kentucky accepted funds from federal government and acceded to administrative and appellate scheme of Education for Handicapped Children Act, state had overriding duty to provide appropriate individualized education program for every handicapped child capable of benefiting from one, and that obligation could require that some children be placed at Kentucky School for the Blind, even if children did not meet school's admission criteria, if placement would be the only way for appropriate IEP to be designed for student. Eva N. v. Brock, E.D.Ky.1990, 741 F.Supp. 626, affirmed 943 F.2d 51. Schools 154(2.1)

State board of education was not relieved from ultimate responsibility for the provision of educational benefits to a handicapped child by the possibility of financial or in-kind assistance from other government or private agencies. William S. v. Gill, N.D.Ill.1983, 572 F.Supp. 509. Schools 148(2.1)

12. ---- Individualized educational program, educational agency

Because education provided each disabled child must be uniquely appropriate for child's educational needs, state must prepare individualized education program (IEP) for each child through joint participation of local education agency, child's teacher, and child's parents. Curtis K. by Delores K. v. Sioux City Community School Dist., N.D.Iowa 1995, 895 F.Supp. 1197.

13. ---- Liability of educational agency

Individuals with Disabilities Education Act (IDEA) does not dictate which district or agency within a state must assume financial liability for special education services, but rather, leaves the assignment and allocation of financial responsibility for special education cost of local school districts to each individual state's legislature. Manchester School Dist. v. Crisman, C.A.1 (N.H.) 2002, 306 F.3d 1. Schools 148(2.1)

District court has authority to award reimbursement costs for private school placement of disabled child against state educational agency, local educational agency, or both in any particular case under Individuals with Disabilities Education Act (IDEA); either or both entities may be held liable for failure to provide free appropriate public education, as district court deems appropriate after considering all relevant factors. St. Tammany Parish School Bd. v. State of La., C.A.5 (La.) 1998, 142 F.3d 776, certiorari dismissed 119 S.Ct. 587, 525 U.S. 1036, 142 L.Ed.2d 490. Schools 155.5(5)

State education agency may be held liable for failure to comply with its duty to assure that substantive requirements of Individuals with Disabilities Education Act (IDEA) are implemented at state and local levels, as agency is statutorily required to ensure that each child within its jurisdiction is provided free appropriate public education, even when local education agency is unwilling or unable to do so. Gadsby by Gadsby v. Grasmick, C.A.4 (Md.) 1997, 109 F.3d 940. Schools 148(2.1)

Office of the State Superintendent of Education (OSSE) could not be held liable in mother's Individuals with Disabilities Education Act (IDEA) action for alleged failure of a local education agency (LEA) charter to provide son with free appropriate public education (FAPE), where District of Columbia Public Schools (DCPS), rather than OSSE, was acting as the state education agency (SEA) responsible for supervision and enforcement. Thomas v. District of Columbia, D.D.C.2011, 773 F.Supp.2d 15. Schools 148(2.1)

When a residential placement of a disabled student is made necessary by a combination of problems, the local education agency (LEA) may be found financially responsible for the placement under the Individuals with Disabilities Education Act (IDEA). Mohawk Trail Regional School Dist. v. Shaun D. ex rel. Linda D., D.Mass.1999, 35 F.Supp.2d 34. Schools 154(3)

14. Delegation of duties

For purposes of determining contract's enforceability, Ohio school district did not abdicate or bargain away its obligation under IDEA to provide disabled student with free appropriate public education (FAPE) by allegedly contracting with private academy, a facility better equipped to deal with student's autism, and in so contracting school district did not relieve itself of obligations to monitor academy for compliance with state-set educational standards or to ensure that academy was meeting requirements of the individualized education program (IEP). Bishop v. Oakstone Academy, S.D.Ohio 2007, 477 F.Supp.2d 876. Schools 154(4)

15. Eligibility for services

Since-repealed Hawai'i regulation, conditioning eligibility for special education on existence of “severe discrepancy” between academic achievement and intellectual ability without permitting use of “response to intervention model,” violated IDEA provision prohibiting states from requiring exclusive reliance on “severe discrepancy model” and requiring states to allow use of “response to intervention model.” Michael P. v. Department of Educ., C.A.9 (Hawai'i) 2011, 656 F.3d 1057. Schools 148(2.1)

Record in IDEA case did not support classification of plaintiffs' minor child as a “child with a disability” under emotional disturbance prong, and they were not entitled to reimbursement for costs of his unilateral out-of-state placement at residential therapeutic school; evidence preponderated that academic problems he presented were result of his truancy, i.e., that he failed his classes because he refused to attend school, and that his refusal behavior was principally the product of a conduct disorder, narcissistic personality tendencies and substance abuse rather than of depression. W.G. v. New York City Dept. of Educ., S.D.N.Y.2011, 801 F.Supp.2d 142. Schools 154(3); Schools 155.5(4)

Disabilities of student who suffered from major depressive disorder and attention deficit hyperactivity disorder (ADHD), who had undergone psychiatric hospitalizations and made multiple suicide attempts, and who also had other behavioral problems, adversely impacted her educational performance, such that she was entitled to special education services under IDEA, notwithstanding that she had performed well under appropriate programs provided in private schools, in which her parents had unilaterally enrolled her, after school district failed to evaluate her. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 148(3)

Student did not exhibit characteristics of emotional disturbance "over a long period of time and to a marked degree," as required to qualify student for special education services under Individuals with Disabilities Education Act (IDEA); student was personable and well-liked by teachers and students and got along well with both groups, and did not demonstrate verbal aggression, physically assaultive behavior, authority conflicts, general pervasive mood of unhappiness or depression, despondency, mood swings, or other conduct typically associated with emotional disturbance while at school. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(3)

16. Domicile

Individuals with Disabilities Education Act (IDEA) does not forbid a state from providing and funding a free appropriate public education to a disabled child who may not be a domiciliary of that state, even if the state is not required to do so and the child is a charge under the IDEA upon the custodial parent's state. Manchester School Dist. v. Crisman, C.A.1 (N.H.) 2002, 306 F.3d 1. Schools 148(2.1)

Under the Education of the Handicapped Act (EHA), Arizona was required to provide special education services tuition free to American citizen born to Mexican parents who was within borders of state of Arizona for bona fide reasons, regardless of child's residency status. Sonya C. By and Through Olivas v. Arizona School for the Deaf and Blind, D.Ariz.1990, 743 F.Supp. 700. Schools 153

Domicile plays no role where no state has assumed responsibility for providing education to handicapped person who has resided nearly all her life within borders of the state, and state, at minimum, under such circumstances has obligation to provide child with education. Rabinowitz v. New Jersey State Bd. of Educ., D.C.N.J.1982, 550 F.Supp. 481. Schools 153

17. Private school

Private high school's requirement of performance at the fifth grade level as a condition of placement in mainstream academic high school classes could not violate IDEA because the school was not directly subject to the IDEA's standards, though disabled student was placed there because local school district lacked its own high school. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 8

State department of education's conduct of allegedly failing to promulgate standards governing the operation of private entities which provided vocational opportunities to special education students, as required by IDEA, supported a claim under IDEA brought by parents of child who was raped while enrolled in a community based

training program. J.R. ex rel. R. v. Waterbury Bd. of Educ., D.Conn.2001, 272 F.Supp.2d 174. Schools 155.5(2.1)

Once appropriate program is offered by public school system, further enhancements are not required by Education of the Handicapped Act (EHA); moreover, where school system proposes appropriate program, it has no duty to consider nonpublic programs. Doyle v. Arlington County School Bd., E.D.Va.1992, 806 F.Supp. 1253, affirmed 39 F.3d 1176. Schools 148(2.1); Schools 154(4)

18. Transfer of student

School board was not legally obligated, under Individuals with Disabilities Education Act (IDEA), to provide on-site sign language interpreter to student at private school, where student was offered free appropriate individualized education program (IEP) at public schools before voluntarily transferring to private school. Cefalu on Behalf of Cefalu v. East Baton Rouge Parish School Bd., C.A.5 (La.) 1997, 117 F.3d 231. Schools 8; Schools 148(2.1)

When responsibility for providing a disabled child a free appropriate public education (FAPE) under the IDEA transfers from one public agency to another, the new public agency is required only to provide a program that is in conformity with the placement in the last agreed upon individualized education plan (IEP) or individual family service plan (IFSP); the new agency need not, and probably could not, provide the exact same educational program. Pardini v. Allegheny Intermediate Unit, W.D.Pa.2003, 280 F.Supp.2d 447, reversed and remanded 420 F.3d 181, certiorari denied 126 S.Ct. 1646, 547 U.S. 1050, 164 L.Ed.2d 353, on remand 2006 WL 3940563. Schools 148(2.1)

When disabled student changed parochial schools, school committee should have, pursuant to the IDEA, conducted individualized education plan (IEP) meeting to evaluate student's educational needs and ensure that she was provided resource services that complied with the IDEA and its regulatory framework. Bristol Warren Regional School Committee v. Rhode Island Dept. of Educ. and Secondary Educations, D.R.I.2003, 253 F.Supp.2d 236. Schools 148(2.1)

No change in learning disabled high school student's “then current educational placement” under Individuals with Disabilities Education Act (IDEA) resulted from his transfer by school board from high school outside his area of residence to one within his area of residence, where student's individualized educational program (IEP) did not change as result of transfer. Hill By and Through Hill v. School Bd. for Pinellas County, M.D.Fla.1997, 954 F.Supp. 251, affirmed 137 F.3d 1355. Schools 148(2.1)

19. Expelled or suspended students

Individuals with Disabilities Education Act (IDEA) does not require provision of free appropriate public education (FAPE) to handicapped students expelled or suspended for criminal or other serious misconduct wholly unrelated to their disabilities; statute requires only that all handicapped students be provided with right to FAPE, and such right is susceptible of forfeiture through conduct unrelated to a student's disability which so completely

disrupts classroom as to prevent continuation of educational process or which constitutes crime against society. Com. of Va., Dept. of Educ. v. Riley, C.A.4 1997, 106 F.3d 559. Schools 148(2.1)

Charter school denied free appropriate public education (FAPE) to adult learning disabled student when it failed to conduct Functional Behavioral Assessment (FBA) and implement Behavioral Intervention Plan (BIP) following student's suspension and expulsion. Shelton v. Maya Angelou Public Charter School, D.D.C.2008, 578 F.Supp.2d 83. Schools 148(3)

20. Incarcerated children

District of Columbia's failure to provide special education services, pursuant to IDEA individualized education program (IEP), for learning disabled student incarcerated in another state, which provided its own special education services for student, did not breach agreement with student for provision of services, under District of Columbia law, since state officials made it impracticable for District to provide special education services by refusing to allow its educators entry into prison for security reasons. Hester v. District of Columbia, C.A.D.C.2007, 505 F.3d 1283, 378 U.S.App.D.C. 272, rehearing en banc denied. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to comply with their "Child Find" duties to disabled students in violation of IDEA, at least through and including the year 2007; their attempts to find disabled children in the District through public awareness, outreach, and even direct referrals were inadequate, they actually failed to find these disabled children, proven by the large number of children to whom defendants denied a free appropriate public education (FAPE), and defendants' initial evaluations were inadequate, proven by low number of 65.80% of children that received timely evaluation and by U.S. Office of Special Education Programs' (OSEP's) annual determinations that District did not meet requirement for timely evaluations. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84. Schools 148(2.1)

Learning disabled student who resided in District of Columbia did not lose his D.C. residence by virtue of being incarcerated in Maryland; thus, District was obligated to provide educational services required under IDEA in accordance with explicit terms of consent order and hearing officer's determination (HOD). Hester v. District of Columbia, D.D.C.2006, 433 F.Supp.2d 71, reversed and remanded 505 F.3d 1283, 378 U.S.App.D.C. 272, rehearing en banc denied. Schools 148(3)

City officials would be required, in order modifying education plan, to include appropriate goals and objectives in temporary education plans (TEP) for city prison inmates who were between ages of 16 and 21 and who were also special education students, on IDEA claims, in class action against city officials by inmates who sought educational services; TEPs developed for inmates attending prison schools did not include goals and objectives to address behavioral or social skills. Handberry v. Thompson, S.D.N.Y.2002, 219 F.Supp.2d 525, vacated and remanded , reinstated 2003 WL 194205, affirmed in part, vacated in part and remanded 436 F.3d 52, opinion amended on rehearing 446 F.3d 335, stay granted in part 2003 WL 1797850. Infants 3135

New individual education plan (IEP) need not be developed for juveniles when they are incarcerated at reception

and evaluation center, and the IEP formulated by the transferor school district must be utilized and implemented to the extent possible; new IEP must be formulated if and when juvenile is sent to long-term institutions. Alexander S. By and Through Bowers v. Boyd, D.S.C.1995, 876 F.Supp. 773, modified on denial of rehearing. Infants 3135

Although incarcerated status of those inmates of Massachusetts county houses of correction under age of 22 and in need of special education services might require adjustments in the particular special education programs available to them as compared to programs available to children with special education needs who were not incarcerated, their incarcerated status did not eviscerate their entitlement to such services under federal and state law. Green v. Johnson, D.C.Mass.1981, 513 F.Supp. 965. Schools 150

21. Duty to identify student with disabilities

School district had reason to suspect that student had disability, and that student may have required special education, as required to comply with its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where student exhibited hyperactivity in class, impulsive behaviors, uncontrollable vocalizations, and other related behavioral problems. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 148(3)

School district's obligation under IDEA's child-find provision to identify student who suffered from an affective disorder and provide her special education services did not end after her parents unilaterally withdrew her from district and placed her in an out-of-state private educational setting, even though district had not previously denied student a free appropriate public education (FAPE); parents continued to reside in district and could seek a FAPE from district as part of a plan to bring student home to a public placement. J.S. v. Scarsdale Union Free School Dist., S.D.N.Y.2011, 826 F.Supp.2d 635. Schools 148(3)

Under District of Columbia law, even if public charter school acting as a local education agency (LEA) violated its child find obligations under IDEA by failing to identify and evaluate student diagnosed with major depressive disorder in order to provide her with free appropriate public education (FAPE), District of Columbia Public Schools (DCPS), which had assumed role as the state education agency (SEA) was not liable to student's mother for LEA's IDEA violations, since public charter school had not notified DCPS that it needed assistance, nor had DCPS been ordered by hearing officer to provide FAPE to student. B.R. ex rel. Rempson v. District of Columbia, D.D.C.2011, 802 F.Supp.2d 153. Schools 148(2.1)

Hearing officer's conclusions regarding school board's duties under IDEA “child find” provisions were supported by substantial evidence; hearing officer concluded that school board “overlooked clear signs of disability” and thus failed to fully evaluate student's suspected disabilities which adversely impacted his academic performance during two school years. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

State Department of Public Instruction (DPI) did not satisfy Individuals with Disabilities Education Act (IDEA) requirement that children in need of special education be found and placed, when DPI inspected school district, determined that compliance was unsatisfactory, but then took insufficient action to bring about compliance. Jamie S. v. Milwaukee Public Schools, E.D.Wis.2007, 519 F.Supp.2d 870, clarification denied 2007 WL 4365799, vacated 668 F.3d 481. Schools 148(2.1)

Under Individuals with Disabilities Education Act (IDEA), school board was not required to identify student as special education student, based on psychiatric institute's discharge form for student, before it was entitled to conduct psychological evaluation, and therefore parents were not justified in refusing consent to evaluation on such grounds, given that there was no statutory requirement that student be identified before evaluations that could aid in formulation of individualized education program (IEP) were conducted, that discharge could not alone have formed basis for identification, and that psychological evaluation was relevant to identification. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 148(3)

School did not violate its duty, under IDEA, to identify student with disabilities, where all testimony indicated that student's poor marks resulted not from inability to comprehend or understand classroom material, but rather from student's failure or refusal to turn in assignments. Clay T. v. Walton County School Dist., M.D.Ga.1997, 952 F.Supp. 817. Schools 148(2.1)

22. Child find provisions

School district's failure to evaluate student for disabilities until his first-grade year, failure to employ functional behavioral assessment in his evaluation, and refusal to label him disabled under IDEA until his second-grade year was not child find violation under IDEA or Rehabilitation Act, thus foreclosing compensatory education remedy, where school district was not required to jump to conclusion that student's misbehavior denoted disability, as his hyperactivity, difficulty following instructions, and tantrums were typical during early primary school years, student's report cards and conference forms indicated intermittent progress and some academic success, evaluation included four tests covering discrepant skill sets, probed for indicia of varying disabilities, and did not require inclusion of functional behavioral test, student's continuing misbehavior post-evaluation was typical of boys his age rather than requiring immediate reevaluation, and his teachers took proactive steps to provide him extra assistance. D.K. v. Abington School Dist., C.A.3 (Pa.) 2012, 2012 WL 4829193. Schools 148(3)

School district satisfied its child find obligations under the Individuals with Disabilities Education Act (IDEA) and §§ 504 of the Rehabilitation Act; school district routinely posted child find notices in local paper, made information available on its website, sent residents the information in their tax bills, and posters and pamphlets were placed in private schools. P.P. ex rel. Michael P. v. West Chester Area School Dist., C.A.3 (Pa.) 2009, 585 F.3d 727. Schools 148(2.1)

School district could not force child to be evaluated under Individuals with Disabilities Education Act (IDEA) to determine whether child needed special services, under IDEA's child-find provision, since child was privately educated at home by parents who refused to consent to the testing and expressly waived all benefits under the IDEA; purpose of IDEA was to make free appropriate public education (FAPE) available to all children with

disabilities and parents could waive child's right to services. Fitzgerald v. Camdenton R-III School Dist., C.A.8 (Mo.) 2006, 439 F.3d 773. Schools 148(2.1)

Pennsylvania's formula for allocating special-education funding to school districts did not violate IDEA's child-find requirement by creating a disincentive to identify students as eligible for special education services; there was no evidence establishing systematic, or even isolated, violations of child-find requirement as a result of funding formula. CG v. Pennsylvania Dept. of Educ., M.D.Pa.2012, 2012 WL 3639063. Schools 19(1); Schools 148(2.1)

From 2008 to first day of trial in IDEA case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to provide free appropriate public education (FAPE) to a substantial number of District of Columbia children with disabilities, ages three to five years old; in 2008 approximately 5.68% of children ages three to five nationwide received Part B special education services whereas that year District of Columbia identified and provided Part B services to 2.72% of children in that age group, the lowest rate in the country and lower than percentage reported for previous year. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 148(2.1)

School district had no obligation under IDEA's child-find provision to identify disabled student and provide her special education services prior to her withdrawal from district during her junior year of high school; student's educational performance did not measurably decline between her freshman and sophomore years, when her affective disorder first manifested itself, her homework and attendance problems during her junior year came on gradually, not becoming problematic until two months before she withdrew, and her psychiatric therapy had previously allowed her to bounce back from her bouts with depression. J.S. v. Scarsdale Union Free School Dist., S.D.N.Y.2011, 826 F.Supp.2d 635. Schools 148(3)

Under IDEA, for purposes of determining whether student was provided with free appropriate public education (FAPE), student was “located and identified” as a potential special education candidate, and school's child find obligations were triggered, upon charter school's referral of student to school district's specialist for psycho-educational evaluation; evaluation diagnosed student with a learning disorder, a developmental coordination disorder, and a possible language disorder, and recommended that school further assess student with a speech-language evaluation, an occupational therapy (OT) evaluation, a clinical evaluation, and a behavior intervention plan (BIP). Long v. District of Columbia, D.D.C.2011, 780 F.Supp.2d 49. Schools 148(3)

School district's actions supported finding that, rather than breaching “child find” provision, it never considered high school student with orthopedic impairment in form of genetic progressive neurological disorder known as Charcot-Marie-Tooth Disease (CMT) to be eligible under the IDEA; district had been aware of student's CMT since she began attending high school in district and was provided Section 504/Americans with Disabilities Act (ADA) plan, and since that time district had made no attempts at assessing student to determine her eligibility under IDEA even when she requested due process hearing. D.R. ex rel. Courtney R. v. Antelope Valley Union High School Dist., C.D.Cal.2010, 746 F.Supp.2d 1132. Schools 148(3)

School district's “child find” duty under the Individuals with Disabilities Education Act (IDEA) was not

triggered to create an individualized education program (IEP) for student with asthma, where student was not experiencing any difficulties with educational performance that would require specially designed instruction, student had average grades, and student was social with other students. Taylor v. Altoona Area School Dist., W.D.Pa.2010, 737 F.Supp.2d 474. Schools 148(2.1)

School officials did not violate their "Child Find" obligation under Individuals with Disabilities Education Act (IDEA) as result of their failure to identify fourth-grade student as suffering from disability requiring his referral to special education, even though student was later diagnosed with non-verbal learning disorder, where school conducted screening for attention deficit disorder (ADD), screening did not diagnose student with ADD, teacher was in regular contact with student's parents about his progress throughout year, teacher used special interventions with student in order to help him with inattention and handwriting, and student had reasonable academic and behavioral performance. A.P. ex rel. Powers v. Woodstock Bd. of Educ., D.Conn.2008, 572 F.Supp.2d 221, affirmed 370 Fed.Appx. 202, 2010 WL 1049297. Schools 148(3)

School district violated provision of Individuals with Disabilities Education Act (IDEA), that children in need of special education be found and placed; identification of prospective referral prospects was not adequate, statutory period following referral during which student was required to be evaluated was exceeded and deadline exceptions were too readily granted, excessive reliance was placed on alternate behavior interventions such as suspensions, and parents were not sufficiently encouraged to attend evaluations. Jamie S. v. Milwaukee Public Schools, E.D.Wis.2007, 519 F.Supp.2d 870, clarification denied 2007 WL 4365799, vacated 668 F.3d 481. Schools 148(3)

State's "child-find" duty under Individuals with Disabilities Education Act (IDEA) includes a requirement that children who are suspected of having a qualifying disability must be identified and evaluated within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Schools 148(2.1)

State violated the "child find" provisions of Individuals with Disabilities Education Act (IDEA) by failing to evaluate emotionally impaired student earlier, since state had numerous warning signs much earlier than date when student was evaluated; fact that student subsequently graduated from high school did not demonstrate that State fulfilled the IDEA by providing the student a free and appropriate public education (FAPE). Department of Educ., State of Hawaii v. Cari Rae S., D.Hawai'i 2001, 158 F.Supp.2d 1190. Schools 148(3)

23. Testing and evaluation

State education department's procedures for selecting type of evaluation to administer to potentially disabled child upon request by parent violated Individuals with Disabilities Education Act (IDEA) and Rehabilitation Act; department chose either comprehensive evaluation meant to determine whether child was disabled or evaluation which department purportedly administered to children not suspected of having handicap but still exhibiting "achievement delays," and department had no clear distinction between situations that called for either particular type of test. Pasatiempo by Pasatiempo v. Aizawa, C.A.9 (Hawai'i) 1996, 103 F.3d 796. Schools 155.5(1)

Public school district's failure to evaluate child for purpose of IDEA when child returned to district after year in private school was not violation of IDEA; child was not enrolled in special education at private school, evidence indicated that child was not learning disabled, and informal educational strategy was prepared for child at direction of parents, who did not wish to stigmatize child. Salley v. St. Tammany Parish School Bd., C.A.5 (La.) 1995, 57 F.3d 458. Schools 148(3)

Evidence of disparate impact which use of IQ test had on black children in determining which children should be placed in classes for the educable mentally retarded and absence of evidence of validation of test sustained finding that school officials violated provisions of the Rehabilitation Act and Education for All Handicapped Children Act by not ensuring that tests were validated for specific purpose for which they were used and by not using a variety of statutorily mandated evaluation tools. Larry P. By Lucille P. v. Riles, C.A.9 (Cal.) 1984, 793 F.2d 969. Schools 164

Imposition of minimal competency test requirement on handicapped children does not violate subsec. (5)(C) of this section mandating that no single procedure shall be sole criteria for determining appropriate education program for child where graduation requirements of school district were threefold, earning 17 credits, completing state requirements and passing competency test. Brookhart v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1983, 697 F.2d 179. Schools 178

District failed to properly consider whether child's behavior was impeding his academic progress, and failed to properly evaluate child under Individuals with Disabilities Education Act (IDEA) in light of his considerable intellectual potential; additionally, district denied child a FAPE for period during which district failed to convene individualized education program (IEP) team meeting and develop an IEP with a positive behavior support plan. G.D. ex rel. G.D. v. Wissahickon School Dist., E.D.Pa.2011, 832 F.Supp.2d 455, entered 2011 WL 2411065. Schools 148(3)

School district did not evaluate student within reasonable time after noticing behavioral issues, and therefore violated its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where district did not hold admission, review, and dismissal (ARD) meeting until one year after observing student's behavior, during which time student was attending disciplinary program at district's discipline and guidance center, and waited another two months after meeting before making special education services available. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 148(3)

From 2008 to first day of trial in case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated IDEA through their failure to comply with their Child Find obligations by identifying and providing timely initial evaluations to all preschool-age children with disabilities in District of Columbia; 44.8% of preschool age children did not receive timely initial evaluations in 2008-09 and 24.91% did not receive timely evaluations in 2009-2010. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 148(2.1)

School district failed to offer student with learning disabilities free and appropriate public education (FAPE), as required by IDEA, even though student was enrolled in private school, where student was domiciled in district, and district denied requests of student's parents for evaluations and individualized education program (IEP) before having to decide whether to continue student's placement at private school for then current and subsequent year or to re-enroll student in public school. Moorestown Tp. Bd. of Educ. v. S.D., D.N.J.2011, 811 F.Supp.2d 1057. Schools 148(3)

School district conducted evaluation of student with diabetes mellitus, adjustment disorder, and social anxiety disorder to determine whether she was qualified for special education and related benefits under Individuals with Disabilities Education Act (IDEA) within 60 days of date on which student's father consented to evaluation, as required by Illinois law pertaining to identification of eligible children for special education, and thus evaluation was timely. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

A functional behavioral assessment (FBA) sought by a student's parent was an “educational evaluation” for purposes of an Individuals with Disabilities Education Act (IDEA) regulation giving parents the right to an independent educational evaluation at public expense, despite claim that the FBA was merely a tool to help students with behavioral, not educational, problems; an FBA was essential to addressing a child's behavioral difficulties, and, as such, it played an integral role in the development of an individualized education plan (IEP). Harris v. District of Columbia, D.D.C.2008, 561 F.Supp.2d 63. Schools 148(3)

Secretary of Education's refusal to approve state's proposed amendment to its plan under the No Child Left Behind (NCLB) Act seeking to assess special education students at instructional rather than grade level, on grounds that amendment violated NCLB mandate that same academic standards apply to all students in the state, was not arbitrary and capricious in violation of the Administrative Procedure Act (APA), despite Secretary's own regulation exempting from testing one percent of special education students; although regulation, which was adopted in the Individuals with Disabilities Act (IDEA), permitted states to provide reasonable accommodations, it did not permit out-of-grade testing. Connecticut v. Spellings, D.Conn.2008, 549 F.Supp.2d 161, affirmed as modified 612 F.3d 107, certiorari denied 131 S.Ct. 1471, 179 L.Ed.2d 360. Schools 148(2.1)

Under the IDEA, hearing officer erred in requiring Massachusetts school district to arrange for and fund twelve-week extended evaluation of disabled student with Wolf-Hirschorn Syndrome at unapproved and unaccredited program in order to inform parties further on issue of whether that program would meet student's needs. Manchester-Essex Regional School Dist. School Committee v. Bureau of Special Educ. Appeals of The Massachusetts Dept. of Educ., D.Mass.2007, 490 F.Supp.2d 49. Schools 148(3)

Assuming that exception existed to school board's right to have student undergo psychological evaluation in determining his eligibility for special education under Individuals with Disabilities Education Act (IDEA), based on parents' alleged fear that student would be harmed by evaluation, exception did not apply to justify parents' refusal to consent to evaluation when there was no evidence that evaluation was likely to harm student, most generous reading of the record supported only the finding that an inappropriate evaluation could harm student

and student's parents were concerned that evaluation might be inappropriate, and hearing officer concluded that parents' true concern was that evaluator would not be impartial. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 148(3)

School district failed to provide emotionally disturbed high school student with free appropriate public education (FAPE), as required under IDEA, when it failed to timely refer student to special education committee for evaluation after his mother informed school superintendent that student was experiencing emotional difficulties and school psychologist recommended private school placement. New Paltz Cent. School Dist. v. St. Pierre ex rel. M.S., N.D.N.Y.2004, 307 F.Supp.2d 394. Schools 148(3)

Absent some threat of harm to student, school district, under IDEA, has absolute right to perform its own mandatory three-year reevaluation of student, which is condition precedent to eligibility for special education under Texas law. Andress v. Cleveland ISD, E.D.Tex.1993, 832 F.Supp. 1086. Schools 148(2.1)

Evidence in suit to challenge standard intelligence tests administered by city board of education as culturally biased against black children established that there was practically no possibility that the few arguably racially biased items on the tests could cause a child who would not otherwise be placed in special classes for the educable mentally handicapped to be placed in such classes. Parents in Action on Special Ed. (PASE) v. Hannon, N.D.Ill.1980, 506 F.Supp. 831. Civil Rights 1418

24. Budgetary constraints

Cost considerations when devising appropriate programs for individual handicapped students are only relevant when choosing between several options, all of which offer “appropriate” education. Clevenger v. Oak Ridge School Bd., C.A.6 (Tenn.) 1984, 744 F.2d 514. Schools 154(2.1)

Where school district did not receive funding under this chapter until beginning of its fiscal year in July 1978, it was not subject to either procedural or substantive requirements of this subchapter during the 1977-78 school year. Scokin v. State of Tex., C.A.5 (Tex.) 1984, 723 F.2d 432.

A factor that school district may take into account in placement of disabled student is impact proposed placement would have on limited educational and financial resources. Cheltenham School Dist. v. Joel P. by Suzanne P., E.D.Pa.1996, 949 F.Supp. 346, affirmed 135 F.3d 763. Schools 148(2.1)

State's receipt of federal funds for assistance in educating handicapped children, pursuant to this chapter, required state to comply with its part of bargain, i.e., to provide sufficient funds to cover full cost of their education, and state's budgetary constraints did not excuse it from obligations arising from acceptance of federal funds. Kerr Center Parents Ass'n v. Charles, D.C.Or.1983, 581 F.Supp. 166. Schools 148(2.1)

Inadequacy of funds does not relieve a state of its obligation to assure handicapped child equal access to educa-

tional services. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

Having placed handicapped child in a residential treatment facility, various state and local agencies could not refuse to pay for the placement under this chapter because of the facility's alleged failure to be approved for funding. Parks v. Pavkovic, N.D.Ill.1982, 536 F.Supp. 296. Schools 159

State which volunteered to participate in this chapter could not refuse to provide funds necessary to send handicapped child to special schools on theory that, because of budgetary constraints, the state and local school authorities could not afford to spend the sums necessary to send child to such schools and, if sufficient funds were not available to finance all of services and programs needed, available funds must be expended equitably in such manner that no child was entirely excluded from publicly supported education consistent with his needs and ability to benefit therefrom. Hines v. Pitt County Bd. of Ed., E.D.N.C.1980, 497 F.Supp. 403. Schools 154(2.1)

25. Duration of State's duty

Once a student has graduated, he is no longer entitled to a free and appropriate public education (FAPE), and thus any claim that a FAPE was deficient becomes moot upon a valid graduation; rule applies only where a student does not contest his graduation, and where he is seeking only prospective, rather than compensatory, relief. T.S. v. Independent School Dist. No. 54, Stroud, Oklahoma, C.A.10 (Okla.) 2001, 265 F.3d 1090, certiorari denied 122 S.Ct. 1297, 535 U.S. 927, 152 L.Ed.2d 209. Schools 155.5(2.1)

Under provision that IDEA applies to persons "between the ages of 3 and 21, inclusive," the relevant period begins on a child's third birthday and ends on his 22nd birthday, provided that is consistent with State law on the provision of public education, and subject to extension in a proper case. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 148(2.1)

School district was not required, under Individuals with Disabilities Education Act (IDEA), to provide disabled student with hearing on his IDEA claims, since student no longer resided in the school district nor did he go to school there at the time he requested the hearing, and student's mother had received copy of "parents' rights" brochure, which contained notice of parent's right to request due process hearing, and notification that the hearing had to be conducted by "district directly responsible for your child's education." Smith ex rel. Townsend v. Special School Dist. No. 1 (Minneapolis), C.A.8 (Minn.) 1999, 184 F.3d 764. Schools 155.5(1)

School district was not required to continue to provide disabled child with transition services after she graduated from high school under exception to IDEA applicable when state law did not provide for free public education between ages 18 and 21 where South Dakota law only required free public education until student completed secondary program or until age 21 and student was to graduate from high school at age 19. Yankton School Dist. v. Schramm, C.A.8 (S.D.) 1996, 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

Where child was not scheduled to finish high school before her eighteenth birthday, state would still have duty to provide public education until allegedly handicapped child graduated from high school or reached age of 21, whichever was earlier, under Texas Education Code and federal Education of All Handicapped Children Act. Susan R.M. by Charles L.M. v. Northeast Independent School Dist., C.A.5 (Tex.) 1987, 818 F.2d 455. Schools 152

20 U.S.C.A. § 1412, governing requirements for eligibility for assistance as handicapped child, does not create absolute duty of board of education to provide free appropriate public education to handicapped child until age of 21. Wexler v. Westfield Bd. of Educ., C.A.3 (N.J.) 1986, 784 F.2d 176, certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49. Schools 148(2.1)

Under this chapter, school district which permitted nonhandicapped students who failed a grade to take that grade over and proceed through normal sequence of grades to graduation, receiving as consequence more than 12 years of free education, was required to provide trainable mentally handicapped student who was in the tenth grade at end of 12 years of schooling with two additional years of free appropriate public education. Helms v. Independent School Dist. No. 3 of Broken Arrow, Tulsa County, Okl., C.A.10 (Okla.) 1984, 750 F.2d 820, certiorari denied 105 S.Ct. 2024, 471 U.S. 1018, 85 L.Ed.2d 305. Schools 148(2.1)

Fact that New Jersey special education student was receiving extended school year (ESY) services in late summer when he turned 21 did not affect end of the school year, and school board had to continue to fund costs of student's residential placement beyond ESY. C.T. ex rel. M.T. v. Verona Bd. of Educ., D.N.J.2006, 464 F.Supp.2d 383. Schools 148(2.1)

State of Indiana had no obligation to provide free appropriate education to handicapped 19-year-old person under either state or federal law where 18 was age limit for free education it provided to nonhandicapped public school children; thus, reimbursement claims for educational expenses for 23-year-old handicapped person were moot. Merrifield v. Lake Cent. School Corp., N.D.Ind.1991, 770 F.Supp. 468. Schools 148(2.1)

This chapter requires North Dakota to give free appropriate education to mentally retarded persons age six to 21 in as normal an education setting as possible. Association for Retarded Citizens of North Dakota v. Olson, D.C.N.D.1982, 561 F.Supp. 473, judgment affirmed, remanded in part on other grounds 713 F.2d 1384, on subsequent appeal 942 F.2d 1235. Schools 148(3)

26. Minimum educational achievement

Individuals with Disabilities Education Act (IDEA) requires states to provide disabled child with meaningful access to education, but it cannot guarantee totally successful results. Walczak v. Florida Union Free School Dist., C.A.2 (N.Y.) 1998, 142 F.3d 119. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) contains no substantive requirement regarding level of education to be afforded disabled students or level of achievement they must achieve, nor any requirement that their potential be maximized, but merely requires that states insure that their disabled children receive some form of

specialized education and states that "appropriate education" is afforded if personalized services are provided for child. King v. Board of Educ. of Allegany County, Maryland, D.Md.1998, 999 F.Supp. 750. Schools 148(2.1)

27. Demonstration of benefit

Education of All Handicapped Children Act did not require that a handicapped child demonstrate that he could benefit from special education in order to be eligible for that education. Timothy W. v. Rochester, N.H., School Dist., C.A.1 (N.H.) 1989, 875 F.2d 954, certiorari denied 110 S.Ct. 519, 493 U.S. 983, 107 L.Ed.2d 520. Schools 148(2.1)

28. Monitoring

Lack of guidelines in Individuals with Disabilities Act (IDEA) with respect to monitoring efforts to be made by state agencies responsible for ensuring compliance with IDEA's least restrictive environment (LRE) mandate did not excuse inadequacy of monitoring efforts undertaken by state Board of Education, as state Board was statutorily required to ensure compliance through effective monitoring plan. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 148(2.1)

It is responsibility of state educational agency either to make sure that local agencies provide adequate purposes to handicapped children or to provide those services. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

29. Termination of funding

State educational agency (SEA) did not violate IDEA or Rehabilitation Act by failing to cut off special education funding to local educational agency (LEA) which had failed to remedy deficiencies in its special education program; SEA reasonably believed that LEA was making good faith effort to move toward compliance, and there was no evidence that LEA's multiple-year delay in attaining compliance was attributable to any failure of SEA to fulfill its supervisory and monitoring responsibilities. A.A. v. Board of Educ., Cent. Islip Union Free School Dist., E.D.N.Y.2003, 255 F.Supp.2d 119, remanded 87 Fed.Appx. 216, 2004 WL 303917, opinion after remand 386 F.3d 455. Schools 148(2.1)

30. Notice

Hearing officer's finding, in denying tuition reimbursement to mother for placement of her child in private reading clinic, that mother's cancer did not excuse her failure to provide notice that she was rejecting placement proposed in Individualized Education Program (IEP) was supported by sufficient evidence; mother's completion of detailed application for the reading clinic indicated that she could take care of her affairs. Rafferty v. Cranston Public School Committee, C.A.1 (R.I.) 2002, 315 F.3d 21. Schools 155.5(4)

School's violation of Education of the Handicapped Act's parental notification requirements in connection with development of individualized educational program did not require relief under Act, where parents fully parti-

cipated in individualized educational program process. Doe v. Alabama State Dept. of Educ., C.A.11 (Ala.) 1990, 915 F.2d 651. Schools 155.5(2.1)

School officials' failure to adequately inform parents of a student with dyslexia of their procedural rights under Education for All Handicapped Children Act when suggesting that the parents hire a tutor and when parents announced their intention to withdraw their son from the public school, in itself, was adequate grounds for holding that school failed to provide student with a free appropriate public education in violation of the Act and North Carolina law. Hall by Hall v. Vance County Bd. of Educ., C.A.4 (N.C.) 1985, 774 F.2d 629.

Impartial Hearing Officer's (HO) finding that school district gave ample notice to student with diabetes mellitus, adjustment disorder, and social anxiety disorder and her parents as to evaluations it was going to conduct of student, its decision that student was not eligible for special education and related services under Individuals with Disabilities Education Act (IDEA), and its decision to remove student from school rolls, even though not required by statute, was well supported by record; student's father was present at collaborative team meeting, and parents received copy of written report that contained ineligibility determinations, as well as other reports. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 155.5(4)

There was no evidence that school district withheld information from parents of student with diabetes mellitus, adjustment disorder, and social anxiety disorder regarding specific procedures for pursuing referral for case study evaluation of student, as would determine her qualification for special education and related benefits under Individuals with Disabilities Act (IDEA); assistant superintendent explained to student's father how out-of-district placements might be paid for by district if student was eligible, assistant superintendent followed up by sending parents a letter and parents' rights booklet, and parents received copy of school's handbook, which provided information on how to request evaluation. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Mother of learning disabled student did not violate the notice provision of the Individuals with Disabilities Education Act (IDEA) when placing student in private program; once school officials had turned the placement process over to mother, it was on notice she would act. Lamoine School Committee v. Ms. Z. ex rel. N.S., D.Me.2005, 353 F.Supp.2d 18. Schools 154(4)

School district's notice to parent of placement of student, who had speech and language impairment, did not violate parent's rights under the IDEA, although notice was not completely in accord with IDEA requirements; notice did not compromise any of the parent's rights, including her due process rights, under the IDEA. Shaw v. District of Columbia, D.D.C.2002, 238 F.Supp.2d 127. Schools 154(2.1)

Failure of school district's letters to inform handicapped student's parents of right to due process hearing and letters' failure to comply with notice requirements did not warrant reversal of hearing officer's determination that student was given free and appropriate public education by school district; parent was actively involved with

student's teachers and principal throughout his time in public school system, and they were responsive to parents' concerns and student's needs. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173 . Schools 155.5(2.1)

31. Power of court

In case involving student with autism and cerebral palsy, hearing officer exceeded her authority to remedy IDEA violation by expunging statutorily mandated individualized education program (IEP) team and replacing them with service providers from home-based program; potential conflict of interest created by arrangement was evident in that providers had financial interest in prolonging student's home-based program and, more importantly, school district was responsible for orchestrating student's educational needs and developing IEP that would address student's unique circumstances. Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 148(3)

Neither a hearing officer nor a court can order Connecticut Department of Mental Health and Addiction Services (DMH) to find a person eligible for its services because this is a discretionary decision left to the superintendent; however, if an otherwise responsible educational or noneducational agency fails to provide disabled children with a free appropriate public education, a district court may issue orders relating to an individual child's entitlement to special education or related services. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Mental Health 20; Schools 155.5(5)

32. Private right of action

Noncustodial parent's allegations that school officials failed to comply with parent's requests for daughter's education records supported parent's IDEA records-access claim. Taylor v. Vermont Dept. of Educ., C.A.2 (Vt.) 2002, 313 F.3d 768. Schools 148(2.1)

There was private right of action for enforcement of complaint resolution procedure (CRP) under the IDEA. Upper Valley Ass'n for Handicapped Citizens v. Mills, D.Vt.1996, 928 F.Supp. 429. Schools 155.5(2.1)

33. Standing

Disabled students had standing to challenge, under Individuals with Disabilities Act (IDEA) and Rehabilitation Act, requirement that they take on same basis as other students California High School Exit Exam (CAHSEE), which must be passed prior to receiving high school diploma, despite prematurity claim that nobody had yet been forced to take test and that state education board had authority to delay date that test passage became graduation requirement. Chapman v. CA Dept. of Educ., N.D.Cal.2002, 229 F.Supp.2d 981, reversed in part 45 Fed.Appx. 780, 2002 WL 31001869, amended and superseded 53 Fed.Appx. 474, 2002 WL 31856343, rehearing and rehearing en banc denied. Schools 155.5(2.1)

34. Jurisdiction

IDEA's incorporation of New York Law in its standards for Free Appropriate Public Education (FAPE) did not

provide district court with jurisdiction over parent's action seeking review of New York State administrative decision holding that school district was obligated by state law to provide student with teacher's aide. Bay Shore Union Free School Dist. v. Kain, C.A.2 (N.Y.) 2007, 485 F.3d 730. Schools 155.5(2.1)

35. Burden of proof

District Court's error was harmless in placing burden of persuasion on parents in school district's challenge under the Individuals with Disabilities Education Act (IDEA) to findings by hearing officer of IDEA violations as to provision of free appropriate public education (FAPE) to elementary school student; hearing officer's errors stemmed largely from mistakes of omissions regarding application of law, which were unaffected by burden of persuasion. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 155.5(2.1)

Plaintiff bears burden of proof in establishing that state educational agency (SEA) failed to satisfy its IDEA monitoring and supervisory duties. A.A. ex rel. J.A. v. Philips, C.A.2 (N.Y.) 2004, 386 F.3d 455. Schools 155.5(4)

36. Evidence

Purported new evidence offered by disabled student did not establish failure of city education department to provide student with free appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA); items were public documents that were available to student's parents at time of administrative hearing, special education service delivery report indicating that school site selected for student did not always deliver full special education services to all of its students requiring them was irrelevant since student's individualized education program (IEP) provided for him to receive therapy at separate location, and stipulation entered in earlier class action also was irrelevant. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 155.5(4)

School district would not be permitted to benefit from its violation of its obligation under IDEA to evaluate student as potentially in need of special education services by basing its subsequent ineligibility determination, two years later, on her success at private schools in which parents were forced to enroll her after school district defaulted on its obligations, and thus evidence of student's prior dismal performance at district schools was improperly excluded by evaluation team and hearing officer on basis that it did not relate to student's current educational and behavioral status. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 155.5(4)

37. Summary judgment

Parties' summary judgment motions were premature on disabled students' class claim that state statute imposing 20-year age limit on admissions to public schools violated IDEA, where record was incomplete as to whether Hawai‘i's education department regularlyencouraged general education students who would otherwise “age out” under state statute to pursue continued education in adult education courses and whether adult education programs and Hawai‘i's secondary education program were similar in nature. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Schools 155.5(5)

Genuine issue of material fact, as to whether charter school's violation of hearing officer's determination (HOD) by refusing to implement it during pendency of appeal resulted in denial of free appropriate public education (FAPE) to adult learning disabled student, precluded summary judgment on that aspect of student's IDEA claim. Shelton v. Maya Angelou Public Charter School, D.D.C.2008, 578 F.Supp.2d 83. Schools 155.5(5)

Genuine issue of material fact as to whether parents' unilateral placement of autistic child in private school was appropriate after they were offered inadequate individualized education program (IEP) that recommended his placement in district program, precluded summary judgment in IDEA suit on parents' claim for tuition reimbursement. A.Y. v. Cumberland Valley School Dist., M.D.Pa.2008, 569 F.Supp.2d 496. Schools 155.5(5)

Genuine issue of material fact existed as to whether individual school administrators abrogated their child find duties, precluding summary judgment in their favor of district defendants on Individuals with Disabilities Education Act (IDEA) claim based on qualified immunity; there were numerous red flags which should have alerted the administrators, including grades which when compared to student's tested ability, demonstrated severe academic underachievement, student's chronic discipline problems from seventh grade onward, and student's test scores. Hicks, ex rel. Hicks v. Purchase Line School Dist., W.D.Pa.2003, 251 F.Supp.2d 1250. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether student was denied free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA) in light of almost 12-month delay between school officials' observation of behavior likely indicating disability and their completion of comprehensive evaluation report (CER), precluding summary judgment for school district on student's claim alleging violation of IDEA. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether student was denied free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA) as a result of length of time that it took to evaluate student and author individualized education plan (IEP) for her, precluding summary judgment for state education department on student's IDEA claim. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Federal Civil Procedure 2491.5

38. Injunction

For purposes of request for injunctive relief by class of disabled District of Columbia children, violations by District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education resulted in irreparable injury to all eligible children between ages of three and five years old, inclusive, who lived in, or were wards of, District of Columbia, and whom District did not identify, locate, evaluate, or offer special education and related services, and without access to those special education and related services, preschool-age children in the District of Columbia suffered substantial harm by being denied vital educational opportunities that were essential to their development. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 155.5(5)

Disabled students were not entitled to preliminary injunction to enjoin enforcement of Hawai‘i statute imposing

20-year age limit on admissions to public schools, where students failed to show that Hawai'i's education department regularly transferred general education students who would otherwise "age out" from secondary education to adult education programs or that education offered by adult education programs was functional equivalent of education provided in Hawai'i's secondary schools. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Injunction 1319

Irreparable harm requirement, for issuance of preliminary injunction, was satisfied by disabled students seeking to bar state from requiring them to take on same basis as other students California High School Exit Exam (CAHSEE), which must be passed in order to graduate from high school; denial of appropriate accommodations would deny students right, under Individuals with Disabilities Act (IDEA) and Rehabilitation Act, to participate in statewide assessment available to other students, and would be injurious to their individual dignity. Chapman v. CA Dept. of Educ., N.D.Cal.2002, 229 F.Supp.2d 981, reversed in part 45 Fed.Appx. 780, 2002 WL 31001869, amended and superseded 53 Fed.Appx. 474, 2002 WL 31856343, rehearing and rehearing en banc denied. Schools 155.5(5)

39. Estoppel

Hawai'i's education department was not judicially estopped from asserting that disabled students' special education and related services ended at age 20, per state statute, where prior representation that, pursuant to IDEA, free appropriate public education (FAPE) was available to students between ages of three and 21 was in section of federal form that did not allow department to explain that it had lowered age limit by terms of IDEA, and department explained in another section of form that it did not offer FAPEs to students beyond age 20. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Estoppel 68(2)

Having agreed to comply with IDEA, its federal regulations, and parallel State regulations, and having accepted and spent federal IDEA funding, Virginia county school board was quasi-estopped to bring Spending Clause challenge to IDEA and implementing regulations, including pendent lite payment rule. County School Bd. of Henrico County, Vir. v. RT, E.D.Va.2006, 433 F.Supp.2d 692. Schools 155.5(2.1)

40. Moot issues

IDEA originally entitled disabled student to a free appropriate public education (FAPE) until his 22nd birthday, whereas Vermont law was consistent with an application of IDEA to children through their 21st year, and thus the additional year of IDEA coverage awarded by the district court as compensatory education preserved the case from mootness, even though the student was between his 22nd and 23rd birthdays at time of decision on appeal. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 155.5(2.1)

In IDEA case, hearing officer's order that school board provide student with guidance counseling services was not moot and remained issue of controversy as it was capable of repetition, yet evading review. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(2.1)

Claim challenging autistic student's recommended placement in special public school pursuant to Individuals

with Disabilities Education Act (IDEA) was rendered "moot" and was not capable of repetition, warranting dismissal of case, where student received educational placement in private school that he sought, his parents received full compensation for their expenditures for private school for pertinent school year, and new placement determination was made each year based upon student's continuing development, requiring new assessment under IDEA. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 155.5(2.1)

Parent's claim that failure of individualized education program (IEP) to provide disabled student with individual speech therapy rendered it substantively inadequate was moot, where school district offered parents individual speech therapy during the mediation process. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 155.5(2.1)

41. Remand

Hearing officer's erroneous denial of any compensatory education award based on school district's failure to provide appropriate placement for 4 months of school year for elementary student with learning disabilities, despite multi-disciplinary team's determination that student required full-time special education placement, pursuant to IDEA, warranted remand to determine amount of compensatory education required to provide student benefits that would likely have accrued had he been given free appropriate public education (FAPE), since student was left at school which did not meet his needs, his academic achievement scores had declined, and individually tailored assessment of student and his compensatory education needs had been conducted. Brown v. District of Columbia, D.D.C.2008, 568 F.Supp.2d 44. Schools 155.5(2.1)

42. Declaratory judgment

Class of disabled District of Columbia children between the ages of three and five was entitled to declaration that, from January 1, 2008 to April 6, 2011, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education were in violation of IDEA and District of Columbia law because they had failed and continued to fail to ensure that (a) free appropriate public education (FAPE) was available to all children with disabilities who resided in or were wards of District of Columbia between ages of three and five, inclusive, (b) all children between ages of three and five, who resided in or were wards of District of Columbia who were in need of special education and related services, were identified, located, and evaluated within 120 days of referral, and (c) all children participating in Part C early intervention and who would participate in Part B preschool education experienced smooth and effective transition to Part B by their third birthdays. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Declaratory Judgment 210

43. Least restrictive environment

Pennsylvania's formula for allocating special-education funding to school districts did not violate IDEA's least-restrictive-environment (LRE) requirement by creating an incentive for districts to educate students in overly restrictive environments; there was no evidence that placement of students in restrictive settings in districts receiving less funding was inappropriate. CG v. Pennsylvania Dept. of Educ., M.D.Pa.2012, 2012 WL 3639063. Schools 19(1); Schools 154(2.1)

II. FREE APPROPRIATE PUBLIC EDUCATION

<Subdivision Index>

Although Individuals with Disabilities Education Act (IDEA) may not require public schools to maximize the potential of disabled students commensurate with opportunities provided to other children, and potential financial burdens imposed on participating states may be relevant to arriving at sensible construction of IDEA, Congress intended to open the door of public education to all qualified children and required participating states to educate handicapped children with nonhandicapped children whenever possible. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(2.1); Schools 154(2.1)

Although at times disabled students at public school were treated differently than their non-disabled peers, treatment did not violate Equal Protection Clause, since differential treatment was based upon students' particular needs as determined by their individualized education plans (IEP), pursuant to IDEA. New Britain Bd. of Educ. v. New Britain Federation of Teachers, Local 871, D.Conn.2010, 754 F.Supp.2d 407. Constitutional Law 3159; Schools 148(2.1)

In educational context, plaintiff asserting claims under Title II of the ADA or Rehabilitation Act must show more than an IDEA violation based upon a failure to provide a free appropriate public education (FAPE); plaintiff must also demonstrate intentional discrimination or some bad faith or gross misjudgment by the school. J.D.P. v. Cherokee County, Ga. School Dist., N.D.Ga.2010, 735 F.Supp.2d 1348. Schools 148(2.1)

In assessing whether district's plan afforded child a free appropriate public education (FAPE), two issues are relevant: whether state complied with procedural requirements of IDEA and whether challenged individualized education program (IEP) was reasonably calculated to enable child to receive educational benefits. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 148(2.1)

Failure to provide an individualized education program (IEP), the failure to hold a due process hearing, or the failure to provide a written determination in a timely manner after requests for an IEP meeting or a hearing have been made constitutes the denial of a free appropriate public education as required by Individuals with Disabilities Education Act (IDEA). Blackman v. District of Columbia, D.D.C.2003, 277 F.Supp.2d 71. Schools 148(2.1)

Disabled child is receiving “free appropriate public education” (FAPE) required under Individuals with Disabilities Education Act (IDEA) if personalized instruction is being provided with sufficient supportive services to permit child to benefit from instruction, and instruction and services are provided at public expense and under public supervision, meet state's educational standards, approximate grade levels used in state's regular education, and comport with child's Individual Education Program (IEP). D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Under the Individuals with Disabilities Education Act (IDEA), state receiving federal funds for the education of handicapped children must provide those children with a “free appropriate public education”; in this context, “free appropriate public education” consists of educational instruction designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruc-

tion, and benefit conferred by this special education must be meaningful and not trivial or de minimis. Christen G. by Louise G. v. Lower Merion School Dist., E.D.Pa.1996, 919 F.Supp. 793. Schools 148(2.1)

If state elects to receive federal funds provided for education of disabled children, state must adopt certain procedures and practices in the education of the disabled pursuant to Individuals with Disabilities Education Act (IDEA) which requires that each disabled child in cooperating state be provided with "free appropriate education." Board of Educ. of Downers Grove Grade School Dist. No. 58 v. Steven L., N.D.Ill.1995, 898 F.Supp. 1252, vacated 89 F.3d 464, 153 A.L.R. Fed. 673, motion denied 117 S.Ct. 1242, 520 U.S. 1113, 137 L.Ed.2d 325, certiorari denied 117 S.Ct. 1556, 520 U.S. 1198, 137 L.Ed.2d 704. Schools 148(2.1)

"Appropriate education" under Individuals with Disabilities Education Act (IDEA) is provided when personalized educational services are provided. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(2.1)

When necessary, appropriate education under the Education of the Handicapped Act must provide training in rudimentary social and personal skills, in light of purposes of Act to secure handicapped student's personal independence and to enhance productivity. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 148(2.1)

72. Matters considered, free appropriate public education

In determining whether disabled child can be educated satisfactorily in regular classroom with supplementary aids and services, court should consider: steps school has taken to try to include the child in regular classroom; comparison between educational benefits child will receive in regular classroom, with supplementary aids and services, and benefits child will receive in segregated special education classroom; and possible negative effect child's inclusion may have on education of other children in the regular classroom. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Severity of child's handicap and extent to which child could benefit from education are proper subjects of consideration in determining whether child's individualized education program (IEP) would fulfill requirement of appropriate education. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 148(2.1)

Appropriate issue in review of adequacy of individualized education program proposed by school district under the Education of the Handicapped Act was not whether the school district's program was "better" or "worse" than that preferred by the parents in terms of academic results or some other purely scholastic criteria, but whether the school district's program, taking into account the totality of the child's special needs, struck an "adequate and appropriate" balance on the fulcrum of maximum benefit and least restrictive environment. Roland M. v. Concord School Committee, C.A.1 (Mass.) 1990, 910 F.2d 983, rehearing denied, certiorari denied 111 S.Ct. 1122, 499 U.S. 912, 113 L.Ed.2d 230. Schools 148(2.1)

Factors considered in making determination under Individuals with Disabilities Education Act (IDEA) as to

whether to place a handicapped child in a more restrictive environment include: (1) whether the child was experiencing emotional conditions that fundamentally interfered with the child's ability to learn in local placement; (2) whether the child's behavior was so inadequate, or regression was occurring to such a degree, as to fundamentally interfere with the child's ability to learn in a local placement; (3) whether, before the dispute arose between the parents and the local school board, any health or educational professionals actually working with the child concluded that the child needed residential placement; (4) whether the child had significant unrealized potential that could only be developed in residential placement; (4) whether the child had significant unrealized potential that could only be developed in residential placement; and (6) whether the demand for residential placement was primarily to address educational needs. S.C. ex rel. C.C. v. Deptford Tp. Bd. of Educ., D.N.J.2003, 248 F.Supp.2d 368. Schools 154(2.1)

In determining appropriate placement for particular disabled student in accordance with mainstreaming presumption under Individuals with Disabilities Education Act (IDEA), if regular classroom is not feasible placement in light of nature and severity of student's handicapping conditions, same factors considered in coming to that determination should be considered, insofar as applicable, in evaluating any more restrictive points on continuum of possible placements. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Evaluations based on grade levels are not determinative of educational progress for purposes of determining whether handicapped student is receiving educational benefit from placement in compliance with IDEA; grades, socialization skills, level of participation, consistency of effort, and commitment to studies are all relevant. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437. Schools 148(2.1)

Where factors considered under the IDEA in determining whether mainstreaming requirement has been met, as to whether child will receive educational or nonacademic benefits from regular classroom, point against more extensive mainstreaming, it should not be necessary to go on to deal with possible countervailing factors such as possible negative effects on other children in the regular classroom or cost of proposed program. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1)

Hearing officers' decisions approving individualized educational programs (IEP) for two hearing-impaired students which would put the students in public schools, rather than in private school for the hearing impaired, were improper to the extent they failed to contain comparative least restrictive environment analysis of the two educational settings in light of children's abilities and needs and contained little discussion of the abilities, needs and maximum potential of each child in contravention of Michigan law and the IDEA. Brimmer v. Traverse City Area Public Schools, W.D.Mich.1994, 872 F.Supp. 447. Schools 155.5(1)

Factors relevant to determining whether a placement is appropriate under the Individuals with Disabilities Education Act (IDEA) include: educational benefits available to child in regular classroom, supplemented with appropriate aids and services, as compared to educational benefits of special education classroom; nonacademic benefits to child of interaction with nonhandicapped children; effect of presence of handicapped child on teacher and other children in regular classroom; and costs of supplementary aids and services necessary to mainstream handicapped child in a regular classroom setting. Board of Educ., Sacramento City Unified School Dist. v. Hol-

land By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1)

In determining whether hearing impaired children were entitled to continue in private school for education of deaf under Education for All Handicapped Children Act, court was not to determine which of competing education methods for hearing impaired children was best; rather, court was to determine whether education program proposed by school district was appropriate means of education for the children. Visco by Visco v. School Dist. of Pittsburgh, W.D.Pa.1988, 684 F.Supp. 1310. Schools 154(4)

In order to meet requirement of a "free appropriate education," under this chapter educators, at the very least, must examine individual needs of child in order to determine whether there are sufficient "services to permit the child to benefit educationally from that instruction." Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

Competing interests of the personal and unique needs of the individual and handicapped child and realities of limited funding and necessity of assisting in education of all handicapped children must be considered by District Court in analyzing what is a "free appropriate public education" under this chapter. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 148(2.1)

Question whether child's primary handicapped condition was a type of organic psychosis denominated "organic childhood schizophrenia," or whether it was a severe mental retardation, while significant to question of whether placement of child in a six-hour day program met standard of "free appropriate public education," to which child was entitled under this chapter and section 794 of Title 29, was not dispositive, as the question was actually whether the child's educational placement was suited to her unique needs. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 148(3)

73. Local control, free appropriate public education

Primary responsibility for formulating the education to be accorded to a handicapped child, and for choosing the educational method most suitable to the child's needs, is left by the IDEA to the state and local educational agencies. Pardini v. Allegheny Intermediate Unit, W.D.Pa.2003, 280 F.Supp.2d 447, reversed and remanded 420 F.3d 181, certiorari denied 126 S.Ct. 1646, 547 U.S. 1050, 164 L.Ed.2d 353, on remand 2006 WL 3940563. Schools 148(2.1)

74. Deference, free appropriate public education

District court finding that individualized education programs (IEPs) recommended by school district for dyslexic student were inadequate to provide student with free appropriate public education (FAPE), as required by IDEA, impermissibly imposed court's view of preferable education methods, and did not accord appropriate deference to state administrative determinations that IEPs were adequate under IDEA. Grim v. Rhinebeck Central School Dist., C.A.2 (N.Y.) 2003, 346 F.3d 377. Schools 155.5(2.1)

There was insufficient evidence in the record to overturn state review officer's (SRO's) finding that private school's regular education curriculum was not specifically designed to meet student's unique special education needs, and thus parents were not entitled to tuition reimbursement for cost of that placement. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

Question of whether benefit accorded disabled student under Individuals with Disabilities Education Act (IDEA) is de minimis and therefore unacceptable must be gauged in relation to child's potential; although court is not to interfere with educational methodology, this limitation does not permit court to abdicate its obligation to enforce statutory provisions that ensure free and appropriate education to each disabled child. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 155.5(2.1)

75. Age of student, free appropriate public education

Despite the text of the IDEA, which statutorily limits a school district's obligation to provide a free appropriate public education (FAPE) only to students under the age of 21, an individual over that age is still eligible for compensatory education for a school district's failure to provide a FAPE prior to the student turning 21; a court may grant compensatory education in such cases through its equitable power under the IDEA. Ferren C. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2010, 612 F.3d 712. Schools 155.5(5)

Award of "compensatory education" under Individuals with Disabilities Education Act (IDEA) requires school district to provide education past child's twenty-first birthday to make up for any earlier deprivation. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 148(2.1)

Hawaii Department of Education (DOE) could not limit autistic student's special education services solely on the basis that student aged out of special education program pursuant to DOE rule upon reaching age 20, and IDEA thus required DOE to provide special education to student through age 21 if student's individualized education plan (IEP) team determined such education was warranted, where state statute and practice permitted general education students to continue education beyond age 20 under certain circumstances. B.T. ex rel. Mary T. v. Department of Educ., Hawaii, D.Hawai'i 2009, 676 F.Supp.2d 982. Schools 148(3)

Hawai'i lacked state law consistently restricting age for admission of general education students into public school, as would allow deviation from IDEA requirement of providing free appropriate public education (FAPE) to all disabled children from age 3 to 21, unless application of IDEA to children aged 18 through 21 was inconsistent with state law or practice, in support of Hawai'i's duty to continue providing severely disabled student individualized education until his twenty-second birthday, since Hawai'i law prohibited general education students 18 years old or older from entering tenth grade, but had no additional age limits when student reached eleventh or twelfth grade, and allowed overage general education students admittance by permission of school principal. B.T. ex rel. Mary T. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 637 F.Supp.2d 856. Schools 148(2.1)

Generally, under the IDEA, a disabled student does not have the right to demand a public education beyond the

age of twenty-one; however, compensatory education for student over that age is available as an equitable remedy where there has been a gross violation of the IDEA, which occurs when a student has been deprived of a free appropriate public education (FAPE) for a substantial period of time. Somoza v. New York City Dept. of Educ., S.D.N.Y.2007, 475 F.Supp.2d 373, reversed 538 F.3d 106. Schools 148(2.1)

Award of compensatory special education and related services beyond disabled child's twenty-first birthday was inappropriate under IDEA; although school district failed to provide free appropriate public education, child's parents failed to demonstrate that child's condition regressed as result of school district's failure to provide appropriate education in timely and consistent manner. Wenger v. Canastota Cent. School Dist., N.D.N.Y.1997, 979 F.Supp. 147, affirmed 181 F.3d 84, affirmed 208 F.3d 204, certiorari denied 121 S.Ct. 584, 531 U.S. 1019, 148 L.Ed.2d 499, rehearing denied 121 S.Ct. 900, 531 U.S. 1134, 148 L.Ed.2d 805. Schools 148(2.1)

Woman claiming deprivation of rights in violation of Individuals with Disabilities Education Act (IDEA) was not barred from award of compensatory education by fact that she was presently over 21 years of age; woman alleged that violations occurred when she was between ages 3 and 21. Cocores By and Through Hughes v. Portsmouth, N.H., School Dist., D.N.H.1991, 779 F.Supp. 203. Schools 155.5(1)

Placement of emotionally handicapped ten-year-old in school with children aged 11 through 17 was not appropriate, where evidence indicated that his behavior problems were worsened when he was placed with older children and he was entitled to be placed in school or similar institution in which he would not be youngest child. Hines v. Pitt County Bd. of Ed., E.D.N.C.1980, 497 F.Supp. 403. Schools 154(2.1)

76. Individualized program, free appropriate public education--Generally

In determining whether student's Ehlers-Danlos Syndrome (EDS) adversely affected his educational performance under the IDEA, ALJ clearly erred in rejecting as unreliable adaptive gym teacher's testimony that student did not need special education to participate in gym curriculum; ALJ noted that teacher testified in detail about many adaptations and modifications she made for student to enable him to participate in gym class, but the referred-to behavior was mandated under student's individualized education program (IEP), and teacher was required by law to follow the directives set out in the IEP even though she may have thought they were unnecessary. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Disabled student's individualized education plan (IEP) to address his significant developmental delays and severe language disorder resulting from autism did not substantively violate IDEA by allegedly depriving student of free and appropriate public education (FAPE) and failing to provide functional behavioral assessment (FBA) or behavior intervention plan (BIP) regarding student's biting, hair pulling, and other behavioral problems, since IEP authorized full-time 1:1 crisis management paraprofessional to provide significant benefits to student regarding his problem behaviors, and initial IEP was corrected to provide additional speech and language services as well as parent training. T.Y. v. New York City Dept. of Educ., C.A.2 (N.Y.) 2009, 584 F.3d 412, certiorari denied 130 S.Ct. 3277, 176 L.Ed.2d 1183. Schools 148(3)

Individualized educational program (IEP) is basic mechanism through which IDEA's goal of providing free appropriate public education (FAPE) is achieved for each disabled child. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Substantive requirement of Individuals with Disabilities Education Act (IDEA) is that program be individually designed to provide educational benefit to handicapped child. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1)

Under Individuals with Disabilities Education Act (IDEA), both the school district and educational resource agency, which acted as a liaison between the Pennsylvania Department of Education and a number of school districts and also provided education services, could be jointly responsible for students' free and appropriate education. Vicky M. v. Northeastern Educational Intermediate Unit, M.D.Pa.2009, 689 F.Supp.2d 721, reconsideration denied 2009 WL 4044711. Schools 148(2.1)

Because individualized education programs (IEPs) for two academic years in question were adequate, there was no need to address appropriateness of parent's unilateral placement of child in private school or whether equity would support award of reimbursement. D.G. v. Cooperstown Cent. School Dist., N.D.N.Y.2010, 746 F.Supp.2d 435. Schools 154(4)

Broad range of ages and performance abilities of class proposed by city department of education (DOE) did not deprive nine-year-old student with learning disabilities of Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA), even if placement of student in such class violated state regulations requiring students in special education to be grouped together by “similarity of individual needs” and that age range of students in special education classes who were less than 16 years old not exceed 36 months, since students were appropriately grouped within class for instructional purposes. W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Failure to mandate counseling would not rise to level of procedural violation of IDEA because student would not have been denied free appropriate public education (FAPE) as a result. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 148(2.1)

Individualized education program (IEP) must be individualized and tailored to the “unique needs” of the child and reasonably calculated to produce benefits (i.e., learning, progress, growth) that are significantly more than de minimis, and gauged in relation to the potential of the child at issue; only by considering an individual child's capabilities and potentialities may a court determine whether an education benefit provided to that child allows for meaningful advancement. Blake C. ex rel. Tina F. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 593 F.Supp.2d 1199. Schools 148(2.1)

Goals set forth for autistic child in individualized education program (IEP) provided an individualized program for child, and could therefore be used to determine whether child's public school placement was reasonably calculated to provide child with meaningful educational benefit as required by Individuals with Disabilities Educa-

tion Act (IDEA), and the public school placement constituted a free appropriate public education (FAPE). Wagner v. Board of Educ. of Montgomery County, Maryland, D.Md.2004, 340 F.Supp.2d 603. Schools 148(3)

"Individualized Education Program" (IEP) required under Individuals with Disabilities Education Act (IDEA) consists of a detailed written statement arrived at by a multi-disciplinary team summarizing the child's abilities, outlining the goals for the child's education and specifying the services the child will receive. Christen G. by Louise G. v. Lower Merion School Dist., E.D.Pa.1996, 919 F.Supp. 793. Schools 148(2.1)

School district's failure to develop written plan to provide transition services to handicapped student did not violate the Individuals with Disabilities Education Act (IDEA); student was provided with Individualized Education Plan (IEP) from outset of his matriculation to high school, and IEP meetings were also conducted yearly to assess his progress and formulate goals for academic year to follow. Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 155.5(1)

Modus operandi of Individuals with Disabilities Education Act (IDEA) is individualized education program (IEP) which is developed jointly by parents and school officials and sets forth an individualized education plan for particular disabled student, and must include statement of services to be provided to child, assessment of child's current education levels, and annual goals set for that child. Delaware County Intermediate Unit No. 25 v. Martin K., E.D.Pa.1993, 831 F.Supp. 1206. Schools 148(2.1)

Placement decisions for handicapped students should be based on individualized educational program, and program objectives should be written before placement. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173. Schools 148(2.1)

Under Education of the Handicapped Act, every school must consider individual needs of every handicapped student and design individualized educational program appropriate for that child; task for courts is to ensure that this individual calibration is made. Johnson v. Lancaster-Lebanon Intermediate Unit 13, Lancaster City School Dist., E.D.Pa.1991, 757 F.Supp. 606. Schools 148(2.1); Schools 155.5(2.1)

77. ---- Conference, individualized program, free appropriate public education

There can be no individualized education program (IEP) under IDEA unless an IEP conference is conducted first, and thus where school district never convened an IEP conference, the "draft" IEP that the district presented to behaviorally disabled child's parents could not properly be considered an IEP. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(3)

School district's failure to convene an individualized education program (IEP) conference under IDEA constituted a substantive deprivation of behaviorally disabled child's rights under IDEA, and a denial of a free appropriate public education (FAPE), though school officials met with parents on several occasions to discuss child's behavioral problems and to review possible placement options for him, as lack of IEP conference denied parents

any meaningful opportunity to participate in the IEP process, and the absence of an IEP at any time during child's sixth-grade year caused him to lose educational opportunity, in that he did not have access to specialized instruction and related services that were individually designed to provide educational benefit. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(3)

Learning disabled student's individualized education plan (IEP), prepared by New York school district, was substantively deficient, and denied him free appropriate public education (FAPE) in violation of IDEA, where no goals or objectives were discussed at special education committee meeting held prior to beginning of school year, no eighth-grade teachers were present at meeting who could have discussed programs available to student, placement was not determined at meeting, and another meeting was not held prior to start of school year to alleviate parents' concerns over student's curriculum. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 148(3)

Evidence supported finding by special education bureau hearing officer that autistic student's parents were responsible for individualized education program (IEP) team's failure to meet before school year started and develop IEP for student as required by the Individuals with Disabilities Education Act (IDEA); parents canceled a scheduled meeting ten minutes before its start, did not appear for another meeting, and when parents sought a meeting, it was at the end of the school year or during summer when plans had already been made that impacted ability to gather fourteen people for IEP meeting, although school district's delay in responding to meeting requests on several occasions was less than admirable. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

78. ---- Evaluation of progress, individualized program, free appropriate public education

Goals and assessment proffered by Hawai'i Department of Education in autistic student's individualized education program (IEP) were generally sufficient, and thus IEP constituted a free appropriate public education (FAPE) under IDEA; IEP showed a focus on evaluating student's speech and communication progress, which were areas identified by parent as the areas most crucial to student's development, and offered him services like speech/language therapy and behavior intensive support to address concerns in those areas, and, with respect to goals, the IEP provided for specific goals and areas where student needed to improve. K.D. ex rel. C.L. v. Department of Educ., Hawaii, C.A.9 (Hawai'i) 2011, 665 F.3d 1110. Schools 148(3)

School district's failure to include and consider student's progress report and student profile for school year in drafting student's individualized education program (IEP) violated student's right to free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA), even though student's parents did not provide documentation until conclusion of IEP meeting, and did not object to IEP until beginning of next school year, where documentation was provided weeks in advance of IEP's implementation. Marc M. ex rel. Aidan M. v. Department of Educ., Hawaii, D.Hawai'i 2011, 762 F.Supp.2d 1235. Schools 148(3)

County school board failed to properly evaluate student for a specific learning disability, and, thus, student was not provided free appropriate public education (FAPE) required by the IDEA, although he was promoted a grade

every year, where he consistently showed a lack of measurable progress, he was making only trivial, minimal academic advancement toward goals in his IEP, and goals, services, and placement proposed in the IEP were not reasonably calculated to confer an educational benefit beyond minimal academic advancement. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 148(3)

Administrative law judge's (ALJ) determination, that school district's use of Kaufman Assessment Battery 2 (KABC-2) test for re-evaluation of student diagnosed with Fragile X syndrome was appropriate under Individuals with Disabilities Education Act (IDEA), was supported by administrative record; district's expert noted that although test was designed for children up to 18 years of age, it was an appropriate tool for assessing the intellectual functioning of persons with Fragile X. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009, 667 F.Supp.2d 964. Schools 155.5(4)

School board's failure to include evaluation methods that would be used to evaluate autistic child's progress toward four of five individualized education program (IEP) goals, though error, was mere technical defect which did not deprive child of free and appropriate public education (FAPE); failure was mere clerical oversight, and it was clear that child would receive education benefit from services proposed in IEP. County School Bd. of Henrico County, Vir. v. Palkovics ex rel. Palkovics, E.D.Va.2003, 285 F.Supp.2d 701, reversed and remanded 399 F.3d 298. Schools 148(3)

79. ---- Substantial performance, individualized program, free appropriate public education

School committee's individualized education programs (IEP) for high school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder were not reasonably calculated to confer any meaningful benefit in critical area of pragmatic language skills, thus depriving student of free and appropriate education (FAPE) under Individuals with Disabilities Education Act (IDEA) and Massachusetts law; committee pointed to no assessment that addressed this need directly and offered no evidence that it provided meaningful instruction in that area, and student's pragmatic language deficits were central component to his disability, affected his ability to transition from high school to other settings in critical way, and were well known to committee well before IEPs in question. Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Evidence supported special education bureau hearing officer's findings that services provided autistic student under expired individualized education programs (IEPs) allowed student to make progress toward achievement of IEP goals, consistent with the Individuals with Disabilities Education Act (IDEA), despite deficiencies in data collection; school district offered numerous tests into evidence. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

District's failure to notify parent of progress of student diagnosed with Fragile X syndrome toward new individualized educational program (IEP) goals, only 12 days into the implementation of those goals, did not render the implementation of the IEP violative of Individuals with Disabilities Education Act (IDEA); teacher had completed the student's progress report under the previous IEP's goals, as they had been effective for almost all of the subject semester, and an evaluation under the new standards, applicable for only 12 days, would have yielded results of questionable worth. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009,

667 F.Supp.2d 964. Schools 148(3)

School district did not provide student with free, appropriate, public education (FAPE) between the first and fifth grades, as required under the IDEA, where student had average intellectual abilities, but his standardized test scores in reading remained low over this five-year period, and he was still reading at a first grade level at the end of fifth grade. C.B. v. Special School Dist. No. 1, D.Minn.2009, 641 F.Supp.2d 850, reversed 636 F.3d 981. Schools 148(2.1)

School substantially implemented student's individualized education program (IEP), and thus provided free and appropriate public education (FAPE) required under Individuals with Disabilities Education Act's (IDEA), even though student did not have shared classroom aide, access to word processing device in classroom, or individualized social skills training, and was not tested at beginning of school year, as required by IEP, where failure to have classroom aide was largely due to parents' delays, student resisted using device and instead used classroom computer, student received social skills training in group setting that was individualized for him based on IEP, and school collected objective data in form of grades, standardized tests, and teacher observations. A.P. ex rel. Powers v. Woodstock Bd. of Educ., D.Conn.2008, 572 F.Supp.2d 221, affirmed 370 Fed.Appx. 202, 2010 WL 1049297. Schools 148(3)

District's failure to meet specifications of student's individualized education program (IEP) to the letter with regard to sessions of speech and language therapy was warranted under the circumstances and did not deprive student of free appropriate public education (FAPE). Catalan ex rel. E.C. v. District of Columbia, D.D.C.2007, 478 F.Supp.2d 73. Schools 148(2.1)

80. ---- Special education, individualized program, free appropriate public education

Individualized education program's (IEP) provision of individualized instructional support and 1:1 after-school support for autistic student met student's requirement for a 1:1 skills trainer, and thus IEP constituted a free appropriate public education (FAPE) under IDEA, absent evidence that such services would not be on a 1:1 basis. K.D. ex rel. C.L. v. Department of Educ., Hawaii, C.A.9 (Hawai'i) 2011, 665 F.3d 1110. Schools 148(3)

ALJ's determination in IDEA claim that student with Ehlers-Danlos Syndrome (EDS) needed special education in gym was not supported by doctor's conclusory testimony and reports that student needed special education because he could not safely engage in unrestricted participation in various activities of the regular gym program because his joints could be injured; school had devised a health plan that would allow student to participate in regular gym and avoid harmful activities or reduce threat of injury during certain exercises, school considered doctor's comments in creating health plan, doctor was not a trained educational professional, and doctor was not familiar with the curriculum and what student needed to do in gym. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Hearing officer and the Appeals Panel did not err in concluding that student was denied free appropriate public education (FAPE) after she was exited from special education at the end of sixth grade because district never addressed student's specific learning disability; school district did not come forward with sufficient extrinsic evid-

ence to overcome the prima facie validity of the hearing officer and Appeals Panel's conclusions concerning student's grade level functioning, and assessment tools that the district used were outdated and lacking as compared to those used by the independent evaluator. Breanne C. v. Southern York County School Dist., M.D.Pa.2010, 732 F.Supp.2d 474. Schools 148(3)

Counseling as related service was not required to provide nine-year-old student, who suffered from learning disabilities, with Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA); student's Individualized Education Plan (IEP) included goals and objectives to address his needs, special education teacher testified very specifically about how he would address student's issues within his class, city department of education (DOE) psychologist testified that IEP team did not believe student required counseling because of progress he had made and fact that placement being recommended was sufficiently small enough to provide therapeutic setting, and student had not been receiving counseling at his private school. W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Hawaii Department of Education, in concluding that student's behavior needed to be addressed in an intensive environment in order for his educational needs to be met, did not inappropriately ignore student's unique needs, specifically his writing deficits and relationship between student's academic needs and behavior; student showed ample behavioral issues, and based upon observation and test results, evidence at the time the IEPs were created did not indicate student had a learning disability based on a visual processing deficit. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 148(3)

Evidence supported special education bureau hearing officer's findings that autistic student's individualized education program (IEP) was appropriate to address special education needs by using numerous teaching methodologies and different teaching systems and so was consistent with Individuals with Disabilities Education Act (IDEA) obligations, although student's parents argued IEP did not contain specific behavioral recommendations, plans for generalization of skills, or statement of services to be provided to the student. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

Individualized education program (IEP) for a student did not reflect evaluators' recommendations, and thus, did not provide the student with the free appropriate public education (FAPE) required by the IDEA; every evaluation and the testimony of an evaluator made clear that the student had to be instructed differently from other students to access educational information and had to be taught in a small, structured classroom, and the IEP failed to address those concerns. District of Columbia v. Bryant-James, D.D.C.2009, 675 F.Supp.2d 115. Schools 148(2.1)

Purported failure of charter school to deliver additional hours of specialized instruction to learning-disabled student did not constitute material failure to implement individualized education program (IEP), as would violate Individuals with Disabilities Education Improvement Act (IDEIA); special education teacher's delivery of services to student was not compromised by additional group and individualized instruction. S.S. ex rel. Shank v. Howard Road Academy, D.D.C.2008, 585 F.Supp.2d 56. Schools 148(3)

Learning-disabled student's eighth-grade individualized education program (IEP) was not procedurally defective because of school district's alleged failure to make comprehensive language evaluation before its creation; IEP was based on far more than school district's "intuitive sense," and evaluations conducted were sufficiently comprehensive to ensure that student's special education needs were identified. L.R. v. Manheim Tp. School Dist., E.D.Pa.2008, 540 F.Supp.2d 603. Schools 148(3)

School district's Individualized Education Plan (IEP), prepared under Individuals with Disabilities Education Act (IDEA), calling for placement of student with auditory processing and attention problems in special public elementary school setting of nine students, receiving separate schooling in all subjects except science, fine arts, and physical education, did not satisfy IDEA requirement that student receive free appropriate public education (FAPE). North Reading School Committee v. Bureau of Special Educ. Appeals of Mass. Dept. of Educ., D.Mass.2007, 480 F.Supp.2d 479. Schools 148(3)

School district did not deny autistic student a free appropriate public education (FAPE), as required by the IDEA, by not having a member on student's Individualized Education Program (IEP) team with the title of special education teacher; both the assistant direct of special services for the school district and the students's case manager and teacher were responsible for teaching student and working directly with him, which was the role that a special education teacher would fill. Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233, Special Services Div., D.Kan.2003, 316 F.Supp.2d 960. Schools 148(3)

Individualized education program (IEP) of disabled student was deficient, under the IDEA, in that it failed to describe in sufficient detail how goals and objectives set forth in IEP were to be accomplished in student's placement, it did not require that student's special education services be delivered by, or under direct supervision of, properly certified providers, and it failed to include behavioral intervention plan. Mr. R. v. Maine School Administrative Dist. No. 35, D.Me.2003, 295 F.Supp.2d 113. Schools 148(2.1)

81. ---- State regulation or control, individualized program, free appropriate public education

Individualized education program (IEP) prepared for student who suffered from learning disabilities satisfied Massachusetts requirement that IEP maximize student's development where plan would have enabled student to spend most of his school day learning along side nonhandicapped children, and provided for "mainstream facilitator" who would have observed student's regular classes, worked with his teachers, and provided him with academic support classes, even though parents alleged that student enjoyed better academic progress in private schools; under Individuals with Disabilities Education Act (IDEA), IEP must prescribe pedagogical format in which handicapped student is educated with children who are not handicapped to maximum extent appropriate. Amann v. Stow School System, C.A.1 (Mass.) 1992, 982 F.2d 644. Schools 154(4)

Hawai'i Department of Education lacked consistent practice of restricting age for admitting general education students into public school, as would allow deviation from IDEA requirement of providing free appropriate public education (FAPE) to all disabled children from age 3 to 21, unless application of IDEA to children aged 18 through 21 was inconsistent with state law or practice, in support of Department's obligation to continue providing severely disabled student individualized education until his twenty-second birthday upon such recommendation by his individualized education plan (IEP), since Department blatantly discriminated in violation of IDEA

and Rehabilitation Act by approving every single overage general education student while barring almost every single overage special education student, unless approved due to settlement of legal action, and failed to provide admitted overage special education students individualized education. B.T. ex rel. Mary T. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 637 F.Supp.2d 856. Schools 148(2.1)

Alleged deficiencies in superseded individualized educational programs (IEP) concerning student diagnosed with attention deficit hyperactivity disorder (ADHD) could not constitute a denial of free appropriate public education (FAPE) justifying student's removal from district several years later and placement in a private behavioral modification facility, notwithstanding Oregon statute governing special education hearings within two years after date of act or omission; earlier IEPs were in effect for a limited term and were superseded before parents ever disputed child's IEP or placement, and allowing such a claim would amount to an end-run around IDEA requirement that parents give advance notice that they were rejecting placement. Ashland School Dist. v. Parents of Student R.J., D.Or.2008, 585 F.Supp.2d 1208, affirmed 588 F.3d 1004. Schools 154(3)

Provision in disabled third-grade student's individualized educational program (IEP), calling for early dismissal on Friday afternoons, did not violate IDEA's free appropriate public education (FAPE) requirement or Connecticut's minimum school day regulation; early release provided teachers with planning time needed for student's program and, even with early release, student's program exceeded minimum times required under regulation. R.L. ex rel. Mr. L. v. Plainville Bd. of Educ., D.Conn.2005, 363 F.Supp.2d 222. Schools 148(2.1)

To the extent that Texas statute imposed higher burden on Texas school districts than that imposed by Individuals with Disabilities Education Act (IDEA) with respect to hearing-impaired students, statute clearly allowed for use of methods of communication which did meet needs of each individual hearing-impaired student; therefore, program provided by school district which made use of total communication method was appropriate individualized education plan (IEP). Bonnie Ann F. by John R.F. v. Calallen Independent School Dist., S.D.Tex.1993, 835 F.Supp. 340, affirmed 40 F.3d 386, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 723. Schools 148(2.1)

Placement of disabled students at nonpublic schools with academic years in excess of 180 days mandated for public schools under Maryland law did not satisfy requirements for providing extended school year (ESY) services as part of students' individualized education programs (IEP); nonpublic schools' continuation of their regular programs into summer months did not address individualized needs of students and, even when district counted students placed in both public and nonpublic schools, only about 1% of disabled students received ESY. Reusch v. Fountain, D.Md.1994, 872 F.Supp. 1421, supplemented 1994 WL 794754. Schools 154(4)

82. ---- Miscellaneous actions, individualized program, free appropriate public education

District court's determination that school district's failure to implement autistic student's individual education plan (IEP) constituted denial of free and appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA) was not clear error, despite evidence that student made some gains in certain skill areas, where district conceded that it failed to provide 15 hours of applied behavioral analysis (ABA) therapy required by IEP, gains were not significant, and board-certified ABA therapist who subsequently worked in student's classroom testified that student's problems were caused by failure of lead teacher and classroom aides

to properly understand and implement ABA techniques, and that it took her several months to bring student back to point where he previously should have and would have been if teachers had understood and properly implemented ABA methodology. Sumter County School Dist. 17 v. Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 148(3)

Disabled student's individualized education plan (IEP) that allegedly deprived parents of right to meaningful participation in development of IEP by failing to specify particular school at which autistic student would receive services was not procedurally deficient, under IDEA and implementing regulations defining IEP as including location and educational placement of student, since "location" referred to general type of environment in which services would be provided, and "educational placement" referred to general type of educational program, not specific school. T.Y. v. New York City Dept. of Educ., C.A.2 (N.Y.) 2009, 584 F.3d 412, certiorari denied 130 S.Ct. 3277, 176 L.Ed.2d 1183. Schools 148(3)

District court's determination that proposed Individualized Education Program (IEP) offered autistic student a free appropriate public education (FAPE) was not clearly erroneous; school district's expert testified in favor of the IEP based on review of the student's prior educational history, the progress reports from private school, the testimony of others, and observations of the school district's class for autistic children. Lt. T.B. ex rel. N.B. v. Warwick School Committee, C.A.1 (R.I.) 2004, 361 F.3d 80. Schools 148(3)

Failure of individualized education program to refer to present educational performance or to include objective criteria for determining whether objectives were being achieved did not invalidate program to instruct student in regular classroom; student's most recent grades were known to parents and school officials; student would be graded according to normal criteria used in class; and parents participated in development of program. Doe By and Through Doe v. Defendant I, C.A.6 (Tenn.) 1990, 898 F.2d 1186, rehearing denied. Schools 148(2.1)

Fifth grade individualized education plan (IEP) was reasonably calculated to provide student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, with some educational benefit, and thus was sufficient to provide student with free and appropriate public education (FAPE) under Individuals with Disabilities Education Improvement Act (IDEA); IPE, which recommended student's continued placement in public school, was individually tailored to student's needs as they existed at the time and IEP provided for some educational benefit in least restrictive environment. S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 148(3)

Learning-disabled student's individualized education plan (IEP), prepared by New York school district, was procedurally deficient, and denied him free appropriate public education (FAPE) in violation of IDEA, where attendees of special education committee meetings did not include regular eighth grade teacher or special education teacher who might have worked with student. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 148(3)

Disabled student was deprived of free appropriate public education (FAPE) to which he was entitled under IDEA, where District of Columbia Public Schools (DCPS) materially failed to implement individualized education program (IEP) by providing student with prescribed extended school year (ESY) services. Wilson v. District

of Columbia, D.D.C.2011, 770 F.Supp.2d 270. Schools 148(2.1)

School district sufficiently implemented individualized education program (IEP) for disabled student suffering from Down syndrome in compliance with IDEA; student's homeroom teacher implemented each and every page of IEP and monitored student's progress toward each objective, and goals related to occupational therapist's and speech pathologist's specialties were provided as required by IEP. J.D.G. v. Colonial School Dist., D.Del.2010, 748 F.Supp.2d 362. Schools 148(3)

Independent school district (ISD) did not provide student, under Individuals with Disabilities Education Act (IDEA), a free and appropriate public education (FAPE) in connection with student and his individual education plan (IEP); student's later unchanged IEPs were not reasonably calculated to enable him to receive educational benefit, as they ignored student's area of weakness and chose to obscure it by highlighting student's success in areas not impacted by his learning disability, later IEP was not individualized on basis of his assessment and performance to meet his needs, any transition plan in IEPs was not individualized, and parents were not informed and indeed were misled about student's actual level of ability until his senior year, as well as student's positive academic and nonacademic benefits. Klein Independent School Dist. v. Hovem, S.D.Tex.2010, 745 F.Supp.2d 700. Schools 148(3)

Tenth grade class grouping for individualized education plan (IEP) of student who suffered from schizoaffective disorder and borderline intellectual functioning violated New York regulations implementing Individuals with Disabilities Education Act (IDEA) by placing student in class with significantly different needs; school district did not adequately consider what progress student made at private school during previous school year, and while differences between student and other individuals in ninth grade class grouping were not as apparent, differences were far more obvious as tenth grade IEP was developed. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

Autistic student's transition from private institution that he had been attending to special public school proposed by city education department was sufficiently addressed by student's individualized education program (IEP), for purposes of claim alleging violation of Individuals with Disabilities Education Act (IDEA), by provision of adequately supervised paraprofessional who would have attended to student on 1:1 basis. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated Rehabilitation Act in connection with their failure to provide disabled students with free appropriate public education (FAPE) required by IDEA and to comply with their Child Find obligations under IDEA, as they showed bad faith or gross misjudgment; defendants knew they were not in compliance with their legal obligations yet failed to change their actions, their relative provision of services under IDEA was lower than that of every state in the country, in most cases significantly so, and their failures were departure from accepted educational practices throughout the country. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84 . Schools 148(2.1)

Individual education program (IEP) prepared by school district for child with learning disability was substant-

ively adequate, and thus child's parent was not entitled to reimbursement for private school tuition after she unilaterally withdrew him from public school, even though IEP did not mention developmental reading class recommended by committee on special education (CSE), where recommendation to enroll child in developmental reading class was made at properly convened CSE meeting, class was included on child's class schedule, class was mainstream class open to all students, child was in fact enrolled in developmental reading class taught by certified reading specialist, and child was otherwise progressing adequately. M.F. v. Irvington Union Free School Dist., S.D.N.Y.2010, 719 F.Supp.2d 302. Schools 148(3)

Alleged deficiencies in Individualized Education Plan (IEP), including vague and generic annual goals and blank measurement method box for each goal, did not rise to level of material procedural violation that would deny student with learning disabilities Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA). W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Student's individualized educational program (IEP) placements in Hawaii Department of Education's day treatment program for children and subsequently in community-based educational program were appropriate within meaning of Individuals with Disabilities Education Act (IDEA); mother agreed to the placements at the time they were made, school officials balanced student's immaturity, behavioral issues, size, age, and academic levels, student received an educational benefit from the IEPs, having shown tremendous improvement in his actions, behaviors, and attitude, time outs and isolation strategies were designed to help control student's anger, and other children's disabilities at placement center were not shown to have a harmful effect on student. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 154(2.1)

Any lack of communication between autistic student's parents and school district did not prevent district from providing free and appropriate public education (FAPE) to student consistent with the Individuals with Disabilities Education Act (IDEA), although the IDEA required that parents be notified of proposed changes in their child's education placement or provision of FAPE; parents made no showing how possible implementation and notification issues prevented student from benefiting from services school district provided, and parents received progress reports. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 148(3)

The failure of the individualized education program (IEP) to recommend a specific school placement location for student diagnosed with autism did not render the IEP procedurally inadequate under the Individuals with Disabilities Education Improvement Act (IDEIA), where the IEP set forth the recommended student to teacher ratio and classroom setting, and it was undisputed that the student was placed at the school of his parents' choice. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(3)

Requirement in individualized educational program (IEP) that student diagnosed with Fragile X syndrome use adaptive clip-type holder for his identification tag was appropriately implemented under the Individuals with Disabilities Education Act (IDEA); teacher and parent had observed that the lanyard for tag was bothering student and teacher thereafter obtained approval to exempt student from the lanyard requirement and allow for a

clip. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009, 667 F.Supp.2d 964. Schools 148(3)

Private school for students with learning disorders did not offer grade school student, who had a learning disability in the language arts, an education in the least restrictive environment, and thus it was not an appropriate placement, such that school district was not required under IDEA to reimburse student's parent's for tuition at private school; public school program offered by school district, but which parents declined, offered educational services similar to private school but in a less restricted environment, student benefited from the social opportunities available in the general education environment, and student performed well in non-language subjects and had an average intellectual capacity. C.B. v. Special School Dist. No. 1, D.Minn.2009, 641 F.Supp.2d 850, reversed 636 F.3d 981. Schools 154(4)

Individualized education program (IEP) was not substantively deficient, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as recommendation of ten hours per week of at-home behavior therapy met standard that IEP be reasonably calculated to enable child to receive educational benefits; parents' own expert witness testified that if student was in school for 25 hours per week, eight or ten hours of at-home behavior therapy was sufficient, IDEA did not require written recommendation prior to meeting indicating that ten hours was appropriate amount of behavioral therapy, and parents' bills showed that student's total behavior therapy hours were in range of 90 per month. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Individualized education program (IEP) proposed by school district for student with an emotional disability and a learning disability in math was reasonably calculated to provide student with a free appropriate public education (FAPE) as required under IDEA, even though IEP did not provide for pull-out services in math, organization, and study skills; student's parents had previously objected to the implementation of pull-out services, and IEP contained many services that were not contained in earlier IEP under which student had made marked academic and social progress, including obtaining grade of “average” in math and grade of “above average” in her other academic subjects. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Evidence supported determination of hearing officer that individualized education program (IEP) placing autistic elementary school student in district's autistic program was not appropriate, as it was not tailored to child; specific sections of IEP and evaluation report employed boilerplate language and recommendations, lacked specificity necessary to implement some of its goals, was incomplete when presented to parents, and contained only promise that district would develop plan for transitioning child from private school to district program, despite importance of transitioning to child's needs. A.Y. v. Cumberland Valley School Dist., M.D.Pa.2008, 569 F.Supp.2d 496. Schools 155.5(4)

Learning-disabled student's eighth-grade individualized education program (IEP) was in substantive compliance with IDEA, despite student's contention it contained double-block schedule employing teacher's aide that was not designed to and did not meet her needs. L.R. v. Manheim Tp. School Dist., E.D.Pa.2008, 540 F.Supp.2d 603. Schools 148(3)

School district placement specialist's notes during placement meeting regarding learning disabled student did not constitute a valid and complete individualized education program (IEP) under Individuals with Disabilities Education Act (IDEA); notes were not in a written form that was capable of distribution, and contained substantive omissions and sarcastic language. Mewborn ex rel. N.V. v. Government of Dist. of Columbia, D.D.C.2005, 360 F.Supp.2d 138. Schools 148(3)

Individualized education program (IEP) developed for disabled student was developed and implemented in manner reasonably calculated to enable student to receive meaningful educational benefit, as required to support finding that student received free appropriate public education (FAPE) to which he was entitled under Individuals with Disabilities Education Act (IDEA), especially where student's parents did not object to substance or implementation of IEP at any time; IEP was individualized on basis of student's assessment and performance, and student was provided with homebound instruction, offered tutorial support, and allowed to make up all work missed during his excused absences. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(2.1)

Individualized education program (IEP) for learning disabled student was reasonably calculated to provide free appropriate public education, as required by the IDEA; although the IEP did not include additional programming recommended by two separately hired experts, the IEP included programming concerning class size, as well as services including speech therapy and multi-sensory education sessions to improve student's vocabulary and comprehension skills. Watson ex rel. Watson v. Kingston City School Dist., N.D.N.Y.2004, 325 F.Supp.2d 141, affirmed 142 Fed.Appx. 9, 2005 WL 1791553, certiorari denied 126 S.Ct. 1040, 546 U.S. 1091, 163 L.Ed.2d 857. Schools 148(3)

Individual educational program (IEP) proposed by school district for learning and behaviorally disabled student contained adequate statement of specific educational services to be provided and extent to which student would be able to participate in regular educational programs, as mandated by Individuals with Disabilities Education act (IDEA); IEP indicated that student's academic and non-academic programs required his participation in science, math, art, industrial art, physical education and lunch, and discussed at length extent of student's participation and his projected ability to perform in those areas. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 148(3)

Proposed Individualized Educational Plan (IEP) which enabled hearing-impaired student to continue in program in which he had made demonstrable educational progress and which would continue to afford student educational benefits met substance requirement of Individuals with Disabilities Education Act (IDEA). Logue By and Through Logue v. Shawnee Mission Public School Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1338, affirmed 153 F.3d 727. Schools 148(2.1)

Individualized Education Program (IEP) proposed by school district offered dyslexic student free appropriate public education as required by Individuals with Disabilities Education Act (IDEA); student's inability to read, write or perform math upon her entry into fourth grade was not fault of her public education, instructional regime in public school was not materially different than that employed in private school for disabled students to

which student's parents unilaterally transferred her, student's objective achievements in private school were not appreciably different than at public school and may in fact have regressed somewhat, and student's exposure to mainstreamed environment in public school was beneficial to her socialization skills. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 148(3)

School district established by preponderance of the evidence that dyslexic elementary student was adequately grouped with children possessing similar requirements and that his individualized education program (IEP) was reasonably calculated and implemented to produce educational benefits, though student had some altercations with another student in special education class and parent disagreed with reading instructional technique used by special educational teacher. Wall by Wall v. Mattituck-Cutchogue School Dist., E.D.N.Y.1996, 945 F.Supp. 501 . Schools 155.5(4)

Evidence established appropriateness of individualized education plan (IEP) for handicapped student in public school, even though there was abundant evidence of beneficial effect that year in private school had on student's educational process; IEP addressed student's educational needs in written language, organizational skills, math, and reading and provided behavioral management system to help develop positive attitude toward school. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 155.5(4)

Individualized education program developed by school district was reasonably calculated to enable child to receive educational benefits, despite lack of sufficient detail and failure to fully integrate child's resource room activities with other areas in child's schooling; program recognized child's difficulties, established goal of increased skills in mainstream classes and allowed for monitoring of progress on daily or weekly basis. Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958. Schools 148(2.1)

83. Amendment of individualized educational program, free appropriate public education

Consensus among members of individualized education plan (IEP) team did not require a revised IEP to incorporate the recommendations from IEP team; mere fact that all participants were in agreement did not translate into a substantive entitlement to a particular educational service under Individuals with Disabilities Education Act (IDEA), without a revision to the IEP. W.A. v. Pascarella, D.Conn.2001, 153 F.Supp.2d 144.

84. Delay of individualized educational program, free appropriate public education

Delay in school district's development and review of individualized education programs (IEPs) prepared for learning disabled student did not deprive student of right to free appropriate public education (FAPE); any delay was not prejudicial where student was not actually educated under district's proposed IEPs. Grim v. Rhinebeck Central School Dist., C.A.2 (N.Y.) 2003, 346 F.3d 377. Schools 155.5(1)

School district's assertion that individual educational program (IEP) prepared for learning disabled student was merely “first draft” that would have been refined before commencement of school year did not preclude district's

liability for reimbursement of student's expenses at private school for that year based on inadequate IEP, in view of finding that district told student's parents that it had no intention of amending IEP until well after school year began. Cleveland Heights-University Heights City School Dist. v. Boss By and Through Boss, C.A.6 (Ohio) 1998, 144 F.3d 391. Schools 148(3)

Although delay in resolving matters regarding educational program of handicapped child is extremely detrimental to his development, the Education of the Handicapped Act, §§ 602-620, as amended, 20 U.S.C.A. §§ 1401-1420, prefers that individualized education programs and, by extension, interim services be a product of good-faith cooperation and negotiation among parties. David D. v. Dartmouth School Committee, C.A.1 (Mass.) 1985, 775 F.2d 411, certiorari denied 106 S.Ct. 1790, 475 U.S. 1140, 90 L.Ed.2d 336. Schools 148(2.1)

Delay in student's placement in Hawaii Department of Education's intermediate home school, which was to follow a temporary placement in day treatment program, did not deny student a free appropriate public education (FAPE) in the least restrictive environment as required by Individuals with Disabilities Education Act (IDEA); any delay in student's placement was due to re-assessment being conducted at mother's request and also due to mother's cancellation of three scheduled individualized educational program (IEP) meetings, and temporary placement would likely have served to aid student's transition from more restrictive environment of day treatment program to program where student would be receiving services at the home school. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 154(3)

Absence of individualized education program (IEP) by first day of classes did not result in denial of a free appropriate public education (FAPE); IEP could have been in place less than one week after classes began, and week's delay was a minor procedural error. C.H. v. Cape Henlopen School Dist., D.Del.2008, 566 F.Supp.2d 352, affirmed 606 F.3d 59. Schools 148(2.1)

Notwithstanding school's delay in developing functional behavior plan for child, administrative record of hearing requested by learning disabled child's parents to determine appropriateness of child's education program supported hearing officer's determination that school district complied with mainstreaming directive under Individuals with Disabilities Education Act (IDEA) through provision of supplementary aids and services; teachers testified that they spent substantial amount of time on curriculum modification to accommodate child, parents were included in every step of development of child's education program and consulted about retention of inclusion consultant, and staff working with child had significant professional experience and experience with child. P. ex rel. Mr. P. v. Newington Bd. of Educ., D.Conn.2007, 512 F.Supp.2d 89, affirmed 546 F.3d 111. Schools 155.5(4)

Four-month delay, in responding to grandmother's request that special education services being provided to learning disabled student be reevaluated, was not denial of free appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA), when there was lack of emergency need for reevaluation, current evaluations existed, and school was unable to determine why reevaluation was necessary from grandmother's initial request. Herbin ex rel. Herbin v. District of Columbia, D.D.C.2005, 362 F.Supp.2d 254. Schools 148(3)

School district's delay in formulating individualized education program (IEP) for student, who had speech and language impairment, and determining her placement did not violate student's rights to free and appropriate public education (FAPE) under the IDEA, where IDEA's 120-day period for developing IEP and selecting placement expired during summer months, student's IEP did not require extended school year (ESY) services, and IEP was in place when student began academic school year. Shaw v. District of Columbia, D.D.C.2002, 238 F.Supp.2d 127. Schools 148(3)

School's failure to "accelerate" preparation and implementation of individualized education program (IEP) for eighth grade student was not procedural error, under IDEA, despite student's alleged history of unmet needs; parents had actively concealed previously unaddressed problems. J.S. v. Shoreline School Dist., W.D.Wash.2002, 220 F.Supp.2d 1175. Schools 148(2.1)

85. Expiration of program, free appropriate public education

School district's failure to convene meeting to conduct reevaluation of student's individualized education program (IEP) before his current IEP expired did not violate student's right to free and appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA), where district continued to provide services to student pursuant to his expired IEP. Wanham v. Everett Public Schools, D.Mass.2008, 550 F.Supp.2d 152. Schools 148(2.1)

86. Procedure, free appropriate public education

Parents and minor child seeking reimbursement for educational expenses under Individuals with Disabilities Education Act (IDEA) failed to establish that school district did not comply with statutory procedures in developing proposed individualized education program (IEP); parents were not denied meaningful participation at IEP meetings, and autistic child's placements and programs were not finalized before IEP goals and objectives were determined. T.P. ex rel S.P. v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2009, 554 F.3d 247. Schools 148(3)

A procedurally defective individualized education program (IEP) does not automatically entitle a party to relief under the IDEA; in evaluating whether a procedural defect has deprived a student of a free appropriate public education (FAPE), the court must consider the impact of the procedural defect, and not merely the defect per se. School Bd. of Collier County, Fla. v. K.C., C.A.11 (Fla.) 2002, 285 F.3d 977. Schools 148(2.1)

Procedural and technical deficiencies in handicapped child's individualized education plan (IEP) that were identified by hearing officer and review officer in state administrative proceeding under Individuals with Disabilities Education Act (IDEA) did not materially affect resolution of core issue of whether child's parents were entitled to reimbursement for unilaterally placing child in private school, and, thus, did not entitle child to additional relief on judicial review. Independent School Dist. No. 283 v. S.D. by J.D., C.A.8 (Minn.) 1996, 88 F.3d 556. Schools 155.5(5)

School district deprived student of free appropriate public education by failing to comply with procedures for

preparing individualized education program--requirement to obtain input and participation of parents, regular classroom teacher, and representative of parochial school attended by student--even though parents did not file dissenting report, and whether or not the procedural faults caused student to loose benefits. W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont., C.A.9 (Mont.) 1992, 960 F.2d 1479. Schools 155.5(1)

New Jersey school board substantially satisfied IDEA's procedural requirements, and individualized education programs (IEPs) for two school years in question were not procedurally defective despite arguments by disabled student and her parents that they contained only goal for reading which was aligned to outdated core curriculum content standards and did not address all of student's areas of need to progress appropriately in general education curriculum, lacked objective assessment of student's levels of performance, and were not implemented properly because student did not have special education teacher for two-month period even though IEP provided for one. H.M. ex rel. B.M. v. Haddon Heights Bd. of Educ., D.N.J.2011, 822 F.Supp.2d 439. Schools 148(3)

Substantial evidence supported hearing officer's determination that compounding of procedural violations resulted in student's denial of free appropriate public education (FAPE); hearing officer cited five procedural errors which gave rise to her conclusion that second Manifestation Determination Review (MDR) was procedurally flawed and that MDR team failed to comply with Virginia Department of Education's (VDOE's) corrective action plan, (1) MDR team fragmented manifestation determination inquiry by addressing only one question, (2) different individuals were present at second MDR than were present at first, (3) student's parent was denied parental participation, (4) MDR team conducted only record review of the evidence, and (5) MDR team failed to review student's psychiatric report which had not been available during first MDR. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

Hearing officer in IDEA case involving student with autism and cerebral palsy did not commit reversible error in finding that individualized education program (IEP) team meetings were not properly attended, adequate testing was not performed by school district, goals and objectives were not sufficiently measurable, and recommendations of qualified experts were ignored, concluding accordingly that IEPs could not be reasonably calculated to provide a meaningful educational benefit to student, and that IEPs for three consecutive years denied student a free appropriate public education (FAPE). Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 148(3)

Individualized education program (IEP) was not procedurally defective, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as it gave them an adequate opportunity to participate in its development; IDEA did not require parental presence during actual drafting of written education program document, and parents had adequate opportunity to respond to goals in written education program after it was drafted. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Individualized education program (IEP) was not procedurally defective, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as they claimed that school district had predetermined student's class assignment and location of his behavior therapy. E.G. v. City School Dist. of

New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Under the IDEA, only procedural inadequacies that cause substantive harm to the child or his parents, meaning that they individually or cumulatively result in the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the individualized education plan (IEP), constitute a denial of a Free Appropriate Public Education (FAPE). Matrejek v. Brewster Cent. School Dist., S.D.N.Y.2007, 471 F.Supp.2d 415, affirmed 293 Fed.Appx. 20, 2008 WL 3852180. Schools 148(2.1)

Failure of District of Columbia Public Schools (DCPS) to comply with IDEA's procedures was not dispositive of whether learning disabled student was denied a free appropriate public education (FAPE), and IDEA claim was viable only if those procedural violations affected student's substantive rights. Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(3)

Student's mother failed to establish that alleged procedural violation, that occurred when State of Hawai‘i Department of Education (DOE) cut hours of student's intensive instructional services consultant (IISC), deprived student with Asperger's Syndrome of a meaningful educational benefit required by the IDEA. B.V. v. Department of Educ., State of Hawaii, D.Hawai'i 2005, 451 F.Supp.2d 1113, affirmed 514 F.3d 1384. Schools 148(3)

School district's committee on special education, in developing elementary school student's individualized education program (IEP), had sufficient current evaluative information with which to adequately identify student's progress and levels of performance, and to make needed adjustments to IEP goals and objectives, and thus, district did not violate procedure required by IDEA; although transcript of committee hearing revealed that professional judgment was used in assessing learning disabled student's progress, committee also reviewed results from numerous tests and evaluations, including tests measuring student's written language, reading, and math abilities, and language and phonological tests conducted by student's language therapist. Viola v. Arlington Central School Dist., S.D.N.Y.2006, 414 F.Supp.2d 366. Schools 148(3)

School district's offer of multiple placement types rather than a specific, firm recommendation constituted a procedural violation of Individuals with Disabilities Education Act (IDEA), and, that procedural violation resulted in a denial of a free appropriate public education (FAPE) for child; district's offer of various types of classrooms, located at a number of different school sites, with varying school-day durations, was not a clear, coherent offer which mother reasonably could evaluate and decide whether to accept or appeal. Glendale Unified School Dist. v. Almasi, C.D.Cal.2000, 122 F.Supp.2d 1093. Schools 154(2.1)

Nature and number of procedural violations of the IDEA established that learning disabled student was not given educational opportunity that procedural requirements of the IDEA were intended to protect; school district did not convene impartial hearing within 45 days of parent's request and did not have individual educational program (IEP) ready to implement at start of school year, did not include in IEP statement of student's present level of educational functioning, specifically in his areas of deficit, did not include in IEP statement of objective strategies to evaluate progress, and did not prepare written report of basis for determination that student was learning disabled. Evans v. Board of Educ. of Rhinebeck Cent. School Dist., S.D.N.Y.1996, 930 F.Supp. 83.

Schools 148(3)

87. Benefit educationally from instruction, free appropriate public education

Requirement under this chapter of "free appropriate public education" is satisfied when state provides personalized instruction with sufficient support services to permit handicapped child to benefit educationally from that instruction; such instruction and services must be provided at public expense, must meet state's educational standards, must approximate grade levels used in state's regular education, and must comport with child's individualized educational plan, as formulated in accordance with requirements under this chapter, and if child is being educated in regular classrooms, the individualized educational plan should be reasonably calculated to enable child to achieve passing marks and advance from grade to grade. Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley, U.S.N.Y.1982, 102 S.Ct. 3034, 458 U.S. 176, 73 L.Ed.2d 690. See, also, Adams Cent. School Dist. No. 090 v. Deist, 1983, 338 N.W.2d 591, 215 Neb. 284. Schools 148(2.1)

District Court's failure to enunciate the correct "meaningful benefit" test under IDEA was not fatal to its determination that individualized education program (IEP) offered handicapped child a free appropriate public education (FAPE), where, under the proper standard, the evidence in the record was more than sufficient to support a finding that the school board's program would confer on child a meaningful educational benefit in light of his individual needs and potential. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 155.5(2.1)

Individualized educational programs (IEP) provided to hearing impaired student were reasonably calculated to provide student with free appropriate public education (FAPE) and student actually received educational benefits during school year; both hearing and reviewing officers at administrative level found that student had made various degrees of progress during school year in which IEPs were in effect, despite fact that her progress was not steady in all areas, student's parents were in constant communication with student's teacher's and were aware of her status at school, and school made changes in IEP to respond to parents' frustration with student's progress, but parents removed student before new IEP could be implemented. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Evidence supported district court's conclusion that any benefit to handicapped student from school district's placement of him in day program was trivial and was not sufficient to satisfy *Rowley* standard under Individuals with Disabilities Education Act (IDEA) requiring that school district provide instruction sufficient to confer some educational benefit upon handicapped child. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 155.5(4)

"Appropriate placement" is that which enables handicapped child to obtain some benefit from public education that child is receiving, not necessarily maximization of potential. Teague Independent School Dist. v. Todd L., C.A.5 (Tex.) 1993, 999 F.2d 127. Schools 154(2.1)

If educational benefits from individualized educational plan (IEP) for handicapped child are adequate, based on surrounding and supporting facts, Education for All Handicapped Children Act (EAHCA) requirements have been satisfied and, while a trifle might not represent adequate benefits, maximum improvement is never required. JSK By and Through JK v. Hendry County School Bd., C.A.11 (Fla.) 1991, 941 F.2d 1563. Schools 148(2.1)

Hearings officer failed to determine whether department of education's placement provided for in individualized educational program (IEP) was reasonably calculated to provide special education student with meaningful educational benefit at time IEP was developed and implemented, as required to determine whether to uphold appropriateness of placement under Individuals with Disabilities Education Act (IDEA). Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 155.5(1)

Preponderance of the evidence supported determination of state review officer (SRO) that disabled student's individualized education programs (IEPs) were reasonably calculated to enable student to receive educational benefits and that school district and board of education provided student with a free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), despite parents' desire for more reading instruction, and therefore, did not warrant reimbursing parents upon their unilateral withdrawal of student and placement in private school; district evaluated student's test scores, reports from private school from previous year, and teacher reports in creating IEPs, parents only objected to reading instruction provisions, IEPs provided two 40 minute sessions of reading instruction per week in a group of five students based on student's decrease in reading comprehension scores for the year, and district felt additional reading instruction would take too much time away from general education classes. E.W.K. ex rel. B.K. v. Board of Educ. of Chappaqua Cent. School Dist., S.D.N.Y.2012, 2012 WL 3205571. Schools 154(4); Schools 155.5(4)

Learning disabled student's individualized education program (IEP) was not substantively deficient, as would violate Individuals with Disabilities Education Act (IDEA), despite contention by student's parents that student received no educational benefits during his entire time at school district; in twelve measures student was tested for reading and comprehension, student advanced by as much as six months on three measures, declined a few months on two measures, and advanced average of three months on all measures during his time at school district. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Proposed individualized education program (IEP) for disabled student suffering from Down syndrome was reasonably calculated to provide him meaningful educational benefits in compliance with IDEA; proposed IEP was focused on training student to function independently in community based on his age and necessity to transition him into independent living, it was formulated based on current, reliable data available to IEP team and was individualized for student's reasonable, defined goals, it addressed parental concerns where appropriate, and it built upon student's existing knowledge and strengths. J.D.G. v. Colonial School Dist., D.Del.2010, 748 F.Supp.2d 362. Schools 148(3)

Individualized education plan (IEP) provided student who suffered from schizoaffective disorder and borderline intellectual functioning free appropriate public education (FAPE) for his ninth grade year under Individuals with Disabilities Education Act (IDEA) and New York regulations; given what committee on special education (CSE)

knew about student at time it was developing IEP, recommended class was reasonably calculated to enable student to receive educational benefits. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

Student's individual education plan (IEP) was not reasonably calculated to enable him to receive educational benefits, as required by the IDEA, where school board did not use psychological testing to evaluate student for specific learning disability, or to make any eligibility determinations regarding specific learning disability, even though he appeared to have a disorder in one or more of basic psychological processes involved in understanding or in using language, and student's eligibility documentation did not disclose any statements whether he had a specific learning disability, nor any basis for making that determination. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 148(3)

“Meaningful educational benefit” standard is appropriate standard against which to measure an individualized education program's (IEP) adequacy under Individuals with Disabilities Education Act (IDEA). Blake C. ex rel. Tina F. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 593 F.Supp.2d 1199. Schools 148(2.1)

Emotionally disabled elementary school student received educational benefit, as required in order for district to comply with Individuals with Disabilities Education Act (IDEA) mandate that he receive free appropriate public education (FAPE), when he did good quality academic work, while in regular classes during spring semester and later when home schooled by district teacher. Keith H. v. Janesville School Dist., W.D.Wis.2003, 305 F.Supp.2d 986. Schools 148(3)

Individualized Education Program (IEP) was reasonably calculated to confer educational benefits on dyslexic student, and thus satisfied IDEA, even though it did not incorporate parents' request for private school placement where student could receive on-on-one teaching using Orton-Gillingham approach; there was evidence that student's reading skills had improved in public school setting which plan proposed to continue. Antonaccio v. Board of Educ. of Arlington Cent. School Dist., S.D.N.Y.2003, 281 F.Supp.2d 710. Schools 148(3)

Learning and behaviorally disabled student received meaningful educational benefit under individual educational programs (IEPs) developed and offered by school district pursuant to Individuals with Disabilities Education Act (IDEA); student's parents approved all IEPs at issue, student's academic performance improved under IEPs, neither student nor his parents ever expressed dissatisfaction with school district's efforts or programs, and credible expert testimony before hearing officer had indicated that IEPs were satisfactory. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 148(3)

Individual educational program (IEP) developed under the IDEA was not reasonably calculated to confer educational benefit on dyslexic high school student where conclusions of hearing officer and state review officer were directly contradicted by testimony of each of the experts on dyslexia, student's academic performance showed no improvement and even deteriorated since he began receiving special education at public high school, district's experts in special education had no specific expertise in area of student's disability, and hearing officers could not have reasonably concluded that student's education was not significantly impeded or adversely affected by

his emotional difficulties, which were directly associated with his learning disability. Evans v. Board of Educ. of Rhinebeck Cent. School Dist., S.D.N.Y.1996, 930 F.Supp. 83. Schools 148(3)

Whether free public education is "appropriate public education" as required by IDEA depends on whether education is sufficient to confer some educational benefit on the handicapped child, and child's grades, test scores, and advancements from one grade level to the next are important evidence for court to consider when assessing whether child has benefitted from her education. Fort Zumwalt School Dist. v. Missouri State Bd. of Educ., E.D.Mo.1996, 923 F.Supp. 1216, affirmed in part , reversed in part 119 F.3d 607, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1840, 523 U.S. 1137, 140 L.Ed.2d 1090. Schools 148(2.1)

As expressed in Individuals with Disabilities Education Act (IDEA), implicit in congressional purpose of providing "free appropriate education" is requirement that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 148(2.1)

Disabled child's individualized education program (IEP) meets requirements of free appropriate public education if state has complied with procedures set forth in Individuals with Disabilities Education Act (IDEA) and if IEP developed through IDEA's procedures is reasonably calculated to enable child to receive educational benefits. Metropolitan Nashville and Davidson County School System v. Guest, M.D.Tenn.1995, 900 F.Supp. 905. Schools 148(2.1)

School educational agency is required to show that each individualized education program (IEP) for its handicapped students is reasonably calculated to confer educational benefit and to allow student to progress adequately from grade to grade, but school district is not required to show that IEP will in fact confer educational benefits. Board of Educ. of Downers Grove Grade School Dist. No. 58 v. Steven L., N.D.Ill.1995, 898 F.Supp. 1252, vacated 89 F.3d 464, 153 A.L.R. Fed. 673, motion denied 117 S.Ct. 1242, 520 U.S. 1113, 137 L.Ed.2d 325, certiorari denied 117 S.Ct. 1556, 520 U.S. 1198, 137 L.Ed.2d 704. Schools 148(2.1)

Standard for appropriateness of free public education for disabled student is access to specialized instruction and related services that are individually designed to confer some meaningful educational benefit on the child. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1)

Standard to be employed in assessing whether or not individualized education plan (IEP) provides appropriate education is whether IEP provides personalized instruction with sufficient support services to enable handicapped child to benefit educationally from that instruction. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 148(2.1)

Previous individualized education programs (IEPs) for dyslexic student did not yield educational benefit to student, so that IEP which continued program of previous years was inappropriate; student's grades continually de-

creased, his reading level failed to increase in six years, and he did not necessarily pass each subject each year, even though student was advanced from grade to grade. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(3)

A "free appropriate public education" under Education for All Handicapped Children Act is educational instruction specially designed to meet unique needs of handicapped child, supported by such services as are necessary to permit child to benefit from instruction. Kattan by Thomas v. District of Columbia, D.D.C.1988, 691 F.Supp. 1539. Schools 148(2.1)

Education of the Handicapped Act [20 U.S.C.A. § 1401 et seq.] requires only that state provide handicapped students with such instruction and support services that will enable students to benefit educationally from instruction. Council For the Hearing Impaired Long Island, Inc. v. Ambach, E.D.N.Y.1985, 610 F.Supp. 1051.

88. Progress, free appropriate public education

Individualized education program (IEP) was reasonably calculated to enable autistic student to make some progress toward goals, and thus satisfied requirement that school district provide student with free appropriate public education (FAPE), even though student was not generalizing skills learned at school and was often unevenly tempered, displaying inappropriate and sometimes violent behavior at home and in public places. Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P., C.A.10 (Colo.) 2008, 540 F.3d 1143, certiorari denied 129 S.Ct. 1356, 555 U.S. 1173, 173 L.Ed.2d 590. Schools 148(3)

Individual education plan provided student with a basic floor of opportunity where it provided that emotionally disturbed student would receive two and one-half hours per day of learning disability instruction, two and one-half hours per day of emotional disability instruction, and regular instruction in gym and music, especially in view of great improvement in his post-IEP performance and his successful completion of the requirements for advancing to second grade. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(3)

School district's decision to transfer handicapped student who was not making satisfactory progress to another school which could provide assistance from an instructor especially qualified to train students with that particular disability was reasonably calculated to furnish the student with a free, appropriate education and thus did not violate this chapter. Wilson v. Marana Unified School Dist. No. 6 of Pima County, C.A.9 (Ariz.) 1984, 735 F.2d 1178. Schools 154(2.1)

Positive academic and non-academic progress of student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, during fourth grade, her final year in public school, was indicative of propriety of her fifth grade individualized education plan (IEP), which recommended her continued placement in public school, under Individuals with Disabilities Education Improvement Act (IDEA). S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 148(3)

Student was not denied a free, appropriate, public education (FAPE), as required by IDEA, because District of Columbia school district did not provide him with a laptop and educational software to take home; student's increases in his testing scores in math and reading, accompanied by his other development, demonstrated that his academic progress was not de minimis without the laptop and software, student had also received a great deal more than a basic floor opportunity, as he was enrolled at a private school at district expense and received 28.5 hours per week of specialized instruction, he had daily access in the classroom to a computer, a calculator, highlighters, and sticky notes, and he also could use and take home a device to assist in word processing, typing, and proofreading. Smith v. District of Columbia, D.D.C.2012, 2012 WL 746396. Schools 148(3)

Disabled student's lack of developmental progress over 16-year period was insufficient to establish that school district intentionally discriminated against student by failing to provide her education benefits, and, thus, student's parents could not recover compensatory damages in their action against district alleging violations of ADA and RA; district made numerous attempts to provide student with free appropriate public education (FAPE), as required by IDEA, and it repeatedly revised her individualized education programs (IEPs). Chambers v. School Dist. of Philadelphia Bd. of Educ., E.D.Pa.2011, 827 F.Supp.2d 409. Schools 155.5(5)

Impartial Hearing Officer (IHO) and New York Sate Review Officer (SRO), in determining under Individuals with Disabilities Education Act (IDEA) that school district provided student who suffered from schizoaffective disorder and borderline intellectual functioning free appropriate public education (FAPE) in least restrictive environment for his ninth and tenth grade school years, appropriately found that student made progress in middle school; teacher report described student as child who had made gains in word reading and fluency, spelling, reading comprehension, writing, and daily living skills, report card reflected that student received grades of 100% on most spelling tests and commented that student was becoming “more and more independent,” and student did not regress in his individual achievement test scores, but rather, stayed in same percentile or dropped only slightly. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

A school district fulfills its substantive obligations under the Individuals with Disabilities Education Improvement Act (IDEIA) if it provides an individualized education program (IEP) that is likely to produce progress, not regression, and if the IEP affords the student with an opportunity greater than mere trivial advancement. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(2.1)

Hearing officer's determination that a student's individualized education plan (IEP) was not deficient, so as to deny him the free appropriate public education (FAPE) required by the Individuals with Disabilities Education Act (IDEA), was not arbitrary or unreasonable, despite evidence of the student's regression; there was no evidence or logical reason why it was more probable than not that the IEP, as opposed to other valid reasons, caused the student's lack of progress, and a multidisciplinary team, in recognition of the student's underachievement, had increased the intensity of services provided. T.H. v. District of Columbia, D.D.C.2009, 620 F.Supp.2d 86. Schools 148(2.1)

School district's offer to place student with autistic behaviors at private school specializing in the education of students with behavioral needs, instead of residential program, was reasonably calculated to provide educational

benefits to student, and court would not defer to hearing officer's finding that, because student already had intensive behavioral support in his home for as much as 30 hours per week, day program would not provide the "repetitive learning across all environments" that student needed in order to "generalize skills across settings" and that transferring student from learning center to private school was essentially a "lateral move"; hearing officer's analysis was premised on erroneous legal conclusion that IDEA required district to address behavior outside the home regardless of educational progress, and student's educational progress at learning center, while not perfect, was substantial notwithstanding his behavioral difficulties. San Rafael Elementary School Dist. v. California Special Educ. Hearing Office, N.D.Cal.2007, 482 F.Supp.2d 1152. Schools 154(3); Schools 154(4)

School district provided the special education student with an appropriate education as required under Individuals with Disabilities Education Act (IDEA); student, who consistently made passing grades and scored on grade level in standardized tests, made academic progress in both his fourth and fifth grade years, and made progress towards his behavioral goals. W.C. ex rel. Sue C. v. Cobb County School Dist., N.D.Ga.2005, 407 F.Supp.2d 1351. Schools 148(3)

Parent of student with learning disability who transferred to new school offered insufficient evidence to demonstrate that school failed to provide student with free appropriate public education (FAPE) during school year, due to allegedly deficient individualized education program (IEP), under Individuals with Disabilities Education Act (IDEA); student improved his performance on state functional reading and math tests, significantly increased grades, won school-wide writing contest, and was selected as most improved student in class. Waller v. Board of Educ. of Prince George's County, D.Md.2002, 234 F.Supp.2d 531. Schools 155.5(4)

School district provided hearing-impaired child with free appropriate education under IDEA; violation was not established by fact that child did not make desired progress toward some of the objectives set out in the individualize education program (IEP) or by use of teaching method different from that desired by parent, or by continuing mainstreaming in nonacademic areas contrary to wishes of parent. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 223, D.Kan.1997, 963 F.Supp. 1000, affirmed 144 F.3d 692. Schools 148(2.1)

School district's placement of learning disabled student in mixed category program involving both learning disabled and educable mentally retarded students in same classroom was appropriate under Education of the Handicapped Act; student progressed under plan and his need for cultivation of peer and social relationships was served. Garrick B. by Gary B. v. Curwensville Area School Dist., M.D.Pa.1987, 669 F.Supp. 705. Schools 148(3)

89. Likelihood of educational progress, free appropriate public education

Magistrate judge properly ordered a 20-year-old mentally retarded child transferred from educational school for handicapped children to a community residence; there was evidence that the child could be appropriately served in community, that the child could obtain educational services in school district from which she would be able to obtain educational benefit, and that if the child were to remain at the school for handicapped children for the remaining two years of her eligibility for educational benefits, her progress over course of those two years would

not be significant. Sherri A.D. v. Kirby, C.A.5 (Tex.) 1992, 975 F.2d 193. Schools 155.5(4)

State, in qualifying for assistance from federal government under Education of the Handicapped Act, was required to provide handicapped child with personalized plan of instruction under which educational progress was likely, rather than merely with plan avoiding regression or providing trivial educational advancement; standard was not whether plan would be "of benefit" to child. Board of Educ. of East Windsor Regional School Dist. v. Diamond in Behalf of Diamond, C.A.3 (N.J.) 1986, 808 F.2d 987. Schools 148(2.1)

Individualized Education Program (IEP), which proposed public high school placement of private school student suffering from dyslexia and attention deficit disorder, was appropriate; IEP included special accommodations for student's needs and, given improvements made during private placement, student was likely to progress. Banks ex rel. Banks v. Danbury Bd. of Educ., D.Conn.2002, 238 F.Supp.2d 428. Schools 148(3)

School district carried its burden of showing that student suffering from verbal apraxia would receive meaningful educational benefit from the individualized education program (IEP) developed under the IDEA, despite failing to include a particular methodology of reading instruction preferred by mother and her expert. Moubry v. Independent School Dist. 696, Ely, Minn., D.Minn.1998, 9 F.Supp.2d 1086. Schools 148(3)

90. Achievement of full potential, free appropriate public education

Individuals with Disabilities Education Act (IDEA) does not require states to provide services which maximize each child's potential or to achieve strict equality of opportunity or services; education secured by IDEA is not one that will maximize potential or best possible education but instead is simply one that is appropriate. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(2.1)

91. Best possible education, free appropriate public education

The free and appropriate public education (FAPE) described in an individual education plan (IEP) under the Individuals with Disabilities Education Act (IDEA) need not be the best possible one, but rather, need only be an education that is specifically designed to meet the disabled child's unique needs, supported by services that will permit him to benefit from the instruction. Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 148(2.1)

Although school board should not make placement decisions under the EHA on basis of financial considerations alone, an "appropriate public education" does not mean the best possible education that a school could provide if given access to unlimited funds; Congress intended states to balance competing interests of economic necessity on the one hand, and the special needs of the handicapped child, on the other when making education placement decisions. Barnett by Barnett v. Fairfax County School Bd., C.A.4 (Va.) 1991, 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 148(2.1)

Then-existing New Jersey administrative regulation construing term "suitable," in statute governing education of handicapped children, as authorizing a program that best helps a pupil to achieve success in learning was not

overbroad and regulation requiring that a local district provide each handicapped person a special education program and services according to how the pupil could best achieve educational success was not inconsistent with statute. Geis v. Board of Educ. of Parsippany-Troy Hills, Morris County, C.A.3 (N.J.) 1985, 774 F.2d 575. Schools 148(2.1)

This chapter does not require states to make available the best possible option. Springdale School Dist. No. 50 of Washington County v. Grace, C.A.8 (Ark.) 1982, 693 F.2d 41, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298. Schools 148(2.1)

"Appropriate education" required under the IDEA does not mean the best possible or optimal one nor require that school district maximize the potential of handicapped students; rather, it means providing personalized instruction with sufficient support services to permit child to benefit educationally from that instruction at public expense, under public supervision, and approximating state's educational standards in its regular education. Cypress-Fairbanks Independent School Dist. v. Michael F. by Barry F., S.D.Tex.1995, 931 F.Supp. 474, affirmed as modified 118 F.3d 245, 152 A.L.R. Fed. 771, certiorari denied 118 S.Ct. 690, 522 U.S. 1047, 139 L.Ed.2d 636. Schools 148(2.1)

Individualized education program (IEP) developed for learning disabled student, involving mainstreaming with special education services in resource room one period a day, was reasonably calculated to provide educational benefits and complied with IDEA, so that parent was not entitled to reimbursement for tuition and expenses at residential school, in light of evidence that disability was mild and subject to accommodation without major disruption of staff and programs, that student was progressing at public school, that district made major efforts in employing experts who could advise them about appropriate IEP and employed tutors during summer months, and that teachers took conscientious and active role in implementation of program. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437. Schools 148(3); Schools 154(3)

Federal law does not impose obligation to provide handicapped student with best education, public or nonpublic, that money can buy. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 148(2.1)

Education for All Handicapped Children Act did not give parents per se right to compel placement of their child in special school that offered the best educational opportunity. Eva N. v. Brock, E.D.Ky.1990, 741 F.Supp. 626, affirmed 943 F.2d 51. Schools 154(2.1)

Under this chapter, which requires school officials to provide handicapped child with a free appropriate public education, an "appropriate education" is not synonymous with best possible education, nor is it an education which enables child to achieve his full potential, as even the best public schools lack resources to enable every child to achieve his full potential. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 164

92. Maximization of potential, free appropriate public education

Statement of present levels of performance in hearing impaired student's individualized educational program

(IEP) did not violate procedural requirements of IDEA and Kansas law, despite fact that it did not clearly convey student's present levels of educational performance in way that related those levels to her disability or explain import of student's raw test scores, where IEP referred to specialists' reports which presumably contained more detail about scores and student's parents and teachers were fully aware of student's level and performance and had discussed them in detail in formulating IEP. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Provision of Tennessee's special education statute, requiring that schools provide "special education services sufficient to meet the needs and maximize the capabilities of handicapped children" did not increase the standard against which school district's performance of obligations to provide education for handicapped would be judged, over the "floor" level of providing education plan "reasonably calculated to enable a child to receive educational benefits," mandated by federal Individuals with Disabilities Education Act. Doe By and Through Doe v. Board of Educ. of Tullahoma City Schools, C.A.6 (Tenn.) 1993, 9 F.3d 455, certiorari denied 114 S.Ct. 2104, 511 U.S. 1108, 128 L.Ed.2d 665. Schools 148(2.1)

"Appropriate education" required by Education of the Handicapped Act is not one which is guaranteed to maximize child's potential. Johnson By and Through Johnson v. Independent School Dist. No. 4 of Bixby, Tulsa County, Okl., C.A.10 (Okla.) 1990, 921 F.2d 1022, certiorari denied 111 S.Ct. 1685, 500 U.S. 905, 114 L.Ed.2d 79. Schools 148(2.1)

The Education for All Handicapped Children Act requires states to provide handicapped children a basic floor of educational opportunity but does not require an educational program to maximize the potential of handicapped children. Leonard by Leonard v. McKenzie, C.A.D.C.1989, 869 F.2d 1558, 276 U.S.App.D.C. 239. Schools 148(2.1)

Requirement under this chapter of a "free appropriate public education" did not require state to maximize potential of handicapped child commensurate with opportunity provided nonhandicapped child. Hall by Hall v. Vance County Bd. of Educ., C.A.4 (N.C.) 1985, 774 F.2d 629.

This chapter did not require that the state of Ohio maximize potential of handicapped child commensurate with opportunity provided to other children. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1983, 720 F.2d 463, appeal dismissed, certiorari denied 104 S.Ct. 2379, 467 U.S. 1201, 81 L.Ed.2d 339, rehearing denied 104 S.Ct. 3549, 467 U.S. 1257, 82 L.Ed.2d 852. Schools 148(2.1)

Individuals with Disabilities Education Improvement Act (IDEIA) does not require the school district to maximize the potential of handicapped children. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(2.1)

IDEA's definition of free appropriate public education (FAPE) does not require school district to maximize potential of handicapped children; rather, FAPE requires that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Mr. C. v. Maine School Administrative Dist. No. 6,

D.Me.2008, 538 F.Supp.2d 298. Schools 148(2.1)

IDEA's guarantee of a free appropriate public education (FAPE) is that of a basic floor of opportunity that consists of access to specialized instruction and related services which are individually designed to provide education benefit to the handicapped child; there is no requirement for a state to provide services to maximize each child's potential, nor must the FAPE be designed according to the parent's desires. Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(2.1)

Education for All Handicapped Children Act does not require a state to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children; Act sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education. Garcia ex rel. Garcia v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 436 F.Supp.2d 1181. Schools 148(2.1)

Requirement of Individuals with Disabilities Education Act (IDEA) that participating states and their public education agencies provide all students with disabilities with free appropriate public education (FAPE) is satisfied when state provides personalized instruction with sufficient support services to allow disabled child to benefit educationally from that instruction; requirement of FAPE does not require state to maximize each child's potential commensurate with opportunity provided to nondisabled children. Foley v. Special School Dist. of St. Louis County, E.D.Mo.1996, 927 F.Supp. 1214, rehearing denied 968 F.Supp. 481, affirmed 153 F.3d 863. Schools 148(2.1)

Free, appropriate education under IDEA does not require states to maximize potential of handicapped children commensurate with opportunity provided to other children. Hall v. Shawnee Mission School Dist. (USD No. 512), D.Kan.1994, 856 F.Supp. 1521. Schools 148(2.1)

While educational benefit provided to handicapped child under Individuals with Disabilities Education Act (IDEA) must be meaningful, IDEA does not require state to attempt to maximize each child's potential. Bonnie Ann F. by John R.F. v. Calallen Independent School Dist., S.D.Tex.1993, 835 F.Supp. 340, affirmed 40 F.3d 386, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 723. Schools 148(2.1)

In reviewing agency determinations under Individuals With Disabilities Education Act (IDEA), courts must be mindful of fact that “appropriate” education for handicapped child does not mean “potential-maximizing.” P.J. By and Through W.J. v. State of Conn. Bd. of Educ., D.Conn.1992, 788 F.Supp. 673. Schools 148(2.1)

Advancement of handicapped student is not necessarily “potential maximizing” that is not required by Education of the Handicapped Act. Angevine v. Jenkins, D.D.C.1990, 752 F.Supp. 24, reversed on other grounds 959 F.2d 292, 294 U.S.App.D.C. 346. Schools 148(2.1)

93. Maximum program attainable, free appropriate public education

Individuals with Disabilities Education Act (IDEA) does not require states to develop individualized education programs (IEPs) that maximize potential of handicapped children, but, instead, guarantees appropriate education, not one that provides everything that might be thought desirable by loving parents. Walczak v. Florida Union Free School Dist., C.A.2 (N.Y.) 1998, 142 F.3d 119. Schools 148(2.1)

Handicapped child's allegation that programming longer than four-hour school day envisioned in his individualized education plan (IEP) might increase benefit he received failed to meet burden of demonstrating that child's IEP would not provide child any meaningful benefit; Education of Handicapped Act does not require school to supply handicapped child with maximum benefit possible. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 155.5(4)

School district was not required to place handicapped child in a private program serving both handicapped and nonhandicapped children and, though private program may have offered the best educational opportunities, could properly decide to place a child in a public educational program serving only handicapped children without violating the requirement in the Education of the Handicapped Act that handicapped children be educated "to the maximum extent appropriate" as long as requirements for placement in public program were met. Mark A. v. Grant Wood Area Educ. Agency, C.A.8 (Iowa) 1986, 795 F.2d 52, certiorari denied 107 S.Ct. 1579, 480 U.S. 936, 94 L.Ed.2d 769. Schools 154(4)

94. Most appropriate education, free appropriate public education

Evidence was sufficient to establish that private school provided appropriate educational setting for high school student who suffered from attention deficit disorder, as required by IDEA, entitling parents to cost of placing student in private school after public school failed to provide student with appropriate placement; at private school, student had small class with high teacher-student ratio, immediate consequences when he misbehaved or did not do his work, and performed better academically after transferring to private school. Capistrano Unified School Dist. v. Wartenberg By and Through Wartenberg, C.A.9 (Cal.) 1995, 59 F.3d 884. Schools 154(4)

School district mainstreamed handicapped child to maximum extent appropriate, as required by IDEA; child had cerebral palsy, hydrocephalus, seizure disorder, perceptual vision deficits and communication disorder, and I.Q. of less than 32, witnesses who knew him well and worked with him closely testified that his individualized education program (IEP) goals and objectives could not be met in general education class, though opposing expert believed that he would benefit from such placement, evidence was overwhelming that the child would be engaged in entirely different academic activities than would his nondisabled peers, and member of child's multidisciplinary team testified that child did not model or imitate other students so as to receive nonacademic benefits from mainstreaming, and witness testified that one-to-one support required for the child would isolate him and make him a visitor in the classroom. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1); Schools 148(3)

95. Perfect education, free appropriate public education

Under this chapter and Va. Code 1950, § 22.1-214(A), state was not required to pay all of the expenses incurred by parents in educating child, whether child was handicapped or nonhandicapped, nor was state required to provide perfect education to any child. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 148(2.1)

96. Self-sufficiency of child, free appropriate public education

Under this chapter, calling for free appropriate public education, unique needs which must be met by educational program include those which, if satisfied, allow the child, within the limits of his or her handicap, to become self-sufficient. Armstrong v. Kline, D.C.Pa.1979, 476 F.Supp. 583, remanded on other grounds 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 164

97. Passing and promotion, free appropriate public education

Given statutory bias in Individuals with Disabilities Education Act (IDEA) for mainstreaming handicapped children, individualized education program (IEP) which places pupil in public school program will ordinarily pass academic muster so long as it is reasonably calculated to enable child to achieve passing marks and advance from grade to grade. Lenn v. Portland School Committee, C.A.1 (Me.) 1993, 998 F.2d 1083. Schools 148(2.1)

While passing marks and annual grade promotion are important to consideration of whether school is meeting requirement of Education of the Handicapped Act (EHA), child's ability or inability to achieve marks and progress does not automatically resolve inquiry as to whether child is receiving free appropriate public education. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(2.1)

98. Grade level, free appropriate public education

Although residential placement might increase benefit to student with behavior disorder and emotional disturbance, he was receiving a meaningful educational benefit where he was in self-contained classroom for behavior disordered-emotionally disturbed students with a teacher's aide, computers, and teacher certified in special education and, as a sixth grader, he was performing math, reading, and spelling on the fourth grade level and English on the 3rd grade level. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 154(3)

Evidence supported school's determination that student with Down's Syndrome should be placed in school's class for moderately retarded, which emphasized survival skills, as opposed to its program for mildly retarded, which emphasized some academics; there was evidence that child, while being retained in mildly retarded class during pendency of court proceedings, was functioning only at first grade level and had to receive individualized instruction from teacher, while remainder of class was operating at fifth or sixth grade level. Chris C. by Barbara C. v. Gwinnett County School Dist., N.D.Ga.1991, 780 F.Supp. 804, affirmed 968 F.2d 25. Schools 155.5(4)

99. Class size, free appropriate public education

Class size provisions for special education students contained in collective bargaining agreement (CBA) between board of education and teachers' union, which placed restrictions on student-teacher ratios, were not illegal, invalid, or unenforceable, under federal or Connecticut state laws concerning students with disabilities, since provisions could be implemented without denying special education services required by students' individualized education plans (IEP); provisions did not require that disabled students be removed from regular classroom for any period of time if doing so would be inconsistent with their IEPs, nor did it mandate that any particular number of classes be created for special education students, and board could comply with class size provisions if it created additional sections for special education inclusion classes and hired additional teachers, so issue was one of allocation of resources rather than an educational or legal issue. New Britain Bd. of Educ. v. New Britain Federation of Teachers, Local 871, D.Conn.2010, 754 F.Supp.2d 407. Labor And Employment 1255; Schools 148(2.1)

School district's special education school was appropriate educational placement for student with Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Syndrome, where school was equipped to implement his IEP as written and school's student-teacher ratio of 12 or 13-to-one satisfied IEP's requirement that student be educated in environment with low student-teacher ratio; fact that student could not continue at school for more than one year due to its grade limitations did not make placement presumptively inappropriate. O.O. ex rel. Pabo v. District of Columbia, D.D.C.2008, 573 F.Supp.2d 41. Schools 148(3)

School district failed to provide emotionally disturbed student with free appropriate public education (FAPE), as required by Individuals with Disabilities Education Act (IDEA), when district proposed individualized education plan (IEP) that did not provide small, class setting declared by experts to be necessary for child to learn. Gellert v. District of Columbia Public Schools, D.D.C.2006, 435 F.Supp.2d 18. Schools 148(3)

100. Gender composition of class, free appropriate public education

Neither Va. Code 1950, § 22.1-214(A) nor this chapter mandated sexual composition of a class. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 148(2.1)

100a. Harassment and bullying, free appropriate public education

A free appropriate public education (FAPE), under IDEA, for high school student with autism transitioning from private to public school placement did not require school district to prove that student would not face future bullying at public school; although student had experienced bullying at a school he had previously attended, and although student's mother had heard students at public school discuss bullying, fact that new placement could appropriately deal with any bullying that might occur was sufficient to meet IDEA. J.E. v. Boyertown Area School Dist., E.D.Pa.2011, 834 F.Supp.2d 240, affirmed 452 Fed.Appx. 172, 2011 WL 5838479. Schools 148(3)

Parents of disabled child who sued city department of education, alleging that school's failure to prevent bullying deprived child of free appropriate public education (FAPE), established that school personnel were deliberately indifferent to or failed to take reasonable steps to prevent bullying, as required to maintain claim under Individuals with Disabilities Education Act (IDEA); child was isolated and victim of harassment from her peers, parents sent letters and tried to speak to principal about issue, school failed to take reasonable steps to address

harassment, and child suffered emotional and social scars as result of bullying. T.K. v. New York City Dept. of Educ., E.D.N.Y.2011, 779 F.Supp.2d 289. Schools 148(2.1)

101. Diploma, free appropriate public education

Denial of diplomas to handicapped children who have been receiving special education and related services required under this chapter, but are unable to achieve educational level necessary to pass minimal competency test, is not denial of "free appropriate public education." Brookhart v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1983, 697 F.2d 179. Schools 178

Graduation goal in learning disabled student's individualized education program (IEP), which projected that student would graduate with regular diploma within three years from date of IEP, did not create substantively deficient IEP, as would violate Individuals with Disabilities Education Act (IDEA), even though, at time IEP was written, student has received little credit for his entire freshmen year and remained at elementary level for reading and math; tutoring program in which student was enrolled had several characteristics, including shorter grading period, which could allow student to meet goal of on-time graduation with regular diploma. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Individuals with Disabilities Education Act's (IDEA) standard of free appropriate public education (FAPE) did not require local educational agency to ensure that sufficient education and supports be provided for student with borderline cognitive skills "to permit her to graduate with a diploma no later than the semester ending following her 21st birthday." District of Columbia v. Nelson, D.D.C.2011, 811 F.Supp.2d 508. Schools 148(3)

102. Equality of services, free appropriate public education

State-funded preschool program was not shown to be a free appropriate public education (FAPE) as required under IDEA on theory it was similar to Head Start, where there was no evidence that the school district ever evaluated this program with reference to child's individualized education program (IEP), and the district introduced no evidence of substantial equivalence of the programs. Board of Educ. of LaGrange School Dist. No. 105 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1999, 184 F.3d 912. Schools 154(2.1)

Disabled student voluntarily enrolled in private parochial school by his parents was entitled, under preamendment version of Individuals with Disabilities Education Act (IDEA), to receive special education services comparable in quality, scope, and opportunity for participation to those services provided to public school students, in absence of any individualized determination by school district of how best to meet student's needs; due to nature of his disability, student required one-on-one assistance throughout school day, which could not be provided off-site, and cost of providing services was identical on- and off-site. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

As long as individualized education program (IEP) proposed by school district meets minimum federal standards of appropriateness, Individuals with Disabilities Education Act (IDEA) does not require school districts to reim-

burse parents who choose a superior placement for the child. Hampton School Dist. v. Dobrowolski, C.A.1 (N.H.) 1992, 976 F.2d 48. Schools 148(2.1)

School district's refusal to provide sign-language instructor for hearing-impaired student in private sectarian school setting was not abuse of district's discretion under 1997 amendments to Individuals with Disabilities Education Act (IDEA); school's provision of sign-language instructor while student attended classes in public school satisfied IDEA's genuine opportunity for equitable participation standard as clarified by amendment, school district offered student free appropriate public education (FAPE), and parents voluntarily placed student in private school. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Schools 8; Schools 148(2.1)

Individual with Disabilities Education Act (IDEA) requires local school districts to make equitable distribution of IDEA resources made available to it among eligible students regardless of whether they attend district school or private school; although local school district is given some discretion in allocating resources, in exercising its discretion, local school district may not do so by totally excluding students who do not attend district schools. Natchez-Adams School Dist. v. Searing by Searing, S.D.Miss.1996, 918 F.Supp. 1028. Schools 148(2.1)

Under this chapter and section 794 of Title 29, an "appropriate education," to which handicapped children are entitled, is one which provides each handicapped child educational opportunities commensurate with that provided other children in the public schools. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 148(2.1)

Equality of services and programs for handicapped and nonhandicapped children was not test for determining whether appropriate education was being provided by state under this chapter which called for free appropriate public education for handicapped children. Armstrong v. Kline, D.C.Pa.1979, 476 F.Supp. 583, remanded on other grounds 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 164

103. Least restrictive environment, free appropriate public education

Provision of disabled student's individualized education plan (IEP) resolving that he would be in regular classroom 74% of time complied with Individuals with Disabilities Education Act's (IDEA) requirement that he be placed in least restrictive environment, despite parents' contention that he should have been placed in regular classroom 80% of time, where evidence produced during administrative proceeding demonstrated that education in regular classroom, with use of supplemental aids and services, could not be achieved satisfactorily. P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Ed., C.A.2 (Conn.) 2008, 546 F.3d 111. Schools 154(2.1)

School district did not violate Individuals with Disabilities Education Act (IDEA) provision requiring it to educate child in least restrictive environment, when it discontinued mainstreaming of student with Rett syndrome, given that while student was in mainstream school she spent most of her time in private room with instruction from special education teacher, rather than in mainstream classroom, due to her disruptive behavior. Board of Educ. of Tp. High School Dist. No. 211 v. Ross, C.A.7 (Ill.) 2007, 486 F.3d 267. Schools 154(2.1)

The IDEA requires that students with disabilities be educated in the least restrictive environment, reflecting a strong preference that disabled children attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. T.F. v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 2006, 449 F.3d 816. Schools 154(2.1)

Public special education preschool placement was not the "least restrictive environment" for student with autism spectrum disorder, and thus proposed Individualized Education Program (IEP) placing student in special education preschool failed to provide student with a free appropriate public education (FAPE) as required under the IDEA; student was succeeding in private mainstream preschool with the assistance of an aide and an intensive applied behavioral analysis program, child was the most academically advanced child in her mainstream classroom, students at the special education pre-school functioned at a considerably lower level than student, and mainstream classroom provided student with appropriate role models and had a more balanced gender ratio. L.B. ex rel. K.B. v. Nebo School Dist., C.A.10 (Utah) 2004, 379 F.3d 966. Schools 154(2.1)

Hybrid preschool program, involving a half-day preschool class composed of half disabled children and half non-disabled children, with afternoon placement in the school's resource room, would ordinarily provide the least restrictive environment (LRE) required by the IDEA only under two circumstances: first, where education in a regular classroom, with the use of supplementary aids and services, could not be achieved satisfactorily or, second, where a regular classroom is not available within a reasonable commuting distance of the child. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 154(2.1)

Full-time residential facility was least restrictive educationally appropriate setting under Individuals with Disabilities Education Act (IDEA) for severely mentally retarded student; residential program was required for student to make meaningful educational progress to reduce his severe self-stimulatory behavior or to improve his toileting, eating, and communication skills, which would succeed only in intense atmosphere of round-the-clock residential setting in which consistent educational program could be enforced throughout all of his waking hours. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 154(3)

Where district court found that school district had failed to present an independent educational program (IEP) which met the minimum requirements of IDEA and had failed to suggest any alternative to its program which did meet those minimums, district court had no choice but to order that the mentally retarded child be educated at out-of-state residential school as urged by the parents, as the only viable option, and since that was the only option, the court was not required to locate another school that would satisfy the least restrictive alternative requirement based on the entire pool of schools available, but rather was required simply to determine whether the one available choice would provide an appropriate education. Board of Educ. of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1994, 41 F.3d 1162. Schools 154(4)

Local extended-day program offered to severely retarded student by school district could confer some educational benefit on student in least restrictive educational environment and, thus, program satisfied requirements of Education of the Handicapped Act, even if student could have made more progress in residential placement. Kerkam by Kerkam v. Superintendent, D.C. Public Schools, C.A.D.C.1991, 931 F.2d 84, 289 U.S.App.D.C. 239

. Schools 148(3); Schools 154(3)

Provision of hearing officer's order, requiring individualized education plan (IEP) team to change location of student with borderline cognitive skills to comparable full-time special education day school if he was not making sufficient progress at private institution, unduly restricted local educational agency from complying with Individuals with Disabilities Education Act's (IDEA) requirement of "least restrictive environment" by prohibiting consideration of regular educational environment or part-time placement in special education school. District of Columbia v. Nelson, D.D.C.2011, 811 F.Supp.2d 508. Schools 154(4)

There was sufficient evidence to support impartial hearing officer's (IHO) determination that applied behavioral services (ABS) was least restrictive environment for disabled student, and thus was appropriate placement under IDEA, even though ABS was more restrictive than public school, where expert's report established need for structured program offering applied behavior analysis, there was no evidence that school district could offer that type of learning environment, and student's individualized education program (IEP) failed to provide services that she required. B.H. v. West Clermont Bd. of Educ., S.D.Ohio 2011, 788 F.Supp.2d 682. Schools 155.5(4)

School district, in rejecting request of parents of elementary school student with multiple disabilities for integrated approach to combining special and regular education, and instead recommending in student's individualized education plan (IEP) self-contained special education for student, did not offer student educational placement in least restrictive environment, in violation of Individuals with Disabilities Education Act (IDEA); district did not take steps toward mainstreaming student, there was lack of evidence as to whether district considered supplementary supports that could have allowed student to spend some of his school day in regular classroom, and district did not provide student any social inclusion with children without disabilities in IEP. J.G. ex rel. N.G. v. Kiryas Joel Union Free School Dist., S.D.N.Y.2011, 777 F.Supp.2d 606. Schools 154(2.1)

"Chrysalis Program" in which disabled student was placed as result of disciplinary incident was not the least restrictive environment in which student could receive free appropriate public education (FAPE), and thus substantive violation resulted from change in placement. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 154(2.1)

Analysis of whether individualized education program (IEP) provided autistic student with the least restrictive environment (LRE) was irrelevant; both parties agreed that student would attend full instructional program of regular education kindergarten, and by definition student had been mainstreamed to maximum extent possible because there was no additional regular class time into which he could be incorporated. Lebron v. North Penn School Dist., E.D.Pa.2011, 769 F.Supp.2d 788. Schools 148(3)

Second Circuit has adopted two-pronged approach to determine whether school district has offered to educate child in "least restrictive environment"; court should consider, first, whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for given child, and, if not, then whether school has mainstreamed child to maximum extent appropriate. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(2.1)

The goal under IDEA is to find the least restrictive educational environment that will accommodate the child's legitimate needs. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(2.1)

School district's proposed placement of autistic student in its extended school year (ESY) program did not violate IDEA's requirement that student be placed in least restrictive environment (LRE), and thus district was not required to pay for student's attendance at private art camp, even though district's ESY program did not have any non-exceptional peers, where district did not have any summer programs for non-disabled students, district provided evidence as to types of classes and instructional therapies student would receive, and there was no testimony as to what camp proposed to offer or how camp activities were expected to assist in implementation of goals set forth in student's individualized education program (IEP). Travis G. v. New Hope-Solebury School Dist., E.D.Pa.2008, 544 F.Supp.2d 435. Schools 154(4)

Therapeutic day school serving severely emotionally disturbed students, which school was the placement that Florida county school board developed in individualized education plan (IEP) for eight-year-old student who was severely emotionally disturbed, provided free and appropriate education (FAPE) to student, and thus, student's adoptive parents were not entitled to reimbursement from school board, under Individuals with Disabilities Education Act (IDEA), of costs incurred when parents decided to enroll child at residential behavioral health facility with classrooms; while IEP which had been developed in New York, shortly before student moved to Florida, had recommended placement in residential program, such placement was not least restrictive environment in Florida, number and variety of services at Florida therapeutic day school were greater than those offered in New York, educational professionals reported that student was manageable at school and able to learn, and it was student's allegedly dangerous behavior at home that parents sought to address through residential placement. L.G. v. School Bd. of Palm Beach County, Fla., S.D.Fla.2007, 512 F.Supp.2d 1240, affirmed 255 Fed.Appx. 360, 2007 WL 3002331. Schools 154(4)

School board's proposed placement of a hearing impaired child in its Head Start collaborative program would have provided a free appropriate public education (FAPE) in the least restrictive environment notwithstanding the fact that the Head Start program was not made up of 100% typically developing children. A.U., ex rel. N.U. v. Roane County Bd. of Educ., E.D.Tenn.2007, 501 F.Supp.2d 1134. Schools 154(2.1)

Hearing officer for Massachusetts Department of Education (DOE), Bureau of Special Education Appeals (BSEA) properly determined that individualized education program (IEP) developed by district for student with language-based learning disability for particular school year was reasonably calculated to provide a free appropriate public education (FAPE) in the least restrictive setting; even if his determination were not afforded due deference, court would have found sensitivity and care in his memorandum compelling, and affording it due deference, there was not a shred of error or caprice therein. David T. v. City of Chicopee, D.Mass.2006, 431 F.Supp.2d 180. Schools 148(3)

While students with disabilities should be educated in the least restrictive environment, parents are not held to the same strict standard of placement as school districts are under IDEA. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(2.1)

Individualized education program (IEP) developed for disabled student called for student's placement in least restrictive environment necessary to achieve free appropriate public education (FAPE) to which student was entitled under Individuals with Disabilities Education Act (IDEA); student's respiratory disability precluded him from being educated in non-air-conditioned setting, IEP provided for itinerant placement with substantial mainstreaming and homebound instruction as needed, and student received substantial homebound instruction while school air conditioning system was malfunctioning. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(2.1)

School district did not provide hearing impaired preschool child with least restrictive environment (LRE), as required by Individuals with Disabilities in Education Act (IDEA), when district offered placement in two school settings involving handicapped children, when special auditory verbal therapy (AVT) child had been receiving, as adjunct to cochlear implant, required that he be exposed to normally developing children to optimize his surgically enhanced listening capability and achieve oral communication without signing. Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S. ex rel. Alec S., C.D.Ill.2002, 184 F.Supp.2d 790. Schools 154(2.1)

Individualized education plan (IEP) which placed educable mentally impaired child in distant school with categorical classroom facility rather than in local school violated IDEA's least restrictive environment preference, notwithstanding Michigan law requirement that child's maximum potential be developed; although there was evidence that services necessary to enable child to achieve her IEP goals could more effectively and successfully be provided in categorical classroom, it was undisputed that services could feasibly be provided at local school. McLaughlin v. Board of Educ. of Holt Public Schools, W.D.Mich.2001, 133 F.Supp.2d 994, reversed 320 F.3d 663, rehearing denied. Schools 148(3)

Placement of emotionally handicapped and learning disabled student, who slashed another student with box cutter, in alternative school did not violate requirement that disabled student be educated in least restrictive environment, for purpose of determining whether student received free appropriate public education (FAPE) as guaranteed by IDEA, where both student's former high school and alternative school offered comparable educational benefits to student but student's inability to control his behavior made it impossible for student to obtain those benefits at high school without posing threat of injury to others. Jane Parent ex rel. John Student v. Osceola County School Bd., M.D.Fla.1999, 59 F.Supp.2d 1243, affirmed 220 F.3d 591. Schools 154(2.1)

For purpose of determining extent of liability of state board of education for failure of city school board to comply with statutory mandates concerning education of disabled students, city school board's failure to comply was systemic and pervasive, where disabled students were placed by category of disability rather than with intention of educating them in least restrictive environment (LRE) for at least 17 years following enactment of LRE mandate. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 148(2.1)

Private day program in alternative middle school was “least restrictive environment” which provided educational benefit to neurologically impaired student, within meaning of Individuals with Disabilities Education Act (IDEA); student's behavior and education improved following her enrollment in private day program, recommendation of one doctor that student be placed in residential facility was based upon representation of student's

mother that student had already been labeled autistic, and another of student's doctors stated that while residential program would be most intense for student, other nonresidential settings might be appropriate. Schreiber v. Ridgewood Bd. of Educ., D.N.J.1997, 952 F.Supp. 205. Schools 154(2.1)

Dyslexic student's placement in private school for disabled students was not proper under Individuals with Disabilities Education Act (IDEA); Individualized Education Program (IEP) proposed by school district offered student free appropriate public education, student required no remedial help in a number of subjects and was happy and participative student in public school, student's attendance at Girl Scouts and YMCA activities was not comparable to mainstreaming offered in IEP, student was able to progress in science and social studies in public school through means other than reading and writing, school district's instructors utilized multisensory approaches to promote student's cognitive capabilities, student's parents did not fully express implications of student's emotional state until conduct of due process hearing on proposed IEP, and proposed IEP placed student in least restrictive environment. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 154(4)

Student with Attention Deficit Hyperactivity Disorder (ADHD) could receive appropriate education at public high school, and therefore private school for disabled students was not the least restrictive environment for the student under the Individuals with Disabilities Education Act (IDEA), where student was on nonsevere side of spectrum between mildly and moderately handicapped. Monticello School Dist. No. 25 v. Illinois State Bd. of Educ., C.D.Ill.1995, 910 F.Supp. 446, affirmed 102 F.3d 895. Schools 154(4)

Failure of state education officials to require expressly that local school districts consider least restrictive environment requirement of IDEA in meeting with parents on child's Individualized Education Program (IEP), before referring or re-referring child to state schools, violated IDEA's requirement that handicapped children be removed from regular education only if supplementary aids and services would not allow satisfactory education in regular classes. Hunt on Behalf of Hunt v. Bartman, W.D.Mo.1994, 873 F.Supp. 229. Schools 154(2.1)

School district violated Individuals With Disabilities Education Act by failing to consider less restrictive placements before accommodating kindergarten child suffering from Down's Syndrome partially in developmental class for children not yet ready for kindergarten, and partially in special class for disabled children. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, affirmed and remanded 995 F.2d 1204. Schools 148(3)

Public residential facility, rather than private facility offering substantially similar program, was least restrictive environment under Education for All Handicapped Children Act for education of adolescent who suffered from behavioral disorder. Mark Z. v. Mountain Brook Bd. of Educ., N.D.Ala.1992, 792 F.Supp. 1228. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) imposes affirmative obligations on school districts to consider placing disabled children in regular classroom settings, with use of supplementary aids and services, before exploring other alternative placements; IDEA incorporates “least restrictive environment” requirement. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools

148(2.1)

Centralizing cued speech program at high school that was approximately five miles farther from hearing impaired student's home than his base school provided free, appropriate public education in least restrictive environment and did not discriminate on basis of handicap, even if student wanted to attend his base school; student was involved in classes made up of nonhandicapped students; and nothing indicated that student would receive better education at his base school. Barnett v. Fairfax County School Bd., E.D.Va.1989, 721 F.Supp. 757, affirmed 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 154(2.1)

Specialized school for deaf was not presumptively excluded from consideration as a "least restrictive environment" within meaning of the Education for All Handicapped Children Act, though school was not, strictly speaking, a mainstreaming program. Barwacz v. Michigan Dept. of Educ., W.D.Mich.1988, 681 F.Supp. 427. Schools 148(2.1)

Handicapped children are entitled to learn in least restrictive environment possible; generally choice of least restrictive environment will involve attempt to mainstream handicapped child, but determination involves careful consideration of child's own needs and in some instances, special facility will constitute least restrictive environment for particular handicapped child. Taylor by Holbrook v. Board of Educ. of Copake-Taconic Hills Cent. School Dist., N.D.N.Y.1986, 649 F.Supp. 1253. Schools 148(2.1)

School district's placement of disabled students in fixed-length programs for extended school year (ESY) services violated IDEA by not taking into account least restrictive environment (LRE) requirement; little or no consideration was given to appropriate duration of any ESY programs. Reusch v. Fountain, D.Md.1994, 872 F.Supp. 1421, supplemented 1994 WL 794754. Schools 148(2.1)

Proposed placement of a student with Down syndrome in a self-contained classroom did not violate the Individuals with Disabilities Education Act's (IDEA) least restrictive environment (LRE) provisions; school district had taken multiple steps in an attempt to accommodate the student, including providing a one-on-one paraeducator, physical, occupational, and speech therapy, and adapted physical education, and had developed an adequate behavioral intervention plan (BIP); moreover, there was evidence that the student was receiving no benefit from being in a regular classroom and that his presence was often disruptive. T.W. v. Unified School Dist. No. 259, Wichita, Kan., C.A.10 (Kan.) 2005, 136 Fed.Appx. 122, 2005 WL 1324969, Unreported. Schools 154(2.1)

104. Special education, free appropriate public education

School district's failure to identify elementary school student as child in need of special education services at beginning of first grade did not deny student free appropriate public education (FAPE) as would violate the Individuals with Disabilities Education Act (IDEA), despite later determination of reading and learning disabilities, where student was evaluated several months prior in kindergarten and found to not qualify as student in need, first grade was first time students ever had a chance to be in a test taking situation, and other children also had difficulty taking a test. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 148(3)

Under IDEA, appropriate placement for moderately mentally retarded nine-year-old student was in regular second grade classroom, with some supplemental services, as full-time member of that class; although school district claimed that it would lose up to $190,764 in state special education funding if student were not enrolled in special education class at least 51% of day, district did not seek statutory waiver, and district's proposal that child be taught by special education teacher ran directly counter to congressional preference that children with disabilities be educated in regular classes with children who are not disabled. Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. By and Through Holland, C.A.9 (Cal.) 1994, 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(3)

School district's placement of mildly mentally retarded student in small special education classes was "appropriate" public education under Education for All Handicapped Children Act, despite parents' contention that individualized tutoring was necessary. Gregory K. v. Longview School Dist., C.A.9 (Wash.) 1987, 811 F.2d 1307. Schools 148(3)

Individualized education program (IEP) providing for placement of student diagnosed with autism as charter school specifically for children with autism, without providing for additional special education itinerant teacher (SEIT) services, occupational therapy, and physical therapy, was reasonably calculated to enable student to receive educational benefits, as required by the Individuals with Disabilities Education Improvement Act (IDEIA); the charter school provided intensive academic and behavioral programs for children with autism, the school developed an individualized program for student based on his needs, and the school provided the parents with a comprehensive training program and monthly home visits. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(3)

Individualized education program (IEP) providing for full-time special education for student with Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Syndrome was reasonably calculated to provide educational benefit, where IEP contained clear goals that were written in measurable way; IEP contained annual goals in various areas, as well as short-term objectives towards achieving each annual goal. O.O. ex rel. Pabo v. District of Columbia, D.D.C.2008, 573 F.Supp.2d 41. Schools 148(3)

Preponderance of evidence supported individual education plan committee's placement of 14-year-old developmentally disabled student at a middle school, rather than her home school, to be educated in basic special education classroom part-time and mainstreamed at middle school in unified arts classes the rest of the day; extensive record of administrative proceedings and great weight of evidence presented in those proceedings established that student was not developing any needed independent living skills or otherwise benefitting academically from her placement in regular education academic classes at her home school as subject matter was far beyond her intellectual ability and all of her teachers and paraprofessionals testified that student needed to be in special education basic classroom. Hudson By and Through Hudson v. Bloomfield Hills Public Schools, E.D.Mich.1995, 910 F.Supp. 1291, affirmed 108 F.3d 112, certiorari denied 118 S.Ct. 78, 522 U.S. 822, 139 L.Ed.2d 37. Schools 155.5(4)

Handicapped student who followed regular education curriculum leading to high school diploma and who met goals of Individualized Education Plan (IEP) of passing mainstream classes received adequate free, appropriate

public education (FAPE) and was no longer eligible for special education services under the Individuals with Disabilities Education Act (IDEA). Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 148(2.1)

Under the Individuals with Disabilities Education Act (IDEA), appropriate placement for moderately mentally retarded nine-year-old student was in a regular second grade classroom, with some supplemental services, as a full-time member of that class; factors of educational and nonacademic benefits to student and effect of her presence on teacher and other children in regular classroom weighed in favor of regular educational placement, and school district did not prove that educating student in regular education classroom with appropriate services would be significantly more expensive than educating her in a proposed special education setting. Board of Educ., Sacramento City Unified School Dist. v. Holland By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(3)

Public school system provided adequate education opportunities for child under Education for All Handicapped Children Act by providing him one hour a day special education in school's resource specialist program, and private school education at public expense was not warranted; student RSP class had four to six students with one teacher and one aide, concentrated on spelling and writing skills, and was coordinated with general education and after exposure to RSP student scored above average in reading skills. Bertolucci v. San Carlos Elementary School Dist., N.D.Cal.1989, 721 F.Supp. 1150. Schools 154(4)

With respect to those handicapped students who were capable of being educated in special classes located in regular schools, practice of educating handicapped students who were found to be in need of special education programs in separate schools or centers, separate wings or sections of regular schools or mobile classes or trailers constituted a violation of Pennsylvania Department of Education's duty to assure that handicapped children who are educated in “regular educational environment” to maximum extent appropriate to needs of handicapped children. Hendricks v. Gilhool, E.D.Pa.1989, 709 F.Supp. 1362. Schools 148(2.1); Schools 154(2.1)

In providing special education, as required by Education for All Handicapped Children Act, public school district may utilize appropriate public school programs or may place and fund handicapped child in private school. Work v. McKenzie, D.D.C.1987, 661 F.Supp. 225. Schools 154(4)

105. Mainstreaming, free appropriate public education

States seeking to qualify for federal funds under Education of the Handicapped Act must develop policies assuring all disabled children the right to free appropriate public education, and must file with Secretary of Education formal plans mapping out in detail programs, procedures, and timetables under which they will effectuate such policies, and such plans must assure that to maximum extent appropriate, states will mainstream disabled children, that is, they will educate them with children who are not disabled, and will segregate or otherwise remove such children from regular classroom setting only when nature or severity of handicapped is such that education or regular classrooms cannot be achieved satisfactorily. Honig v. Doe, U.S.Cal.1988, 108 S.Ct. 592, 484 U.S. 305, 98 L.Ed.2d 686. Schools 17

Placement of disabled student in school with class specifically structured for autistic children as to academic subjects, but in which child would be placed in regular classes for other subjects, was appropriate under mainstreaming provision of Individuals With Disabilities Education Act (IDEA), as placement was carefully tailored to ensure that student was mainstreamed to maximum extent appropriate. Hartmann by Hartmann v. Loudoun County Bd. of Educ., C.A.4 (Va.) 1997, 118 F.3d 996, certiorari denied 118 S.Ct. 688, 522 U.S. 1046, 139 L.Ed.2d 634. Schools 148(3)

District court's finding that disabled student could receive educational benefit in regular classroom, and that individualized education program (IEP) which would involve only partial mainstreaming was thus inappropriate for student under Individuals With Disabilities Education Act (IDEA), was not supported by evidence; notwithstanding student's allegedly more successful experiences in regular classrooms before and after student's placement by defendant county, evidence indicated that student failed to make academic progress in regular classrooms, and interaction with non-handicapped students did not outweigh student's need for educational benefits. Hartmann by Hartmann v. Loudoun County Bd. of Educ., C.A.4 (Va.) 1997, 118 F.3d 996, certiorari denied 118 S.Ct. 688, 522 U.S. 1046, 139 L.Ed.2d 634. Schools 155.5(4)

Evidence in IDEA action was sufficient to establish that mainstreaming was not appropriate placement for high school student who suffered from attention deficit disorder; prior attempts at mainstreaming had resulted in total failure, while separate teaching produced superior results. Capistrano Unified School Dist. v. Wartenberg By and Through Wartenberg, C.A.9 (Cal.) 1995, 59 F.3d 884. Schools 155.5(4)

Off-campus, self-contained program was “least restrictive environment” in which student with Tourette's Syndrome and Attention Deficit Hyperactivity Disorder could be educated satisfactorily, for purposes of IDEA, despite claim that student could have been educated in mainstream setting if school provided personal classroom aide; it was not likely that aide would have made meaningful difference, student was socially isolated at mainstream placement, and he had violently attacked two students and school staff member and directed sexually explicit remarks at female students. Clyde K. v. Puyallup School Dist., No. 3, C.A.9 (Wash.) 1994, 35 F.3d 1396. Schools 154(2.1)

IDEA sets forth Congress' preference for educating children with disabilities in regular classrooms with their peers. Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. By and Through Holland, C.A.9 (Cal.) 1994, 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1)

Trial court did not err by finding that school's plan to educate student suffering from neurological impairment that hindered his ability to process auditory information and engage in normal language and thinking skills in classroom with a supplemental tutorial, which included access to word processor and substitution of oral examinations for written tests and longer papers satisfied “mainstreaming” requirement that handicapped children be educated along with other children to maximum extent possible; alternative proposed by parents was payment of tuition to attend private school, which consisted only of handicapped children. Doe By and Through Doe v. Board of Educ. of Tullahoma City Schools, C.A.6 (Tenn.) 1993, 9 F.3d 455, certiorari denied 114 S.Ct. 2104, 511 U.S. 1108, 128 L.Ed.2d 665. Schools 148(3)

Mainstreaming requirement of the Individuals with Disabilities Education Act (IDEA) prohibits school from placing child with disabilities outside regular classroom if educating child in regular classroom, with supplementary aids and support services, can be achieved satisfactorily and, if placement outside regular classroom is necessary for child to receive educational benefit, school may still be violating IDEA if it has not made sufficient efforts to include child in school programs with nondisabled children whenever possible. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Determination that child with disabilities might make greater academic progress in segregated, special education class may not warrant excluding child from regular classroom environment; court must pay special attention to those unique benefits child may obtain from integration in regular classroom, such as development of social and communications skills from interaction with nondisabled peers. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Preference of Individuals with Disabilities Education Act for mainstreaming handicapped students did not justify individualized educational program for learning disabled tenth grade student which stated goal of only four months' progress over period of more than one year so as to make public school placement superior to private school, which educated only children with disabilities; where necessary for educational reasons, mainstreaming assumed subordinate role in formulating educational program. Carter By and Through Carter v. Florence County School Dist. Four, C.A.4 (S.C.) 1991, 950 F.2d 156, certiorari granted in part 113 S.Ct. 1249, 507 U.S. 907, 122 L.Ed.2d 649, affirmed 114 S.Ct. 361, 510 U.S. 7, 126 L.Ed.2d 284. Schools 148(3)

School district mainstreamed handicapped child to maximum extent appropriate, as required by Education of the Handicapped Act, when it removed him from regular education and mainstreamed him only during lunch and recess; child was unable to participate in regular prekindergarten program without forcing instructor to devote most of her time and attention away from other students and did not receive any benefit from prekindergarten other than opportunity to associate with nonhandicapped students. Daniel R.R. v. State Bd. of Educ., C.A.5 (Tex.) 1989, 874 F.2d 1036. Schools 148(2.1)

In determining whether mainstreaming requirements of Education for All Handicapped Children Act were satisfied, court could consider both whether severely handicapped child would benefit from placement in regular public elementary school and costs to school district of such placement, which would require special, self-contained classroom with teacher trained to meet handicapped child's exceptional educational needs. A.W. By and Through N.W. v. Northwest R-1 School Dist., C.A.8 (Mo.) 1987, 813 F.2d 158, certiorari denied 108 S.Ct. 144, 484 U.S. 847, 98 L.Ed.2d 100.

Mainstreaming provisions of the Education of the Handicapped Act requiring a state receiving federal financial assistance, “to the maximum extent appropriate,” to educate handicapped children with children who are not handicapped does not mean that a handicapped child must be educated in the same classroom with nonhandicapped children. Mark A. v. Grant Wood Area Educ. Agency, C.A.8 (Iowa) 1986, 795 F.2d 52, certiorari denied 107 S.Ct. 1579, 480 U.S. 936, 94 L.Ed.2d 769. Schools 148(2.1)

Although handicapped child's progress, or lack thereof, at regular public school is relevant factor in determining

maximum appropriate extent to which he can be mainstreamed, it is not dispositive of that question, since court must determine whether child could have been provided with additional services, such as those provided at schools for handicapped, which would have improved his performance at public school. Roncker On Behalf of Roncker v. Walter, C.A.6 (Ohio) 1983, 700 F.2d 1058, certiorari denied 104 S.Ct. 196, 464 U.S. 864, 78 L.Ed.2d 171. Schools 154(2.1)

Before ordering residential placement for handicapped child, court should weigh the mainstreaming policy embodied in this chapter which encourages the placement of the children in the least restrictive environment. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 154(3)

School district's individualized education program (IEP) for autistic student failed to comport with Individuals with Disabilities Education Act's (IDEA) "mainstreaming" requirement; evidence strongly supported conclusions that an integrated class would be far more beneficial for student than a self-contained class, that student was capable of attending an integrated class if provided with sufficient accommodations, and that student did not negatively impact other students. G.B. ex rel. N.B. v. Tuxedo Union Free School Dist., S.D.N.Y.2010, 751 F.Supp.2d 552. Schools 154(2.1)

Individualized education program (IEP) for 2006-2007 school year was appropriate even though it did not place student with Down Syndrome in regular education classroom for more than 80% of her time and, according to parents, behavior management plan was not properly implemented; determinations of percentage of time student spent in regular education setting had to be made on basis of student's individualized needs, and any deficiency in plan's implementation could not be attributed to school board because parents refused to accept time-out room that was major component of behavior plan. L. ex rel. Mr. F. v. North Haven Bd. of Educ., D.Conn.2009, 624 F.Supp.2d 163. Schools 148(3)

The IDEA manifests a preference for mainstreaming disabled children. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(2.1)

Analyzing the effect of disabled student's presence on other students in regular classroom, in determining whether to mainstream the disabled student, pursuant to IDEA, focuses on the school district's obligation to educate all of its students, recognizing that, even if disabled student might benefit from inclusion, she may be so disruptive in regular classroom that other students' education is significantly impaired, and modifying the curriculum to include disabled student may demand so much of the teacher's attention that the teacher will be required to ignore the other students. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 154(2.1)

Student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder was not able to be satisfactorily educated full-time in regular classroom with supplementary aids and services, but rather, was being educated in least restrictive environment, as required by IDEA, so that additional inclusion would hinder her own progress in acquiring essential life skills, since school district expended substantial time and effort to provide student with meaningful benefit from inclusion in regular classroom, student received little, if any, educational benefit from inclusion in regular classroom, and student's conduct adversely affected her class-

mates in regular classroom. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 154(2.1)

Individualized education program (IEP) which placed student in special education program with 12:1:1 staffing ratio was inappropriate because it failed to mainstream high school student with attention deficit hyperactivity disorder (ADHD) to maximum extent appropriate, and therefore failed to meet IDEA's requirement that disabled student's free appropriate public education (FAPE) be provided in the least restrictive environment. Jennifer D. ex rel. Travis D. v. New York City Dept. of Educ., S.D.N.Y.2008, 550 F.Supp.2d 420. Schools 154(2.1)

Record of administrative hearing requested by parents of learning disabled child supported hearing officer's decision that school district included child in regular education environment to maximum extent appropriate and removed him from that setting only when it was necessary for his individual needs, in compliance with Individuals with Disabilities Education Act (IDEA) mainstreaming directive; despite fact that child required pull-out services, he was included in regular education environment for 74% of school day, and therapist agreed that transition to regular class placement of 80% of the day should be gradual. P. ex rel. Mr. P. v. Newington Bd. of Educ., D.Conn.2007, 512 F.Supp.2d 89, affirmed 546 F.3d 111. Schools 155.5(4)

Evidence supported finding that disabled third-grade student was being mainstreamed to maximum extent appropriate, as required under IDEA; non-verbal student, functioning at approximately level of one-year-old, was being mainstreamed more than half of her school day and had reverse mainstreaming with non-disabled peers for 45 minutes daily at lunch and recess time. R.L. ex rel. Mr. L. v. Plainville Bd. of Educ., D.Conn.2005, 363 F.Supp.2d 222. Schools 155.5(4)

Mainstreaming requirement of Individuals with Disabilities Education Act (IDEA), requiring that disabled student be placed in least restrictive educational environment appropriate to student's needs, did not mandate use of video teleconferencing equipment (VTC) to allow second grade student to have virtual experience of classroom during 25% of time he was absent due to complications of his leukemia treatment; it was restrictions imposed by his illness, which required him to stay out of school during periods when infection risk was high, rather than any action of school, that prevented mainstreaming. Eric H. ex rel. John H. v. Methacton School Dist., E.D.Pa.2003, 265 F.Supp.2d 513. Schools 154(2.1)

Evidence supported finding that full inclusion placement would not result in learning disabled student's being provided a free appropriate public education (FAPE) for school year; student would not have received any educational benefits from a full inclusion placement but would likely have received some non-educational benefits, student's presence in a regular classroom would likely have had minimal effect on the teacher and other students, and cost of mainstreaming student would not be a factor. Katherine G. ex rel. Cynthia G. v. Kentfield School Dist., N.D.Cal.2003, 261 F.Supp.2d 1159, affirmed 112 Fed.Appx. 586, 2004 WL 2370562. Schools 154(2.1)

Placement of learning-disabled middle school student in multicategorical special education room, for classes other than music, art, and health, was inappropriate under Individuals with Disabilities Education Act (IDEA) when compared with mainstream placement coupled with appropriate support; district had not adequately evalu-

ated its ability to accommodate student in regular classroom, record reflected that student did not flourish in special education setting and did better when given opportunity to mainstream, and there was no showing that student would act disruptively in mainstream if provided with adequate support. Warton v. New Fairfield Bd. of Educ., D.Conn.2002, 217 F.Supp.2d 261. Schools 154(2.1)

In determining whether school is in compliance with mainstreaming requirement of Individuals with Disabilities Education Act (IDEA) with respect to particular disabled student, court first ascertains whether education in regular classroom can be achieved satisfactorily with use of supplementary aids and services; if placement outside of regular classroom is found to be necessary to permit child to benefit educationally, court then decides whether school has mainstreamed child to maximum extent appropriate by making efforts to include child in school programs with nondisabled children whenever possible. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Factors to be considered in determining whether disabled child can be educated satisfactorily in regular classroom with supplementary aids and services, in accordance with mainstreaming preference established by Individuals with Disabilities Education Act (IDEA), are: steps that school has taken to try to include child in regular classroom; comparison between educational benefits child would receive in regular classroom and benefits child would receive in segregated setting; and possible negative effect child's inclusion might have on education of other children in regular classroom. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Inclusive placement of learning disabled child, in regular classroom, was appropriate under IDEA, despite parent's opposition and failure of district to diagnose child's dyslexia, where recommendations made by parents' experts could be implemented in inclusive placement, and mirrored many of the recommendations in district's proposed individualized education program (IEP), and where the district did perform testing on the child and did not base its proposed IEP solely on anecdotal information. Jonathan G. v. Lower Merion School Dist., E.D.Pa.1997, 955 F.Supp. 413. Schools 148(3)

At its core, Individuals with Disabilities Education Act (IDEA) has indisputable preference for “mainstreaming” special education students; such students are to be educated, to maximum extent appropriate, in regular class setting. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 148(2.1)

Within the statutory preference under the IDEA for “mainstreaming” handicapped student in least restrictive environment consistent with needs, to the maximum extent possible, “least restrictive environment” connotes not merely freedom from restraint but freedom to associate with family and with able-bodied peers. Cypress-Fairbanks Independent School Dist. v. Michael F. by Barry F., S.D.Tex.1995, 931 F.Supp. 474, affirmed as modified 118 F.3d 245, 152 A.L.R. Fed. 771, certiorari denied 118 S.Ct. 690, 522 U.S. 1047, 139 L.Ed.2d 636. Schools 148(2.1)

Mainstreaming is inappropriate under IDEA only where nature or severity of handicap is such that education in regular classes cannot be achieved satisfactorily. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437.

Schools 148(2.1)

Whether mainstreaming requirement of the IDEA has been met may be determined under two-part test, asking first whether education in regular classroom with use of supplemental aids and services can be achieved satisfactorily for the child and, if not, whether the school has mainstreamed child to maximum extent appropriate, and discussion of such test may be organized under the following factors: educational benefits available to child in regular classroom, supplemented with appropriate aids and services, compared with educational benefits of special education classroom; nonacademic benefits to handicapped child from interaction with nonhandicapped children; effect of presence of handicapped child on the teacher and other children in the regular classroom; and costs of supplementary aids and services necessary to mainstream the handicapped child in regular classroom setting. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1)

Mainstreaming criteria of Individuals with Disabilities Education Act (IDEA) require schools, to maximum extent appropriate, to educate disabled children in least restrictive environment with children who are not disabled. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 148(2.1)

Parents of handicapped student failed to establish that placement of student in therapeutic day school was not appropriate under IDEA, despite their preference for "mainstreaming" student, particularly in light of evaluations by psychologists and social workers supporting conclusion that student was not benefitting from interaction with other students and would benefit from being placed in more structured program with additional support services; effort at mainstreaming had proven unsuccessful, particularly as student's behavior represented regression on his own part, in addition to disruption of others. MR by RR v. Lincolnwood Bd. of Educ., Dist. 74, N.D.Ill.1994, 843 F.Supp. 1236, reconsideration denied 1994 WL 30968, affirmed 56 F.3d 67, rehearing and suggestion for rehearing en banc denied. Schools 154(2.1)

Individualized education program (IEP) for mainstreaming mentally disabled student only for art, music, and gym did not comply with IDEA's mainstreaming requirement; school district did not take meaningful steps to include student in regular classroom with adequate supplemental aids and services and did not consider less restrictive alternative placements, and nothing indicated that student would present behavior problems if provided with adequate level of supplementary aids and services. Mavis v. Sobol, N.D.N.Y.1993, 839 F.Supp. 968. Schools 148(3)

Individuals with Disabilities Education Act (IDEA) requires states to mainstream disabled children with able-bodied children whenever possible. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1)

In determining how to comply with Individuals With Disabilities Education Act school districts must carefully examine educational benefits, both academic and nonacademic, available to disabled child in a regular classroom, particularly advantages arrived from modeling on behavior and language of children without disabilities, effects of such inclusion upon other children in class, both positive and negative, and cost of necessary supplementary services. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, affirmed and remanded 995 F.2d 1204. Schools 148(2.1)

Provision of Individuals with Disabilities Education Act (IDEA) requiring state to assure that children with disabilities are educated with children who are not disabled to maximum extent appropriate denotes clear preference by Congress for inclusion of handicapped children in classes with other children. Cordero by Bates v. Pennsylvania Dept. of Educ., M.D.Pa.1992, 795 F.Supp. 1352. Schools 148(2.1)

Individuals with Disabilities Education Act's (IDEA's) preference or presumption in favor of including disabled student in regular classrooms will not be rebutted unless school district shows that child's disabilities are so severe that he or she will receive little or no benefit from inclusion, that he or she is so disruptive as to significantly impair education of other children in the class, or that cost of providing inclusive education will significantly affect other children in district. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(2.1)

Local board of education's decision to place child, who had been diagnosed as having mental retardation secondary to Downs Syndrome, in its preschool program, which was not fully integrated, was based on fact that child was handicapped, rather than on professional review of available alternatives and recommendations of experts familiar with particular special education needs that were incidental to child's handicap, and thus placement decision was clearly inconsistent with procedural requirements of Individuals With Disabilities Education Act (IDEA) and regulations promulgated thereunder. P.J. By and Through W.J. v. State of Conn. Bd. of Educ., D.Conn.1992, 788 F.Supp. 673. Schools 148(3)

The Individuals with Disabilities Education Act (IDEA) has a strong preference for "mainstreaming" which rises to level of a rebuttable presumption; "mainstreaming" is the placement of handicapped children in regular classrooms. Board of Educ., Sacramento City Unified School Dist. v. Holland By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1); Schools 155.5(4)

Placement of a hearing-impaired student with multiple physical handicaps at a school for the deaf was appropriate and consistent with the "mainstreaming" requirements of the Education of the Handicapped Act; the student would receive no benefit from mainstreaming and even if there was a marginal benefit from "mainstreaming" which would result from interacting with hearing children and adults while passing in the halls or eating in the lunchroom, it was outweighed by the benefits gained from an all-signing environment provided by school for the deaf. French v. Omaha Public Schools, D.Neb.1991, 766 F.Supp. 765. Schools 154(2.1)

Handicapped student's individualized education program could be implemented reasonably satisfactorily in integrated program at neighborhood high school that student would have attended were she not handicapped and, thus, placement there was in accordance with Education for All Handicapped Children Act, despite parents' desire to have student placed in totally segregated program for handicapped; student's socialization needs would be met at neighborhood school, where she would interact with age-appropriate nonhandicapped peers, no credible evidence supported concern that neighborhood school had excessively hostile educational environment, and student's recreational and physical education needs could be met there. School Dist. of Kettle Moraine v. Grover, E.D.Wis.1990, 755 F.Supp. 243. Schools 154(2.1)

Under Education of All Handicapped Children Act, removal of child from "mainstream" educational environment is permitted only when education in regular classes cannot be achieved satisfactorily. Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990, 754 F.Supp. 906. Schools 148(2.1)

School district was required to explore feasibility of mainstreaming mentally handicapped child into classes for nonacademic subjects, even though child would have to take academic subjects in classes for students socially and emotionally disturbed/mentally retarded. Liscio by Hippensteel v. Woodland Hills School Dist., W.D.Pa.1989, 734 F.Supp. 689, affirmed 902 F.2d 1561, affirmed 902 F.2d 1563. Schools 148(3)

Mainstreaming of eight-year-old student with severe hearing loss, rather than placement in a facility for the hearing impaired, met the free appropriate public education requirement of Education of the Handicapped Act where child had superior intellectual potential and was learning in a ordinary classroom setting and, in some areas, was on a par with her peers, and her social adjustment was improving and her classmates had learned to communicate with her; however, board could continue to transport child to another facility for one-to-one supplementary academic work, especially given child's rapport with resource room teachers at the other facility. Bonadonna v. Cooperman, D.C.N.J.1985, 619 F.Supp. 401. Schools 154(2.1)

It is possible to provide an appropriate public education, within meaning of this chapter, in a separate educational setting. St. Louis Developmental Disabilities Treatment Center Parents Ass'n v. Mallory, W.D.Mo.1984, 591 F.Supp. 1416, affirmed 767 F.2d 518. Schools 148(2.1)

School system and school officials did not violate this chapter by transferring student with cerebral palsy from school where she was being taught in traditional classes in which majority of students were not handicapped to a school where separate classrooms were maintained for children who were physically or otherwise health impaired. Johnston by Johnston v. Ann Arbor Public Schools, E.D.Mich.1983, 569 F.Supp. 1502. Schools 154(2.1)

Inasmuch as public school's individual education program for an 18-year-old handicapped student, who was mentally retarded, mentally ill and epileptic, relied on legitimate educational philosophy akin to the mainstreaming approach preferred by this chapter and would provide the student an education that benefited her within meaning of this chapter, the plan would be deemed satisfactory under this section's requirement of a "free appropriate public education," despite the objections of student's parents and their desire that daughter remain in private school she attended for last eight years. Lang v. Braintree School Committee, D.C.Mass.1982, 545 F.Supp. 1221. Schools 164

Individualized education program that school offered to severely retarded 18-year-old boy did not place him in contact with nonhandicapped students to the maximum extent consistent with appropriate education program as required by this chapter, where under the program he had virtually no contact with nonhandicapped students outside of his lunch period and even than his contacts were few. Campbell v. Talladega County Bd. of Ed., N.D.Ala.1981, 518 F.Supp. 47. Schools 148(3)

106. Disruption, free appropriate public education

Disruptive impact that disabled student had on other students was a relevant consideration in deciding whether he received an appropriate education under the IDEA. Alex R., ex rel. Beth R. v. Forrestville Valley Community Unit School Dist. No. 221, C.A.7 (Ill.) 2004, 375 F.3d 603, certiorari denied 125 S.Ct. 628, 543 U.S. 1009, 160 L.Ed.2d 474. Schools 148(2.1)

107. Parental participation, free appropriate public education--Generally

Any procedural failure by school district in scheduling disabled student's individualized education program (IEP) meetings at times his parents could not attend during pendency of their challenge to district's proposed triennial reevaluation of student's special education services did not deny student a free appropriate public education (FAPE) under IDEA; student remained in his placement in district, and parents failed to describe any portions of IEPs for which they withdrew their consent. G.J. v. Muscogee County School Dist., C.A.11 (Ga.) 2012, 668 F.3d 1258. Schools 148(2.1)

School district's creation of individualized education plan (IEP) for disabled student was not rendered procedurally inadequate due to lack of participation by student's parents; even if district should have held a second IEP meeting to review goals and objectives that were ultimately included in IEP but were not discussed at earlier meeting, parents did not fully avail themselves of opportunity to actively and meaningfully participate in development of IEP, since they refused to talk about any issue other than whether district would pay for student's placement at private school. Hjortness ex rel. Hjortness v. Neenah Joint School Dist., C.A.7 (Wis.) 2007, 507 F.3d 1060, certiorari denied 128 S.Ct. 2962, 554 U.S. 930. Schools 148(2.1)

District court did not clearly err in determining that parents had meaningful opportunity to participate in development and review of individualized education plan (IEP) for student with Rett syndrome, as required by Individuals with Disabilities Education Act (IDEA), in that addendum drafted by district officials at IEP meeting could be viewed as expression of concern rather than evidence that district had predetermined student's placement, fact that district had attorney poised to file suit did not indicate that meeting was sham, and parties conducted comprehensive review of student's situation at IEP meeting. Board of Educ. of Tp. High School Dist. No. 211 v. Ross, C.A.7 (Ill.) 2007, 486 F.3d 267. Schools 148(3)

Parental right to provide input into location of services under IDEA does not grant parents veto power over individualized education program (IEP) team site selection decisions. White ex rel. White v. Ascension Parish School Bd., C.A.5 (La.) 2003, 343 F.3d 373. Schools 148(2.1)

Substantive harm, resulting in a denial of a free appropriate public education (FAPE) under IDEA, occurs when the procedural violations of IDEA seriously infringe upon the parents' opportunity to participate in the individualized education program (IEP) process, and procedural violations that deprive an eligible student of an individualized education program or result in the loss of educational opportunity also will constitute a denial of a FAPE. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(2.1)

Court's determination that individual education plan (IEP) for handicapped student was appropriate was supported by evidence that it was calculated to confer some educational benefit on the student, even though parents felt that residential setting where he would be with other blind students would be more advantageous, and where the plan had a number of points which were not included in prior individual education plan which parents claimed had been inadequate. Carlisle Area School v. Scott P. By and Through Bess P., C.A.3 (Pa.) 1995, 62 F.3d 520, amended , certiorari denied 116 S.Ct. 1419, 517 U.S. 1135, 134 L.Ed.2d 544. Schools 155.5(4)

It is permissible to consider parental hostility to individualized educational program (IEP) as part of prospective evaluation required by Education of the Handicapped Act (EHA) of the placement's expected educational benefits; if facts show that parents are so opposed to placement as to undermine its value to child, there is no obligation under EHA to order the placement. Board of Educ. of Community Consol. School Dist. No. 21, Cook County, Ill. v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1991, 938 F.2d 712, rehearing denied, certiorari denied 112 S.Ct. 957, 502 U.S. 1066, 117 L.Ed.2d 124. Schools 154(2.1)

Parents of handicapped child waived right to properly constituted individualized educational program meeting when they rejected school district's offer to schedule one, though parents had been seeking extended school year services for their child for three years, they had specifically agreed with school district to hold individualized educational program meeting to discuss study by clinical psychologist, meeting convened by school district was not proper individualized educational program meeting, and at meeting school district refused to place extended school year program on child's individualized educational program unless parents agreed to exclude program from “stay put” provision of Education of the Handicapped Act. Cordrey v. Euckert, C.A.6 (Ohio) 1990, 917 F.2d 1460, certiorari denied 111 S.Ct. 1391, 499 U.S. 938, 113 L.Ed.2d 447. Schools 155.5(1)

Local education authority which failed to meet guidelines for consulting parents in the development of student's individual education plan, with the resulting six-month delay in adoption of an IEP, did not comply with the Education of the Handicapped Act. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(2.1)

School district's failure following parental requests for documentation personally identifiable to disabled student to either provide parents with complete set of copies or to allow them to review all requested documents did not deprive student of free appropriate public education (FAPE); hearing officer found that while district's document maintenance was “less than organized,” irregularities cited by parents were nothing more than district's attempts to correct mistakes, that any trouble parents may have had in recovering documents from district could not have impeded parent's decisionmaking regarding district's provision of FAPE to student because parents did not request any documents until end of school year and just a few months before student was withdrawn from district, and parents offered no evidence that documents provided to them at earlier dates were somehow inadequate, relying instead on speculation as to what might have occurred. C.H. ex rel. C.H. v. Northwest Independent School Dist., E.D.Tex.2011, 815 F.Supp.2d 977. Schools 148(2.1)

Substantial evidence supported hearing officer's conclusion that decision to place student in “Chrysalis Program” as result of disciplinary violation was made by school board and not individualized education program (IEP) team, and resulting procedural violation constituted denial of free appropriate public education (FAPE) as

it significantly impeded parent's opportunity to participate in decisionmaking process. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

Learning disabled student's parents acted unreasonably during the individualized education program (IEP) process, and thus any delay in the development of an IEP did not violate IDEA, where parents objected to all evaluations of student proposed by the school district, they breached a clearly-worded settlement agreement permitting the district to have student evaluated by up to three of its own evaluators, and they insisted upon conditions that the district could not agree to, such as requiring that the district waive its right to see the independent evaluators' records. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Student's individualized education plan (IEP) was appropriate, as required by the Individuals with Disabilities Education Act (IDEA), despite claim by the student's mother that the IEP was not appropriately tailored to address the student's "deficits in expressive and receptive language" which impacted his "ability to access the general curriculum"; the mother fully participated in the IEP development process, fully agreed with the substance of the IEP as drafted at a meeting and signed the IEP indicating her agreement. Hinson ex rel. N.H. v. Merritt Educational Center, D.D.C.2008, 579 F.Supp.2d 89. Schools 148(3)

Individualized education program (IEP) could have been instituted for student and none was developed because of conduct of student's mother; she initially returned permission request form without properly checking off box that authorized that evaluation, initial team meeting adjourned before IEP could be developed and mother could not meet until after start of school year due to various scheduling conflicts, and continued IEP meeting did not occur because student's mother had filed request for due process hearing and refused to participate in any further IEP meetings. C.H. v. Cape Henlopen School Dist., D.Del.2008, 566 F.Supp.2d 352, affirmed 606 F.3d 59. Schools 148(2.1)

Charter middle school did not deny student, with Attention Deficit Hyperactivity Disorder (ADHD) and atypical learning disorder, free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), through adoption of competency-based system, where teacher had flexibility in determining whether student mastered subject matter, through use of tests, discussions or other methods, and simply passed or failed student without awarding letter or numerical grades, despite claim that parents did not receive sufficient input regarding student's progress to determine whether they should request additional assistance for him. Claudia C-B v. Board of Trustees of Pioneer Valley Performing Arts Charter School, D.Mass.2008, 539 F.Supp.2d 474. Schools 148(3)

Preponderance of the evidence in IDEA case supported ALJ's finding that disabled student's parent refused to cooperate with Child Study Team (CST) to such an extent that CST was unreasonably prevented from creating an individualized education program (IEP) for school year in question; student's mother had refused to sign consent to have her son evaluated, a necessary prerequisite to creating his IEP, and withheld her consent to evaluate for two months until day she notified school board her son had been offered enrollment at private school and, through her attorney, gave school district's attorneys enrollment contract and outline of services provided at that school. M.S. v. Mullica Tp. Bd. of Educ., D.N.J.2007, 485 F.Supp.2d 555, affirmed 263 Fed.Appx. 264, 2008

WL 324200. Schools 155.5(4)

State of Hawai‘i Department of Education (DOE) did not violate IDEA's procedural requirements by failing to consider parental input; although student's mother disagreed with DOE's decisions regarding her request for a different skills teacher, DOE officials at individualized education plan (IEP) meetings discussed mother's concerns and considered her views. B.V. v. Department of Educ., State of Hawaii, D.Hawai'i 2005, 451 F.Supp.2d 1113, affirmed 514 F.3d 1384. Schools 148(3)

School system did not deny parents meaningful opportunity to participate in autistic student's education in violation of individual education plan (IEP), for purposes of determining whether subsequent IEP was appropriate under IDEA, even though system denied mother permission to videotape student in speech therapy sessions, where school's policy of inviting participation was discretionary, and system held 11 meetings and had many other communications with parents during school year. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 148(3)

Evidence that teacher prepared draft individualized education program (IEP) for student after informal meeting with student's parents, for discussion at next meeting of student's IEP team, was insufficient to support finding, in administrative proceedings on parents' request for reimbursement for private placement under Individuals with Disabilities Education Act (IDEA), that parents were denied adequate participation in process of preparation of student's IEP, as basis for finding that student was denied free appropriate public education (FAPE), absent any evidence that parents were forced to accept proposed IEP or were unaware of their rights in IEP process. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 155.5(4)

Individualized education program (IEP) developed for eighth grade student with attention deficit disorder was appropriate, even though it failed to address behavioral problems at home; parents had concealed or minimized extent of home problems, leaving school to reasonably conclude that student's academic difficulties stemmed only from his attention deficit disorder. J.S. v. Shoreline School Dist., W.D.Wash.2002, 220 F.Supp.2d 1175. Schools 148(3)

Autistic child's individualized education plans (IEPs) for the first and third grades were reasonably calculated to confer meaningful educational benefit, and did not deprive child of a “free appropriate public education” (FAPE); however, school district's failure to include a district representative as part of the IEP team was a procedural violation that deprived child's parents an opportunity to meaningfully participate in the IEP process and deprived child of educational opportunity. Pitchford ex rel. M. v. Salem-Keizer School District No. 24J, D.Or.2001, 155 F.Supp.2d 1213. Schools 148(3)

Requirements that free appropriate public education (FAPE) must be provided at public expense to meet standards of state education agency, that FAPE must include appropriate education, and that FAPE unfold in conformity with individual education plan (IEP), do not apply to parental placements that are otherwise proper under Individuals with Disabilities Education Act (IDEA). Matthew J. v. Massachusetts Dept. of Educ., D.Mass.1998, 989 F.Supp. 380. Schools 154(4)

Parents of disabled child did not show such hostility to individualized education program (IEP) as to establish that it lacked value for the child; though parents offered testimony at hearing that they opposed placement that school officials were proposing for the child at the time of the hearing, two years after the development of IEP, mother participated in all five case conferences, signed documents showing unqualified agreement with plans developed at each conference, and did not provide school with notice that she later came to disagree with the plans. Roy and Anne A. v. Valparaiso Community Schools, N.D.Ind.1997, 951 F.Supp. 1370. Schools 148(2.1)

Parents of handicapped child were not denied opportunity to participate in formulation of an individual educational plan for child, although school came to meeting with a document entitled "Independent Education Program" dated to take effect immediately, since school did not come to meeting with an unchangeable, completed plan subject only to parental approval, in light of opportunities for parental involvement. Scituate School Committee v. Robert B., D.C.R.I.1985, 620 F.Supp. 1224, affirmed 795 F.2d 77. Schools 148(2.1)

School committee or the state does not comply with the procedural requirements of this chapter by including parents only in the initial and penultimate steps of the planning process for an educational program for their children; unless the parents are invited to participate in all significant decisions made by the school, the statutory deference to state and local decision making in the educational field would not be justified. Lang v. Braintree School Committee, D.C.Mass.1982, 545 F.Supp. 1221. Schools 164

Parents had meaningful opportunity to participate with respect to special education determination made by school district for their son, as required by Individuals with Disabilities Education Act (IDEA), and placement suggested by school district was not predetermined, given that, in addition to being involved in development of son's individualized education program (IEP), parents and their special education representative informed school district of their specific requests, to which school district responded to explain its different conclusions; that parents disagreed with placement decision did not establish lack of meaningful participation. Paolella ex rel. Paolella v. District of Columbia, C.A.D.C.2006, 210 Fed.Appx. 1, 2006 WL 3697318, Unreported. Schools 148(2.1)

108. ---- Consent of parents, parental participation, free appropriate public education

School district's refusal to offer an individualized education program (IEP) to student without an evaluation of the student by an expert of the district's choice did not deny learning disabled student a free appropriate public education (FAPE) under IDEA, even though student had been evaluated by doctor selected by her parents, where parents had entered settlement agreement expressly permitting district to reevaluate student with its own specialists. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Student was provided an appropriate placement based on his individualized education plan (IEP), as required by the Individuals with Disabilities Education Act (IDEA); the student's mother fully participated in the IEP and placement decision-making process, fully agreed with the placement at the time it was issued and signed a placement notice indicating her approval, and there was no evidence that the school where the student was placed could not implement his IEP. Hinson ex rel. N.H. v. Merritt Educational Center, D.D.C.2008, 579 F.Supp.2d 89. Schools 154(2.1)

Evidence that parents of learning and behaviorally disabled student approved individual educational programs (IEPs) developed and offered by school district pursuant to Individuals with Disabilities Education Act (IDEA) and that student's academic performance improved under IEPs, together with credible expert testimony before local hearing officer indicating that IEPs were satisfactory, was sufficient to support conclusion that IEPs were reasonably developed and calculated to enable student to receive some educational benefit as mandated by IDEA. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 155.5(4)

Child's exit from special education program did not violate IDEA, where child's mother had consented to child's exit. Perreault-Osborne v. New Milford Bd. of Educ., C.A.2 (Conn.) 2003, 74 Fed.Appx. 148, 2003 WL 22100797, Unreported. Schools 148(2.1)

109. Preschool programs, free appropriate public education

Providing a student with an appropriate preschool education free of charge, as mandated by the Individuals with Disabilities Education Act (IDEA), required a school district to pay for both the itinerant special education services provided to the student and the tuition required for his part-time enrollment at a private preschool; while the district claimed that the student could have received his special education services in other community-based settings, the individualized education program team never considered any other community-based options or specific locations. Madison Metropolitan School Dist. v. P.R. ex rel. Teresa R., W.D.Wis.2009, 598 F.Supp.2d 938. Schools 154(4)

Preschool program and resource center at which preschool handicapped child would be in segregated environment of handicapped children only for half of day was least restrictive environment under Individuals with Disabilities Education Act (IDEA); proposed placement was in child's home school and children in class had interaction with nondisabled older children through assemblies and a program where first-graders visited the class. T.R. ex rel. N.R. v. Kingwood Tp. Bd. of Educ., D.N.J.1998, 32 F.Supp.2d 720, affirmed in part , vacated in part 205 F.3d 572. Schools 154(2.1)

110. Deaf students, free appropriate public education

South Dakota Board of Regents did not violate IDEA when it closed the South Dakota School for the Deaf and out-sourced its services to home school districts; although deaf and hearing impaired students preferred to attend programs at the school's campus and their parents preferred to enroll their children in a separate, language-rich school, the IDEA's integrated-classroom preference made no exception for deaf students, and did not require states to make available the best possible option. Barron ex rel. D.B. v. South Dakota Bd. of Regents, C.A.8 (S.D.) 2011, 655 F.3d 787. Schools 14; Schools 148(2.1)

Order requiring school to furnish profoundly and prelingually deaf child with a certified teacher of the deaf comported with the “appropriate education” requirement of this section, notwithstanding that child might learn more quickly at state school for the deaf as attendance at public school would be consistent with this chapter's, mainstreaming goals and state educational agency determined that child be placed in public school and provided personalized instruction in reading, arithmetic, spelling, telling of time, health, social services, and art along with

manual communication, lip reading, writing and speaking, and cost to the school did not justify judicial intervention. Springdale School Dist. No. 50 of Washington County v. Grace, C.A.8 (Ark.) 1982, 693 F.2d 41, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298. Schools 154(2.1)

Deaf student would not be denied a free appropriate public education (FAPE) under IDEA even if school provided her with a meaning-for-meaning transcription of classroom discussions, rather than a verbatim word-for-word transcription, which was preferred by her parents, since meaning-for-meaning transcriptions were reasonably calculated to provide student with educational benefits, enable her to achieve passing marks, and allow her to advance from grade to grade, especially considering that individual education plan (IEP) also provided student with preferential seating in classrooms, a second set of textbooks at home, copies of teachers' notes when necessary, closed captioning, a peer note-taker in one of her classes, an auditory FM system to presumably amplify sounds, a special laptop for videos with closed captioning, and a closed-captioning decoder. Poway Unified School Dist. v. Cheng ex rel. Cheng, S.D.Cal.2011, 821 F.Supp.2d 1197. Schools 148(2.1)

111. Sign language, free appropriate public education

In light of finding that deaf child, who performed better than average child in her class and was advancing easily from grade to grade, was receiving an adequate education and fact that deaf child was receiving personalized instruction and related services calculated by school administrators to meet her educational needs, this chapter did not require provision of a sign-language interpreter for deaf child. Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley, U.S.N.Y.1982, 102 S.Ct. 3034, 458 U.S. 176, 73 L.Ed.2d 690. Schools 148(2.1)

Student did not receive free appropriate public education to which she was entitled under the IDEA, where due process panel concluded that the education student received at state school with respect to sign language instruction was “wholly deficient,” given that all evaluations of student over the years showed an intensive need for a language-based program that adequately considered her profound deafness. Strawn v. Missouri State Bd. of Educ., C.A.8 (Mo.) 2000, 210 F.3d 954. Schools 148(2.1)

Findings that profoundly deaf Native American Child required immediate intensive instruction in American Sign Language (ASL) in order to comprehend instruction offered in regular classroom, that he could not presently receive any educational benefit from continued mainstreaming, and that he should therefore be placed in residential school 280 miles from home were not clearly erroneous notwithstanding value of social interaction with family and friends and of influence of his tribe and fact that child was of above average intelligence and would not detrimentally affect mainstream classroom environment. Poolaw v. Bishop, C.A.9 (Ariz.) 1995, 67 F.3d 830. Schools 154(3)

Signing system used by school district provided hearing-impaired students with adequate education under IDEA, despite parents' claim that district was required to use particular sign language system used in their homes; while evaluations for all three students demonstrated that each had weakness in particular subjects, overall each had improved academically. Petersen v. Hastings Public Schools, C.A.8 (Neb.) 1994, 31 F.3d 705. Schools 148(2.1)

Individualized Education Program proposed by school officials for deaf student, utilizing total communication concept, relying primarily upon sign language as means of communication, provided student with free appropriate public education as required by Education for All Handicapped Children Act, despite parents' preference for cued speech technique. Lachman v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1988, 852 F.2d 290, certiorari denied 109 S.Ct. 308, 488 U.S. 925, 102 L.Ed.2d 327. Schools 148(2.1)

In action challenging decision of Kentucky Department of Education that 12-year-old boy suffering from severe to profound hearing loss be placed in his resident county's program in which another child would be taught by "total" method employing sign language and finger spelling, rather than continuing to have boy commute to another county's school in which "oral/aural" method was used exclusively, trial judge's conclusion that resident county's proposed program was appropriate was supported by evidence, especially evidence that children learning under oral method in the program had not begun to pick up sign language from child on "total" method. Age v. Bullitt County Public Schools, C.A.6 (Ky.) 1982, 673 F.2d 141. Schools 155.5(4)

School district was not required under Individuals with Disabilities Education Act (IDEA) to provide deaf student with full-time sign language interpreter at public expense after his parents elected to place him in private school, where district provided student with free appropriate public education (FAPE), and cost for student's full time interpreter was more than ten times amount available under IDEA for all parentally-placed private school students in district. Board of Educ. of Appoquinimink School Dist. v. Johnson, D.Del.2008, 543 F.Supp.2d 351, stay denied 2008 WL 5043472. Schools 148(2.1)

Any burden placed upon hearing-impaired student's free exercise of religion by school district's refusal to provide student with sign-language instructor in private sectarian school setting was not so substantial as to call decision into constitutional question; any burden was on act of sending child to private school rather than on religious practice, and student attended school for part of each day at public school for disabled students at which he received services of interpreter. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Constitutional Law 1368(1); Schools 8; Schools 148(2.1)

School district's refusal to provide sign-language instructor for hearing-impaired student in private sectarian school setting, prior to 1997 amendments to Individuals with Disabilities Education Act (IDEA), was not abuse of discretion afforded district by IDEA; student was provided with sign language instructor while he attended public school, but not while he attended private sectarian school, student's parents effectively opted for lesser entitlement under IDEA by choosing to place student in private school, and student was given genuine opportunity to participate in all services called for in his Individualized Education Program (IEP). Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Schools 8; Schools 148(2.1)

School district's use of modified Signing Exact English sign language system in education of hearing impaired students, rather than strict Signing Exact English system, did not violate Individuals with Disabilities Education Act (IDEA) as modified system proved adequate in conferring educational benefits on students; each student showed continued academic and lingual improvement through his or her educational experience, modifications

were completed after consultations with educators knowledgeable in filed of signing systems, and modifications were designed to utilize strengths of unmodified system, while alleviating some difficulties recognized to exist with strict system. Petersen By and Through Petersen v. Hastings Public Schools, D.Neb.1993, 831 F.Supp. 742, affirmed 31 F.3d 705. Schools 148(2.1)

112. Tutoring, free appropriate public education

Assuming that mentally retarded student voluntarily enrolled by her parents in private school was individually entitled, under the Individuals with Disabilities Education Act (IDEA), to proportionate share of federal funds received by state under the IDEA, in form of publicly subsidized services of consultant teacher and teacher's aide, state did not have to provide such services on-site at private school, but had discretion under the IDEA as to whether services would be provided on-site. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(3)

School district's refusal to provide disabled student with one-to-one tutoring using particular instructional method did not violate Individuals with Disabilities Education Act (IDEA); student was still making progress and receiving free appropriate public education, even if she was behind in grade-level achievement. E.S. v. Independent School Dist., No. 196 Rosemount-Apple Valley, C.A.8 (Minn.) 1998, 135 F.3d 566. Schools 148(2.1)

Individualized educational programs developed by board of education for students suffering from dyslexia, although not in compliance with requirement of Education of the Handicapped Act (EHA), only had to be supplemented by weekly private tutoring in order to satisfy Act's requirement of free appropriate public education. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(3)

Public school is not required to provide tutorial service that is equal to that of private institutions. Doe By and Through Doe v. Defendant I, C.A.6 (Tenn.) 1990, 898 F.2d 1186, rehearing denied. Schools 148(2.1)

Parents of mildly mentally retarded student were not entitled to reimbursement for tutoring expenses under Education for All Handicapped Children Act, where school's proposed placement of student in special education classes was appropriate. Gregory K. v. Longview School Dist., C.A.9 (Wash.) 1987, 811 F.2d 1307. Schools 154(3)

School district did not deny learning disabled student free appropriate public education (FAPE) in manner by which it offered student tutoring during his expulsion, as would violate Individuals with Disabilities Education Act (IDEA), where district offered tutoring that met student's individualized education program (IEP), and then changed from computer-based tutoring to one-on-one tutoring to improve student's progress once it became clear that student was not making adequate progress with computer-based tutoring and his mother provided more insight into his learning difficulties. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Hearing officer's formula-based compensatory education award of tutoring for exact number of service hours that public charter school denied elementary student with disabilities was not arbitrary award, but rather, was

constructed to put student in position he would have been but for denial of free and appropriate public education (FAPE) in violation of IDEA, since award was individually tailored to meet student's unique prospective needs after review of test results indicating that student was reading at two years behind grade level, review of report card and progress report showing student's failing grades, and consideration of recommendations by psychologist and tutoring center. Mary McLeod Bethune Day Academy Public Charter School v. Bland, D.D.C.2008, 555 F.Supp.2d 130. Schools 155.5(5)

113. Assistive aids, free appropriate public education

The IDEA does not require school districts to pass a student claiming a disability when the student is able, with less than the assistive aids requested, to succeed but nonetheless fails; if a school district simply provided the assistive devices requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate educational benefits the IDEA requires. Sherman v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2003, 340 F.3d 87. Schools 148(3)

School district did not violate Individuals with Disabilities Education Act (IDEA) by not offering or providing Books on Tape to learning disabled student, since alternative forms of assistive technology for dyslexia existed in lieu of Books on Tape. Miller ex rel S.M. v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 455 F.Supp.2d 1286, affirmed 565 F.3d 1232. Schools 148(3)

114. Medication, free appropriate public education

School district could not properly include, as condition of individualized education program, that educationally handicapped student be medicated without his parents' consent. Valerie J. v. Derry Co-op. School Dist., D.N.H.1991, 771 F.Supp. 483, clarified 771 F.Supp. 492. Schools 148(4)

115. Year-round programming, free appropriate public education

District court did not apply incorrect regression/recoupment standard in affirming hearing officer's determination that autistic child did not require extended school year (ESY) services to obtain a free appropriate public education (FAPE) under the IDEA; although district court did not articulate each of Montana's factors, those factors were used by hearing officer in determining whether regression/recoupment of skills required ESY services. N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County, Mont., C.A.9 (Mont.) 2008, 541 F.3d 1202. Schools 148(3)

Policy of refusing, in formulation of individual education programs for children within school system, to consider possible necessity for programs extending beyond 180 days per year violated mandates of this chapter that individual educational program be designed to meet personal needs of each handicapped child, that each child receive some benefit, and that lack of funds not bear more heavily on handicapped than on nonhandicapped children. Crawford v. Pittman, C.A.5 (Miss.) 1983, 708 F.2d 1028, rehearing denied 715 F.2d 577. Schools 162.5

Inflexible application of Commonwealth of Pennsylvania's administrative policy which set a limit of 180 days of

instruction per year for all children, handicapped or not, was incompatible with emphasis on individual of this section which required that every state which elects to receive federal assistance under this chapter must provide all handicapped children with a right to a "free appropriate education" and, thus, policy could not be upheld against challenge by handicapped children and their parents. Battle v. Com. of Pa., C.A.3 (Pa.) 1980, 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 162.5

Wisconsin school district's extended school year (ESY) offer as part of free appropriate public education (FAPE) was reasonably calculated to provide student with educational benefit, despite parents' claim he would experience regression as result of ESY services offered. A.S. v. Madison Metropolitan School Dist., W.D.Wis.2007, 477 F.Supp.2d 969. Schools 148(2.1)

State of Missouri's policy of refusing to consider or provide more than 180 days of education per school year for the severely handicapped denied those children a "free appropriate education" as required by this chapter; however, special school district would not be adjudged to have breached a duty imposed by this chapter. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 162.5

Under this chapter and its regulations, board of education must provide services year-round to a handicapped child if child will substantially regress during the summer recess. Phipps v. New Hanover County Bd. of Educ., E.D.N.C.1982, 551 F.Supp. 732. Schools 162.5

A free appropriate public education may, in some cases, include year-round educational programming; whether it does in a particular case will vary with the needs of the particular child, but where it is required, federal law imposes on the local educational unit wherein the child resides the obligation to provide such an education. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 162.5

116. Presumption in favor of public schools, free appropriate public education

School district did not deny disabled student a free appropriate public education, although parents claimed that district predetermined student's placement; IDEA required district to assume public placement for student, through provision mandating that district educate student with his nondisabled peers to the greatest extent appropriate, and district thus did not need to consider private placement once it determined that public placement was appropriate. Hjortness ex rel. Hjortness v. Neenah Joint School Dist., C.A.7 (Wis.) 2007, 507 F.3d 1060, certiorari denied 128 S.Ct. 2962, 554 U.S. 930. Schools 154(4)

Despite handicapped child's arguments that district court improperly imposed its own views of education methodology in Individuals With Disabilities Education Act (IDEA) action, in reversing review officer's decision granting child's parents reimbursement for private school tuition, district court properly enforced IDEA's educational policies including presumption in favor of child's placement in public schools by finding that review officer's decision was inconsistent with core IDEA principles. Independent School Dist. No. 283 v. S.D. by J.D., C.A.8 (Minn.) 1996, 88 F.3d 556. Schools 155.5(2.1)

School district must evaluate child's needs and determine what is necessary to afford the child a free appropriate public education (FAPE), and if it appears that district is not in a position to provide those services in the public school setting, then and only then must it place the child at public expense in a private school that can provide those services; if school district can supply the needed services, then public school is the preferred venue for educating the child. W.S. ex rel. C.S. v. Rye City School Dist., S.D.N.Y.2006, 454 F.Supp.2d 134. Schools 154(4)

117. Neighborhood school, free appropriate public education

Placement of deaf student at regional day school which was specially designed for disabled students, rather than at regular school closer to deaf student's home, satisfied least restrictive environment provisions of IDEA; school district's decision to send deaf student to regional day school was based on scarcity of interpreters and speech pathologists in area, and regional day school was only an additional eight miles from deaf student's home. Flour Bluff Independent School District v. Katherine M. by Lesa T., C.A.5 (Tex.) 1996, 91 F.3d 689, certiorari denied 117 S.Ct. 948, 519 U.S. 1111, 136 L.Ed.2d 836. Schools 154(2.1)

School district satisfied its obligation under Education of the Handicapped Act to provide handicapped child with fully integrated public education by busing handicapped child to a nearby school, and therefore did not violate Act by refusing to modify neighborhood elementary school nearest to child's home to make it accessible to child. Schuldt v. Mankato Independent School, Dist. No. 77, C.A.8 (Minn.) 1991, 937 F.2d 1357, rehearing denied, certiorari denied 112 S.Ct. 937, 502 U.S. 1059, 117 L.Ed.2d 108. Schools 154(2.1)

Autistic student's individualized education program (IEP) did not violate federal regulations that favored sending children to neighborhood schools; geographical proximity was factor that districts had to consider, but they had significant authority to select school site, as long as it was educationally appropriate, and district fulfilled its legal obligations by considering placing student at his neighborhood school before deciding to implement his IEP elsewhere. Lebron v. North Penn School Dist., E.D.Pa.2011, 769 F.Supp.2d 788. Schools 148(3)

Education of the Handicapped Act does not require school system to duplicate small, resource-intensive program in each neighborhood school. Barnett v. Fairfax County School Bd., E.D.Va.1989, 721 F.Supp. 757, affirmed 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 148(2.1)

118. District school, free appropriate public education

School district did not have to provide disabled student with free appropriate public education (FAPE) while he was enrolled at cyber charter school; burden of providing appropriate education, consistent with mandates of IDEA, rested on student's new Local Education Agency (LEA). I.H. ex rel. D.S. v. Cumberland Valley School Dist., M.D.Pa.2012, 842 F.Supp.2d 762. Schools 148(2.1)

In IDEA case, hearing officer did not lack jurisdiction to order Planning and Placement Team (PPT) to consider out-of-district placement for student; hearing officer did not order a “remedy” in absence of IDEA violation, but rather directed PPT to proceed as it otherwise would have in absence of parents' challenge to IEP modification,

and order did not bind parents from taking their own course of action or from challenging student's IEP in the future. L. ex rel. Mr. F. v. North Haven Bd. of Educ., D.Conn.2009, 624 F.Supp.2d 163. Schools 155.5(1)

Although individualized education plan (IEP) for disabled student, who was severely autistic, called for out-of-district placement of student, such placement was least restrictive environment (LRE) in which student could receive free and appropriate public education (FAPE), as required by IDEA; student, despite specialized, individual instruction provided, was not likely to receive meaningful educational benefit at in-district school, student had minimal interactions with non-disabled students, and had been disruptive to other students learning, while achieving little or no detectable benefit. M.A. ex rel. G.A. v. Voorhees Tp. Bd. of Educ., D.N.J.2002, 202 F.Supp.2d 345, affirmed 65 Fed.Appx. 404, 2003 WL 21356406. Schools 154(4)

The IDEA and accompanying regulations did not require school district to create life skills support program within its district for student with Down's Syndrome, and instead placement in existing program in nearby school district, ten miles away, was appropriate placement, where creating program within the district would require district to construct a new classroom and hire a new teacher, as well as possibly a new teacher's aide, district would have difficulty duplicating quality of existing program and its related services, and it was possible that student would be the only student, or at best one of two, in a program within his district, while he would be one of 12 students if placed in the other district. Cheltenham School Dist. v. Joel P. by Suzanne P., E.D.Pa.1996, 949 F.Supp. 346, affirmed 135 F.3d 763. Schools 148(3); Schools 154(2.1)

119. State school, free appropriate public education

Placement of disabled child in out-of-state facility was appropriate under Individuals with Disabilities Education Act, even though such facility was not closest available facility; out-of-state facility was closest known appropriate residential placement for child, and school district failed to satisfy its burden of proposing specific alternative placement and establishing that it was appropriate for child. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(4)

Independent educational program developed for severely handicapped seven-year-old child for implementation at state school met both federal standard of “appropriate” education and state standard of special educational services sufficient to “meet the needs and maximize the capabilities” of the child and, indeed, exceeded quality of out-of-state residential program, in which parents sought to place child at state expense, given factors of adequate speech and language training, sufficient behavior management training and integration with nonhandicapped children, and nonresidential setting, permitting regular contact with community and family members. Cothern v. Mallory, W.D.Mo.1983, 565 F.Supp. 701. Schools 154(4)

120. Private school, free appropriate public education

While Individuals with Disabilities Education Act (IDEA) requires states to provide some measure of special education and related services to disabled children in private schools, IDEA does not require school district to provide those services on site of private school. KDM ex rel. WJM v. Reedsport School Dist., C.A.9 (Or.) 1999, 196 F.3d 1046, rehearing and rehearing en banc denied 210 F.3d 1098, certiorari denied 121 S.Ct. 564, 531 U.S. 1010, 148 L.Ed.2d 483. Schools 8

School district was not required to provide disabled child with special education and related services at private religious school where child was voluntarily placed by her parents, as particular disabled child voluntarily placed in private school had no individual right to services; rather, state was only required to spend proportionate amounts on special education services for that class of students as a whole. Foley v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1998, 153 F.3d 863. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) does not require school district to provide on-site special-education services to disabled child voluntarily enrolled in private school. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(2.1)

States and localities have no obligation, under Individuals with Disabilities Education Act (IDEA), to spend their money to ensure that disabled children who have chosen to enroll in private schools will receive publicly funded special-education services generally comparable to those provided to public-school children. K.R. by M.R. v. Anderson Community School Corp., C.A.7 (Ind.) 1997, 125 F.3d 1017, certiorari denied 118 S.Ct. 1360, 523 U.S. 1046, 140 L.Ed.2d 510. Schools 8; Schools 148(2.1)

Disabled students voluntarily attending private school have lesser entitlement to benefits under Individuals with Disabilities Education Act (IDEA) than do students attending public school or those placed in private school by local school district; Congress did not intend public schools to provide disabled students who are voluntarily placed in private schools with benefits comparable to those of disabled public school students in all instances. K.R. by M.R. v. Anderson Community School Corp., C.A.7 (Ind.) 1996, 81 F.3d 673, rehearing and suggestion for rehearing en banc denied, vacated 117 S.Ct. 2502, 521 U.S. 1114, 138 L.Ed.2d 1007, on remand 125 F.3d 1017. Schools 148(2.1)

Evidence supported hearing officer's decision that appropriate educational placement for deaf, blind and developmentally disabled student under Individuals with Disabilities Education Act (IDEA) was not a public school but a private school; after seven years in public school system, student had made little, if any, progress toward learning even the most basic skills. Ojai Unified School Dist. v. Jackson, C.A.9 (Cal.) 1993, 4 F.3d 1467, certiorari denied 115 S.Ct. 90, 513 U.S. 825, 130 L.Ed.2d 41. Schools 155.5(4)

Autistic student's private placement provided educational instruction specially designed to meet student's unique needs, supported by services that were necessary to permit student to benefit from instruction, as required to support claim by student's parents against state's department of education for reimbursement of tuition at private placement under Individuals with Disabilities Education Act (IDEA), despite department's contention that private placement did not have certified special education teacher nor occupational therapist employed by placement; student made both behavioral and communication gains at private placement. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

ALJ's decision to require school district to pay for student's tuition at private school did not violate IDEA's requirement that school districts offer placements in least restrictive environment available to meet student's needs, where there was no indication that private school was exclusively for disabled students. Ravenswood City School Dist. v. J.S., N.D.Cal.2012, 2012 WL 2510844. Schools 154(4)

Disabled student's unilateral placement at private school was appropriate under the IDEA, where student improved markedly after enrolling at the school; her gender identity disorder had been overcome, her language usage was appropriate, and her anxiety issues were under control. Department of Educ., State of Haw. v. M.F. ex rel. R.F., D.Hawai'i 2011, 840 F.Supp.2d 1214, clarified on denial of reconsideration 2012 WL 639141. Schools 154(4)

Even if private school was a superior placement for high school student with autism, it did not mean that individualized education plan (IEP) offered at public school for the student was not sufficient, nor inappropriate, under IDEA, and thus, once it was determined that the public school IEP was reasonably calculated to provide student with a free appropriate public education (FAPE), parents had no right to compel school district to provide education for student in private school setting. J.E. v. Boyertown Area School Dist., E.D.Pa.2011, 834 F.Supp.2d 240, affirmed 452 Fed.Appx. 172, 2011 WL 5838479. Schools 154(4)

Learning disabled student's placement at public high school did not deny student a free appropriate public education (FAPE); school district was not required to consider private placements, public school fully implemented services required by student's individualized education program (IEP) and shorter length of student's classes at public high school was not a material failure in that regard, and student's behavioral issues did not show that public school failed to implement his IEP. Savoy v. District of Columbia, D.D.C.2012, 844 F.Supp.2d 23. Schools 154(2.1)

Parents' placement of student with learning disabilities at private school was appropriate under IDEA, as required to support parents' entitlement to tuition reimbursement from public school district, despite district's contention that New Jersey Department of Education did not approve placement; parents searched all available options for student and chose private school, and no less than four experts, who all knew student for more than three years, testified that they believed student's placement was appropriate and that he received educational benefit from his time at private school. Moorestown Tp. Bd. of Educ. v. S.D., D.N.J.2011, 811 F.Supp.2d 1057. Schools 154(4)

Reviewing court would defer to findings of impartial hearing officer (IHO) and state review officer (SRO) that private school placement was appropriate for autistic student, despite New York City Department of Education's (DOE's) contention he "had shown little progress during his previous year (there)" and that school was not "specially designed to meet (student's) unique needs"; school provided student with essentially all the services that committee on special education (CSE) had recommended in its individualized education program (IEP), except it offered one session per week of occupational therapy rather than two and did not place student in classroom with consistent student-teacher-paraprofessional ratio, and it also offered him certain services not required by IEP such as art therapy and academic units specifically tailored to his interest in filmmaking. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

Impartial hearing officer (IHO) correctly found that equities weighed in favor of reimbursement of parents' tuition costs associated with unilateral placement of their autistic child in private school. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 154(4)

District of Columbia Public Schools (DCPS) could not satisfy its obligation under IDEA to provide disabled student with free appropriate public education (FAPE) by offering services comparable to those described in student's individualized education program (IEP) from private school; student's IEP could not be transferred to DCPS because private school was not "public agency" within meaning of education regulation governing IEP transfers and student transferred schools during summer, not within same school year. Maynard v. District of Columbia, D.D.C.2010, 701 F.Supp.2d 116. Schools 148(2.1)

Preponderance of evidence supported state review officer's determination that placement of learning disabled student in transitional program at private school was not reasonably calculated to enable her to receive educational benefit, in denying parents' request for tuition reimbursement under IDEA; although student was placed in mainstream science classroom, she was not mainstreamed for other subjects despite positive reports about her abilities, but was instead placed in self-contained classrooms away from her nondisabled peers. Schreiber v. East Ramapo Central School Dist., S.D.N.Y.2010, 700 F.Supp.2d 529. Schools 155.5(4)

The placement of a disabled child in a private school setting is proper, for purposes of obtaining reimbursement under IDEA, if it (1) is appropriate, i.e., it provides significant learning and confers meaningful benefit, and (2) is provided in the least restrictive educational environment. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(4)

Placement of student diagnosed with attention deficit hyperactivity disorder (ADHD) in a private behavioral modification program was not necessary to meet student's educational needs, so as to require that district cover parents' cost of such program under Individuals with Disabilities Education Act (IDEA), since student's placement stemmed from issues apart from the learning process which manifested themselves away from school grounds; main reasons mother withdrew student from school had little to do with quality of education student was receiving, but rather was due to student's sneaking out of the house to carry on a relationship of some sort with a 28-year old man who was formerly a custodian at the school and perhaps with one or more teenage boys, student's alleged defiance, and mother's disapproval of student's friends. Ashland School Dist. v. Parents of Student R.J., D.Or.2008, 585 F.Supp.2d 1208, affirmed 588 F.3d 1004. Schools 154(3)

Private educational placement for disabled student is proper, as required for parents to obtain reimbursement therefor in cause of action under the Individuals with Disabilities Education Act (IDEA), if it: (1) is appropriate, i.e., it provides significant learning and confers meaningful benefit; and (2) is provided in least restrictive educational environment. N.M. ex rel. M.M. v. School Dist. of Philadelphia, E.D.Pa.2008, 585 F.Supp.2d 657, affirmed 394 Fed.Appx. 920, 2010 WL 3622658. Schools 154(4)

Vacatur of hearing officer's compensatory award under the IDEA, which found that school district had denied student a free and appropriate public education (FAPE), and ordered district to place and fund student at a nonpublic special education school, was warranted, where there was no explanation or factual support for the formula-based award. Friendship Edison Public Charter School Collegiate Campus v. Nesbitt, D.D.C.2008, 532 F.Supp.2d 121. Schools 155.5(2.1)

Disabled student's placement at private school that was one of three he originally selected and could address his

individualized needs and provide him with services he needed to go forward to become independent, capable, and successful adult was appropriate remedy for denial of free appropriate public education (FAPE), but ALJ's $15,000 spending cap was arbitrary and impractical and student was entitled to full services at particular school, including supplemental services as outlined by school director in her affidavit. Draper v. Atlanta Indep. School System, N.D.Ga.2007, 480 F.Supp.2d 1331, affirmed 518 F.3d 1275. Schools 154(4)

Private school was appropriate placement for student with auditory processing and attention problems, despite claims of public school, required to reimburse tuition under Individuals with Disabilities Education Act (IDEA), that teachers at private school were not properly accredited, and that public school's witnesses asserting that private school's program was ineffective should have been credited. North Reading School Committee v. Bureau of Special Educ. Appeals of Mass. Dept. of Educ., D.Mass.2007, 480 F.Supp.2d 479. Schools 154(4)

Even if parents of learning disabled student who were seeking tuition reimbursement under IDEA from District of Columbia Public Schools (DCPS) for particular school year after placing their child at private school in Maryland had exhausted least restrictive environment (LRE) claim at the administrative level, there was no evidence in record that private school could implement student's individualized education program (IEP), and since DCPS placement afforded student educational benefit and IEP for that school year was appropriate, DCPS had satisfied its obligation to offer free appropriate public education (FAPE). Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(3)

Private school for autistic children had provided autistic student with educational benefit during prior year, and thus was appropriate placement under IDEA, as indicated by test results and experts' testimony that student demonstrated progress during three-week period as to reducing negative behaviors, and that he was increasingly expressing himself spontaneously. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 154(4)

Private school specializing in education of autistic children and utilizing applied behavioral analysis (ABA) theory was an appropriate educational placement for autistic student, and school board would have to reimburse student's parents for relevant costs associated with school year in which it failed to meet its obligations under IDEA. County School Bd. of Henrico County, Va. v. R.T., E.D.Va.2006, 433 F.Supp.2d 657. Schools 154(4)

School district responded substantively to Individuals with Disabilities Education Act (IDEA) requirement, that it provide free appropriate public education (FAPE) to middle school student with behavior problems, when it prepared Individualized Education Program (IEP) calling for placement in private school in area, featuring small class size and technically diversified staff. A.K. ex rel. J.K. v. Alexandria City School Bd., E.D.Va.2005, 409 F.Supp.2d 689, reversed and remanded 484 F.3d 672, rehearing and rehearing en banc denied 497 F.3d 409, certiorari denied 128 S.Ct. 1123, 552 U.S. 1170, 169 L.Ed.2d 957, on remand 544 F.Supp.2d 487. Schools 154(4)

Private school was not an appropriate placement for special education student, and he was therefore not entitled to reimbursement for his tuition under Individuals with Disabilities Education Act (IDEA); private school was a

more restrictive placement than the placements provided to student by the school district, there was no indication that private placement would eventually transition student into a less restrictive placement, and school's methodology and certification were inadequate to meet the student's educational needs. W.C. ex rel. Sue C. v. Cobb County School Dist., N.D.Ga.2005, 407 F.Supp.2d 1351. Schools 154(4)

The IDEA does not forbid states to offer special education services on-site at private school, and school districts have discretion in this regard. Bay Shore Union Free School Dist. v. T. ex rel R., E.D.N.Y.2005, 405 F.Supp.2d 230, vacated , appeal dismissed 485 F.3d 730. Schools 8

Since school district's proposed public school placement could not meet all of student's unique needs, as required under the Individuals with Disabilities in Education Act (IDEA) to qualify as a free appropriate public education, district court would order that student be placed at district's expense for a transitional period of one year in a private school that had on-site psychological services which had proven to be of great importance in student's integration to school; student had been out of school for almost four years, was diagnosed with major depression disorder after having been enrolled at the public school, and had communicated thoughts of hurting herself after attending the public school. Zayas v. Commonwealth of Puerto Rico, D.Puerto Rico 2005, 378 F.Supp.2d 13, affirmed 163 Fed.Appx. 4, 2005 WL 3484654. Schools 154(4)

In IDEA case, parents had met their burden of showing that private school out of district was appropriate placement for their daughter; in concluding otherwise, State Review Officer (SRO) mistakenly relied on student's performance on single standardized test in determining whether her performance had improved, student made substantial progress in her speech and language skills during relevant school year despite private school's nonprovision of related services contemplated by district, and placement of student with classmates who were between three and four years younger had also been deemed appropriate in last acceptable individualized education plan (IEP). Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(4)

Individualized education program (IEP) for grade school student who had Asperger's Syndrome, calling for education using district's facilities and teachers, was inappropriate in view of report of experts preparing IEP for following school year, rejecting public school option and endorsing placement of student in private school. Schoenbach v. District of Columbia, D.D.C.2004, 309 F.Supp.2d 71. Schools 148(3)

Emotionally disabled elementary school grade student received free appropriate public education (FAPE), as mandated by Individuals with Disabilities Education Act (IDEA), when he was assigned to attend school within district, where he would receive special education instruction, despite parents' claim that student's diagnosis of social phobia or posttraumatic stress disorder precluded attendance at that school; parents failed to explain why diagnosis precluded public school attendance, or how any problems would not carry over into any alternate private school placement. Keith H. v. Janesville School Dist., W.D.Wis.2003, 305 F.Supp.2d 986. Schools 154(2.1)

Student who needed special education services under IDEA was entitled to immediate placement in private facility, funded by school district, to implement hearing officer's determination (HOD) that student required full-time

special education placement and that neither student's current school nor public elementary school was appropriate placement, instead of placement in another school in district as recommended by special master based on it's assurances that appropriate placements were available; district failed to immediately find appropriate placement within time frame ordered by special master and did not implement individualized education program (IEP) for student over course of four years, and district's inexcusable disregard of student's rights under IDEA threatened student's physical and emotional health and safety. Blackman v. District of Columbia, D.D.C.2003, 278 F.Supp.2d 1. Schools 154(2.1)

Disabled child who has been placed by his parents in private school does not have individually enforceable right to receive special education and related services; rather, local school district need only spend proportional amount of its total Individuals with Disabilities Education Act (IDEA) funding on provision of services to disabled students in private school. Gary S. v. Manchester School Dist., D.N.H.2003, 241 F.Supp.2d 111, affirmed 374 F.3d 15, certiorari denied 125 S.Ct. 505, 543 U.S. 988, 160 L.Ed.2d 373. Schools 148(2.1)

School district failed to provide hearing impaired preschool child with free appropriate public education (FAPE) mandated by Individuals with Disabilities in Education Act (IDEA), by failing to comply with deadlines for preparation of Individualized Education Program (IEP) and Individualized Family Service Plan (IFSP), and holding of multidisciplinary conference (MDC), which required parents to enroll child in private school at own expense, as new school year commenced without district action. Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S. ex rel. Alec S., C.D.Ill.2002, 184 F.Supp.2d 790. Schools 148(3)

In Individuals with Disabilities Education Act (IDEA) case in which parties agreed that school system could no longer educate student because it could not meet his disability-related needs and in which local school board did not offer an appropriate placement at the outset, thereby causing the parent to unilaterally place their child in a program that was otherwise proper, but did not meet the requirements of IDEA, hearing officer erred when she concluded that private school was an inappropriate placement for school year, particularly when she had found it an appropriate placement for the previous year; there was no legal basis for board to insist that private school contractually agree to comply with the IDEA's requirements relating to individualized education programs (IEPs). M.C., ex rel. Mrs. C. v. Voluntown Bd. of Educ., D.Conn.1999, 56 F.Supp.2d 243, reversed in part , vacated in part 226 F.3d 60, on remand 122 F.Supp.2d 289. Schools 154(4)

Parents of disabled student assumed financial risk of unilaterally withdrawing student from public school, for purposes of tuition reimbursement provisions of Individuals with Disabilities Education Act (IDEA), where parents unilaterally placed student in private facility without consulting with school district, expressing any dissatisfaction with district's programs, or discussing available local alternatives with district. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) is an equal access statute, which requires states to accept children with disabilities into their public schools; that access must be meaningful and must be reasonably calculated to confer some educational benefits on the child and, where possible, the education must be provided in regular public school with the child participating as much as possible in the same activities as other children;

when that is not possible, Act provides for placement in private schools at public expense. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1); Schools 154(4)

School district was obliged under the Education of the Handicapped Act to pay learning disabled child's tuition at private day school even though school was "decertified" during the course of the school year, where issue arose only because of district's failure to place child in an appropriate school on a timely basis, parents acted reasonably when they could not get a decision from the district, district funded education of other students at the same school, and the school was later recertified and appeared to be an "appropriate" placement. Shirk v. District of Columbia, D.D.C.1991, 756 F.Supp. 31. Schools 154(4)

Five-year-old multiply handicapped child was not appropriately placed in District of Columbia public school program for handicapped children, but rather, was appropriately placed in private school; evidence showed that student would not have been provided with necessary speech and occupational therapy in public school and despite expectations and efforts to establish that program, none had been offered. Kattan by Thomas v. District of Columbia, D.D.C.1988, 691 F.Supp. 1539. Schools 154(4)

Individualized education program for fifth grade student who had dyslexia, calling for integration with regular students during recess, lunch, and sports programs, could be implemented at private school approved for nonpublic placement of youngsters with dyslexia, where all students at such school were of average or higher intelligence, many would be considered regular students in public setting, and fifth grade student would have contact with such students in class, as well as during lunch, recess, and sports programs. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 154(4)

Department of Education was responsible for all costs associated with disabled student's provisional placement at private school, given its present inability to provide the free appropriate public education that student required. Zayas v. Puerto Rico, C.A.1 (Puerto Rico) 2005, 163 Fed.Appx. 4, 2005 WL 3484654, Unreported. Schools 154(4)

121. Parochial school, free appropriate public education

Disabled student was not entitled, under amendments to Individuals with Disabilities Education Act (IDEA), to receive publicly-funded special education services in private parochial school setting, where local school district made free appropriate public education (FAPE) mandated by IDEA available to student, and parents elected to enroll student in private parochial school. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) required school district to provide disabled student with consultant teacher and teacher's aide at parochial school; district's only justification for its failure to provide such benefits was its view that establishment clause prohibited on-site provision of such services in parochial school, statute and its regulations were more consistent with mandatory entitlements than with discretionary authority, and giving school district discretion to offer services required by IDEA only in public schools would

have required student to either forgo IDEA benefits, bear cost of such benefits herself, or transfer to public school. Russman by Russman v. Sobol, C.A.2 (N.Y.) 1996, 85 F.3d 1050, amended , motion granted 117 S.Ct. 940, 519 U.S. 1106, 136 L.Ed.2d 830, vacated 117 S.Ct. 2502, 521 U.S. 1114, 138 L.Ed.2d 1008, on remand 150 F.3d 219. Schools 148(2.1)

Parents' unilateral placement of elementary school student with multiple disabilities in private yeshiva was not appropriate under Individuals with Disabilities Education Act (IDEA); yeshiva had no experience with or capacity to educate students with disabilities, few of its teachers, if any, attained education beyond yeshiva, or equivalent of high-school degree, none of student's various classroom aides had training in or experience with educating children with disabilities, and aides' individualized sessions with student were not designed to augment or complement his various therapies, but rather, they appeared to be extension of yeshiva's religious education, although there was no formal coordination of lesson plan with yeshiva. J.G. ex rel. N.G. v. Kiryas Joel Union Free School Dist., S.D.N.Y.2011, 777 F.Supp.2d 606. Schools 154(4)

Establishment Clause did not preclude reimbursement of parents who placed disabled child in otherwise appropriate sectarian school while challenging appropriateness of individualized education plan (IEP) proposed by local educational agency (LEA); IDEA reimbursement scheme was neutral with respect to religion, with funds reaching sectarian institution only as result of parents' wholly independent choice. L.M. ex rel. H.M. v. Evesham Tp. Bd. of Educ., D.N.J.2003, 256 F.Supp.2d 290. Constitutional Law 1363; Schools 154(4)

Local educational agency (LEA) may not rely on state law that bans payment to sectarian institutions as basis for denying parental reimbursement when LEA has failed to provide free and appropriate public education (FAPE) and unilateral parental placement in such institution is otherwise deemed appropriate under IDEA. L.M. ex rel. H.M. v. Evesham Tp. Bd. of Educ., D.N.J.2003, 256 F.Supp.2d 290. Schools 154(4)

School district's refusal to provide certain services to disabled student in private sectarian school setting did not come within Free Exercise Plus exception to general rule that facially neutral government act does not violate Free Exercise Clause merely because it has incidental effect on religious practice; parents' decision to place student in private sectarian school was voluntary, and district's refusal to provide services under those circumstances was within its discretion. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Constitutional Law 1363; Schools 8; Schools 148(2.1)

Placement of mentally ill high school student at private school outside state was appropriate under Individuals with Disabilities Education Act (IDEA); school providing Christian sectarian education was suitable for student's condition, involving excessive social anxiety, magical thinking, poor internal controls and inappropriate affect, as it would not subject him to aggressive behavior that could prove damaging, and school district ultimately approved school as appropriate education source in later individual educational plans (IEPs) prepared for student. Matthew J. v. Massachusetts Dept. of Educ., D.Mass.1998, 989 F.Supp. 380. Schools 154(4)

122. Home schooling, free appropriate public education

Parents' home-based program for their child with autism was not “proper,” within meaning of IDEA, precluding

parents' eligibility for reimbursement of costs of home-based program, on grounds that program was not reasonably calculated to enable child to receive educational benefits, where program provided only some educational services, including math, reading, and listening comprehension, but these services were often secondary to teaching of social and behavior skills and were in no way intended to supplant educational services available to child through school district. T.B. ex rel. W.B. v. St. Joseph School Dist., C.A.8 (Mo.) 2012, 677 F.3d 844. Schools 154(3)

States have discretion to determine whether home education that is exempted from state's compulsory attendance requirement qualifies as a "private school," for purpose of IDEA requirements. Hooks v. Clark County School Dist., C.A.9 (Nev.) 2000, 228 F.3d 1036, certiorari denied 121 S.Ct. 1602, 532 U.S. 971, 149 L.Ed.2d 468. Schools 154(4)

School district's policy of denying special education and related services to home-educated children did not violate equal protection clause, as state and its school districts had legitimate interest in promoting educational environments that fulfilled the qualifications that state deemed important, and maximizing the utility of scarce funds, and limiting IDEA services to qualified private schools reasonably advanced those interests by steering scarce educational resources toward those qualified educational environments. Hooks v. Clark County School Dist., C.A.9 (Nev.) 2000, 228 F.3d 1036, certiorari denied 121 S.Ct. 1602, 532 U.S. 971, 149 L.Ed.2d 468. Constitutional Law 3620; Schools 160.7

School district's alleged threats to file truancy charges unless learning disabled student's parents either enrolled student in public school or registered her with the state as a home-schooled student pursuant to state statute did not deny student access to a free appropriate public education (FAPE) under IDEA, even though hearing officer had ordered student to be homeschooled. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Hearing officer's final determination that disabled student was not eligible for home-bound services, under IDEA requirement that school district provide free appropriate public education (FAPE), was not inconsistent with officer's prior unofficial finding that student had been denied FAPE, since finding was based on argument by student's parent that all 17.5 hours of instruction required by student's individualized education program (IEP) should have been provided instead of only 4 hours supplied, but parent failed to establish by medical documentation that student's condition required home-bound services. Wilkins v. District of Columbia, D.D.C.2008, 571 F.Supp.2d 163. Schools 155.5(1)

Autistic student's placement at junior high school, rather than home schooling, was reasonably calculated to provide student with a free appropriate public education (FAPE), in accord with Individuals with Disabilities Education Act (IDEA). Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233, Special Services Div., D.Kan.2003, 316 F.Supp.2d 960. Schools 154(3)

Parents' placement of autistic child in 38-hour home-based program was reasonably calculated to enable child to receive educational benefits, as required for parents to receive reimbursement for program under Individuals with Disabilities Education Act (IDEA); program was designed by child's parents and autism experts and had

carefully targeted child's specific challenges and capacities. T.H. v. Board of Educ. of Palatine Community Consol. School Dist. 15, N.D.Ill.1999, 55 F.Supp.2d 830, appeal dismissed 202 F.3d 275, affirmed 207 F.3d 931, certiorari denied 121 S.Ct. 70, 531 U.S. 824, 148 L.Ed.2d 34. Schools 154(4)

Handicapped student's home schooling after he had been determined to be eligible for services under Individuals with Disabilities Education Act (IDEA) was not "free appropriate public education." Stockton by Stockton v. Barbour County Bd. of Educ., N.D.W.Va.1995, 884 F.Supp. 201, affirmed 112 F.3d 510. Schools 148(2.1)

123. Residential placement, free appropriate public education

Disabled child is not entitled under IDEA to placement in residential school merely because latter would more nearly enable child to reach his or her full potential. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 154(3)

Placement of child who suffered from emotional and educational disabilities in private residential treatment facility was necessary for child to make meaningful educational progress, for purpose of Individuals with Disabilities Education Act (IDEA), in view of child's stalled academic performance while in public school system, and failure of board of education to sufficiently deal with child's problems, despite clinical evaluation concluding that child's problems could only be properly addressed in highly structured residential setting. Mrs. B. v. Milford Bd. of Educ., C.A.2 (Conn.) 1997, 103 F.3d 1114. Schools 154(3)

Under Individuals with Disabilities Education Act (IDEA) and California law, county could not show by preponderance of evidence that residential placement of seriously emotionally disturbed (SED) minor was unnecessary for minor to accomplish her individualized education program (IEP) goals; despite argument that day treatment was least restrictive environment available, evidence showed that day program failed to meet IEP goals. County of San Diego v. California Special Educ. Hearing Office, C.A.9 (Cal.) 1996, 93 F.3d 1458. Schools 155.5(4)

Residential placement, rather than mainstreaming, was appropriate under Individuals with Disabilities Education Act (IDEA) for disabled child, despite school district's contention that requiring residential placement was equivalent to requiring district to provide "best" or "potential-maximizing" education; child did not receive academic or nonacademic benefits in a regular classroom, child was severely disrupting regular classroom, school district failed to support its contention that cost-benefit analysis might support conclusion that community-based program was appropriate for child, district conceded at trial that cost was not issue in case, child's educational progress was deteriorating under district's program, parent's experts testified that child required residential placement, that out-of-state program was appropriate for child's disabilities, and that they were unaware of any closer appropriate program, no medical expert testified that district's proposal was reasonably calculated to provide child appropriate education, and district's expert had had no personal contact with child, was less knowledgeable about child's condition than were parent's experts, and testified in terms of broad generalities. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(3)

Individualized education program (IEP) developed for profoundly deaf child, which would place child in resid-

ential school providing intensive instruction in American Sign Language (ASL), was reasonably calculated to result in educational benefit to child as required by IDEA. Poolaw v. Bishop, C.A.9 (Ariz.) 1995, 67 F.3d 830. Schools 154(3)

Individualized education program (IEP) proposed by school district for child with learning disabilities and emotional difficulties, which provided for individualized instruction in problem areas, oral, untimed testing, academic subjects one subject at a time at pace set by child, individualized counseling, and enrollment in some regular classes with nonexceptional children, satisfied requirements of IDEA, notwithstanding parents' request for residential placement of child; evidence did not support claim that residential placement was best possible education for child and IDEA required IEP to seek least restrictive environment. Salley v. St. Tammany Parish School Bd., C.A.5 (La.) 1995, 57 F.3d 458. Schools 154(3)

Education of the Handicapped Act required residential placement of child who was suffering from several congenital physical abnormalities and from neurological impairment inhibiting his ability to walk or to communicate, rather than placement in day program, in view of severity of child's disability; only residential placement would provide child with requisite free appropriate public education. Board of Educ. of East Windsor Regional School Dist. v. Diamond in Behalf of Diamond, C.A.3 (N.J.) 1986, 808 F.2d 987. Schools 154(3)

To determine whether residential placement is appropriate under provisions of Education for All Handicapped Children Act [20 U.S.C.A. §§ 1401(16), 1413(a)(4)(B)], court must analyze whether full-time placement may be considered necessary for educational purposes or whether residential placement is response to medical, social or emotional problems that are segregable from learning process. McKenzie v. Smith, C.A.D.C.1985, 771 F.2d 1527, 248 U.S.App.D.C. 387. Schools 154(3)

Where unique condition of severely retarded child demanded that he receive round-the-clock training and reinforcement in order to make any educational progress at all, order that child be placed in residential program was proper under this chapter. Abrahamson v. Hershman, C.A.1 (Mass.) 1983, 701 F.2d 223. Schools 154(3)

Findings that child might regress if moved to an entirely new home and school environment pursuant to education plan proposed by school officials and that it would be detrimental for student to return to his parents' home was a finding that student could not benefit from the proposed program of instruction and sustained district court's determination that residential program was required. Doe v. Anrig, C.A.1 (Mass.) 1982, 692 F.2d 800, on remand 561 F.Supp. 121. Schools 155.5(4)

Private day school placement provided disabled student with free appropriate public education (FAPE), and student did not require residential placement under IDEA; student's emotional problems were segregable from his ability to learn. Y.B. v. Board of Educ. of Prince George's County, D.Md.2012, 2012 WL 3962511. Schools 154(3)

Residential placement was not required to afford student a free appropriate public education (FAPE); weight of the evidence demonstrated that student had progressed significantly in his months away from public high school

and could return to high school with benefit of increased support services and more structure to his school day, and while student indisputably had frequent problems out of school involving criminal activity, drug use, and violence, his academic performance at public high school was at least average. C.T. v. Croton-Harmon Union Free School Dist., S.D.N.Y.2011, 812 F.Supp.2d 420. Schools 154(3)

School district's individualized education plan (IEP) for autistic student recommending his placement in non-residential high school was not reasonably calculated to enable student to receive educational benefits, as required to provide student with free appropriate public education (FAPE) under IDEA; student's needs were extensive, requiring great deal of structure and consistency, and best met through 24-hour residential program. Cone v. Randolph County Schools Bd. of Educ., M.D.N.C.2009, 657 F.Supp.2d 667. Schools 148(3); Schools 154(3)

Placement of disabled student in 24-hour a day residential facility was not proper under the IDEA, for purposes of parents' request for reimbursement of costs thereof, as it did not provide him an education in the least restrictive environment (LRE); there was no credible evidence that student would regress and lose skills from time he left school until time he returned in the morning, and doctor opined that student could receive educational benefit without additional services beyond school day. A.S. v. Madison Metropolitan School Dist., W.D.Wis.2007, 477 F.Supp.2d 969. Schools 154(3)

Residential placement was required in order for autistic child to receive a free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA); child was not showing any academic progress at day school, and all but one witness concurred that could academically improve in the more restrictive environment of a residential program. S.C. ex rel. C.C. v. Deptford Tp. Bd. of Educ., D.N.J.2003, 248 F.Supp.2d 368. Schools 154(3)

Residential placement of disabled child under Individuals with Disabilities Education Act (IDEA) is inappropriate where such placement is requested or needed to address needs other than child's educational needs, as where placement is sought in response to medical, social, emotional, or caretaking or custodial problems segregable from learning process. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 154(3)

Relevant factors in determining whether residential placement of disabled student is least restrictive educational environment and therefore required for educational purposes under Individuals with Disabilities Education Act (IDEA) include: steps that school has taken to try to include child in regular or local community-based school setting; comparison between educational benefits child would receive in local placement and benefits child would receive in residential placement; and possible negative effect child's inclusion might have on education of other children in local placement class and school. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) does not authorize residential care merely to enhance otherwise sufficient day program; handicapped child who would make educational progress in day program would not be entitled to placement in residential school merely because latter would more nearly enable the child to

reach his or her full potential, but rather, district is required merely to ensure that child be placed in program that provides opportunity for some educational progress. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 154(3)

Given clearly inappropriate individualized education program (IEP) proposed for school year by school district, student's residential placement at private school by parent was appropriate placement under Education of the Handicapped Act (EHA), notwithstanding fact that residential placement at private school was more restrictive than was optimally necessary for student, as it did not provide mainstreaming; parent was thus entitled to tuition reimbursement for that school year, where school district failed to show availability of more appropriate, less restrictive placements. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900 . Schools 154(4)

Upon determination that twenty-four hour residential placement for 16-year-old student suffering from severe infantile autism and severe mental retardation was necessary for student to achieve educational progress, Education of the Handicapped Act mandated that school district provide student with residential placement until age 21, or, in the alternative, to pay for placement in residential facility mutually agreed upon by student's parents and school officials. Drew P. v. Clarke County School Dist., M.D.Ga.1987, 676 F.Supp. 1559, affirmed 877 F.2d 927, certiorari denied 110 S.Ct. 1510, 494 U.S. 1046, 108 L.Ed.2d 646.

Psychologically handicapped child's residential placement, whereby State paid only tuition component of facility's charges, deprived child of free and appropriate public education, in violation of the Education for the Handicapped Act. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 154(3)

Although during her term in private boarding school, now 16-year-old mentally handicapped child's emotional condition and social orientation had improved and although those problems were exhibited primarily in response to stressful home environment, a residential program was not necessary to provide child with the appropriate education to which she was entitled under this chapter and public funding of that placement was not required as school district offered a free appropriate program which conferred educational benefits, notwithstanding unrebutted evidence that child's gains might be lost if private placement was changed. Ahern v. Keene, D.C.Del.1984, 593 F.Supp. 902. Schools 154(3)

Under New Jersey's regulations implementing this subchapter and requiring local public school districts to provide each handicapped pupil with special education program and services according to how pupil can best achieve educational success, continued attendance by 15-year-old trainable, mentally retarded child with neurological impairment in residential school was more appropriate placement than placing child in his home and in local schools since child's continued attendance at the residential school would enable him to best achieve success in learning and where placing him in his home and in local schools would have adverse effect on his ability to learn and develop to maximum possible extent. Geis v. Board of Educ. of Parsippany-Troy Hills, Morris County, D.C.N.J.1984, 589 F.Supp. 269, affirmed 774 F.2d 575. Schools 154(3)

Under this chapter, school district was required to provide residential program for profoundly retarded child, in view of evidence that child would realize his learning potential only if he received more professional help than a

day program could offer him. Kruelle v. Biggs, D.C.Del.1980, 489 F.Supp. 169, affirmed 642 F.2d 687. Schools 154(3)

Under this subchapter as well the Rehabilitation Act of 1973, section 701 et seq. of Title 29, and implementing regulations, the District of Columbia Board of Education had responsibility for providing residential educational services to multiply handicapped 16-year-old boy who was diagnosed as being epileptic with grand mal, petit mal, and drop seizures, emotionally disturbed, and learning disabled and whose condition required that he be placed in resident treatment facility to provide medical supervision, special education and psychological support. North v. District of Columbia Bd. of Ed., D.C.D.C.1979, 471 F.Supp. 136. Schools 154(3)

124. Personal injury awards, free appropriate public education

Placement of Medicaid lien by county's social services department on settlement or personal injury award received by disabled student to pay for services that are mandated, under state law, to be provided free of charge to such students violates Individuals with Disabilities Education Act (IDEA). Andree ex rel. Andree v. County of Nassau, E.D.N.Y.2004, 311 F.Supp.2d 325. Schools 148(2.1)

125. Compensatory education, free appropriate public education

Absence of specially designed instruction in Individualized Education Program (IEP) for elementary school student who suffered reading and learning disabilities did not affect substantive rights of student or parents, and therefore, did not warrant award of compensatory education under the Individuals with Disabilities Education Act (IDEA); subsequent Notices of Recommended Educational Placement (NOREP) contained required information, including specialized educational placement, and parents signed and approved NOREPs. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 155.5(5)

Student was not denied free and appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA) for time period during which she was in acute care ward of long-term psychiatric residential treatment center, as would warrant award of compensatory education; school district responded promptly after being informed of learning disabled student's admission to facility and sought to reevaluate her educational needs and develop a new individualized education plan (IEP), and failure to develop new IEP was attributable to acute nature of student's medical condition. Mary T. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2009, 575 F.3d 235. Schools 155.5(5)

Denial of compensatory education under IDEA to disabled student, on basis that private school program had provided her with social and psychological services and that she continued making gains in those areas during enrollment, was supported by evidence, including conclusions of school and private psychologists regarding student's social and emotional well-being and program's provision of constant feedback and monitoring and group counseling. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 155.5(4)

Arkansas Department of Education (ADE) did not violate IDEA or § 1983 with regard to its training and monitoring of school district personnel throughout the state; ADE's receipt of five-year state improvement grant was

de facto compliance with requirement of comprehensive system of personnel development (CSPD) and thus defense to claim for injunctive relief by parents of autistic student, while student was not in school when first grant was approved his personal rights under IDEA were not violated so he could not receive compensatory education at state's expense for alleged statewide failure of ADE's special education training program, and in any event district court's finding that Arkansas's state plans including provisions for training of personnel had all been approved as in compliance with IDEA was not clearly erroneous. Bradley ex rel. Bradley v. Arkansas Dept. of Educ., C.A.8 (Ark.) 2006, 443 F.3d 965. Schools 148(3)

Student was entitled to compensatory education under Individuals with Disabilities Education Act (IDEA) upon finding that his Individualized Education Program (IEP) was inappropriate and that school district knew or should have known of deficiency; majority of skills that student possessed at time of expert's evaluation were gained before he was placed in day program pursuant to IEP, same rate of progress did not continue after he was placed at day program, and he reached plateau in his development. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 148(2.1)

Student was entitled to one year of compensatory educational services in his action, by his next friend and mother, against school district for violation of its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where student was placed in disciplinary program at district's discipline and guidance center for one year while awaiting evaluation for, and provision of, special education services. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 155.5(5)

Evidence was insufficient to support compensatory education damages award of 150 hours upon determination that student suffering from mental retardation and emotional disturbance was denied free appropriate public education (FAPE) under the Individuals with Disabilities Education Improvement Act (IDEIA); although educational advocate opined that student needed 150 hours in life-skills training, the advocate failed to provide any explanation as to why that amount was appropriate. Gill v. District of Columbia, D.D.C.2010, 751 F.Supp.2d 104, affirmed 2011 WL 3903367. Schools 155.5(5)

Student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder was not entitled to award of compensatory education, since she had received free appropriate public education comporting with IDEA requirements. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 155.5(5)

Appropriate education that student with learning disability had been receiving for previous two years did not abate or mitigate school district's duty, as mandated by hearing officer determination under IDEA, to provide him with compensatory education. D.W. v. District of Columbia, D.D.C.2008, 561 F.Supp.2d 56. Schools 148(3)

Disabled student received all compensatory education to which he would otherwise have been entitled for period after he started elementary school and before his interim individualized education program (IEP) was implemented, and thus student was not entitled under Individuals with Disabilities Education Act (IDEA) to compensatory education for that period, where school district provided student with many more hours of applied behavior analysis (ABA), verbal behavior (VB), and occupational therapy (OT) services than were called for in interim IEP. Travis G. v. New Hope-Solebury School Dist., E.D.Pa.2008, 544 F.Supp.2d 435. Schools 155.5(5)

Appropriate amount of compensatory education under IDEA, as remedy for school district's denial of free appropriate public education (FAPE) to student who was diagnosed with hemophilia, autism, borderline mental retardation, bipolar disorder, and other conditions, was 460 hours for grade seven, and 108 hours for grade eight, in light of Hearing Officers' and Appeals Panel's agreement on such conclusion, weight due to administrative proceedings, and absence of evidence to contradict their findings. Heather D. v. Northampton Area School Dist., E.D.Pa.2007, 511 F.Supp.2d 549, subsequent determination 2007 WL 2332480. Schools 155.5(5)

One-year equitable limitation period did not apply to IDEA compensatory education claim, initiated at state administrative level, requesting additional hours of education to replace years adult student did not receive under IDEA as minor. A.A. ex rel. E.A. v. Exeter Tp. School Dist., E.D.Pa.2007, 485 F.Supp.2d 587. Schools 155.5(2.1)

Award of compensatory education to disabled student who was not provided appropriate individual education plan (IEP) was not subject to equitable limitations period applicable to tuition reimbursement claims of parents. Keystone Cent. School Dist. v. E.E. ex rel. H.E., M.D.Pa.2006, 438 F.Supp.2d 519. Schools 155.5(2.1)

Disabled student was not provided free appropriate public education (FAPE) during period in which school district complied with administrative hearing officer's stay-put order under the IDEA, which required it to make no significant change to student's existing individualized education program (IEP) while new IEP was being challenged, and thus student was entitled to compensatory education; stay-put status did not provide student with more than de minimis educational benefit, given that student's existing IEP had failed the previous year. Mr. R. v. Maine School Administrative Dist. No. 35, D.Me.2003, 295 F.Supp.2d 113. Schools 148(2.1)

Equitable order that school district provide paraprofessional for disabled student for six academic years, regardless of whether student attended public or private religious school, was warranted by district's past refusal, in violation of preamendment version of IDEA, to provide such services to student for three years that he attended private sectarian school, where during three other years student attended public school only because of refusal. Westendorp v. Independent School Dist. No. 273, D.Minn.1998, 35 F.Supp.2d 1134. Schools 8; Schools 155.5(5)

126. Reimbursement, free appropriate public education--Generally

Under IDEA, parents are entitled to reimbursement of private-education tuition for their child only if a federal court concludes both that the public placement violated IDEA and the private school placement was proper under the Act, and even then courts retain discretion to reduce the amount of a reimbursement award if the equities

so warrant. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

District Court, in considering, pursuant to IDEA, whether reimbursement of some or all of cost of child's private education was warranted by school district's alleged failure to provide child with free appropriate public education (FAPE), and on basis that private-school placement was suitable, was required to consider all relevant factors, including notice provided by parents and school district's opportunities for evaluating the child. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

Even if public school denied learning-disabled student a free appropriate public education (FAPE) by failing to have an individualized educational program (IEP) in effect for student on first day of classes, as required by IDEA, equitable considerations weighed against reimbursing student's parents for cost of student's private school education for one school year, since parents' conduct in delaying continuation of individualized educational program (IEP) meeting and canceling speech and language evaluation substantially precluded any possibility that school could timely develop an appropriate IEP for student. C.H. v. Cape Henlopen School Dist., C.A.3 (Del.) 2010, 606 F.3d 59. Schools 154(4)

Parents and minor child seeking reimbursement for educational expenses under Individuals with Disabilities Education Act (IDEA) failed to establish that school district's proposed individualized education program (IEP) was substantively inappropriate; IEP included numerous supports and services to assist autistic child with his transition from primarily home-based educational program to school-based program. T.P. ex rel S.P. v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2009, 554 F.3d 247. Schools 148(3)

Reimbursement for parents' unilateral placement of disabled child in private school upon their rejection of school district's individual education plan (IEP) as inappropriate was not barred by private school's failure to provide an IEP, to structure individualized program for student, or by private school teachers' lack of special education certification, where placement was appropriate in that child continued to make in reaching her academic, social, and behavioral goals. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 154(4)

Reading center was not an appropriate placement for learning disabled child under IDEA, supporting hearing officer's denial of private school reimbursement, where child only worked on her reading ability at the center and did not study any other subjects such as social studies, math, English, or science. Rafferty v. Cranston Public School Committee, C.A.1 (R.I.) 2002, 315 F.3d 21. Schools 154(4)

District court inappropriately substituted its own subjective judgment about appropriate measures of educational progress under IDEA, when, in finding that school board owed reimbursement to parent of learning-disabled child for private school tuition, it discredited state review officer's interpretation of objective evidence regarding student's lack of progress at and consequent inappropriateness of private school, and instead relied on non-objective evidence including parent's testimony concerning child's happiness. M.S. ex rel. S.S. v. Board of Educ. of the City School Dist. of the City of Yonkers, C.A.2 (N.Y.) 2000, 231 F.3d 96, certiorari denied 121 S.Ct. 1403, 532 U.S. 942, 149 L.Ed.2d 346. Schools 154(4)

Removing child from partially mainstreamed program at public school, which otherwise provided appropriate academic instruction and to which the only objection was the failure to fully mainstream, and placing the child in a nonmainstreamed program in a private school did not satisfy the goals of the Individuals with Disabilities Education Act, and did not entitle parents to reimbursement of the private school tuition. Gillette By and Through Gillette v. Fairland Bd. of Educ., C.A.6 (Ohio) 1991, 932 F.2d 551. Schools 154(4)

Educational officials who did not conduct required multi-disciplinary review for learning-disabled child, and who failed to involve child's parents in preparation of proposed individual educational program, did not provide child with "free and appropriate public education" and were liable under the Education of the Handicapped Act for cost of placing child in private school. Board of Educ. of Cabell County v. Dienelt, C.A.4 (W.Va.) 1988, 843 F.2d 813. Schools 148(3)

Administrative hearing officer erred in awarding disabled student and her parents reimbursement and compensatory education for violations of the IDEA by the Department of Education (DOE) of Hawai'i, without considering their failure to challenge DOE's offer of a free appropriate public education (FAPE) and to provide written notice prior to student's unilateral withdrawal from public education. Department of Educ., State of Haw. v. M.F. ex rel. R.F., D.Hawai'i 2011, 840 F.Supp.2d 1214, clarified on denial of reconsideration 2012 WL 639141. Schools 154(4); Schools 155.5(5)

Parents were not entitled to reimbursement under IDEA for unilateral placement of learning-disabled student in private school, where it was not appropriate to rely on school's prospective potential to decide whether reimbursement was appropriate, and placement in school had not been successful, given that student's writing skills, reading skills, and decoding skills had all declined relative to his peer levels, and that school had failed to tailor its program to student's specific needs. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 154(4)

Because District of Columbia could craft an appropriate Individualized Education Plan (IEP) to provide a free, appropriate, public education (FAPE) to student with attention-deficit/hyperactivity disorder (ADHD), it was not required under IDEA to pay for student's placement at private school; administrative hearing officer ordered that student's IEP be modified to provide for small group instruction to remedy any inadequacy, private school would not provide the least restrictive environment for student's education, and student had previously received educational benefit at an inclusion-based school for five years. N.T. v. District of Columbia, D.D.C.2012, 839 F.Supp.2d 29. Schools 154(4)

District court would not reduce or deny parents reimbursement from public school district, pursuant to Individuals with Disabilities Education Act (IDEA), based on parents' alleged unreasonableness; although parents failed to provide district with notice prior to child's non-emergent hospitalization, district informed parents that district believed it had no further obligations towards child, and district never changed its incorrect position that it had no obligation to child as long as she was not physically present in state. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Three-part *Burlington* test for reimbursement under IDEA of cost of private special education services applied to

claims for retroactive direct tuition payment. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

Parents of student who suffered from schizoaffective disorder and borderline intellectual functioning were entitled to reimbursement under Individuals with Disabilities Education Act (IDEA) for private school expenditures for student's tenth grade year; school district's individualized education plan (IEP) for student's tenth grade year was inappropriate, private school was appropriate to meet student's needs for that year, as student made social, emotional, and academic progress at private school, and parents did not act in bad faith in paying tuition to private school. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 154(4)

Parent's unilateral private placement is appropriate, for tuition reimbursement purposes, if it is reasonably calculated to enable child to receive educational benefits; private placement need not meet IDEA definition of free appropriate public education (FAPE) or provide certified special education teachers or individualized education program (IEP) for disabled student, but rather appropriate private placement is one that is likely to produce progress, not regression. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

A court has the discretion to grant, reduce, or deny reimbursement under the IDEA to parents who have placed their child in a private school after public school failed to provide appropriate individual education plan (IEP), regardless of the degree or quality of notice the parent provided. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 154(4)

Parent's unilateral placement of disabled student in private school was unreasonable, and thus parent was not entitled to tuition reimbursement under IDEA, notwithstanding contention that District of Columbia Public Schools (DCPS) failed to timely provide student with free appropriate public education (FAPE); parent allowed DCPS less than one month to convene individualized education program (IEP) meeting before enrolling student in private school, and parent informed DCPS that she would be enrolling student in private school but then showed up at public school on first day of school year expecting DCPS to have schedule prepared for student. Maynard v. District of Columbia, D.D.C.2010, 701 F.Supp.2d 116. Schools 154(4)

Preponderance of evidence supported state review officer's determination that placement of learning disabled student in private school setting consisting of self-contained classrooms of no more than seven students for all academic subjects was not reasonably calculated to enable her to receive educational benefit, in denying parents' request for tuition reimbursement under IDEA; private school's rigorous mainstream curriculum made it difficult for student to participate in mainstream classes, and school psychologist testified that student's disability was not so severe that she should have been segregated from her nondisabled peers. Schreiber v. East Ramapo Central School Dist., S.D.N.Y.2010, 700 F.Supp.2d 529. Schools 155.5(4)

Pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), parents dissatisfied with a proposed individualized education program (IEP) may unilaterally remove their child from a public school, place the child in a private school they believe to be appropriate to the child's needs, and then file a complaint

with the state educational agency seeking reimbursement for the private school tuition. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 154(4)

Parents' unilateral decision to place autistic student at private school for children with neurodevelopmental disorders was appropriate to student's needs, as required for parents to be entitled to tuition reimbursement under IDEA; private school provided education that was attuned to student's particular strengths, deficits, and abilities with respect to both her academic and therapeutic needs, school regularly conducted individualized assessments that showed clear awareness of student's day-to-day and long-term educational needs, with curricular goals adjusted in light of her performance, and student made progress during year at school. A.D. v. Bd. of Educ. of City School Dist. of City of New York, S.D.N.Y.2010, 690 F.Supp.2d 193. Schools 154(4)

In IDEA case, hearing officer did not err in ordering reimbursement for expenses and tuition associated with private placement of student with autism and cerebral palsy, or in selecting educational home-based program despite school district's contention that selected program lacked qualified direct service providers and was not the least restrictive environment (LRE). Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 154(3); Schools 154(4)

Under the IDEA, parents of autistic child that was not provided with a free appropriate public education (FAPE) were entitled to be reimbursed from the county school board for the full, year-round cost of tuition for, and travel to and from, private school in which they enrolled their child. JP ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2009, 641 F.Supp.2d 499. Schools 154(4)

Student's need for special education services was not so obvious that general exercise of equity would override statutory requirement for tuition reimbursement under Individuals with Disabilities Education Act (IDEA); parents were aware of procedures under IDEA and obligation to provide notice prior to removal, it was not obvious to school that student needed special education services, and parents withdrew student from public school and enrolled him in private residential school in order to address his drug use. Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Nothing in a student's individualized education program even suggested that for him to receive an appropriate preschool education he needed to attend private preschool full-time, and thus, under the Individuals with Disabilities Education Act (IDEA), the school district was responsible to pay for only part-time enrollment; the decision of the student's parents to enroll him at the preschool full-time was a personal one, above and beyond the requirements of his individualized education program, and thus, they were entitled to only partial tuition reimbursement. Madison Metropolitan School Dist. v. P.R. ex rel. Teresa R., W.D.Wis.2009, 598 F.Supp.2d 938. Schools 154(4)

Parents were not entitled to reimbursement under IDEA for their unilateral placement of their child with emotional and learning disabilities at a private, out-of-state school specializing in treating disabled children, even if individualized education program (IEP) proposed by school district was inadequate and even if the private

school was well-suited to educate student; selected private school was not the least restrictive environment for child to receive a free appropriate public education (FAPE) under IDEA, as student had previously made educational progress in several placements less restrictive, including an in-state private school not certified for special education and a public school. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(4)

Even assuming the inadequacy of individualized educational program (IEP) developed by school district for parents' learning disabled child, parents were not entitled to reimbursement under the Individuals with Disabilities Education Act (IDEA) for their unilateral private placement of child, not only based on complete lack of evidence that private school where child was placed was least restrictive environment for child, but based on evidence that this private school placement, with other disabled children, would not appropriately address child's social skills needs. N.M. ex rel. M.M. v. School Dist. of Philadelphia, E.D.Pa.2008, 585 F.Supp.2d 657, affirmed 394 Fed.Appx. 920, 2010 WL 3622658. Schools 154(4)

Parents of learning disabled Pennsylvania student who had unilaterally placed him at private school for children with disabilities were not entitled to tuition reimbursement under the IDEA, as school district had conducted appropriate evaluation of, and offered appropriate individualized education program (IEP) for, that student. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 154(4)

Tuition reimbursement for two years' of special private education was appropriate where school district defaulted on its obligation under IDEA to evaluate severely depressed student as potentially eligible for special services and then improperly determined her ineligible two years later by failing to gather and consider relevant information. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 154(4)

Parent of high school student with attention deficit hyperactivity disorder (ADHD) who was seeking reimbursement of costs associated with unilateral placement of her child in alternative special education program with 15:1 staffing ratio satisfied her burden of showing that placement was appropriate; in addition to evidence of student's academic success and improved behavior and emotional progress in that program, objective supporting evidence included testimony of school's Director of Admissions for Special Education, special education teacher, and school psychologist. Jennifer D. ex rel. Travis D. v. New York City Dept. of Educ., S.D.N.Y.2008, 550 F.Supp.2d 420. Schools 155.5(4)

Parents who place their children in private schools without the consent of local school officials are entitled to reimbursement only if the public agency violated the Individuals with Disabilities Education Act (IDEA), that the private school placement was an appropriate placement, and that cost of the private education was reasonable. District of Columbia v. Abramson, D.D.C.2007, 493 F.Supp.2d 80. Schools 154(4)

Administrative Appeal Officer (AAO) did not err in ordering prospective relief for learning disabled student under Individuals with Disabilities Education Act (IDEA), consisting of, inter alia, reimbursement for private Alternative Language Therapy (ALT) tutoring, psycho-educational and speech-language evaluations; relief struck appropriate and equitable balance between needs to account for placement factors and to set boundaries on

school district's discretion to avoid problems that led to past IDEA violations. Miller ex rel S.M. v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 455 F.Supp.2d 1286, affirmed 565 F.3d 1232. Schools 154(4)

Public school system would be required to reimburse parents of autistic student for reasonable costs of educating student at private school for autistic children, in which parents had unilaterally placed child, and for any related services and accommodations that would have been covered under IDEA had school system provided student with appropriate education during school year. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 154(4)

Under IDEA, while court may consider least restrictive environment issue, parent's inability to place child in least restrictive environment does not bar parental reimbursement. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(4)

Parents of profoundly deaf, mobility-impaired minor enrolled in private nursery school would not be prevented from seeking tuition reimbursement by fact that minor had never been enrolled in public school, under the Individuals with Disabilities Education Act (IDEA), if parents established that proposed individual educational plans (IEPs) denied minor free appropriate public education (FAPE), where school board did not become responsible for providing minor with FAPE until he was already enrolled in private school. E.W. v. School Bd. of Miami-Dade County Florida, S.D.Fla.2004, 307 F.Supp.2d 1363. Schools 154(4)

School timely and appropriately followed procedures required under Individuals with Disabilities Education Act (IDEA) when student with learning disability first enrolled as out-of-state transfer student, and thus student's parent was not entitled to reimbursement of private school tuition fees, stemming from alleged inadequacy of individualized education program (IEP) proffered to student; school was not required to adopt most recent evaluation of student, school properly implemented most recent IEP developed for student by predecessor district, student did not suffer loss of educational opportunity, and school made timely request for student's records from predecessor district. Waller v. Board of Educ. of Prince George's County, D.Md.2002, 234 F.Supp.2d 531. Schools 154(4)

Student who suffered disabling speech impairment but was denied speech therapy by school district was entitled to reimbursement under Individuals with Disabilities Education Act (IDEA) for all private speech therapy which parents provided for him beginning on date that school wrongfully determined that student was ineligible for speech therapy and calculation of this time did not include reasonable time period of two months for school to make its final decision as to whether student was entitled to speech therapy. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 934 F.Supp. 989. Schools 154(4)

Evidence did not support overturning the determination of an ALJ that a proposed placement of a student at a school did not violate the Individuals with Disabilities Education Act (IDEA), such that the actions of the student's parents in unilaterally placing the student at a private school for the disabled deprived the first school of the opportunity to provide a free appropriate public education (FAPE) to the student, thus precluding reimbursement for costs of the private school; a comparison between the programs at the two schools was irrelevant to the

adequacy of the proposed placement under IDEA. H.W. ex rel. A.W. v. Highland Park Bd. of Educ., C.A.3 (N.J.) 2004, 108 Fed.Appx. 731, 2004 WL 1946511, Unreported. Schools 155.5(4)

127. ---- Cooperation of parents, reimbursement, free appropriate public education

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in reversing the hearing officer's order, where school district displayed continued cooperation with parents' demands, and, prior to seeking reimbursement, parents had never complained about any of the individual education plans (IEP). Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Courts should be reluctant to award reimbursement of private school costs to a disabled student's parents who refuse or hinder the development of a free and appropriate public education (FAPE) or individual education plan (IEP) under the Individuals with Disabilities Education Act (IDEA). Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 154(4)

Parents of disabled child did not fail to make child available for evaluation by school district, as would, under Individuals with Disabilities Education Act (IDEA), support denial of parents' reimbursement from public school district for parents' enrollment of child in private school; parents' duty to make child available for evaluation was extinguished when district disavowed any responsibility to child. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Equities favored reimbursing parents of emotionally disabled student for their tuition expenses during period of time following committee on special education (CSE) meeting to end of school year, even though parents had provided imperfect notice, where student had previously attended public school in district, student and her parents were residing within district at time she was removed from public school, and parents acted in good faith and for the most part were very cooperative; by time of meeting, school district clearly had notice of student's disability and of their obligation to provide her with free appropriate public education (FAPE). W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

Impartial hearing officer (IHO) and state review officer (SRO) did not err in determining that equities favored funding autistic student's private school tuition; record was clear that parents cooperated in good faith at all times with New York City Department of Education (DOE) and they cooperated with district, participated at committee on special education (CSE) meeting, visited proposed placements, and notified district in writing that they were reenrolling student at private school when no placement was offered by district. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

While lack of parental consent to additional testing and evaluation requested by school psychologist present at individualized education program (IEP) meeting was factor to be weighed in finding parental unreasonableness allowing for reduction in reimbursement for cost of unilateral private placement under the IDEA, loss of free ap-

propriate public education (FAPE) was caused almost wholly by school district's negligence in scheduling timely IEP meeting and fact learning-disabled student fell through bureaucratic cracks, and one-sixth, rather than one-third, reduction in reimbursement better reflected parent's contribution to student's non-attendance at school during school year in question. Hogan v. Fairfax County School Bd., E.D.Va.2009, 645 F.Supp.2d 554. Schools 154(4)

Parents of disabled New Jersey student would not be reimbursed for private special education and related services provided during particular school year for which student's mother failed to cooperate with township Child Study Team (CST) in developing an appropriate individualized education program (IEP). M.S. v. Mullica Tp. Bd. of Educ., D.N.J.2007, 485 F.Supp.2d 555, affirmed 263 Fed.Appx. 264, 2008 WL 324200. Schools 154(4)

Parents forfeited any right they had to reimbursement for cost of student's unilateral placement in private school under Individuals with Disabilities Education Act (IDEA) when they unjustifiably failed to make student available for psychological evaluation requested by board for purposes of determining whether student should be identified as special education student and, if so, what placement was appropriate. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 154(4)

128. ---- Notice, reimbursement, free appropriate public education

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in considering parents' failure to give school district notice of their objections to child's individual education plan (IEP) as a factor favoring denial of reimbursement, even though school district was aware of possibility that parents might withdraw child from public school in favor of a private residential facility. Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Conduct of special education student's parents did not provide for reduction or denial of tuition reimbursement from state's department of education for private educational placement under Individuals with Disabilities Education Act (IDEA), despite department's contention that parents did not provide adequate notice of intent to put student in private placement, where parents sent letter to department stating they were rejecting IEP and enrolling student in private placement at public expense, and although student's mother did not tell department that private placement had done intake assessment or that student was receiving speech-language services, mother attended and participated in IEP meetings, provided department with all documents she had received from private placement, and agreed to evaluations of student that IEP team felt necessary. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

Pursuant to Individuals with Disabilities Education Act's (IDEA) notice requirements for parents removing a child from public school, parents of disabled child had no duty to provide written notice to school district prior to child's removal from public school and hospitalization; when parents hospitalized child they were not rejecting any placement proposed by district, and there was no indication in record that parents had intent to enroll

child at different school at time of removal and hospitalization. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Equities favored providing partial reimbursement to parents of emotionally disabled student for costs of private school placement even though they failed to provide school with proper notice of their intent to remove student from public school, absent evidence that parents were informed of IDEA's notice requirement. W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

Even if private, residential, out-of-state school was an appropriate placement for student with special educational needs, parents were not entitled to reimbursement for educational expenses attributed to that placement, under the IDEA; parents failed to provide requisite timely notice to the public school district before enrolling student in the private school, failure to provide notice could not be excused, and parents did not act reasonably, inasmuch as the failed to adequately consider other placements and failed to give district time to explore other placement options before removing student. Covington v. Yuba City Unified School Dist., E.D.Cal.2011, 780 F.Supp.2d 1014. Schools 154(4)

In IDEA case, equities weighed in favor or reimbursement for costs of “Jump Start” program at private school, despite parents' failure to provide public school district with notice and opportunity to provide student with free appropriate public education (FAPE) prior to unilateral placement of their child at that school; parents' obligations under IDEA'S notice requirement were not triggered because New York City Department of Education (DOE) never provided them with Final Notice of Recommendation, and indeed they could not have informed DOE that they were “rejecting the placement proposed by the public agency” because DOE never made placement recommendation for them to reject. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

Student's mother gave county school board sufficient notice of her intent to enroll student at private school at public expense, based on school board's failure to provide a free appropriate public education (FAPE), and, thus, mother was entitled to reimbursement under the IDEA, where mother attended individual education plan (IEP) meeting and informed the team that she rejected its proposed placement, head of the private school also attended the meeting to describe and explain the school's program, and, since mother could have placed student in private school herself at her own expense, common sense indicated that she raised the issue before the school board to obtain placement at public expense. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 154(4)

Even if student was eligible for tuition reimbursement for placement in private school, school district did not have notice prior to student's removal that parents felt student was in need to special education, and thus school district had no opportunity to address special education issues within public school setting, as required for reimbursement of private school tuition under Individuals with Disabilities Education Act (IDEA). Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Parents who did not give school district notice that they were removing their disabled child from current educational placement, and who, despite fact that they had previously approved child's individualized education program (IEP), unilaterally transferred child to private residential facility located out of state, failed to demonstrate that the equities warranted waiving "notice" requirement of the Individuals with Disabilities Education Act (IDEA) by awarding them full or even partial reimbursement for costs of this private placement. Ashland School Dist. v. Parents of Student E.H., D.Or.2008, 583 F.Supp.2d 1220, affirmed 587 F.3d 1175. Schools 154(4)

Parents of student with a disability were not required to first accept individual education plan (IEP) developed for student to remain eligible for reimbursement of private school tuition under the IDEA; parents notified board of education of need for special education services and provided written notice of their rejection of the IEP as inadequate for student's needs and their intent to seek additional special education services for student. D.L. ex rel. J.L. v. Springfield Bd. of Educ., D.N.J.2008, 536 F.Supp.2d 534. Schools 154(4)

A court may reduce or deny tuition reimbursement, under Individuals with Disabilities in Education Act (IDEA), if a disabled child's parents, prior to or during the most recent individualized education program (IEP) meeting before removing their child from school, failed to inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education (FAPE) to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or when parents acted unreasonably. Schoenbach v. District of Columbia, D.D.C.2004, 309 F.Supp.2d 71. Schools 154(4)

129. ---- Residential placement, reimbursement, free appropriate public education

District court's determination that parental placement of autistic student was appropriate, and thus that school district was required under Individuals with Disabilities Education Act (IDEA) to reimburse student's parents for expenses associated with home placement, was not clear error, despite district's contentions that home placement was too restrictive and that home placement was not reasonably calculated to provide educational benefit, where student received approximately 30 hours per week of applied behavioral analysis (ABA) services provided by experienced ABA line therapist, parents and ABA therapist made sure that student had sufficient opportunities to interact with other children, and student was progressing both educationally and behaviorally under home program. Sumter County School Dist. 17 v. Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 154(3)

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in concluding that child's residential placement was necessitated by medical, rather than educational, concerns when it denied reimbursement, where record contained evidence that parents placed child in residential care to treat medical, not educational, problems. Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Long-term psychiatric residential treatment center employed tools to enable learning disabled student to manage her medical condition, rather than her educational needs, and thus parents were not entitled to reimbursement for services under Individuals with Disabilities Education Act (IDEA), although some services may have provided educational benefit; purpose of groups was to teach coping skills to work with depression and anxiety, program

at facility was designed to address medical conditions and had no state educational accreditation or on-site educators, and student's admission to facility was necessitated by need to address acute medical condition. Mary T. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2009, 575 F.3d 235. Schools 154(3)

Parents' placement of disabled child in private residential treatment center was appropriate and reimbursable placement under Individuals with Disabilities Education Act (IDEA); placement was necessary for educational purposes, child's medical, social, and emotional problems were not segregable from learning process, treatment of child's psychiatric condition at center was not "quite apart from" her educational needs, and services provided at center were primarily oriented toward providing child an education, and were essential in order for child to receive meaningful educational benefit. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(3)

Private, residential, out-of-state school was not an appropriate placement for student with special educational needs, and thus, parents were not entitled to reimbursement for educational expenses attributed to that placement, under the IDEA; the private school had no credentialed special education teachers on staff, there was no showing that an individualized educational plan (IEP) was developed at the private school to address student's specific educational needs and behavioral issues, and the private school had a religious based curriculum, which had nothing to do with student's special needs. Covington v. Yuba City Unified School Dist., E.D.Cal.2011, 780 F.Supp.2d 1014. Schools 154(4)

Individualized education plans (IEPs) for a student who suffered from both an emotional disturbance and a substance-abuse problem were substantively adequate, even though they did not provide for residential placement, thus precluding parents' recovery of reimbursement under the IDEA for the costs of private residential placements; the student succeeded in the program called for by the IEPs during the times that his substance-abuse problem was under control, and while a residential placement may have been the most effective way to treat his substance-abuse problem, that treatment was not the district's responsibility. P.K. ex rel. P.K. v. Bedford Cent. School Dist., S.D.N.Y.2008, 569 F.Supp.2d 371. Schools 154(3)

Board of education was not required to pay for disabled student's foster placement, which his educational needs did not dictate and which was not a "related service" within meaning of IDEA; although student's emotional and educational needs were intertwined, there was no evidence those needs could only be addressed through a residential placement, and student was initially placed in foster home at his mother's request because of his behavior at home despite fact he was making satisfactory academic progress. M.K. ex rel. Mrs. K. v. Sergi, D.Conn.2008, 554 F.Supp.2d 201. Schools 154(3)

School board's proposed individualized education plan (IEP) for 16-year-old diagnosed with attention deficit hyperactive disorder (ADHD), learning disability (LD), and serious emotional disturbance (ED), consisting of transition from private residential school he had been attending into public high school, was least restrictive alternative and appropriate under IDEA, precluding reimbursement of parents for cost of private boarding school into which parents had unilaterally placed child instead; several experts with experience with child testified at due process hearing that proposed transition was appropriate, while parents' experts who questioned IEP and favored more structured environment had less familiarity with child. A.S. ex rel. P.B.S. v. Board of Educ. of

Town of West Hartford, D.Conn.2001, 245 F.Supp.2d 417, affirmed 47 Fed.Appx. 615, 2002 WL 31309248. Schools 154(4)

Disabled student's post-graduation residential placement was not "necessary" for educational purposes, as required to entitle him to reimbursement for costs thereof pursuant to Individuals with Disabilities Education Act (IDEA); student did not contest adequacy of services provided to him prior to graduation or school's determination that he had satisfied academic requirements for graduation, and his need for continued residential placement after graduation rested on medical considerations outside scope of IDEA. Daugherty By and Through Daugherty v. Hamilton County Schools, E.D.Tenn.1998, 21 F.Supp.2d 765, affirmed. Schools 154(3)

Private residential school in which parent placed severely learning disabled high school student was appropriate in that it provided student with a structured, individualized supportive environment in which to learn, adopted individualized education programs (IEPs) which were detailed and addressed student's individualized education needs, and student benefitted from residential nature of the school in that staff were able to help her with social interactions and personal hygiene, and the annual cost, averaging $26,900 when the average cost of all publicly funded residential placements was $40,200, was reasonable, so that parent was entitled to reimbursement from school district which failed to adopt an IEP reasonably calculated to meet the student's educational needs. Briere By and Through Brown v. Fair Haven Grade School Dist., D.Vt.1996, 948 F.Supp. 1242. Schools 154(4)

Given clearly inappropriate individualized education program (IEP) proposed for school year by school district, student's residential placement at private school by parent was appropriate placement under Education of the Handicapped Act (EHA), notwithstanding fact that residential placement at private school was more restrictive than was optimally necessary for student, as it did not provide mainstreaming; parent was thus entitled to tuition reimbursement for that school year, where school district failed to show availability of more appropriate, less restrictive placements. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900 . Schools 154(4)

130. ---- Special education, reimbursement, free appropriate public education

IDEA authorized reimbursement of the costs of private special-education services to child with learning disabilities where school district failed to provide child with a free appropriate public education (FAPE) and private-school placement was appropriate, even though child had not previously received special education or related services through the public school; by finding child ineligible for special-education services and declining to offer him an individualized education program (IEP), school district failed to provide him with the required FAPE. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

District court's determination that school district was incapable of providing autistic student with free and appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), and thus that student's parents were entitled to compensation for services they provided at home, was not clear error, even though district had entered into contract with private company to provide applied behavioral analysis (ABA) consultation services, technical assistance, and training, where there had been no ABA training or supervision, and company and district had not settled on schedule for visits by consultant. Sumter County School Dist. 17 v.

Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 154(3)

In deciding whether student who had not previously received special education services was eligible for tuition reimbursement under Individuals with Disabilities Education Act (IDEA) provision authorizing "appropriate" relief, district court could not consider requirements of IDEA provision authorizing tuition reimbursement for students who had previously received such services. Forest Grove School Dist. v. T.A., C.A.9 (Or.) 2008, 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Students who have not "previously received special education and related services," within the meaning of the Individuals with Disabilities Education Act (IDEA) provision allowing students who have received such services reimbursement for private school tuition, are nonetheless eligible for reimbursement under the IDEA provision authorizing "appropriate" relief. Forest Grove School Dist. v. T.A., C.A.9 (Or.) 2008, 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

IDEA provision providing for reimbursement of private school tuition when a public agency failed to provide a free appropriate public education (FAPE) did not preclude reimbursement when child had not previously received special education and related services; express purpose of IDEA was to ensure that a FAPE was available to all children with disabilities and IDEA conferred broad discretion on district court to grant relief it deemed appropriate to parents of disabled children who opt for unilateral private placement where placement was proper and proposed individualized education program (IEP) was inadequate. Frank G. v. Board of Educ. of Hyde Park, C.A.2 (N.Y.) 2006, 459 F.3d 356, certiorari denied 128 S.Ct. 436, 552 U.S. 985, 169 L.Ed.2d 325. Schools 154(4)

Significant disputed factual issues existed as to conduct and intent of both school district and parents of ninth-grade student with alleged nonverbal learning disability, precluding judgment on the record as to whether parents acted reasonably, as required for reimbursement for costs of attending private school after school district allegedly failed to provide appropriate special education services as required under the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act. Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 155.5(5)

Autism center was appropriate private placement for disabled student under Individuals with Disabilities Education Act (IDEA), as required to support reimbursement claim against state's department of education for private placement; center provided intensive autism-specific education and training that student needed and addressed student's unique needs. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

Individualized education program (IEP) generated for learning disabled student's sixth grade year was reasonably calculated to enable student to receive educational benefits and provided student with a free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), even if it did not include particular reading programs or goals, and therefore, reimbursement was not warranted for parents' unilat-

eral withdrawal of student and placement in private school; tests showed student was in the average range, including in reading, fifth grade report card showed student scoring either "consistent" or "exemplary" in all fields with only two "inconsistent" scores in separate subjects, student's literary extension teacher found that student was "performing in an acceptable range" and able to manage the curriculum, student was progressing under prior IEPs, which did not include separate reading instruction, student's special education case manager, who consulted with his teachers daily, believed student had no difficulty in reading fifth grade materials, and co-chairperson of reading department believed separate reading services were not necessary as reading goals would be addressed in services already provided by IEP. E.W.K. ex rel. B.K. v. Board of Educ. of Chappaqua Cent. School Dist., S.D.N.Y.2012, 2012 WL 3205571. Schools 148(3)

Student did not previously receive special education and related services prior to unilateral removal from public high school and private placement, and thus was not eligible for tuition reimbursement for placement in private school under Individuals with Disabilities Education Act (IDEA); student's parents agreed with evaluation two years earlier that student was not eligible for services, parents did not request further evaluation or special services prior to removal from school, and student was removed from school for drug treatment, rather than reasons related to special education services. Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

130a. ---- Time period, reimbursement, free appropriate public education

Even if county board of education failed to provide student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, free and appropriate public education (FAPE) for her fifth grade year, equity would prevent district court from awarding reimbursement for cost of placement of student in private school; board had no notice of parents' intent to seek private placement or reimbursement for that private placement until more than a year after final individualized education plan (IEP) meeting, prior to student's removal from public school. S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 154(4)

Parents of emotionally disabled student were precluded from obtaining private school tuition reimbursement from school district prior to date when completed social history and psychoeducational report were sent to district, but it should not have taken district more than one month thereafter to convene committee on special education (CSE) meeting and parents were entitled to reimbursement for additional four weeks, representing period between date when completed social history and psychoeducational report were sent to district and date of actual CSE meeting. W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

131. Miscellaneous programs appropriate, free appropriate public education

School district met the free appropriate public education (FAPE) requirements of the IDEA when it created individualized education program (IEP) and Evaluation Report (ER) for student, even though ER did not identify student as having a learning disability in math computation and did not assess his social and emotional functioning; areas in question were not identified as suspected disabilities and so were properly excluded from ER. P.P. ex rel. Michael P. v. West Chester Area School Dist., C.A.3 (Pa.) 2009, 585 F.3d 727. Schools 148(3)

Public school district's proposed individualized education program (IEP) for student diagnosed with autism and other disabilities was not substantively deficient in violation of the Individuals with Disabilities in Education Act (IDEA); although the parents claimed that the IEP promoted learned helplessness by providing student with a personal aide, the IEP provided for decreasing the level of prompting from the aide where it was no longer needed, team meetings with the parents every four to six weeks to discuss student's progress, including the level of prompting required, and stressed independence in the following of daily routines and the application of reading and math skills. A.C. ex rel. M.C. v. Board of Educ. of The Chappaqua Central School Dist., C.A.2 (N.Y.) 2009, 553 F.3d 165. Schools 148(3)

Individualized education program (IEP) for autistic student did not deny student a free appropriate public education (FAPE) under the IDEA; IEP incorporated several teaching techniques and provided adequate generalization services for student to receive some educational benefit. Sytsema ex rel. Sytsema v. Academy School Dist. No. 20, C.A.10 (Colo.) 2008, 538 F.3d 1306, on remand 2009 WL 3682221. Schools 148(3)

Board of education introduced sufficient evidence to prove that the public school preschool placement, involving a half-day preschool class composed of half disabled children and half non-disabled children, with afternoon placement in the school's resource room, provided a meaningful educational benefit to handicapped child, considering child's specific needs, and thus satisfied IDEA's requirement of a free appropriate public education (FAPE) for child. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 155.5(4)

Autistic student's placement in private facility, which was only certified to provide designated instruction and service (DIS) of counseling and not special education itself, was appropriate under California law providing that handicapped three to five-year-old students may be placed in program that only provides DIS without simultaneous special education and therefore, placement was appropriate under Individuals with Disabilities Education Act (IDEA). Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 154(4)

District court's determination that individualized education program (IEP) was adequate and appropriate to ensure requisite degree of educational benefit to handicapped child under Individuals with Disabilities Education Act (IDEA) was supported by evidence; although IEP did not contain precise programs that parents preferred for enhancing child's social skills, it embodied substantial suitably diverse socialization component, and academic programs assured child basic floor of educational opportunity. Lenn v. Portland School Committee, C.A.1 (Me.) 1993, 998 F.2d 1083. Schools 155.5(4)

School board's recommended placement of handicapped child in new public school program for school year 1990-91 did not violate the Individuals with Disabilities Education Act (IDEA), notwithstanding complaint of parents that because program was new and could not be observed in operation prior to its recommendation it was not reasonably calculated to meet child's needs; new program offered one-on-one programming and longer school day than alternative programs, a full-time behavioral consultant, occupational therapy, speech therapy, and transitional programming; moreover, program was in a school closer to child's home than alternative placement options. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.) 1993, 993 F.2d 1031, rehearing denied. Schools 148(2.1); Schools 154(2.1)

Individualized educational program (IEP) directing placement of junior high school student handicapped by behavioral disorder and learning disability in private day school, rather than in alternative public school for student suffering mainly from severe behavioral disorders as recommended by school district, was the least restrictive placement that would be of educational benefit to the student, particularly considering parents' hostility to district's proposed placement. Board of Educ. of Community Consol. School Dist. No. 21, Cook County, Ill. v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1991, 938 F.2d 712, rehearing denied, certiorari denied 112 S.Ct. 957, 502 U.S. 1066, 117 L.Ed.2d 124. Schools 154(4)

District court properly balanced handicapped child's minimal ability to benefit from more than four-hour school day against physical distress resulting from prolonged sensory stimulation in determining that four-hour school day in child's individualized education program (IEP) fulfilled requirements of appropriate education. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 155.5(2.1)

“Cued speech” program at high school provided profoundly hearing-impaired student with “appropriate education” as required by the EHA, notwithstanding that high school was five miles farther from student's home than his base school; school board had no duty under the EHA to duplicate interpretative services at student's community school, so as to place him as close as possible to his home. Barnett by Barnett v. Fairfax County School Bd., C.A.4 (Va.) 1991, 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 154(2.1)

Individualized education program which provided one hour of home instruction per day to handicapped child was reasonably calculated to enable child to receive educational benefits, thereby satisfying Education for All Handicapped Children Act. Thomas v. Cincinnati Bd. of Educ., C.A.6 (Ohio) 1990, 918 F.2d 618. Schools 154(3)

Educational programs school offered to handicapped student for two school years were reasonably calculated to provide student with educational benefits and met requirements of Education of the Handicapped Act, despite school's failure to place student in residential educational environment; expert testimony indicated that plan was appropriately designed to increase student's time in school to full school day by end of academic year and that residential facility was not appropriate placement for student because it did not have facilities to deal with student's psychological and emotional needs. Doe v. Alabama State Dept. of Educ., C.A.11 (Ala.) 1990, 915 F.2d 651. Schools 154(3)

Psychiatric testimony established that only “free appropriate public education” for seriously emotionally disturbed 19-year-old was one which offered long-term treatment and had locked wards, and which, in addition, unlike program chosen by school board, was willing to accept student, despite cost of $88,000 per year as compared to $55,000 cost per year at school chosen by board. Clevenger v. Oak Ridge School Bd., C.A.6 (Tenn.) 1984, 744 F.2d 514. Schools 154(2.1)

Parents of student with dyslexia, attention deficit hyperactivity disorder (ADHD), and speech impairment had not shown that Texas school district denied student free appropriate public education (FAPE) during relevant

time period; education program provided during relevant period was sufficiently individualized on basis of student's assessment and performance and was administered in least restrictive environment (LRE), services were provided in coordinated and collaborative manner by key stakeholders, and positive academic and nonacademic benefits were demonstrated. C.H. ex rel. C.H. v. Northwest Independent School Dist., E.D.Tex.2011, 815 F.Supp.2d 977. Schools 148(3)

In IDEA case in which parents of disabled student were seeking tuition reimbursement for cost of unilateral private school placement, record supported State Review Officer's (SRO's) finding that proposed placement of autistic student at public school with 6:1 student/teacher ratio and teacher with 30 years of experience with New York City Department of Education (DOE), ten of them working with students with autism, was appropriate given student's needs; parents' speculation that student might not have received occupational therapy did not constitute denial of a free appropriate public education (FAPE). A.L. v. New York City Dept. of Educ., S.D.N.Y.2011, 812 F.Supp.2d 492. Schools 155.5(4)

Granting appropriate deference to decisions of Impartial Hearing Officer (IHO) and State Review Officer (SRO) below, disabled student's individualized education program (IEP) was substantively sufficient and provided student with free appropriate public education (FAPE); parents raised specific objections to certain aspects of those decisions relating to recordings of telephone calls between student's mother and then-director of special education at student's public school and student's sixth grade homeroom and language arts teachers, letters that chairman of sub-committee on special education (CSE) sent to other schools to investigate out-of-district placements for student, and IHO's decision to credit testimony of school district's witnesses. B.O. v. Cold Spring Harbor Central School Dist., E.D.N.Y.2011, 807 F.Supp.2d 130. Schools 148(2.1)

Individualized education program (IEP) for eighth grade student with attention deficit hyperactivity disorder (ADHD) was reasonably calculated to enable child to receive educational benefits, and thus did not amount to denial of free appropriate public education (FAPE) under IDEA; child's eighth grade IEP was similar to his sixth grade IEP under which child achieved reading goals, achieved all goals for writing skills except spelling, received passing grades and was advanced to next grade, and it was reasonable to conclude that child would have continued to progress under his more intensive eighth grade IEP. Adrianne D. v. Lakeland Central School Dist., S.D.N.Y.2010, 686 F.Supp.2d 361. Schools 148(3)

Evidence supported determination that failure of the District of Columbia Public Schools (DCPS) to timely comply with a hearing officer's determination requiring certain examinations and evaluations of a learning disabled student did not result in educational harm to the student so as to deny him a free, appropriate public education (FAPE) for purposes of the Individuals with Disabilities Education Act (IDEA); the student received in the interim the services and instruction that a prior individualized education program (IEP) required, a subsequent IEP called for the same amount of specialized instruction and services, and student's teacher and counselors testified that he had made progress under the IEP. J.N. v. District of Columbia, D.D.C.2010, 677 F.Supp.2d 314. Schools 155.5(4)

High school student's subsequent placement by parents in boarding school recommended by staff at her previous boarding school was an appropriate placement under Individuals with Disabilities Education Act (IDEA), as re-

quired to entitle parents to reimbursement for the private school tuition from city department of education; school was a highly structured, non-voluntary program wherein students participated in a daytime work program which emphasized work ethic and was designed to motivate students through promotions, and in this program, student had been promoted from a worker to a service crew member, where her responsibilities included supervision of other children. Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 154(4)

School district provided free appropriate public education (FAPE) to student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder, comporting with IDEA, and thus, district did not violate Rehabilitation Act's FAPE requirement. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 148(3)

Pennsylvania school district provided a free appropriate public education (FAPE) to learning disabled student; evaluation district undertook and Evaluation Report (ER) it provided were substantively appropriate, and individualized education program (IEP) district offered to student for that school year was reasonably calculated to provide meaningful educational benefit. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 148(3)

Public school district provided learning disabled student free appropriate public education (FAPE) to which student was entitled, under Individuals with Disabilities Education Act (IDEA), when she was placed in special learning center maintained by district which could implement programs described in student's Individualized Education Program (IEP), despite claim by parent that student was entitled to other special educational services not mentioned in IEP and not available at learning center. Lopez v. District of Columbia, D.D.C.2005, 355 F.Supp.2d 392. Schools 148(3)

Nine-year-old student suffering from verbal apraxia received free appropriate public education (FAPE) required by IDEA through the Title One reading program, rather than special education, over a period of several months; report card's author, who recommended that the student continue to work on his reading skills, did not provide any clear indication that the student's reading difficulties were of dominant concern, such as would counsel special educational services, apraxia expert opined that there was no correlation between apraxia and reading difficulties, and during the period of Title One instruction, the student made progress in reading. Moubry v. Independent School Dist. 696, Ely, Minn., D.Minn.1998, 9 F.Supp.2d 1086. Schools 148(3)

School system's proposal of self-contained class in regular community school for learning disabled student provided student with free appropriate public education required by Education of the Handicapped Act (EHA); school system's program used innovative, nontraditional, and hands-on approach which could only be described as far superior to private school program favored by parents. Doyle v. Arlington County School Bd., E.D.Va.1992, 806 F.Supp. 1253, affirmed 39 F.3d 1176. Schools 148(3); Schools 154(4)

Assuming student who was left homebound by illness had a disability and was entitled to a free appropriate public education (FAPE) under the IDEA, substantial evidence supported the finding that school district provided student with meaningful educational benefit despite some failures; although the hours provided by district broke

down substantially at the end of student's eighth grade year, student's parents were partly to blame for many missed hours, district offered to make up the hours, student's late receipt of assignments did not necessarily indicate that he did not receive benefit of those assignments, and student's grades and test scores indicated that he maintained his high academic abilities. Falzett v. Pocono Mountain School Dist., C.A.3 (Pa.) 2005, 152 Fed.Appx. 117, 2005 WL 2500122, Unreported. Schools 155.5(4)

Student with Down syndrome was not denied a free appropriate public education (FAPE) during a nine-week trial placement, despite claim that school district failed to adequately train teachers, to adapt the curriculum for the student, or to adequately communicate with the student's parents; there was significant evidence of teacher training and qualifications during the period at issue, as well as evidence of curriculum modifications, and there was no showing that the amount of parental contact was less than the communication with parents of nondisabled children. T.W. v. Unified School Dist. No. 259, Wichita, Kan., C.A.10 (Kan.) 2005, 136 Fed.Appx. 122, 2005 WL 1324969, Unreported. Schools 148(3)

School district adequately accommodated disabled child's limited ability to write with a pen or pencil, as required under IDEA, where goals related to written work and notetaking were removed from child's individualized education program (IEP) when he struggled to achieve them, child was trained in computer dictation program, and child was provided with instruction in using a computer keyboard. L.C. v. Utah State Bd. of Educ., C.A.10 (Utah) 2005, 125 Fed.Appx. 252, 2005 WL 639713, Unreported. Schools 148(2.1)

132. Miscellaneous programs inappropriate, free appropriate public education

Allegations that student was unable to attend classes because of chronic fatigue syndrome and fibromyalgia, that student was only able to complete her seventh-grade education through home schooling, and that school refused to provide such instruction, as well as allegations that upon her return to school student was placed at an inappropriate level of education, supported claim that student was denied an appropriate educational placement for purposes of claim under IDEA. Weixel v. Board of Educ. of City of New York, C.A.2 (N.Y.) 2002, 287 F.3d 138. Schools 154(2.1)

Placement in program limited to disabled students was not the least restrictive environment (LRE) for child with Down Syndrome, as required under IDEA, where the evidence presented at the hearing indicated that his disability and individualized education program (IEP) did not prevent him from benefitting from a more inclusive setting and, specifically, that the private preschool in which child was able to interact with nondisabled children provided the least restrictive environment. Board of Educ. of LaGrange School Dist. No. 105 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1999, 184 F.3d 912. Schools 154(2.1)

Autistic student's placement in communicatively handicapped class at school, which would be supplemented by some one-to-one behavior modification counseling, was inappropriate under Individuals with Disabilities Education Act (IDEA) because it was insufficiently individually designed to meet student's special needs; there were no other autistic children at school, there was no evidence that teacher had been trained to work with autistic children and student required more restrictive and less stimulating environment than that offered at school. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(3)

Evidence including handicapped student's prior recoupment patterns and opinions of school psychologists familiar with student supported district court's determination that student was not entitled to extended school year program as part of his individualized educational program under the Education of the Handicapped Act; testimony regarding to what degree student would regress without summer program was directly conflicting. Cordrey v. Euckert, C.A.6 (Ohio) 1990, 917 F.2d 1460, certiorari denied 111 S.Ct. 1391, 499 U.S. 938, 113 L.Ed.2d 447. Schools 155.5(4)

Court did not err in holding that six-hour day provided by one program for mentally retarded child who also suffered from cerebral palsy was an inappropriate education and that the child required continuous supervision. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 148(3)

State residential facility for developmentally disabled failed to provide children residents with free appropriate public education and to invite agencies that provided transition services to meetings at which post-secondary goals and transition services were discussed, in violation of Individuals with Disabilities Education Act (IDEA); facility did not adequately plan special education for each child, did not provide children with adequate time in special education classes, did not provide adequate number of teachers, and did not provide for continuing education adequate to enable teachers to do their job well. U.S. v. Arkansas, E.D.Ark.2011, 794 F.Supp.2d 935. Schools 148(2.1)

Disabled student was denied free appropriate public education (FAPE), in violation of IDEA, because of school district's improper behavior program, even if there was no adverse impact on student's academic performance, where district employed point system to reward student for positive behavior and utilized physical restraints, there was no evidence in record that there was any scientific basis for point system, student, who had cognitive deficit, did not understand point system and her behavior regressed, and teacher was unduly punitive with student and was punishing her for behavior related to her disability. B.H. v. West Clermont Bd. of Educ., S.D.Ohio 2011, 788 F.Supp.2d 682. Schools 148(3)

Impartial hearing officer (IHO) and state review officer (SRO) did not err in determining that autistic student was never offered permanent placement for school year in question and thus was denied free appropriate public education (FAPE) by New York City Department of Education (D0E); committee on special education (CSE) did not offer placement to student at meeting to develop his individualized education program (IEP) or afterward. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to provide disabled students with a free appropriate public education (FAPE) as required by IDEA; they only provided FAPE to approximately half of the three-to-five year old children in the District who qualified. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84. Schools 148(2.1)

New York State Department of Education (DOE) failed to provide autistic student a free appropriate public education (FAPE) by determining student's goals on an arbitrary basis such that they failed to reflect the results of his evaluations; court adopted findings of impartial hearing officer (IHO) that DOE's determination of academic

goals and objectives that would be set forth in individualized education program (IEP) on basis of student's grade level rather than evaluations parents provided to Committee on Special Education (CSE) resulted in generic goals that did not reflect consideration of student's unique characteristics, that some of student's goals and objectives were not measurable, and that nonacademic goals that were too advanced. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 148(3)

Defects in disabled student's individualized education program (IEP) were so significant that he was not offered a free appropriate public education (FAPE) under the IDEA; IEP was completely missing statement of student's present levels of performance, failed to describe any supplementary aids and services to be provided despite fact defendants conceded those services were necessary, failed to address student's need for occupational therapy, was internally inconsistent regarding nature of services that would be provided to student, and failed to adequately describe services that would be provided in inclusive education setting. N.S. ex rel. Stein v. District of Columbia, D.D.C.2010, 709 F.Supp.2d 57. Schools 148(3)

High school student's initial placement by parents at a therapeutic boarding school was not appropriate placement under Individuals with Disabilities Education Act (IDEA), as required to entitle parents to reimbursement for the private school tuition from city department of education; student's grade performance at private school was similar to disparate grades at her prior high schools, student was asked to leave private school after her first semester there because of her poor behavior, including lack of cooperation with staff, violations of school rules, and attempts to run away, and student's doctors recommended a more restrictive and structured program than the "loosely structured" private school provided. Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 154(4)

School district denied student, who had been diagnosed with hemophilia, autism, borderline mental retardation, bipolar disorder and other conditions, a free appropriate public education (FAPE), beginning in first grade, where district was aware of student's special academic and behavioral needs prior to her entry into first grade, district failed to evaluate her for special education services in first grade, and district failed to provide her with individualized education plan (IEP) during majority of her elementary years. Heather D. v. Northampton Area School Dist., E.D.Pa.2007, 511 F.Supp.2d 549, subsequent determination 2007 WL 2332480. Schools 148(3)

School district did not provide low-IQ high school student with free appropriate public education (FAPE) for three consecutive school years; district did not provide student with basic floor of opportunity in reading where it continued to use the same reading program despite fact that his reading skills decreased, failed to provide student with FAPE in other areas such as math, and although student had not mastered his written expression and his auditory processing skills as part of his receptive and expression in language functioning, goals and objectives of individualized education programs (IEPs) in those areas were exactly the same from one school year to the next. Draper v. Atlanta Indep. School System, N.D.Ga.2007, 480 F.Supp.2d 1331, affirmed 518 F.3d 1275. Schools 148(3)

Parents proved by preponderance of evidence that autistic student did not make progress under individual education plan (IEP) during certain school year, and that subsequent IEP, which was substantially the same, thus

would not provide student with free appropriate public education (FAPE) within meaning of IDEA, where testing data and experts' opinions showed that student at best made no progress and at worst regressed several months, and discrete trial data which school system relied upon was not accurate reflection of student's progress. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 155.5(4)

Day treatment program, which was not yet in existence, was not an appropriate placement for learning disabled student, whose mental health providers agreed it would not be an appropriate placement for him, and therefore because school committee, which proposed day treatment program, failed to identify an appropriate and available placement for student, his individualized education program (IEP) was not reasonably calculated to provide him educational benefit in the least restrictive setting. Lamoine School Committee v. Ms. Z. ex rel. N.S., D.Me.2005, 353 F.Supp.2d 18. Schools 154(2.1)

School district failed to provide learning disabled student with free appropriate public education (FAPE) for two school years since district's placement of student was not designed to address her unique needs in the areas of pragmatics and social skills. Katherine G. ex rel. Cynthia G. v. Kentfield School Dist., N.D.Cal.2003, 261 F.Supp.2d 1159, affirmed 112 Fed.Appx. 586, 2004 WL 2370562. Schools 148(3)

Parents proved school had violated IDEA in connection with child's first year at school where, because of administrative confusion and budgetary constraints, school failed to respond to mother's inquiries, informed mother that child could not be tested until months after school began, failed to develop Individual Education Plan (IEP) within required time limits, and did not tailor IEP to child's individual needs. Gerstmyer v. Howard County Public Schools, D.Md.1994, 850 F.Supp. 361. Schools 148(2.1)

Pennsylvania's system of special education violated dictates of Individuals with Disabilities Education Act (IDEA), due to state's failure to ensure that special education systems were running properly, and if not, to correct them; as result of lack of centralized state supervision, significant numbers of handicapped children waited inordinate amounts of time to obtain placements in private schools when such placement may not have been appropriate and may have unnecessarily caused separation of families. Cordero by Bates v. Pennsylvania Dept. of Educ., M.D.Pa.1992, 795 F.Supp. 1352. Schools 154(4)

Child's behavior problems during his developmental kindergarten year were not proper basis for deciding that it would be appropriate to place child in segregated special education class outside district where kindergarten teacher had no prior experience in working with children with special needs, where she received only occasional assistance from another teacher who was experienced with Downs Syndrome children, where no teacher's aide was placed in classroom until March of school years and where teacher had only informal contact with student's speech therapist; it was unfair and improper to base Individualized Education Program (IEP) on problems that developed during that year. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(3)

Individualized education plan providing for 5.25 hours per week of special needs services was inappropriate for middle school student where it failed to implement recommendations of special hospital evaluation of student,

which middle school had allegedly relied upon and endorsed; student was performing between two and one-half and five years below his grade level in reading and language-based skills. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900. Schools 148(2.1)

School board did not satisfy requirements of Education of the Handicapped Act in its efforts to develop and implement educational program for emotionally handicapped student; student's current individualized education program did not include sufficiently specific behavioral or academic goals or methods for evaluating student's progress, board officials did not provide counseling or training to student's parents or adequately involve them in efforts to teach student or control his behavior, and student's current educational program offered him no realistic prospect of returning to regular class setting. Chris D. v. Montgomery County Bd. of Educ., M.D.Ala.1990, 753 F.Supp. 922. Schools 148(3)

Evidence established that mentally handicapped child obtained no benefit in academic subjects in educably mentally retarded class while showing academic progress in socially and emotionally disturbed/mentally retarded class, and, thus, placement in educably mentally retarded class for academic subjects was inappropriate. Liscio by Hippensteel v. Woodland Hills School Dist., W.D.Pa.1989, 734 F.Supp. 689, affirmed 902 F.2d 1561, affirmed 902 F.2d 1563. Schools 155.5(4)

Officials operating state school for mentally handicapped violated provisions of Education for All Handicapped Children Act by failing to provide clients with free, appropriate public education and to provide individualized education plan. Lelsz v. Kavanagh, N.D.Tex.1987, 673 F.Supp. 828. Schools 148(3)

Evidence that public school teacher in special-day-class program had been exposed to intensive multisensory approach required by individualized education program for fifth grade student who had dyslexia was insufficient to show that public school placement was appropriate for such student, where there was testimony that teacher's exposure was insufficient to allow her to make effective use of such approach, teacher did not consistently use such approach and teacher's responses indicated that she did not feel such approach was necessary. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 155.5(4)

Individualized education program formulated by school district for handicapped child pursuant to the Education of the Handicapped Act [28 U.S.C.A. § 1401(19)] was insufficient to satisfy requirements under the Act, in that it failed to address all three areas of child's handicaps, namely, cognitive, physical and language, and furthermore did not contain adequate statement of specific educational services to be provided to the child. Russell By and Through Russell v. Jefferson School Dist., N.D.Cal.1985, 609 F.Supp. 605. Schools 148(2.1)

In action challenging proposed placement by school committee of two children afflicted by learning disabilities and associated emotional problems, evidence was sufficient to establish that both children had severe learning disabilities and significant accompanying emotional problems, and that school committee's proposals calling for placement within public classrooms with pupil-teacher ratios possibly as high as ten-to-one and providing for some mainstreaming violated children's right to a free appropriate education under this chapter. Colin K. v. Schmidt, D.C.R.I.1982, 536 F.Supp. 1375, affirmed 715 F.2d 1. Schools 155.5(4)

Preponderance of evidence supported finding that placement of multiply-handicapped child in six-hour day program, augmented by home support, did not constitute "free appropriate public education" to which handicapped children are entitled under this chapter and section 794 of Title 29, as all objective indications demonstrated that child made no meaningful progress in her current placement within the six-hour day program; therefore, child was entitled to be placed, at no cost to her parents, in an educational residential facility capable of meeting the unique needs of severely intellectually impaired schizophrenic children. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 155.5(4)

Individualized education program that school offered to severely retarded 18-year-old boy failed to teach him functional and communicative skills, which might, to whatever degree, increase his independence, and lacked detailed evaluation and recordkeeping and, therefore, the program was not appropriate under this chapter. Campbell v. Talladega County Bd. of Ed., N.D.Ala.1981, 518 F.Supp. 47. Schools 148(3)

III. RELATED SERVICES

<Subdivision Index>

161. Related services generally

School district was not required to provide related services at public school under Rehabilitation Act to student who was provided with free and appropriate education (FAPE) through her enrollment at private school. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 148(2.1)

Even if disabled child voluntarily placed in private school had individual right to some level of special education services, school district did not have to provide such services on private school premises, when such action would violate state law. Foley v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1998, 153 F.3d 863. Schools 148(2.1)

States are not obligated under the Individuals with Disabilities Education Act (IDEA) to expend their own funds on disabled children who have voluntarily enrolled in private school; rather, states are required to provide to such children, voluntarily enrolled in private schools, only with those services that can be purchased with proportionate amount of federal funds received by state under the IDEA. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(2.1)

Under Individuals with Disability Education Act (IDEA), "free appropriate public education" includes not only special education, but also related services, such as transportation and other supportive services required to assist child with disability to benefit from special education. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1)

When handicapped child is voluntarily placed in private school, public school district need not provide related service to that child under Education of Handicapped Act if that particular service is not designed to meet the unique needs of the child. McNair v. Oak Hills Local School Dist., C.A.6 (Ohio) 1989, 872 F.2d 153. Schools 154(4)

School district's occasional failure to follow plan for accommodating student's diabetes mellitus did not cause student to become emotionally disturbed, as would support her entitlement to special education and related services under Individuals with Disabilities Education Act (IDEA); over two-year period, instances in which district failed to follow plan were infrequent, school staff made every effort to follow plan, student was very able to speak up for herself and take appropriate action when any problems arose, and student's medical records did not reflect that any of her emotional difficulties were caused by failure to follow plan. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Under federal law, right of private school student to receive related services is extremely limited, and IDEA and its corresponding regulations clearly and explicitly do not confer on disabled student's parents the right to any due process hearing if related services are not provided or paid for. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 148(2.1)

IDEA mandates that states cannot avoid their responsibilities thereunder by asserting that they lack the resources

to provide special education and related services to disabled children, and school district cannot avoid responsibility for related services on ground that they are beyond the competence of public school system, as agency responsible for providing services may do so indirectly. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 148(2.1)

Handicapped child is generally entitled to health services under Individuals with Disabilities Education Act (IDEA) as long as services are provided by individual other than physician. Morton Community Unit School Dist. No. 709 v. J.M., C.D.Ill.1997, 986 F.Supp. 1112, affirmed 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

Related services such as development of social skills, study skills, and self-esteem need not be provided unless they are necessary in order for handicapped child to benefit educationally. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173. Schools 148(2.1)

Fact that particular program may benefit classified child's special education program does not ipso facto compel conclusion that that program is a "related service" and that school district has responsibility for cost of that service under Education for All Handicapped Children Act. Field v. Haddonfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313. Schools 148(2.1)

162. Extracurricular activities, related services

Under the Education for All Handicapped Children Act, school district was not obligated to provide extracurricular activities to handicapped student, where student, because of lack of interest and sporadic and recurring behavior, would receive no significant educational benefit from extracurricular activities. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1986, 788 F.2d 328, certiorari denied 106 S.Ct. 3297, 478 U.S. 1005, 92 L.Ed.2d 711 . Schools 148(2.1)

Preliminary injunction would be issued barring school districts from potentially violating Individuals with Disabilities Education Act (IDEA), by prohibiting student who reached age 19 while still in high school, due to disabilities, from membership on track and cross country teams, and barring state high school athletic association from sanctioning districts for allowing student to compete; claimants were likely to succeed on merits of claim that IDEA was violated, denial of chance to compete would result in irreparable injury, and balance of hardship favored inclusion of student, as he almost always finished last in races and would not compromise competitive balance among teams. Kling v. Mentor Public School Dist., N.D.Ohio 2001, 136 F.Supp.2d 744. Schools 155.5(5)

Placement of emotionally handicapped and learning disabled student, who slashed another student with box cutter, in alternative school was reasonably calculated to enable him to receive adequate educational benefits, for purpose of determining whether student received free appropriate public education (FAPE) as guaranteed by IDEA; although alternative school offered limited extracurricular activities and did not offer reading instructor certified to teach special education students, student's behavior improved during tenure at alternative school and he earned passing grades in all courses. Jane Parent ex rel. John Student v. Osceola County School Bd.,

M.D.Fla.1999, 59 F.Supp.2d 1243, affirmed 220 F.3d 591. Schools 154(2.1)

163. In-service training for parents, related services

This chapter did not oblige school district to provide in-service training to parents of handicapped student, and in-service training provided by the school district to its employed staff was adequate. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1983, 720 F.2d 463, appeal dismissed, certiorari denied 104 S.Ct. 2379, 467 U.S. 1201, 81 L.Ed.2d 339, rehearing denied 104 S.Ct. 3549, 467 U.S. 1257, 82 L.Ed.2d 852. Schools 148(2.1)

City department of education's failure to include parent training and counseling in nine-year-old autistic student's individualized education program (IEP) did not result in denial of Free Appropriate Public Education (FAPE), as would render IEP substantively inadequate; department's recommended placement offered parent training opportunities consistent with New York regulations. E. Z.-L. ex rel. R.L. v. New York City Dept. of Educ., S.D.N.Y.2011, 763 F.Supp.2d 584. Schools 148(3)

In action brought by parents of handicapped child seeking to redress alleged violations of rights guaranteed by this chapter, evidence was sufficient to establish that an appropriate educational placement for child, who parents contended was autistic and school district asserted was severely mentally retarded, was a highly structured educational program on a 12-month, year-round basis designed specifically to meet child's particular and unique needs; accordingly, school district was required to prepare individual education program for child, to provide child's parents with the training in behavioral techniques for the management of child's abnormal behavior, and to provide counseling to child's parents. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 155.5(4)

164. Medical services, related services

Provision of clean intermittent catheterization to eight-year-old girl born with spina bifida so that she could attend special education classes was not “medical service” which school was not required to provide except for purposes of diagnosis or evaluation where services of physician were not required to perform the procedure but could be provided by nurse or trained layperson. Irving Independent School Dist. v. Tatro, U.S.Tex.1984, 104 S.Ct. 3371, 468 U.S. 883, 82 L.Ed.2d 664, on remand 741 F.2d 82. Schools 148(4)

Services required by handicapped student, including constant monitoring, frequent adjustments to tracheostomy system, and ointment applications were “related services” which school district had to provide at its own expense under IDEA, rather than “medical services” outside scope of district's obligations; financial burden of hiring nurse to attend student would not cause undue burden to district, and services were time-consuming but did not require high degree of expertise or any medical treatment expense. Morton Community Unit School Dist. No. 709 v. J.M., C.A.7 (Ill.) 1998, 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

In the absence of any evidence that the student's educational and emotional disabilities were so severe that hospitalization was necessary to provide him with the free appropriate public education, parents were not entitled to

recover for medical services provided to him after a nervous breakdown. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(4)

Although some staff members appeared, in the opinion of student's physician, to be reluctant to administer medical services to student and although three unions representing teachers and principals filed grievances petition for determination of whether their contracts required them to perform such services, individualized educational plan for handicapped child which called for her to be placed in a regular public school and to have the staff trained to administer medical services which she might need was an appropriate free public education. Department of Educ., State of Hawaii v. Katherine D. By and Through Kevin and Roberta D., C.A.9 (Hawai'i) 1983, 727 F.2d 809, certiorari denied 105 S.Ct. 2360, 471 U.S. 1117, 86 L.Ed.2d 260. Schools 148(4)

Providing handicapped child with clean intermittent catheterization was "related service," within meaning of par. (17) of this section, where absence of such service would prevent the child from participating in regular public school program. Tokarcik v. Forest Hills School Dist., C.A.3 (Pa.) 1981, 665 F.2d 443, certiorari denied 102 S.Ct. 3508, 458 U.S. 1121, 73 L.Ed.2d 1383. Schools 148(4)

Under the IDEA, parents of learning disabled student were not entitled to reimbursement from school district for vision therapy services they obtained privately; services were obtained before school district was made aware of student's potential eligibility for special education services, and district had satisfied its child find obligations during period when parents obtained vision therapy for student. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 148(4)

Handicapped child is not generally entitled to health services under Individuals with Disabilities Education Act (IDEA) if allocation of services required places undue burden on particular school district. Morton Community Unit School Dist. No. 709 v. J.M., C.D.Ill.1997, 986 F.Supp. 1112, affirmed 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

Parents were entitled to reimbursement for payments made by health insurer for independent educational evaluation of disabled child since health insurance policy had lifetime cap and payment by insurer would reduce lifetime benefits; even though parents voluntarily submitted insurance claim without being pressured by state, they suffered "financial loss" within meaning of Secretary of Education's Notice of Interpretation on Use of Parent's Insurance Proceeds which interpreted "free appropriate public education" to mean that agency may not compel parents to file insurance claim when filing claim would pose realistic threat that parents of handicapped children would suffer financial loss not incurred by similarly situated parents. Raymond S. v. Ramirez, N.D.Iowa 1996, 918 F.Supp. 1280. Schools 148(2.1)

Absent evidence that nursing care for child having Congenital Central Hypoventilation Syndrome would be unduly burdensome for school district, nursing care, a related, supportive service, fell outside medical services exclusion of Individuals with Disabilities Education Act (IDEA); properly qualified individual could be retained at hourly rate of nine dollars, 40-hour work week for 9.5 months at this hourly rate translated into base salary of $13,680, district currently employed personnel who performed tasks similar to that which child's nurse would

perform and costs of that care and of requested nursing care were comparable, alternative schooling arrangement, presumably home schooling, would not be cost free to district, and gains to child, relative to burden imposed on district, were weightier. Neely By and Through Neely v. Rutherford County Schools, M.D.Tenn.1994, 851 F.Supp. 888, reversed 68 F.3d 965, certiorari denied 116 S.Ct. 1418, 517 U.S. 1134, 134 L.Ed.2d 543. Schools 148(4)

Emotionally disturbed student's placement in substance abuse program after he was expelled by school in which he was placed after being found in possession of Valium and admitting to drinking and smoking marijuana, was not a "related service" under Education for All Handicapped Children Act but, rather, was a "medical service" the payment of which was responsibility of parents, although school "required" student to attend substance abuse program as condition for continued enrollment of school; testimony and records revealed that program provided intensive therapy for student's underlying psychiatric disorders and provided medical treatment which school could not, as an educational institution, provide. Field v. Haddonfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313. Schools 148(4)

"Medical services" exclusion to school district's obligation to provide supportive services to facilitate handicap student's access to school, was limited to services provided by a licensed physician, and did not include services of a trained medical professional other than a physician. Macomb County Intermediate School Dist. v. Joshua S., E.D.Mich.1989, 715 F.Supp. 824. Schools 148(4)

Public school was not required to fund emotionally handicapped child's hospitalization at private psychiatric hospital as related service to special education at the hospital where placement in hospital was for medical and not educational reasons, hospitalization was not made in support of special educational program, and hospitalization was for treatment of student's condition and not for diagnostic and evaluation purposes. McKenzie v. Jefferson, D.C.D.C.1983, 566 F.Supp. 404. Schools 148(3)

165. Nursing services, related services

Full-time care of nursing care due to constant possibility of mucous plug in student's tracheotomy tube fell within "medical service" exclusion of Individuals with Disabilities Education Act, and thus, was not related or "supportive service" that school district had to provide as matter of federal law; court rejected physician-nonphysician test for medical services. Granite School Dist. v. Shannon M. by Myrna M., D.Utah 1992, 787 F.Supp. 1020. Schools 148(4)

Basic floor of opportunity as required by Individuals with Disabilities Education Act (Act) was being provided to handicapped child pursuant to her individualized education program (IEP) which recommended home instruction, and thus, school's refusal to provide child with full-time nursing tracheostomy care during school hours so as to allow her to attend regular classes did not violate Act. Granite School Dist. v. Shannon M. by Myrna M., D.Utah 1992, 787 F.Supp. 1020. Schools 148(4)

Full time, individualized nursing service for multiply-handicapped child, which was necessary to allow child to attend school, was not a "related service" which school district was required to provide to child without charge

under Education for All Handicapped Children Act, since the nursing services, including constant attention to possibility of life-threatening plug in child's tracheotomy tube, were so varied and intensive that nursing personnel with responsibility for other children could not safely care for the child and since services were more in nature of "medical services" than "related services." Bevin H. by Michael H. v. Wright, W.D.Pa.1987, 666 F.Supp. 71.

Education of All Handicapped Children Act did not require school district and board of education to provide severely physically disabled child with constant in-school nursing care, where constant monitoring was required to protect child's life, and medical attention required by child was beyond competence of school nurse. Detsel by Detsel v. Board of Educ. of Auburn Enlarged City School Dist., N.D.N.Y.1986, 637 F.Supp. 1022, affirmed 820 F.2d 587, certiorari denied 108 S.Ct. 495, 484 U.S. 981, 98 L.Ed.2d 494. Schools 148(4)

166. Personal care attendant, related services

Provision in disabled high school student's individualized education program (IEP) purportedly authorizing her parents to select her personal care attendant (PCA), was not substantial or significant, and thus district's replacement of parent-selected PCA with district employee was at most de minimis violation which did not deprived student of free appropriate public education (FAPE). Slama ex rel. Slama v. Independent School Dist. No. 2580, D.Minn.2003, 259 F.Supp.2d 880. Schools 148(2.1)

167. Psychiatric services, related services

Emotionally disturbed child's placement in acute care psychiatric hospital was primarily for medical, psychiatric reasons, and child's hospitalization thus did not constitute educationally related service for the costs of which a school district was responsible under the Education for All Handicapped Children Act (EHA), even though psychotherapeutic services which child received at hospital might be qualitatively similar to those she would receive at residential placement. Clovis Unified School Dist. v. California Office of Administrative Hearings, C.A.9 (Cal.) 1990, 903 F.2d 635. Schools 148(4)

Under this chapter, psychiatrists, in contradistinction to psychologists, counselors and other providers of psychological services, are licensed physicians whose services are appropriately designated as medical treatment, and thus excluded from "related services" which states must provide as part of free appropriate education. Darlene L. v. Illinois State Bd. of Educ., N.D.Ill.1983, 568 F.Supp. 1340. Schools 148(4)

168. Psychological services, related services

Learning-disabled child was barred from reimbursement under the IDEA for the costs of his psychological treatment, even prior to 1997 amendments and even assuming that psychological counseling was required to assist the child to benefit from special education during the period he was treated and that child's individualized education programs (IEPs) for that period failed adequately to address this need for counseling, where child's parents failed to raise any issue with respect to the extent or nature of the psychological counseling services provided for child in his IEPs until after the treatment had ended. M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., C.A.2 (Conn.) 2000, 226 F.3d 60, on remand 122 F.Supp.2d 289. Schools 148(4)

Severely emotionally disturbed child was "handicapped" under Education of the Handicapped Act, and thus entitled to free appropriate public education, including psychological care and related services. Babb v. Knox County School System, C.A.6 (Tenn.) 1992, 965 F.2d 104, certiorari denied 113 S.Ct. 380, 506 U.S. 941, 121 L.Ed.2d 290. Schools 148(3); Schools 148(4)

Preponderance of the evidence in IDEA case showed that parents of emotionally disturbed student were entitled to reimbursement for costs of appropriate related services in form of counseling, social work, psychological services, and parent counseling services, i.e., "wrap-around services," and hearing officer did not properly deny reimbursement on grounds that parents failed to present evidence of their costs during case-in-chief; hearing officer twice acknowledged parents' offer to provide the cost information but refused to admit it into evidence, and that refusal ran afoul of statutory mandate that his decision be made on substantive grounds. A.G. v. District of Columbia, D.D.C.2011, 794 F.Supp.2d 133. Schools 155.5(4)

Original classification of student as "other health impairment" rather than autistic did not amount to substantive flaw in student's education program, entitling parents to reimbursement for additional hours of 1:1 behavior therapy. J.A. v. East Ramapo Cent. School Dist., S.D.N.Y.2009, 603 F.Supp.2d 684. Schools 154(4)

District court could not conclude that 20-year-old language and learning disabled student who was also suffering from pedophilia was capable of making academic progress without psychological and counseling services where he had not made academic progress or received significant psychological or counseling services in current placement; thus, at a minimum, IDEA required that student should receive a psychiatric evaluation for diagnostic and evaluation purposes to determine the extent of the psychological and counseling services that he needed to benefit from special education. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 148(3)

Parent was entitled to reimbursement from school district under Education of the Handicapped Act for costs of individual psychotherapy and group therapy provided his mentally ill son at hospital, where such therapy was required for son to benefit from special education. Doe v. Anrig, D.Mass.1987, 651 F.Supp. 424. Schools 148(3)

Neurological evaluation performed by doctor and psychological evaluation performed by psychologist needed to help pediatrician ascertain source of handicapped child's difficulties were requested and required by county department of education to assist child to benefit from special education and, as such, had to be furnished to child by department pursuant to Education of the Handicapped Act, § 602(16-18), as amended, 20 U.S.C.A. § 1401(16-18). Seals v. Loftis, E.D.Tenn.1985, 614 F.Supp. 302. Schools 148(4)

Psychotherapy provided for an 11-year-old emotionally disturbed boy as part of his individualized education plan developed by school board constituted a covered "related service" within meaning of par. (17) of this section, and thus costs of such services would be borne by school board. T.G. v. Board of Educ. of Piscataway, N.J., D.C.N.J.1983, 576 F.Supp. 420, affirmed 738 F.2d 420, affirmed 738 F.2d 421, affirmed 738 F.2d 425, certiorari denied 105 S.Ct. 592, 469 U.S. 1086, 83 L.Ed.2d 701. Schools 148(3)

Psychological services that were required to assist emotionally disturbed student to benefit from special education were "related services" under this chapter and, as such, were to be provided by State without cost to student. Papacoda v. State of Conn., D.C.Conn.1981, 528 F.Supp. 68. Schools 148(3)

169. Residential placement, related services--Generally

School district was not entitled under Individuals with Disabilities Education Act (IDEA) to attempt day-schooling of disabled child before agreeing to child's placement in residential program; district had recognized child's serious problems for several years and had been attempting various forms of intervention in nonresidential setting; child was at crucial age and any further delay in getting her appropriate placement would significantly worsen her chances of improvement, and IDEA did not require child to spend years in educational environment likely to be inadequate and to impede her progress simply to permit district to try every option short of residential placement. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(3)

Residential programs are appropriate under IDEA if they are necessary to allow a disabled child to benefit from special education and related services, and fact that residential placement may be required due primarily to emotional problems does not relieve the state of its obligation to pay for the program so long as it is necessary to insure that the child can be properly educated. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 154(3)

Settlement agreement reached in Individuals with Disabilities Education Act (IDEA) action, concerning costs of special education student's placement in residential facility, requiring board of education to contribute 90% of any increase in the costs for the array of services provided in the previous school year was unambiguous and since aide was outside the array of services covered in the previous school year, board, pursuant to settlement agreement, was not required to pay for costs of aide. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145, 1994 WL 514779. Compromise And Settlement 12

A residential rehabilitation facility for brain injury victims represented the appropriate educational placement for a brain damaged student; placement qualified as "special education and related services" under Education for All Handicapped Children Act and was not simply medical in nature and the placement was the only appropriate educational program in view of the student's disability. Brown By and Through Brown v. Wilson County School Bd., M.D.Tenn.1990, 747 F.Supp. 436. Schools 154(3)

Under Education of the Handicapped Act, school board was required to place 12-year-old emotionally disabled student in full-time residential school, as residential placement would provide for needed behavior modification and thus, potentially, for student to return to regular classroom; school board's two suggested alternatives, individual instruction at home or in isolated room in administrative building, would be inadequate, as student's behavior problems could not be redressed in isolated environment, and interaction with student's peers was necessary for any behavior modification program for student. Chris D. v. Montgomery County Bd. of Educ., M.D.Ala.1990, 743 F.Supp. 1524. Schools 154(3)

Under appropriate circumstances, local school districts must provide residential placement to a handicapped

child. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 154(3)

170. ---- Adult group homes, residential placement, related services

Placement of severely retarded 18-year-old woman in group home for adults was an "educational placement" under Education for All Handicapped Children Act, even if arguably mistake because group home was not educational institution, since placement in community setting was part of individualized plan and multidisciplinary team determined that placement was part of appropriate educational plan. McClain v. Smith, E.D.Tenn.1989, 793 F.Supp. 756. Schools 154(3)

171. ---- Location of facility, residential placement, related services

New Jersey Division of Development Disabilities (DDD) was obligated to place autistic 20-year-old student in approved facility located in her home town rather than in conditionally provided facility located elsewhere, under the IDEA, despite alleged difficulties DDD had with approved facility in home town regarding methods of reimbursement for specific clients; facility in hometown remained approved educational placement. Remis by Trude v. New Jersey Dept. of Human Services, D.N.J.1993, 815 F.Supp. 141. Schools 154(2.1)

There is no requirement under Individuals with Disabilities Education Act (IDEA) that child receive residential placement located in his immediate geographic area, although it is preferable. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 154(3)

172. ---- Non-educational problems, residential placement, related services

School district's obligation to provide free appropriate education did not extend to reimbursement of costs incurred by parent who placed her criminally inclined and truant son in private residential school for difficult students; son did not suffer from any learning impairment, and school was essentially providing incarceration services not contemplated by Individuals with Disabilities Education Act. Dale M. ex rel. Alice M. v. Board of Educ. of Bradley-Bourbonnais High School Dist. No. 307, C.A.7 (Ill.) 2001, 237 F.3d 813, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 546, 534 U.S. 1020, 151 L.Ed.2d 423, rehearing denied 122 S.Ct. 1134, 534 U.S. 1157, 151 L.Ed.2d 1024. Schools 154(4)

Evidence that severely handicapped child had reached a point of diminishing marginal returns and would not be able to learn much more, and that child's living in rented apartment had become primarily custodial, established that proposed program of day school at elementary school for severely and profoundly retarded children and living at home constituted the free appropriate public education child was entitled to under this chapter, notwithstanding testimony by child's caretaker and neurologist that it might be possible to teach child self-initiation of toilet use, which would have required continuation of 24-hour residential care and education. Matthews by Matthews v. Davis, C.A.4 (Va.) 1984, 742 F.2d 825. Schools 155.5(4)

Under the IDEA, school district was not responsible for ensuring that disabled student translated behavior skills learned in classroom to home or community settings; district was not required to address behavior problems that

occurred outside of school when student demonstrated educational progress in the classroom, even though student contended that generalization of behavioral skills into settings outside the classroom was educational need that district could appropriately address only through a residential placement. San Rafael Elementary School Dist. v. California Special Educ. Hearing Office, N.D.Cal.2007, 482 F.Supp.2d 1152. Schools 148(3)

Individualized educational plan (IEP) proposed by school district failed to adequately address behavior of disabled student diagnosed with, inter alia, pedophilia and paraphilia, and thus, district was responsible for student's placement at a special education residential facility, despite claims that student was not entitled to educational and related services to address behavior which manifested itself outside the school setting, and that the placement amounted to treatment of an underlying medical (psychiatric) condition; student's out-of-school behavior was inextricably intertwined with his educational performance. Mohawk Trail Regional School Dist. v. Shaun D. ex rel. Linda D., D.Mass.1999, 35 F.Supp.2d 34. Schools 148(3)

When residential placement of disabled student is response to medical, social or emotional problems segregable from learning process,school district is not obligated to bear total cost of placement; instead, school district must cover cost of special education and related services but need not fund medical treatment or other noneducational expenses. King v. Pine Plains Cent. School Dist., S.D.N.Y.1996, 918 F.Supp. 772. Schools 154(3)

Multihandicapped student with severe emotional disturbance, neurological impairment, and lack of socialization skills was entitled to year-round residential placement, under New Jersey law, even though student had received passing grades in public school while he was in youth behavior program, out-of-home living arrangement, and even though student was not mentally retarded; student's emotional problems and lack of socialization skills could not be severed from learning process; and student showed strong signs of regression despite two years with youth behavior program. B.G. by F.G. v. Cranford Bd. of Educ., D.N.J.1988, 702 F.Supp. 1140, supplemented 702 F.Supp. 1158, affirmed 882 F.2d 510. Schools 154(3)

Where residential placement was required in order for emotionally disturbed children to benefit from special education, school district would not be relieved of its responsibility to provide residential placement by asserting claim that placement was means of addressing social and emotional, rather than educational problems. Christopher T. by Brogna v. San Francisco Unified School Dist., N.D.Cal.1982, 553 F.Supp. 1107. Schools 154(3)

Residential placement is required under this chapter when necessary for educational purposes, but there is no obligation to provide residential placement where the placement is a response to medical, social, or emotional problems that are segregable from the learning process; the concept of education under this chapter is necessarily broad, however, and residential placement is within contemplation of this chapter where the child's social, emotional, medical, and educational problems are so intertwined that it is impossible for court to separate them. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 154(3)

173. ---- Room and board, residential placement, related services

Under Individuals with Disabilities Education Act (IDEA), school officials were required to pay for deaf, blind

and developmentally disabled student to reside with his grandparents while he attended private school day program pending availability of place in residential program which had been determined to be appropriate placement for him but that reimbursement could not exceed cost that state would have incurred had student been placed in private school's residential program. Ojai Unified School Dist. v. Jackson, C.A.9 (Cal.) 1993, 4 F.3d 1467, certiorari denied 115 S.Ct. 90, 513 U.S. 825, 130 L.Ed.2d 41. Schools 154(4)

Education of the Handicapped Act provides for residential placement when such placement may be necessary to meet individual needs of handicapped child; if residential placement is required, room, board, and related services must be provided at no cost to child's parents. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 154(3)

"Related service," for purpose of Education of the Handicapped Act provision defining educational expenses for which public school district must make reimbursement, did not include costs of room and board for placement of student who had dyslexia in private residence, where school in which student was placed was day school. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 154(4)

State would be required to pay all costs of residential placement of emotionally disturbed student in a special education school, including room and board, through student's graduation where student could not be educated without residential placement because a therapy program had to be coordinated with teaching program. Papacoda v. State of Conn., D.C.Conn.1981, 528 F.Supp. 68. Schools 154(3)

This chapter contemplates residential placement under some circumstances, and when residential placement is necessary for educational purposes, program, including nonmedical care and room and board, must be at no cost to the child's parents. Kruelle v. Biggs, D.C.Del.1980, 489 F.Supp. 169, affirmed 642 F.2d 687. Schools 154(3)

174. ---- Out of state placement, residential placement, related services

If a state does not have the facilities to educate a child with a specific disability, an out-of-state residential placement will be appropriate under IDEA if it is first approved by the commissioner or the local or regional board of education. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 154(4)

175. Summer enrichment activities, related services

Determination of whether handicapped child's level of achievement would be jeopardized by summer break in structured educational programming, for purposes of determining whether Education of Handicapped Act requires summer program, requires consideration not only of retrospective data, such as past regression and rate of recoupment, but also predictive data, based on opinion of professionals in consultation with child's parents as well as circumstantial considerations of child's individual situation at home and in neighborhood and community. Johnson By and Through Johnson v. Independent School Dist. No. 4 of Bixby, Tulsa County, Okl., C.A.10 (Okla.) 1990, 921 F.2d 1022, certiorari denied 111 S.Ct. 1685, 500 U.S. 905, 114 L.Ed.2d 79. Schools

148(2.1)

School district was not required by Individuals with Disabilities Education Act (IDEA) to provide student with summer placement, even if his regression was documented, absent expert testimony that summer placement was needed. Wanham v. Everett Public Schools, D.Mass.2008, 550 F.Supp.2d 152. Schools 162.5

175a. Transition services, related services

From 2008 to first day of trial in case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated IDEA through their failure to provide students with smooth and effective transition from Part C to Part B. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1 . Schools 148(2.1)

176. Transportation, related services

A school district may, under the Individuals with Disabilities Education Act (IDEA), apply a facially neutral transportation policy to a disabled child without violating the law when the request for a deviation from the policy is not based on the child's educational needs, but on the parents' convenience or preference. Fick ex rel. Fick v. Sioux Falls School Dist. 49-5, C.A.8 (S.D.) 2003, 337 F.3d 968, rehearing and rehearing en banc denied. Schools 159.5(4)

Language and spirit of Individuals with Disabilities Education Act (IDEA) encompassed reimbursement for transportation costs of commuting between San Jose where parents of autistic child lived and Los Angeles where autistic child attended private counseling facility at beginning and end of child's participation in program and when facility was officially closed to students such as at winter and spring breaks, reimbursement for transportation costs to and from facility each day and reimbursement for costs of lodging for child and mother in Los Angeles. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 154(4)

Parents of hearing-impaired child, seeking to have public school district provide transportation to private school, needed to demonstrate that child was handicapped, transportation was related service, that transportation was required to meet needs of child caused by the handicap, and that school district was responsible under Education of Handicapped Act and its regulations for providing the related services under the particular circumstances at hand. McNair v. Oak Hills Local School Dist., C.A.6 (Ohio) 1989, 872 F.2d 153. Schools 159.5(4)

School district's transportation policy, even if facially neutral, was not exempt from review under IDEA, as applied to wheelchair-using student who was not regularly attending school and whose individualized education program (IEP) was not being implemented effectively; student's educational needs were not being met by services provided, and student's nonattendance at school was due to his inability to travel from door of his family's apartment to school bus, so student and parents were not requesting transportation because of convenience or preference, but out of necessity. District of Columbia v. Ramirez, D.D.C.2005, 377 F.Supp.2d 63. Schools 148(4)

Door-to-door transportation was not "necessary" for disabled student to benefit from her special education program, as required for such transportation to be considered "related service" school district was required to provide under Individuals with Disabilities Education Act (IDEA), despite fact that student's one-way trip to school was 13.5 miles, absent any evidence of average one-way distance traveled by other students; student was eight years old and capable of following directions not to walk out into traffic, and parent was able to provide transportation. Malehorn on Behalf of Malehorn v. Hill City School Dist., D.S.D.1997, 987 F.Supp. 772. Schools 159.5(4)

State defendants, along with local school district, were properly enjoined to provide transportation to parochial school student to special education classes in public school where funding necessary for local district to provide such transportation would be provided by state Department of Elementary and Secondary Education. Felter v. Cape Girardeau Public School Dist., E.D.Mo.1993, 830 F.Supp. 1279. Injunction 1319

Transportation of a handicapped student to and from school represented "supportive services," rather than medical services, which a school district was required to provide to the student under the Education for All Handicapped Children Act in order to provide the student with meaningful access to education, absent showing of need for attention of licensed physician during transport. Macomb County Intermediate School Dist. v. Joshua S., E.D.Mich.1989, 715 F.Supp. 824. Schools 159.5(4)

Upon parents' decision to place handicapped child, who required total special education program, in private school of their own choosing, thereby rejecting public school district's designation of appropriate placement for child, public school district was not required to provide transportation for student between her home and private school, even though school district placed and funded other children at such private school and public school bus passed within few blocks of child's home. Work v. McKenzie, D.D.C.1987, 661 F.Supp. 225. Schools 159.5(4)

Neither Va. Code 1950, § 22.1-214(A), Virginia regulations, nor this chapter required reimbursement of transportation expenses incurred by parents of handicapped child. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366.

Although county school officials were not required to establish a self-contained program at school attended by learning disabled child, it was appropriate to require county to pay for related service of alternative transportation to a school having such program and located six miles farther from child's home as it would take child 30 minutes or more by bus to reach the other school because of transfers and state law permitted reimbursement for reasonable transportation costs. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 159.5(4)

Since half-time attendance by the minor plaintiff at specified private educational institution was essential to the success of the special education program being offered to her by public school, the public school board, if the child's parents accepted the offered program and placement, would have to pay the cost of the child's transportation to and from and her tuition at the private school during the transition period. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 8; Schools 159.5(4)

177. Miscellaneous related services

Requiring school district to provide compensatory services in amount of 60 minutes per week of direct occupational therapy (OT) services was appropriate remedy for school district's failure to follow state's requirement for licensing its occupational therapist. Evanston Community Consolidated School Dist. Number 65 v. Michael M., C.A.7 (Ill.) 2004, 356 F.3d 798. Schools 155.5(5)

School district's denial of the use of an advanced calculator in learning disabled student's math course, confirmed by administrative rulings of an impartial hearing officer (IHO) and state review officer (SRO), did not deprive student of a free appropriate public education within the meaning of the IDEA, notwithstanding student's failing grade in the math class; evidence demonstrated that student was capable of passing the class with the assistance of a less advanced calculator in a manner consistent with the education goals of the class's curriculum, and that student's lack of effort contributed to the failing grade. Sherman v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2003, 340 F.3d 87. Schools 148(3)

Parents' procurement of otherwise appropriate Applied Behavioral Analysis (ABA) services for child less than three years of age was reimbursable notwithstanding providers' lack of proper qualifications under Individuals with Disabilities Education Act (IDEA) section governing services to infants and toddlers, where state's denial of appropriate services was due to shortage of qualified providers. Still v. DeBuono, C.A.2 (N.Y.) 1996, 101 F.3d 888. Schools 154(4)

Neither the Education of the Handicapped Act nor North Carolina's special education law required school board to fund habilitative services in the home for 19-year-old student who was autistic and moderately mentally handicapped, in order to provide free appropriate public education, where, after student had returned home from residential facility and enrolled in local school, he had continued to make educational progress despite failure of home care aides to follow rigorously the successful behavior management program that had been used at the residential facility. Burke County Bd. of Educ. v. Denton By and Through Denton, C.A.4 (N.C.) 1990, 895 F.2d 973.

Hearing officer's finding, that school district's speech paraprofessional was qualified to provide speech and language services to disabled student pursuant to student's individualized education program (IEP), was reasonable in hearing regarding due process complaint by student's parents under Individuals with Disabilities Education Act (IDEA), where principal and district's speech language pathologist testified that paraprofessional was qualified, and parents failed to provide any evidence questioning paraprofessional's qualifications. T.G. ex rel. T.G. v. Midland School Dist. 7, C.D.Ill.2012, 2012 WL 264186. Schools 148(3)

Provision of equine therapy adequately addressed student's physical therapy needs, and thus school district fulfilled its duty to provide free and appropriate public education (FAPE); parents' neuropsychologist testified that equine therapy improved student's physical status and mobility which lead to improvements in balance and gross motor skills, and father testified that equine therapy was beneficial, and equine therapy instructor indicated that equine therapy resulted in significant improvement in student's balance, coordination, self-esteem, and ability to take direct instruction in a positive matter. K.C. ex rel. Her Parents v. Nazareth Area School Dist., E.D.Pa.2011, 806 F.Supp.2d 806. Schools 148(4)

Regulations interpreting the Individuals with Disabilities Education Act (IDEA) to exclude cochlear implant mapping from the definition of "related services" required as part of a free appropriate education (FAPE) were reasonable and entitled to deference; the statutory provision at issue, including a subpart establishing that the term "related services" included audiology services and a subpart excepting from the definition of "related services" a "medical device that is surgically implanted, or the replacement of such device," was ambiguous, and the Department of Education adequately articulated the basis for its choice to exclude mapping services from coverage. Petit v. U.S. Dept. of Educ., D.D.C.2008, 578 F.Supp.2d 145. Schools 148(4)

School district's provision of "free appropriate public education" (FAPE), pursuant to IDEA, did not require furnishing facilitated communication to student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder, since facilitated communication was not scientifically valid methodology for mentally retarded children, was not appropriate component of individualized education program (IEP) for student who was highly distractible, and could cause student to lose ground in other communication skills. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 148(3)

Individuals with Disabilities Act (IDEA) did not require that school district supply second grade student, forced to miss approximately 25% of school days due to complications of leukemia treatment, with video teleconferencing equipment (VTC) in order that student might improve interpersonal skills by having virtual access to classroom and its interactive possibilities; improvements in those areas could be achieved by emphasizing them during 75% of time student was in school. Eric H. ex rel. John H. v. Methacton School Dist., E.D.Pa.2003, 265 F.Supp.2d 513. Schools 148(2.1)

School committee was not required, under IDEA, to provide on-site services to disabled student who was voluntarily enrolled in parochial school, even though it provided such services to students enrolled in other parochial schools within district; decision whether to provide on-site services was within committee's discretion. Bristol Warren Regional School Committee v. Rhode Island Dept. of Educ. and Secondary Educations, D.R.I.2003, 253 F.Supp.2d 236. Schools 148(2.1)

City officials failed to provide disabled city prison inmates, who were between ages of 16 and 21, with education-related services such as counseling, speech therapy, and vision services, as required under IDEA, and thus city would be ordered to provide all required related services, in order modifying education plan, in inmates' class action against city officials seeking educational services, although district court would defer to officials regarding security issues relating to counseling. Handberry v. Thompson, S.D.N.Y.2002, 219 F.Supp.2d 525, vacated and remanded , reinstated 2003 WL 194205, affirmed in part, vacated in part and remanded 436 F.3d 52, opinion amended on rehearing 446 F.3d 335, stay granted in part 2003 WL 1797850. Infants 3135; Infants 3139

Individuals with Disabilities Education Act (IDEA) did not require school district to provide special education services at private parochial school in which disabled student had been unilaterally placed by her parents, where such services were made available to student by district at public school; under plain language of regulations, state and local agency's obligation to make services available and to provide services did not equate to obliga-

tion to pay for related services where school had appropriate alternative, and school's provision at public school of services consistent with student's individualized education plan (IEP) constituted genuine opportunity for equitable participation. Foley v. Special School Dist. of St. Louis County, E.D.Mo.1996, 927 F.Supp. 1214, rehearing denied 968 F.Supp. 481, affirmed 153 F.3d 863. Schools 148(2.1)

After it was determined that school district did not provide hearing-impaired student with free appropriate public education under Education of the Handicapped Act, district would be required to provide student with extra speech and language therapy and reimburse student's parents for past lessons provided by private therapist, but would not be required to provide deaf adult role model during student's classes. Johnson v. Lancaster-Lebanon Intermediate Unit 13, Lancaster City School Dist., E.D.Pa.1991, 757 F.Supp. 606. Schools 155.5(5)

While plaintiff, a child with exceptional educational needs, might benefit from being accompanied to public school by a staff member of the private school plaintiff had been attending, and while her period of adjustment as a result might be significantly shorter, the district court had no authority to order a staff member from a private educational institution to undertake that obligation. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 8

School district adequately accommodated disabled child's limited ability to write with a pen or pencil, as required under IDEA, where goals related to written work and notetaking were removed from child's individualized education program (IEP) when he struggled to achieve them, child was trained in computer dictation program, and child was provided with instruction in using a computer keyboard. L.C. v. Utah State Bd. of Educ., C.A.10 (Utah) 2005, 125 Fed.Appx. 252, 2005 WL 639713, Unreported. Schools 148(2.1)

20 U.S.C.A. § 1412, 20 USCA § 1412

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

END OF DOCUMENT

Cal. Admin. Code tit. 2, § 1183.1

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 2. Financial Operations
Chapter 2.5. Commission on State Mandates
Article 3. Test Claims (Refs & Annos)

§ 1183.1. Content of Parameters and Guidelines.

(a) The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information:

(1) Summary of the Mandate. A summary of the mandate identifying the statute(s) or executive order(s) that contain the mandate and/or the increased level of service and the activities found to be required under those statute(s) or executive order(s).

(2) Eligible Claimants. A description of the types and/or level(s) of local governmental entities that are eligible to file for reimbursement.

(3) Period of Reimbursement. A description of the period of reimbursement specifying the first and subsequent fiscal years that can be reimbursed.

(4) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. “The most reasonable methods of complying with the mandate” are those methods not specified in statute or executive order that are necessary to carry out the mandated program.

(5) Claim Preparation. Instruction on claim preparation, including instructions for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.

(6) Record Retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during the period subject to audit.

(7) Offsetting Revenues and Reimbursements (if applicable).

Identification of:

Cal. Admin. Code tit. 2, § 1183.1

i. Dedicated state and federal funds appropriated for this program.

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.

(8) Offsetting Savings (if applicable). Identification of any offsetting savings in the same program experienced because of the same statute(s) or executive order(s) found to contain a mandate.

(9) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming instructions, which constitutes notice of the right of local agencies and school districts to file reimbursement claims, based upon the statement of decision and parameters and guidelines adopted by the commission.

(10) Remedies Before the Commission. Instructions for filing requests to review claiming instructions and requests to amend parameters and guidelines with the commission.

(11) Legal and Factual Basis. Notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission.

Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17530, 17553, 17556(e) and 17557, Government Code.

HISTORY

1. Amendment of section heading, section and Note filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

2. Amendment of section heading, section and Note filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

2 CCR § 1183.1, 2 CA ADC § 1183.1

This database is current through 12/28/12 Register 2012, No. 52

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 3. Local Administration (Refs & Annos)
Part 24. School Finance (Refs & Annos)
Chapter 3. State School Fund (Refs & Annos)
Article 1. Appropriations, Sources, Conditions, Amounts of Support Per Average Daily Attendance (Refs & Annos)

§ 41311. Child Nutrition Program

It is the intent of the Legislature that the Child Nutrition Program shall provide permanent financial assistance to eligible school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, for implementing the school meal program. That financial assistance shall be used to reimburse the cafeteria account of school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, based upon the number of qualifying meals served to students.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1985, c. 1546, § 1.)

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

Derivation

Education Code 1959, § 17314, added by Stats.1975, c. 1277, p. 3544, § 13.

CROSS REFERENCES

Cafeteria synonymous with food service for purposes of this Code, see Education Code § 38080.

CODE OF REGULATIONS REFERENCES

Authority to apply for funds, see 5 Cal. Code of Regs. § 15552.

School lunch and breakfast programs, see 5 Cal. Code of Regs. § 15550 et seq.

LIBRARY REFERENCES

2009 Main Volume

Agriculture 2.7.
Schools 19(1).
Westlaw Topic Nos. 23, 345.
C.J.S. Agriculture §§ 1, 32.
C.J.S. Schools and School Districts §§ 7, 9.

West's Ann. Cal. Educ. Code § 41311, CA EDUC § 41311

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 28. General Instructional Programs (Refs & Annos)
Chapter 10. Adult Schools (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

§ 52501.5. Revenue expenditure

(a) Except as provided in subdivision (b), no revenue derived from the average daily attendance of adult education programs shall be expended for other than adult education purposes, nor shall revenue derived from other average daily attendance be expended for adult education purposes.

(b) When a district's adult revenue limit as allowed by Section 52616 is composed of average daily attendance from both a regional occupational center or program and an adult education program, the adult revenue limit income may be allocated to each program in a proportion other than the amount of adult revenue limit per average daily attendance otherwise allocable thereto.

CREDIT(S)

(Added by Stats.1977, c. 36, § 489, eff. April 29, 1977, operative April 30, 1977. Amended by Stats.1977, c. 523, § 3, eff. Sept. 3, 1977; Stats.1977, c. 1230, § 12, eff. Oct. 1, 1977; Stats.1987, c. 917, § 33; Stats.1988, c. 1461, § 25; Stats.1991, c. 756 (A.B.675), § 28, eff. Oct. 9, 1991; Stats.1991, c. 1132 (A.B.339), § 2.)

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

Legislative intent of Stats.1991, c. 1132 (A.B.339), see Historical and Statutory Notes under Education Code § 52616.1.

Derivation

Education Code 1959, § 5702.5, added by Stats.1976, c. 323, § 3, amended by Stats.1976, c. 991, § 1.

LIBRARY REFERENCES

2006 Main Volume

Schools 19(2).
Westlaw Topic No. 345.
C.J.S. Schools and School Districts § 9.

West's Ann. Cal. Educ. Code § 52501.5, CA EDUC § 52501.5

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 28. General Instructional Programs (Refs & Annos)
Chapter 10. Adult Schools (Refs & Annos)
Article 6. Finances (Refs & Annos)
§ 52616. Adult block entitlement; adult education fund

(a) Notwithstanding any other provision of law, commencing July 1, 1993, the Superintendent of Public Instruction shall determine an adult block entitlement, to be paid from appropriations to Section A of the State School Fund as part of the principal apportionment to school districts, for those school districts that maintain education programs for adults by multiplying the adult education revenue limit per unit of average daily attendance determined pursuant to Section 52616.16 and the adult education average daily attendance determined pursuant to Section 52616.17.

(b) The adult block entitlement shall be deposited in a separate fund of the school district to be known as the "adult education fund." Money in an adult education fund shall be expended only for adult education purposes. Moneys received for programs other than adult education shall not be expended for adult education.

CREDIT(S)

(Added by Stats.1992, c. 1195 (A.B.1891), § 7, operative July 1, 1993.)

HISTORICAL AND STATUTORY NOTES

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Operative effect and legislative intent, see Historical and Statutory Notes under Education Code § 42238.5.

Section 31 of Stats.2003, c. 573 (A.B.1266), provides:

"SEC. 31. The reduction in funding to regional occupational centers and programs and adult education programs by Items 6110-105-0001 and 6110-156-0001 of Section 2.00 of the Budget Act of 2003 as compared to funding for those items in the Budget Act of 2002 shall be administered by the Superintendent of Public Instruction as a

reduction to the number of funded units of average daily attendance. The reduction shall be allocated on a pro rata basis, based on the number of units of average daily attendance funded in the 2002-03 fiscal year for each regional occupational center and program and adult education program, exclusive of units of average daily attendance funded through CalWORKs reimbursements. The percentage of the reduction to each regional occupational center and program and adult education program shall be reflective of the percentage of the overall funding reduction to those centers and programs."

Former Notes

Former § 52616, added by Stats.1983, c. 498, § 105, amended by Stats.1983, c. 1302, § 23.5; Stats.1985, c. 1025, § 1.5; Stats.1989, c. 82, § 17; Stats.1989, c. 83, § 17; Stats.1989, c. 92, § 9; Stats.1989, c. 1395, § 6, relating to adult education block entitlement, was repealed by Stats.1992, c. 1195 (A.B.1891), § 6. See this section.

Former § 52616, added by Stats.1981, c. 100, § 24.7, amended by Stats.1981, c. 1093, § 16.5; Stats.1982, c. 327, § 14, relating to similar subject matter, was repealed by Stats.1983, c. 498, § 104. See this section.

Derivation

Former § 52616, added by Stats.1983, c. 498, § 105, amended by Stats.1983, c. 1302, § 23.5; Stats.1985, c. 1025, § 1.5; Stats.1989, c. 82, § 17; Stats.1989, c. 83, § 17; Stats.1989, c. 92, § 9; Stats.1989, c. 1395, § 6.

Former § 52616, added by Stats.1981, c. 100, amended by Stats.1981, c. 1093, § 16.5; Stats.1982, c. 327, § 14.

CROSS REFERENCES

Adult education, authorized classes and courses, see Education Code § 41976.

CODE OF REGULATIONS REFERENCES

Adult education, administration, range of allowable expenditures, see 5 Cal. Code of Regs. § 10605.

Range of allowable expenditures, see 5 Cal. Code of Regs. s 10605.

LIBRARY REFERENCES

2006 Main Volume

Schools 19(2).
Westlaw Topic No. 345.
C.J.S. Schools and School Districts § 9.

West's Ann. Cal. Educ. Code § 52616, CA EDUC § 52616

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

END OF DOCUMENT

Effective: October 7, 2005

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 30. Special Education Programs (Refs & Annos)
Chapter 7.2. Special Education Funding (Refs & Annos)
Article 7. Federal Funding Allocations (Refs & Annos)

§ 56844. Use of federal funds to satisfy state-mandated funding obligations to local educational agencies

In complying with paragraph (17), regarding the prohibition against supplantation of federal funds, and paragraph (18), regarding maintenance of state financial support for special education and related services, of subsection (a) of Section 1412 of Title 20 of the United States Code, the state may not use funds paid to it under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to satisfy state-mandated funding obligations to local educational agencies, including funding based on pupil attendance or enrollment, or on inflation.

CREDIT(S)

(Added by Stats.2005, c. 653 (A.B.1662), § 54, eff. Oct. 7, 2005.)

HISTORICAL AND STATUTORY NOTES

2013 Electronic Pocket Part Update

2005 Legislation

For legislative findings and declarations, cost reimbursement provisions, and urgency effective provisions relating to Stats.2005, c. 653 (A.B.1662), see Historical and Statutory Notes under Education Code § 33590.

Former Notes

Former § 56844, added by Stats.1993, c. 688 (A.B.1242), § 2, relating to provision of educational and supportive services through an emotionally disturbed children pilot project, was repealed by its own terms, operative Jan. 1, 1997.

West's Ann. Cal. Educ. Code § 56844, CA EDUC § 56844

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

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2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-151-0001—For support of Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.50-California American Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code..... 4,540,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-152-0001—For local assistance, Department of Education, Program 10.30.050-American Indian Education Centers pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code..... 376,000

6110-156-0001—For local assistance, Department of Education (Proposition 98), Program 10.50.010-Instruction, for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 745,978,000

Schedule:

(1) 10.50.010.001-Adult Education.... 745,978,000
(2) 10.50.010.008-Remedial education services for participants in the CalWORKs program..... 8,739,000
(3) Reimbursements-CalWORKs..... −8,739,000

Provisions:

1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.
2. The funds appropriated in Schedule (2) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code). Funds shall be apportioned by the Superinten-

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dent of Public Instruction for direct instructional costs only to school districts and regional occupational centers and programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, based on the number of CalWORKs-eligible family members served in the county.

3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services, (b) assessment of skills, (c) instruction and curriculum development, (d) professional development, (e) citizenship testing, (f) naturalization preparation and assistance, and (g) regional and state coordination and program evaluation.
4. The funds appropriated in Schedule (2) shall be subject to the following:
   (a) The funds shall be used only for educational activities for welfare recipient pupils and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These funds shall be used to supplement and not supplant existing funds and services provided for welfare recipient pupils and those in transition off of welfare.
   (b) Notwithstanding any other provision of law, each local educational agency's individual cap for the average daily attendance of adult education and regional occupational centers and programs (ROC/Ps) shall not be in-

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creased as a result of the appropriations made by this item.

(c) Funds may be claimed by local educational agencies for services provided to welfare recipient pupils and those in transition off of welfare pursuant to this section only if all of the following occur:
   (1) Each local educational agency has met the terms of the interagency agreement between the State Department of Education and the State Department of Social Services pursuant to Provision 2.
   (2) Each local educational agency has fully claimed its respective adult education or ROC/Ps average daily attendance cap for the current year.
   (3) Each local educational agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2.

(d) Each local educational agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or Item 6110-105-0001 or pursuant to Section 1.80, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of Division 4 of Title 2 of the Education Code, and ROC/Ps requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code, respectively.

(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local educational agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.

(f) The Legislature finds the need for good information on the role of local educational agencies in providing services to individuals who are eligible for or recipients of Cal-

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WORKs assistance. This information includes the extent to which local educational programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.

(g) The State Department of Education shall develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources, (2) characteristics of participants, and (3) pupil and program outcomes. The department shall work with the office of the State Chief Information Officer and Legislative Analyst's Office in determining the specific data elements of the system and shall meet all information technology reporting requirements of the State Chief Information Officer.

(h) As a condition of receiving funds provided in Schedule (2) or any General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient pupils and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this item and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2010, to June 30, 2011, inclusive.

5. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.

6. An additional $45,896,000 in expenditures for this item has been deferred until the 2011–12 fiscal year.

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7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund..... 89,764,000

Provisions:

1. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The department shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.
2. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (non-LEA) receiving greater than $500,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.

   All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California, (2) a member of the department's staff of auditors, or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Government Auditing Standards issued by the Comptroller General of the United States.

   The audit shall be in accordance with State Department of Education audit guidelines and Office of Management and Budget (OMB), Circular No. A-133, Audits of

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States, Local Governments, and Non-Profit Organizations.

Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the audit shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all department costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

(b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited-scope audit reports of all subrecipients it is responsible for monitoring that receive between $25,000 and $500,000 of federal awards, and that do not have an organizationwide audit performed. These limited-scope audits shall be conducted in accordance with the State Department of Education audit guidelines and OMB, Circular No. A-133. The department may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited-scope audits shall include agreed-upon procedures engagements conducted in accordance with either American Institute of Certified Public Accountants (AICPA) generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities, allowable costs and cost principles, eligibility, matching, level of effort, earmarking, and reporting.

The department shall contract for the limited-scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

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3. On or before March 1 of each year, the State Department of Education shall report to the appropriate subcommittees of the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review on the following aspects of Title II of the federal Workforce Investment Act of 1998: (a) the makeup of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school districts, community colleges, community-based organizations, or other local entities), (b) the extent to which participating programs were able to meet planned performance targets, and (c) a breakdown of the types of courses (English as a Second Language (ESL), ESL-Citizenship, adult basic education, or adult secondary education) included in the performance targets of participating agencies.

   It is the intent of the Legislature that the Legislature and the department utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.
4. The State Department of Education shall continue to ensure that outcome measures for State Department of Mental Health and State Department of Developmental Services clients are set at a level where these clients will continue to be eligible for adult education services in the current fiscal year and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the State Department of Mental Health, State Department of Developmental Services, and Department of Finance for this purpose.
5. Of the funds appropriated in this item, $3,000,000 is provided in one-time carryover funds for the federal Adult Education Program.

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6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities..... 18,670,000

Provisions:

1. Notwithstanding Section 41841.5 of the Education Code, or any other provision of law, all of the following shall apply:
   (a) The amount appropriated in this item and any amount allocated for this program in this act shall be the only funds available for allocation by the Superintendent of Public Instruction to school districts or county offices of education for the Adults in Correctional Facilities Program.
   (b) The amount appropriated in this item shall be allocated based upon prior year rather than current year expenditures.
   (c) Funding distributed to each local educational agency (LEA) for reimbursement of services provided in the prior fiscal year for the Adults in Correctional Facilities Program shall be limited to the amount received by the agency for services provided in the 2008–09 fiscal year. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the prior fiscal year, as compared to the level of services provided in the 2008–09 fiscal year. Any funds remaining as a result of those decreased levels of service shall be allocated to provide support for new programs in accordance with Section 41841.8 of the Education Code.
   (d) Funding appropriated in this item for growth in average daily attendance (ADA) first shall be allocated to programs that are funded for 20 units or less of ADA, up to a maximum of 20 additional units of ADA per program.
2. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-

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pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.

3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-161-0001—For local assistance, Department of Education (Proposition 98), Program 10.60-Special Education Programs for Exceptional Children..... 3,106,681,000

Schedule:

(1) 10.60.050.003-Special education instruction..... 3,035,964,000

(2) 10.60.050.080-Early Education Program for Individuals with Exceptional Needs..... 85,112,000

(3) Reimbursements for Early Education Program, Part C..... −14,395,000

Provisions:

1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 2010–11 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, superseding all prior law.

2. Of the funds appropriated in Schedule (1), up to $13,178,000, plus any cost-of-living adjustment, shall be available for the purchase, repair, and inventory maintenance of specialized books, materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.

3. Of the funds appropriated in Schedule (1), up to $10,058,000, plus any cost-of-living adjustment, shall be available for the purposes of vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of Division 4 of Title 2 of the Education Code. As a condition of receiving these funds, each local educational agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision

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of vocational education for special education pupils shall be maintained at or above the level provided in the 1984–85 fiscal year. The Superintendent of Public Instruction may waive this requirement for local educational agencies that demonstrate that the requirement would impose a severe hardship.

4. Of the funds appropriated in Schedule (1), up to $5,246,000, plus any cost-of-living adjustment (COLA), shall be available for regional occupational centers and programs that serve pupils having disabilities; up to $88,410,000, plus any COLA, shall be available for regionalized program specialist services; and up to $2,637,000, plus any COLA, shall be available for small special education local plan areas (SELPAs) pursuant to Section 56836.24 of the Education Code.
5. Of the funds appropriated in Schedule (1), up to $3,000,000 is provided for extraordinary costs associated with single placements in nonpublic, nonsectarian schools, pursuant to Section 56836.21 of the Education Code. Pursuant to legislation, these funds shall also provide reimbursement for costs associated with pupils residing in licensed children's institutes.
6. Of the funds appropriated in Schedule (1), up to $198,344,000, plus any cost-of-living adjustment (COLA), is available to fund the costs of children placed in licensed children's institutions who attend nonpublic schools based on the funding formula authorized in Chapter 914 of the Statutes of 2004.
7. Funds available for infant units shall be allocated with the following average number of pupils per unit:
   (a) For special classes and centers—16.
   (b) For resource specialist programs—24.
   (c) For designated instructional services—16.
8. Notwithstanding any other provision of law, early education programs for infants and toddlers shall be offered for 200 days. Funds appropriated in Schedule (2) shall be allocated by the State Department of Education for the 2010–11 fiscal year to those programs receiving allocations for instructional units pursuant to Section 56432 of the Education Code for the Early Education

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Program for Individuals with Exceptional Needs operated pursuant to Chapter 4.4 (commencing with Section 56425) of Part 30 of Division 4 of Title 2 of the Education Code, based on computing 200-day entitlements. Notwithstanding any other provision of law, funds in Schedule (2) shall be used only for the purposes specified in Provisions 10 and 11.

9. Notwithstanding any other provision of law, state funds appropriated in Schedule (2) in excess of the amount necessary to fund the deficited entitlements pursuant to Section 56432 of the Education Code and Provision 10 shall be available for allocation by the State Department of Education to local educational agencies for the operation of programs serving solely low-incidence infants and toddlers pursuant to Title 14 (commencing with Section 95000) of the Government Code. These funds shall be allocated to each local educational agency for each solely low-incidence child through age two in excess of the number of solely low-incidence children through age two served by the local educational agency during the 1992–93 fiscal year and reported on the April 1993 pupil count. These funds shall only be allocated if the amount of reimbursement received from the State Department of Developmental Services is insufficient to fully fund the costs of operating the Early Intervention Program, as authorized by Title 14 (commencing with Section 95000) of the Government Code.
10. The State Department of Education, through coordination with the special education local plan areas, shall ensure local interagency coordination and collaboration in the provision of early intervention services, including local training activities, child-find activities, public awareness, and the family resource center activities.
11. Funds appropriated in this item, unless otherwise specified, are available for the sole purpose of funding 2010–11 fiscal year special education program costs and shall not be used to fund any prior year adjustments, claims, or costs.
12. Of the amount provided in Schedule (1), up to $188,000, plus any cost-of-living adjustment, shall be available to fully fund the declining en-

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rollment of necessary small special education local plan areas pursuant to Chapter 551 of the Statutes of 2001.

13. Pursuant to Section 56427 of the Education Code, of the funds appropriated in Schedule (1), up to $2,324,000 may be used to provide funding for infant programs, and may be used for those programs that do not qualify for funding pursuant to Section 56432 of the Education Code.
14. Of the funds appropriated in Schedule (1), up to $29,478,000 shall be allocated to local educational agencies for the purposes of Project Workability I.
15. Of the funds appropriated in Schedule (1), up to $1,700,000 shall be used to provide specialized services to pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
16. Of the funds appropriated in Schedule (1), up to $1,117,000 shall be used for a personnel development program. This program shall include state-sponsored staff development for special education personnel to have the necessary content knowledge and skills to serve children with disabilities. This funding may include training and services targeting special education teachers and related service personnel that teach core academic or multiple subjects to meet the applicable special education requirements of the Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.).
17. Of the funds appropriated in Schedule (1), up to $200,000 shall be used for research and training in cross-cultural assessments.
18. Of the amount specified in Schedule (1), up to $31,000,000 shall be used to provide mental health services required by an individual education plan pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and pursuant to Chapter 493 of the Statutes of 2004.
19. Of the amount provided in Schedule (1), $0 is to reflect a cost-of-living adjustment.
20. Of the amount provided in Schedule (2), $0 is to reflect a cost-of-living adjustment.
21. Of the amount appropriated in this item, up to $1,480,000 is available for the state's share of

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costs in the settlement of Emma C. v. Delaine Eastin, et al. (N.D. Cal. No. C96-4179TEH). The State Department of Education shall report by January 1, 2011, to the fiscal committees of both houses of the Legislature, the Department of Finance, and the Legislative Analyst's Office on the planned use of the additional special education funds provided to the Ravenswood Elementary School District pursuant to this settlement. The report shall also provide the State Department of Education's best estimate of when this supplemental funding will no longer be required by the court. The State Department of Education shall comply with the requirements of Section 948 of the Government Code in any further request for funds to satisfy this settlement.

22. Of the funds appropriated in this item, up to $2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of paragraph (14) of subdivision (a) of Section 612 of the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and Section 2122 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.). The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. All programs are to include evaluation components.
23. Notwithstanding any other provision of law, state funds appropriated in Schedule (1) in excess of the amount necessary to fund the defined entitlement shall be to fulfill other shortages in entitlements budgeted in this schedule by the

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State Department of Education, upon Department of Finance approval, to any program funded under Schedule (1).

24. The funds appropriated in this item reflect an adjustment to the base funding of 0.11 percent for the annual adjustment in statewide average daily attendance.
25. Of the funds appropriated in Schedule (1), the amount resulting from increases in federal funds reflected in the calculation performed in paragraph (1) of subdivision (c) of Section 56836.08 of the Education Code shall be allocated based on an equal amount per average daily attendance and added to each special education local plan area's base funding, consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code. When the final amount is determined, the State Department of Education shall provide this information to the Department of Finance and the budget committees of each house of the Legislature.

6110-161-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, Program 10.60-Special Education Programs for Exceptional Children..... 1,232,219,000

Schedule:

(1) 10.60.050.012-Local Agency Entitlements, IDEA Special Education..... 1,038,850,000
(2) 10.60.050.013-State Agency Entitlements, IDEA Special Education.... 1,758,000
(3) 10.60.050.015-IDEA, Local Entitlements, Preschool Program..... 67,066,000
(4) 10.60.050.021-IDEA, State Level Activities..... 81,614,000
(5) 10.60.050.030-P.L. 99-457, Preschool Grant Program..... 37,841,000
(6) 10.60.050.031-IDEA, State Improvement Grant, Special Education..... 2,196,000
(7) 10.60.050.032-IDEA, Family Empowerment Centers..... 2,794,000
(8) 20.80.002-Supplemental Grants: Newborn Hearing Grant..... 100,000

Provisions:

1. If the funds for Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec.

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1400 et seq.) (IDEA) that are actually received by the state exceed $1,218,328,000, at least 95 percent of the funds received in excess of that amount shall be allocated for local entitlements and to state agencies with approved local plans. Up to 5 percent of the amount received in excess of $1,218,328,000 may be used for state administrative expenses upon approval of the Department of Finance. If the funds for Part B of the IDEA that are actually received by the state are less than $1,218,328,000, the reduction shall be taken in other state-level activities.

2. The funds appropriated in Schedule (2) shall be distributed to state-operated programs serving disabled children from 3 to 21 years of age, inclusive. In accordance with federal law, the funds appropriated in Schedules (1) and (2) shall be distributed to local and state agencies on the basis of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) permanent formula.
4. Of the funds appropriated in Schedule (4), up to $300,000 shall be used to develop and test procedures, materials, and training for alternative dispute resolution in special education.
5. Of the funds appropriated by Schedule (5) for the Preschool Grant Program, $1,228,000 shall be used for in-service training and shall include a parent training component and may, in addition, include a staff training program. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. This program shall include state-sponsored and local components.
6. Of the funds appropriated in this item, $1,420,000 is available for local assistance grants to monitor local educational agency compliance with state and federal laws and regulations governing special education. This funding level is to be used to continue the facilitated reviews and, to the extent consistent with the key performance indicators developed by the State Department of Education, these activities shall focus on local educational agencies identified by the United States Department of Education's Office of Special Education Programs.

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7. The funds appropriated in Schedule (7) shall be used for the purposes of Family Empowerment Centers on Disability pursuant to Chapter 690 of the Statutes of 2001.
8. Notwithstanding the notification requirements listed in subdivision (d) of Section 26.00, the Department of Finance is authorized to approve intraschedule transfers of funds within this item submitted by the State Department of Education for the purposes of ensuring that special education funding provided in this item is appropriated in accordance with the statutory funding formula required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the special education funding formula required pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of Division 4 of Title 2 of the Education Code, without waiting 30 days, but shall provide a notice to the Legislature each time a transfer occurs.
9. Of the funds appropriated in Schedule (4), $76,000,000 shall be used exclusively to support mental health services that are provided during the 2010–11 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and that are included within an individualized education program pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). Each county office of education receiving these funds shall contract, on behalf of special education local planning areas in its county, with the county mental health agency to provide specified mental health services. This funding shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for provision of the mental health services provided in the 2010–11 fiscal year. Amounts allocated to each county office of education shall reflect the share of the $76,000,000 in federal special education funds provided to that county in the 2004–05 fiscal year for mental health services provided pursuant to Chapter 26.5 (commencing with Section

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7570) of Division 7 of Title 1 of the Government Code.

10. Of the funds appropriated in Schedule (6), $2,196,000 is provided on a one-time basis for science-based professional development as part of the State Personnel Development grant.
11. Of the funds appropriated in Schedule (4), up to $3,894,000 shall be available for transfer to the State Special Schools for student transportation allowances. However, of these funds, the State Department of Education (SDE) shall obtain written approval from the Department of Finance prior to spending $924,000 to address transportation contract increases resulting from fuel and insurance costs. The Department of Finance shall act within 30 days of receiving justification from the SDE for the increased costs.
14. Of the funds appropriated in Schedule (4), $7,000,000 is provided in one-time carryover funds to support mental health services.

6110-166-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund for purposes of Article 5 (commencing with Section 54690) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code, Partnership Academies Program..... 23,490,000

Schedule:

(1) 10.70.070.001-California Partnership Academies..... 23,490,000
(2) 10.70.070.002-“Green” California Partnership Academies..... 5,000,000
(3) Reimbursements..... −5,000,000

Provisions:

1. If there are any funds in this item that are not allocated for planning or operational grants, the State Department of Education may allocate those remaining funds as one-time grants to state-funded partnership academies to be used for one-time purposes.
2. The State Department of Education shall not authorize new partnership academies without the approval of the Department of Finance and 30-day notification to the Joint Legislative Budget Committee.
3. Notwithstanding Provisions 1 and 2, the funds appropriated in Schedule (2) shall be available consistent with Article 5 (commencing with

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Section 54690) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code and pursuant to Chapter 757 of the Statutes of 2008.

4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-166-0890—For local assistance, Department of Education, Program 10.70-Vocational Education, payable from the Federal Trust Fund..... 134,848,000

Provisions:

1. The funds appropriated in this item include federal Carl D. Perkins Career and Technical Education Act of 2006 funds for the current fiscal year to be transferred to the community colleges by means of interagency agreements for the purpose of funding career technical education programs in community colleges.
2. The State Board of Education and the Board of Governors of the California Community Colleges shall target funds appropriated by this item to provide services to persons participating in welfare-to-work activities under the CalWORKs program.
3. The Superintendent of Public Instruction shall report, not later than February 1 of each year, to the Joint Legislative Budget Committee and the Director of Finance, describing the amount of carryover funds from this item, reasons for the carryover, and plans to reduce the amount of carryover.
4. Of the funds appropriated in this item, $6,500,000 is provided from one-time carryover funds for Vocational Education Programs.

6110-167-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.70-Agricultural Career Technical Education Incentive Program established pursuant to Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code..... 5,157,000

Provisions:

1. As a condition of receiving funds appropriated in this item, a school district shall certify to the Superintendent of Public Instruction both of the following:
   (a) Agricultural Career Technical Education Incentive Program funds shall be expended for the items identified in its application,

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except that, in items of expenditure classification 4000, only the total cost of expenses shall be required and itemization shall not be required.

(b) The school district shall provide at least 50 percent of the cost of the items and costs from expenditure classification 4000, as identified in its application, from other funding sources. This provision does not limit the authority of the Superintendent of Public Instruction to waive the local matching requirement established by subdivision (b) of Section 52461.5 of the Education Code.

2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for an adjustment in statewide average daily attendance.
3. Of the amount appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-170-0001—For local assistance, Department of Education, pursuant to Section 88532 of the Education Code..... 0

Schedule:

(1) 20.40.800-Career Technical Education..... 21,578,000
(2) Reimbursements..... −21,578,000

Provisions:

1. Funding in this item shall be provided through a transfer from Schedule (21) of Item 6870-101-0001, and from the Quality Education Investment Act, in accordance with subdivision (f) of Section 52055.770 of the Education Code, pursuant to an interagency agreement between the Office of the Chancellor of the California Community Colleges and the State Department of Education.
2. Of the funds appropriated in this item, $498,000 reflects a one-time reimbursement to complete two projects initiated in the 2009–10 fiscal year.

6110-180-0890—For local assistance, Department of Education, Program 20.10.025-Educational Technology, payable from the Federal Trust Fund..... 49,206,000

Schedule:

(1) 20.10.025.010-Formula Grants..... 5,739,000

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(2) 20.10.025.011-Competitive Grants..... 5,739,000
(3) 20.10.025.012-ARRA Competitive Grants..... 37,728,000

Provisions:

1. The funds appropriated in Schedule (1) shall be allocated as formula grants to school districts pursuant to the federal Enhancing Education Through Technology program.
2. The funds appropriated in Schedule (2) are available for competitive grants pursuant to Chapter 8.9 (commencing with Section 52295.10) of Part 28 of Division 4 of Title 2 of the Education Code and the federal Enhancing Education Through Technology program. The eligibility criteria for these grants shall be consistent with federal law and target local educational agencies with high numbers or percentages of children from families with incomes below the poverty line and one or more schools either qualifying for federal school improvement or demonstrating substantial technology needs.

2.5. The funds appropriated in Schedule (3) are provided under the American Recovery and Reinvestment Act (ARRA) of 2009 and shall be used for a special one-time competitive grant program separate from and notwithstanding the requirements of the existing Enhancing Education Through Technology competitive grant program specified in Chapter 8.9 (commencing with Section 52295.10) of Part 28 of Division 4 of Title 2 of the Education Code. The ARRA competitive grant program shall be administered by the State Department of Education (SDE). Of the funds appropriated in Schedule (3), $150,000 is carryover for SDE to administer the program and fulfill federal monitoring, reporting, and evaluation requirements. The SDE shall expedite the ARRA competitive grant process to ensure that grant recipients are selected and receive funding no later than 45 days after enactment of the budget.

3. Of the funds appropriated in Schedule (3), $300,000 is provided for the California Technology Assistance Project to provide technical assistance and support for the competitive grant program.

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4. The eligibility criteria for the competitive grant program shall be consistent with federal law and target high-need local education agencies (LEA) and eligible education partnerships. A high-need LEA is an LEA having a high number or percentage of children from families with incomes below the poverty line. An eligible education partnership must consist of at least one high-need LEA and at least one of the following: an LEA that has successfully demonstrated the use of technology to improve instruction; an institution of higher education in full compliance with reporting requirements of Section 207(f) of the Higher Education Act of 1965, as amended, and that has not been identified by the state as low-performing; a for-profit business or organization that develops, designs, manufactures, or produces technology products or services or has substantial expertise in the application of technology in instruction; a public or private nonprofit organization with demonstrated expertise in the application of education technology in instruction; or other LEAs, educational service agencies, libraries, or other entities that are appropriate to provide local programs.
5. For the American Recovery and Reinvestment Act (ARRA) competitive grant program, the State Department of Education (SDE) shall award funds to eligible local educational agencies (LEAs) and education partnerships that commit to using education data and technology to improve college and career readiness or the high school graduation rate. The SDE shall give first priority to applicants that commit to acquiring, maintaining, and using data, to meet one or both of these objectives. Approved applicants may use competitive grant funds to purchase digital equipment and materials to help participants meet the program's objective. As part of the grant application process, applicants shall be required to submit a plan for using the Enhancing Education Through Technology funds and analyzing the effectiveness of their plan in achieving the program's objective. As part of each plan, applicants shall be required to establish processes for collecting, maintaining, accessing, and using college- and career-readiness data

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or high school graduation data to improve pupil achievement and teacher instruction. In selecting grant recipients, the SDE shall consider, at a minimum, the following application criteria: the quality and scope of the applicant's plan, the ability of the applicant to support successful implementation of the proposal, and the likelihood the applicant's proposal could provide statewide benefit.

6. In allocating grant funds, the State Department of Education (SDE) shall adhere to a regional system whereby applicants within each of the 11 California Technology Assistance Project regions compete against other applicants from that region. The amount of grant funding available for each region shall be determined based upon the proportionate enrollment of pupils in grades 7 to 12, inclusive, in eligible schools from that region, but a region shall not be allocated less than $500,000. If a region is allocated more funding than is needed for its eligible applicants, the Superintendent may develop a policy to ensure that funding is redistributed to other regions for their eligible but unfunded applicants.
7. By December 15, 2010, the State Department of Education shall provide to the fiscal committees of the Legislature: (a) a list of the American Recovery and Reinvestment Act competitive grant recipients and the amount of each recipient's grant, (b) a list of the college- and career-readiness data and high school graduation data that each grant recipient is collecting, and (c) a description of how that data is being used to foster ongoing improvement in pupil achievement and teacher instruction.

6110-181-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.10.025-Educational Technology, programs funded pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28 of Division 4 and Chapter 3.34 (commencing with Section 44730) of Part 25 of Division 3 of Title 2 of the Education Code..... 17,555,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.

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2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
3. As a part of the support system authorized by paragraph (5) of subdivision (a) of Section 51871 of the Education Code, the California Technology Assistance Project regional consortia shall assist school districts in using pupil achievement data to inform instruction and improve pupil learning. The regional consortia shall also support the identification and dissemination of best practices in the area of data-driven instructional improvement.

6110-181-0140—For local assistance, Department of Education, payable from the California Environmental License Plate Fund, for purposes of Section 21190 of the Public Resources Code..... 360,000
Schedule:
(1) 20.10.055-Environmental Education..... 548,000
(2) Reimbursements..... −188,000

6110-182-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.20.030-K–12 High-Speed Network..... 10,404,000
Provisions:
1. Expenditure authority of no greater than $15,600,000 is provided for the K–12 High-Speed Network.
   (a) Of the amount authorized for expenditure in this provision, $1,300,000 of unexpended cash reserves from the following appropriations are available to continue management and operation of the network during the 2010–11 fiscal year: Item 6440-001-0001, Schedule (a), Provision 44 of Chapter 52 of the Statutes of 2000; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 106 of the Statutes of 2001; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 379 of the Statutes of 2002; Item 6440-001-0001, Schedule (1), Provision 22 of Chapter 157 of the Statutes of 2003; and Item 6110-182-0001, Chapter 208 of the Statutes of 2004.
   (b) Of the amount authorized for expenditure in this provision, $4,600,000 shall be funded

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by E-rate and California Teleconnect Fund moneys. The lead educational agency or the Corporation for Education Network Initiatives in California (CENIC), or both, shall submit quarterly reports to the Department of Finance and the Legislature on funds received from E-rate and the California Teleconnect Fund.

(c) For the 2010–11 fiscal year, all major subcontracts of the K–12 High-Speed Network program shall be excluded from both the eligible program costs on which indirect costs are charged and from the calculation of the indirect cost rate based on that year's data. For purposes of this provision, a major subcontract is defined as a subcontract for services in an amount in excess of $25,000.

2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-183-0890—For local assistance, Department of Education, Program 20.10.045-Safe and Drug Free Schools and Communities Act (Part A of Title IV of P.L. 107-110), payable from the Federal Trust Fund..... 2,250,000

Provisions:

1. Local educational agencies shall give priority in the expenditure of the funds appropriated in this item to create comprehensive drug and violence prevention programs that promote school safety, reduce the use of drugs, and create learning environments that are free of alcohol and guns and that support academic achievement for all pupils. In addition to preventing drug and alcohol use, prevention programs will respond to the crisis of violence in our schools by addressing the need to prevent serious crime, violence, and discipline problems. The Superintendent of Public Instruction shall (a) notify local educational agencies of this policy and (b) incorporate the policy into the State Department of Education's compliance review procedures.
2. The funds appropriated in this item are available on a one-time basis to support the closing of the program.

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6110-188-0001—For local assistance, Department of Education (Proposition 98), Program 10.10-School Apportionments Deferred Maintenance, for transfer to the State School Deferred Maintenance Fund..... 312,888,000

Provisions:

1. The funds appropriated in this item shall be transferred to the State School Deferred Maintenance Fund and are available for funding applications received by the Department of General Services, Office of Public School Construction for the purpose of payments to school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-189-0001—For local assistance, Department of Education (Proposition 98), Program 20.20.020.005-Instructional Support, for transfer to State Instructional Materials Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33 of Division 4 of Title 2 of the Education Code (Instructional Materials Block Grant)..... 416,254,000

Provisions:

1. The funds in this item shall be allocated to school districts to purchase standards-aligned instructional materials.
2. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
3. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-190-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.10.021-School Apportionments, Community Day Schools established pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27 of Division 4 of Title 2 of the Education Code..... 47,248,000

Provisions:

1. Funds appropriated in this item shall not be available for the purposes of Section 41972 of the Education Code.
2. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.

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3. An additional $4,751,000 in expenditures for this item has been deferred until the 2011–12 fiscal year.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0001—For local assistance, State Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60-Staff Development..... 32,380,000

Schedule:

(1) 20.60.070-Instructional Support: Bilingual Teacher Training Assistance Program..... 2,131,000
(2) 20.60.060-Instructional Support: Teacher Peer Review..... 29,848,000
(3) 20.60.110-Instructional Support: Improving School Effectiveness-Reader Services for Blind Teachers..... 401,000

Provisions:

1. The amount appropriated in Schedule (1) shall be allocated for the purposes of the Bilingual Teacher Training Assistance Program established by Article 4 (commencing with Section 52180) of Chapter 7 of Part 28 of Division 4 of Title 2 of the Education Code.
2. Of the funds appropriated in Schedule (1), $0 is to reflect a cost-of-living adjustment.
3. The funds appropriated in Schedule (2) shall be allocated in accordance with Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code. If the funds are insufficient to fully fund growth in this program, the State Department of Education may adjust the per-participant rate to conform to available funds. Funds appropriated in Schedule (2) include $0 to reflect a cost-of-living adjustment.
4. The amount appropriated in Schedule (3) shall be allocated for the purposes of the Reader Services for Blind Teachers Program, for transfer to the Reader Employment Fund established by Section 45371 of the Education Code for the purposes of Section 44925 of the Education Code.
5. Of the funds appropriated in Schedule (3), $0 is to reflect a cost-of-living adjustment.

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6. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part B of Title II of the Elementary and Secondary Education Act (Mathematics and Science Partnership Grants) payable from the Federal Trust Fund..... 23,576,000

Provisions:

1. Of the funds appropriated in this item, $3,000,000 is provided in one-time carryover funds to support the California Mathematics and Science Partnership Program.

6110-195-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.140-Staff Development: Teacher Improvement, Teacher Incentives National Board Certification..... 3,000,000

Provisions:

1. The funds appropriated in this item shall be for the purpose of providing incentive grants to teachers with certification by the National Board for Professional Teaching Standards that are teaching in low-performing schools pursuant to Article 13 (commencing with Section 44395) of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code.
2. The State Department of Education shall not approve new applications from, or new award incentive grants to, teacher participants not already approved in the 2008–09 or prior grant application processes.
3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-195-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part A of Title II of the Elementary and Secondary Education Act (Teacher and Principal Training and Recruiting Fund), payable from the Federal Trust Fund..... 316,836,000

Schedule:

(1) 20.60.280-Improving Teacher Quality Local Grants..... 310,932,000

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(2) 20.60.270-Administrator Training Program..... 1,554,000
(3) 20.60.190.300-California Subject Matter Projects..... 4,350,000

Provisions:

1. The funds appropriated in Schedule (2) shall be for the Administrator Training Program authorized pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code.
2. The funds appropriated in Schedule (3) shall be for transfer to the University of California, which shall use the funds for the Subject Matter Projects pursuant to Article 1 (commencing with Section 99200) of Chapter 5 of Part 65 of Division 14 of Title 3 of the Education Code.
3. Of the funds appropriated in Schedule (2), up to $500,000 may be used to provide professional development for private school teachers and administrators in accordance with federal law. By October 15 of each year, the State Department of Education shall submit to the appropriate budget and policy committees of the Legislature, the Legislative Analyst's Office, and the Department of Finance a report of the number of private school teachers and administrators served under this provision and the type of professional development provided.

6110-196-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded in this item, in lieu of the amount that otherwise would be appropriated pursuant to any other statute..... 1,508,848,000

Schedule:

(1) 30.10.010-Special Program, Child Development, Preschool Education..... 379,518,000
(1.5) 30.10.020-Child Care Services..... 1,683,503,000

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(a)	30.10.020.001-Special Program, Child Development, General Child Development Programs....	758,374,000
(c)	30.10.020.004-Special Program, Child Development, Migrant Day Care.....	30,579,000
(d)	30.10.020.007-Special Program, Child Development, Alternative Payment Program.....	251,770,000
(e)	30.10.020.011-Special Program, Child Development, Alternative Payment Program—Stage 2....	193,650,000
(f)	30.10.020.012-Special Program, Child Development, Alternative Payment Program—Stage 3 Setaside.....	365,918,000
(g)	30.10.020.008-Special Program, Child Development, Resource and Referral.....	18,688,000
(j)	30.10.020.096-Special Program, Child Development, Allowance for Handicapped.....	1,940,000
(k)	30.10.020.106-Special Program, Child Development, California Child Care Initiative.....	250,000

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(*l*) 30.10.020.901-Special Program, Child Development, Quality Improvement..... 47,115,000

(m) 30.10.020.911-Special Program, Child Development, Centralized Eligibility List..... 7,900,000

(n) 30.10.020.920-Special Program, Child Development, Local Planning Councils..... 3,319,000

(o) 30.10.020.014-Special Program, Child Development, Accounts Payable..... 4,000,000

(3) 30.10.020.908-Special Program, Child Development, Cost-of-Living Adjustments..... 0

(4) 30.10.020.909-Special Program, Child Development, Growth Adjustments..... 0

(5) Amount payable from the Federal Trust Fund (Item 6110-196-0890)..... −554,173,000

Provisions:

1. (a) Notwithstanding any other provision of law, alternative payment child care programs shall be subject to the rate ceilings established in the Regional Market Rate Survey of California child care and development providers for provider payments. When approved pursuant to Section 8447 of the Education Code, any changes to the market rate limits, adjustment factors or regions shall be utilized by the State Department of Education, the California Community Colleges, and the State Department of Social Services in various programs under the jurisdiction of these departments.

(b) Notwithstanding any other provision of law, the funds appropriated in this item for the cost of licensed child care services provided through alternative payment or voucher

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programs including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code shall be used only to reimburse child care costs up to the 85th percentile of the rates charged by providers offering the same type of child care for the same age child in that region, based on the 2005 Regional Market Rate Survey data.

(c) Notwithstanding any other provision of law, the funds appropriated in this item for the cost of license-exempt child care services provided through alternative payment or voucher programs including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code shall be used only to reimburse license-exempt child care costs up to 80 percent of the regional reimbursement rate limits established for family child care homes.

2. Of the amount appropriated in Schedule (1), $50,000,000 is available for prekindergarten and family literacy preschool programs pursuant to Chapter 211 of the Statutes of 2006. Of the amount appropriated in Schedule (1), $5,000,000 is available for the provision of wraparound care to children enrolled in state preschool programs. The Superintendent of Public Instruction shall assign priority for these funds to children enrolled in prekindergarten and family literacy preschool programs authorized by Section 8238.4 of the Education Code.
3. Funds in Schedule (1.5)(*l*) shall be reserved for activities to improve the quality and availability of child care, pursuant to the following:
   (a) $2,002,671 is for the schoolage care and resource and referral earmark.
   (b) $11,342,626 is for the infant and toddler earmark and shall be used for increasing the supply of quality child care for infants and toddlers.
   (c) $664,000 in one-time federal funding is available for use in the 2010–11 fiscal year.

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	The remaining funds shall be used for child care and development quality expenditures identified by the State Department of Education (SDE) and approved by the Department of Finance.	
(d)	From the remaining funds in Schedule (1.5)(*l*), the following amounts shall be allocated for the following purposes: $3,591,000 to train former CalWORKs recipients as child care teachers, for which administrative costs shall be minimized to allow for maximum enrollment, with priority for funding given to programs at community colleges that have demonstrated high completion rates; $1,250,000 for training license-exempt child care providers, with priority given to participants serving subsidized children; $12,300,000 from federal funds for contracting with the State Department of Social Services (DSS) for increased inspections of child care facilities; $1,000,000 for Trustline registration workload (Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code); $500,000 for health and safety training for licensed and exempt child care providers; $75,000 for the Health Hotline for activities until October 1, 2010; $81,000 for the infant-toddler specialists for Health Line for activities until October 1, 2010; and $75,000, for activities until October 1, 2010, to implement a technical assistance program to child care providers in accessing financing for renovation, expansion, or construction of child care facilities. Of the amounts specified in this provision, first priority shall be to fully fund Trustline registration workload as determined by the DSS in conjunction with the SDE.	
(e)	$114,000 is for preschool education projects, including, but not limited to, those operated by the public television stations in Redding, Sacramento, San Francisco, San Jose, Los Angeles, Fresno, San Diego, and Eureka. These funds shall be available for activities until October 1, 2010.	

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(f) $63,000 is for the Child Development Permit Matrix Professional Growth Advisors program to train child care providers to become Professional Growth Advisors and advise other child care providers on the process of seeking Child Development Permits. These funds shall be available for activities until October 1, 2010.

(g) Notwithstanding any other provision of law, Sections 8279.4, 8279.5, and 8279.6 of the Education Code are suspended effective October 1, 2010 for the 2010–11 fiscal year.

4. Of the amount appropriated in Schedule (1.5)(*l*), $11,825,000 shall be for child care worker recruitment and retention programs pursuant to Section 8279.7 of the Education Code, and $320,000 shall be for the Child Development Training Consortium.

5. (a) The State Department of Education (SDE) shall conduct monthly analyses of CalWORKs Stage 2 and Stage 3 caseloads and expenditures and adjust agency contract maximum reimbursement amounts and allocations as necessary to ensure funds are distributed proportionally to need. The SDE shall share monthly caseload analyses with the State Department of Social Services (DSS).

(b) The SDE shall provide quarterly information regarding the sufficiency of funding for Stage 2 to DSS. The SDE shall provide caseloads, expenditures, allocations, unit costs, family fees, and other key variables and assumptions used in determining the sufficiency of state allocations. Detailed backup by month and on a county-by-county basis shall be provided to the DSS at least on a quarterly basis for comparisons with Stage 1 trends.

(c) By September 30 and March 30 of each year, the SDE shall ensure that detailed caseload and expenditure data, through the most recent period for Stage 2 along with all relevant assumptions, is provided to DSS to facilitate budget development. The detailed data provided shall include actual and projected monthly caseload from Stage 2

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scheduled to time off of their transitional child care benefit from the last actual month reported by agencies through the next two fiscal years as well as local attrition experience. DSS shall utilize data provided by the SDE, including key variables from the prior fiscal year and the first two months of the current fiscal year, to provide coordinated estimates in November of each year for Stage 1 and 2 child care for preparation of the Governor's Budget, and shall utilize data from at least the first two quarters of the current fiscal year, and any additional monthly data as they become available for preparation of the May Revision. The DSS shall share its assumptions and methodology with the SDE in the preparation of the Governor's Budget.

(d) The SDE shall coordinate with the DSS to identify annual general subsidized child care program expenditures for Temporary Assistance for Needy Families-eligible children. The SDE shall modify existing reporting forms as necessary to capture this data.

(e) The SDE shall provide to the DSS, upon request, access to the information and data elements necessary to comply with federal reporting requirements and any other information deemed necessary to improve estimation of child care budgeting needs.

(f) The SDE shall report on the number of families disenrolled from Stage 3 and the number of those that subsequently enroll in the Alternative Payment program or are transferred to another child care program. The SDE shall also provide detailed expenditure and caseload data for Stage 3 similar to that required for Stage 2, as specified in subdivision (c), to DSS by September 30 and March 30 of each year.

6. (a) Notwithstanding any other provision of law, the funds in Schedule (1.5)(f) are reserved exclusively for continuing child care for the following: (a) former CalWORKs families who are working, have left cash aid, and have exhausted their two-year eligibility for transitional services in either Stage 1 or 2

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pursuant to subdivision (c) of Section 8351 or Section 8353 of the Education Code, respectively, but still meet eligibility requirements for receipt of subsidized child care services, and (b) families who received lump-sum diversion payments or diversion services under Section 11266.5 of the Welfare and Institutions Code and have spent two years in Stage 2 off of cash aid, but still meet eligibility requirements for receipt of subsidized child care services.

7. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance-of-effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.
8. (a) Notwithstanding any other provision of law, the income eligibility limits pursuant to Section 8263.1 of the Education Code that were in effect for the 2007–08 fiscal year shall remain in effect for the 2010–11 fiscal year.
   (b) Notwithstanding any other provision of law, the family fee schedule that was in effect for the 2007–08, 2008–09, and 2009–10 fiscal years shall remain in effect for the 2010–11 fiscal year, and shall retain a flat fee per family.
9. Of the amounts provided in this item, $0 is to reflect a cost-of-living adjustment for Schedules (1), (1.5)(a), (1.5)(c), (1.5)(d), (1.5)(g), (1.5)(i), (1.5)(j), and (1.5)(n). The maximum standard reimbursement rate shall not exceed $34.38 per day for general child care programs and $21.22 per day for state preschool programs. Furthermore, the migrant child care and Cal-SAFE child care programs shall adhere to the maximum standard reimbursement rates as prescribed for the general child care programs. All other rates and adjustment factors shall conform.
10. Of the amounts provided in this item, $0 is available to provide a growth adjustment for

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Schedules (1), (1.5)(a), (1.5)(c), (1.5)(d), (1.5)(i), and (1.5)(j).

11. Notwithstanding any other provision of law, the funds in Schedule (1.5)(m) are appropriated exclusively for developing and maintaining a centralized eligibility list in each county pursuant to Section 8227 of the Education Code. By November 1 of each year, the State Department of Education shall provide a status report on implementing eligibility lists in each county, which shall include, but is not limited to, the cost of implementation and operation of the eligibility lists in each county, and the number of children and families on the list for each county.
12. Notwithstanding Section 8278.3 of the Education Code or any other provision of law, up to $5,000,000 of the Child Care Facilities Revolving Fund balance may be allocated for use on a one-time basis for renovations and repairs to meet health and safety standards, to comply with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and to perform emergency repairs, that were the result of an unforeseen event and are necessary to maintain continued normal operation of the child care and development program. These funds shall be made available to school districts and contracting agencies that provide subsidized center-based services pursuant to the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code).
13. The State Department of Education shall provide the study on the characteristics of families and costs of care pursuant to Provision 13 of Item 6110-196-0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.) to the State Department of Social Services, the Department of Finance, and the Legislative Analyst no later than March 1, 2011.
14. Notwithstanding any other provision of law, funds in Schedule (1.5)(o) are available for accounts payable for non-CalWORKs child care programs and to reimburse non-CalWORKs alternative payment programs for actual and allowable costs incurred for additional services, pur-

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suant to Section 8222.1 of the Education Code. The State Department of Education shall give priority for the allocation of these funds for accounts payable.

15. (a) Notwithstanding Section 8450 of the Education Code, for contracts issued pursuant to Sections 8230, 8235, 8240, and 8250 of the Education Code, the Superintendent shall offset the 2010–11 apportionments with funds maintained in a contractor's Center-based reserve account within the child development fund as of June 30, 2010. The offset of apportionments shall continue until such time that the reserve account balance is 5 percent of the sum of the contract maximum reimbursable amount(s) contributing to the Center-based reserve account. Notwithstanding Section 26.00, the State Department of Education may transfer expenditure authority between Schedules (1), (1.5)(a), (1.5)(c), and (1.5)(j), for the purpose of implementing this subdivision subject to approval of a budget revision by the Department of Finance.

    (b) In the event that $83,100,000 of savings reflected in this item are not achievable through the authority in subdivision (a), the State Department of Education may conduct quarterly analyses of fiscal and attendance reports for the 2010–11 fiscal year for all contracts and may adjust contract maximum reimbursable amounts due to the underutilization of funds in order to achieve this savings target. Article 18 (commencing with Section 8400) of Part 6 of Division 1 of Title 1 of the Education Code and Section 18301 of Title 5 of the California Code of Regulations are not applicable to the contract adjustments specified in this subdivision.

16. Notwithstanding any other provision of law, the Local Planning Councils shall meet the requirements of Section 8499.5 of the Education Code to the extent feasible and to the extent data is readily accessible.

17. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of

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Division 3 of Title 2 of the Government Code), the State Department of Social Services or State Department of Education may implement Provision (1)(c) through all-county letters, management bulletins, or similar instructions.

6110-196-0890—For local assistance, Department of Education, Program 30—Child Development Programs, payable from the Federal Trust Fund..... 554,173,000

Provisions:

1. Notwithstanding any other provision of law, the funds appropriated in this item, to the extent permissible under federal law, are subject to Section 8262 of the Education Code.
2. Of the funds appropriated in this item, $10,000,000 is from the transfer of funds, pursuant to Item 5180-402, from the federal Temporary Assistance for Needy Families (TANF) Block Grant administered by the State Department of Social Services to the federal Child Care and Development Block Grant for Stage 2 child care.
4. Of the funds appropriated in this item, $664,000 is available on a one-time basis for quality projects from federal Child Care and Development Block Grant funds appropriated prior to the 2010–11 federal fiscal year.
5. Of the funds appropriated in this item, $23,738,000 is available on a one-time basis for CalWORKs Stage 3 child care from federal Child Care and Development Block Grant funds appropriated prior to the 2010–11 federal fiscal year.

6110-197-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, 21st Century Community Learning Centers Program..... 174,034,000

Schedule:

(1) 30.10.080-Special Program, Child Development, 21st Century Community Learning Centers Program..... 174,034,000

Provisions:

1. The State Department of Education shall provide an annual report to the Legislature and Director of Finance by November 1 of each year that identifies by cohort for the previous fiscal year each high school program funded, the amount

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of the annual grant and actual funds expended, the numbers of pupils served and planned to be served, and the average cost per pupil per day. If the average cost per pupil per day exceeds $10 per day, the department shall provide specific reasons why the costs are justified and cannot be reduced. In calculating cost per pupil per day, the department shall not count attendance unless the pupil is under the direct supervision of after school program staff funded through the grant. Additionally, the department shall calculate cost per day on the basis of the equivalent of a three-hour day for 180 days per school year. The department shall also identify for each program, as applicable, if the attendance of pupils is restricted to any particular subgroup of pupils at the school in which the program is located. If such restrictions exist, the department shall provide an explanation of the circumstances and necessity therefor.

2. Of the funding provided in this item $44,663,000 is available from one-time carryover funds from prior years.
3. The State Department of Education shall, by March 1 of each year, provide a report to the Director of Finance and the Legislative Analyst's Office that includes, but is not limited to, allocation and expenditure data for all programs funded in this item in the past three years, the reasons for carryover, and the planned uses of carryover funds.

6110-198-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation to school districts and county offices of education, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 57,905,000

Schedule:

(1) 20.60.220-Cal-SAFE Academic and Supportive Services..... 19,800,000
(2) 20.60.221-All Services for Non-converting Pregnant Minors Programs..... 13,327,000
(3) 30.10.020-Cal-SAFE Child Care.... 24,778,000

Provisions:

1. The amounts appropriated in Schedules (1), (2), and (3) are based on estimates of the amounts

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required by existing programs for operation of Cal-SAFE programs in the current year. By October 31 of each year, the State Department of Education (SDE) shall submit to the Department of Finance current expenditure data for both the prior fiscal year and the current year showing each agency's allocation and supporting detail including average daily attendance and child care attendance and enrollment data. The SDE shall also provide estimates of average daily attendance and child care to be provided in the budget year.

2. Funds appropriated in Schedule (2) are available to provide funding for all child care, as well as both academic and supportive services for programs choosing to retain their Pregnant Minors Program revenue limit. Notwithstanding any other provision of law, the State Department of Education shall compute allocations to these agencies using the respective agencies' 1998–99 Pregnant Minors Program revenue limits. Further, notwithstanding any other provision of law, programs which choose to retain their Pregnant Minors Program revenue limit rather than convert to the Cal-SAFE revenue limit must provide child care within the revenue limit funding for children of pupils comprising base year average daily attendance.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance. No funds may be allocated for the addition of new Cal-SAFE agencies unless an existing grantee ceases providing services. Any allocations for new agencies shall be limited to the amount previously allocated to the agency withdrawing services; however, in no case shall allocations for authorized agencies exceed the amount appropriated in this item.
5. Notwithstanding Section 26.00, the State Department of Education may transfer expenditure authority between Schedule (1) Cal-SAFE Academic and Supportive Services and Schedule (2) All Services for Nonconverting Pregnant Minors Programs, to accurately reflect expenditures in

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these programs, upon approval of the Department of Finance and notification of the Legislature.

6. In the event that funding in this item is insufficient to serve all eligible pupils, the State Department of Education shall prorate the amounts in Schedules (1) and (2).
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-198-0890—For local assistance, Department of Education, American Recovery and Reinvestment Act (P.L. 111-5), payable from the Federal Trust Fund..... 110,137,000

Schedule:

(1) 30.10.020.001-Special Program, Child Development, General Child Development Programs..... 17,347,000
(2) 30.10.020.007-Special Program, Child Development, Alternative Payment Program..... 18,830,000
(3) 30.10.020.011-Special Program, Child Development, Alternative Payment Program-Stage 2..... 36,272,000
(4) 30.10.020.012-Special Program, Child Development, Alternative Payment Program-Stage 3..... 18,905,000
(5) 30.10.020.901-Special Program, Child Development, Quality Improvement..... 18,783,000

Provisions:

1. Of the funds appropriated in Schedule (5), $5,273,000 is for activities to improve the quality of child care for infants and toddlers and $1,758,000 is for the improvement of the quality of care for children from birth to five years of age, as identified by the State Department of Education and approved by the Department of Finance.
2. The State Department of Education shall ensure that provider contracts include provisions that advise families receiving services with American Recovery and Reinvestment Act funds in General Child Care and Alternative Payment programs that they will cease to receive services when these funds are exhausted, unless they can be accommodated through attrition in capped programs funded with Proposition 98 General Fund

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funds, federal base Child Care and Development Block Grant funds, or both.

6110-199-0890—For local assistance, Department of Education, American Recovery and Reinvestment Act (P.L. 111-5), payable from the Federal Trust Fund..... 2,603,000

Provisions:

1. The funds appropriated in this item are made available through a three-year grant under the American Recovery and Reinvestment Act to support the activities of the State Advisory Council on Early Childhood Education and Care (ELAC) established pursuant to Executive Order S-23-09. The State Department of Education shall allocate these funds in a manner consistent with the state's approved application for these funds and as further directed by the ELAC.
2. Of the funds appropriated in this item, $117,000 shall be transferred to Item 6110-001-0890 for state operations costs to support the activities of the State Advisory Council on Early Childhood Education and Care, subject to approval of a budget revision by the Department of Finance.

6110-201-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition School Breakfast and Summer Food Service Program grants pursuant to Article 11 (commencing with Section 49550.3) of Chapter 9 of Part 27 of the Education Code..... 1,017,000

6110-201-0890—For local assistance, Department of Education, Program 30.20-Child Nutrition, payable from the Federal Trust Fund..... 2,160,081,000

Schedule:

(1) 30.20.010-Child Nutrition Programs..... 2,127,631,000
(2) 30.20.040-Summer Food Service Program..... 32,450,000

Provisions:

1. Of the amount appropriated in Schedule (1), $7,988,000 is provided on a one-time basis for Fresh Fruit and Vegetable Program grants to local educational agencies.

6110-202-0001—For local assistance, Department of Education, Program 30.20.010-Child Nutrition Programs..... 10,422,000

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Provisions:

1. Funds appropriated are for child nutrition programs pursuant to Section 41311 of the Education Code. Claims for reimbursement of meals pursuant to this appropriation shall be submitted no later than September 30, 2011, to be eligible for reimbursement.
2. Funds appropriated shall be available for allocation in accordance with Section 49536 of the Education Code, except that the allocation shall not be made based on all meals served, but based on the number of meals that are served and that qualify as free or reduced-price meals in accordance with Sections 49501, 49550, and 49552 of the Education Code.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.

6110-203-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition Programs, established pursuant to Sections 41311, 49501, 49536, 49550, 49552, and 49559 of the Education Code..... 151,532,000

Schedule:

(1) 30.20.010-Child Nutrition Programs..... 151,874,000
(2) Reimbursements..... −342,000

Provisions:

1. Funds appropriated in Schedule (1) shall be allocated pursuant to Section 41311 of the Education Code. Claims for reimbursement of meals pursuant to this allocation shall be submitted by school districts on or before September 30, 2011, to be eligible for reimbursement.
2. Funds designated for child nutrition programs in Schedule (1) shall be allocated in accordance with Section 49536 of the Education Code; however, the allocation shall be based not on all meals served, but on the number of meals that are served and that qualify as free or reduced-price meals in accordance with Sections 49501, 49550, and 49552 of the Education Code.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. Of the funds appropriated in this item, $17,488,000 is for the purpose of providing a

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6110-150-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.051-American Indian Early Childhood Education Program established pursuant to former Chapter 6.5 (commencing with Section 52060) of Part 28 of Division 4 of Title 2 of the Education Code..... 662,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-151-0001—For support of Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.50-California American Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code..... 4,540,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-152-0001—For local assistance, Department of Education, Program 10.30.050-American Indian Education Centers pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code..... 376,000

6110-156-0001—For local assistance, Department of Education (Proposition 98), Program 10.50.010-Instruction, for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 745,978,000

Schedule:

(1) 10.50.010.001-Adult Education.... 745,978,000
(2) 10.50.010.008-Remedial education services for participants in the CalWORKs program..... 8,739,000
(3) Reimbursements-CalWORKs..... −8,739,000

Provisions:

1. Credit for participating in adult education classes or programs may be generated by a special day

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class pupil only for days in which the pupil has met the minimum day requirements set forth in Section 46141 of the Education Code.

2. The funds appropriated in Schedule (2) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and regional occupational centers and programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, based on the number of CalWORKs-eligible family members served in the county.
3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services, (b) assessment of skills, (c) instruction and curriculum development, (d) professional development, (e) citizenship testing, (f) naturalization preparation and assistance, and (g) regional and state coordination and program evaluation.
4. The funds appropriated in Schedule (2) shall be subject to the following:
   (a) The funds shall be used only for educational activities for welfare recipient pupils and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These funds shall be

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used to supplement and not supplant existing funds and services provided for welfare recipient pupils and those in transition off of welfare.

(b) Notwithstanding any other provision of law, each local educational agency's individual cap for the average daily attendance of adult education and regional occupational centers and programs (ROC/Ps) shall not be increased as a result of the appropriations made by this item.

(c) Funds may be claimed by local educational agencies for services provided to welfare recipient pupils and those in transition off of welfare pursuant to this section only if all of the following occur:

(1) Each local educational agency has met the terms of the interagency agreement between the State Department of Education and the State Department of Social Services pursuant to Provision 2.

(2) Each local educational agency has fully claimed its respective adult education or ROC/Ps average daily attendance cap for the current year.

(3) Each local educational agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2.

(d) Each local educational agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or Item 6110-105-0001 or pursuant to Section 1.80, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of Division 4 of Title 2 of the Education Code, and ROC/Ps requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code, respectively.

(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be

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apportioned on an advance basis to local educational agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.

(f) The Legislature finds the need for good information on the role of local educational agencies in providing services to individuals who are eligible for or recipients of CalWORKs assistance. This information includes the extent to which local educational programs serve public assistance recipients and the impact these services have on the recipients' ability to find jobs and become self-supporting.

(g) The State Department of Education shall maintain a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources, (2) characteristics of participants, and (3) pupil and program outcomes. The department shall meet all information technology reporting requirements of the State Chief Information Officer.

(h) As a condition of receiving funds provided in Schedule (2) or any General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient pupils and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this item and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2011, to June 30, 2012, inclusive.

5. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-

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pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.

6. An additional $45,896,000 in expenditures for this item has been deferred until the 2012–13 fiscal year.
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund..... 87,659,000

Provisions:

1. The State Department of Education shall reimburse claims on a quarterly basis from qualifying community-based organizations that provide adult basic education under this item.
2. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (non-LEA) receiving greater than $500,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.

   All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California, (2) a member of the department's staff of auditors, or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Government Auditing Standards issued by the Comptroller General of the United States.

   The audit shall be in accordance with State Department of Education audit guidelines and Office of Management and Budget (OMB), Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

   Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the audit shall cover the period from

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the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all department costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

(b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited-scope audit reports of all subrecipients it is responsible for monitoring that receive between $25,000 and $500,000 of federal awards, and that do not have an organizationwide audit performed. These limited-scope audits shall be conducted in accordance with the State Department of Education audit guidelines and OMB, Circular No. A-133. The department may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited-scope audits shall include agreed-upon procedures engagements conducted in accordance with either American Institute of Certified Public Accountants (AICPA) generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities, allowable costs and cost principles, eligibility, matching, level of effort, earmarking, and reporting.

The department shall contract for the limited-scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

3. On or before March 1 of each year, the State Department of Education shall report to the appropriate subcommittees of the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review on the following aspects of Title II of the federal Workforce Investment Act of 1998: (a) the makeup of those adult education providers that applied for com-

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petitive grants under Title II and those that obtained grants, by size, geographic location, and type (school districts, community colleges, community-based organizations, or other local entities), (b) the extent to which participating programs were able to meet planned performance targets, and (c) a breakdown of the types of courses (English as a Second Language (ESL), ESL-Citizenship, adult basic education, or adult secondary education) included in the performance targets of participating agencies.

It is the intent of the Legislature that the Legislature and the department utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.

4. The State Department of Education shall continue to ensure that outcome measures for State Department of Mental Health and State Department of Developmental Services clients are set at a level where these clients will continue to be eligible for adult education services in the current fiscal year and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the State Department of Mental Health, State Department of Developmental Services, and Department of Finance for this purpose.
5. Of the funds appropriated in this item, $3,100,000 is provided in one-time carryover funds for the federal Adult Education Program.

6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities..... 18,670,000

Provisions:

1. Notwithstanding Section 41841.5 of the Education Code, or any other provision of law, all of the following shall apply:

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(a) The amount appropriated in this item and any amount allocated for this program in this act shall be the only funds available for allocation by the Superintendent of Public Instruction to school districts or county offices of education for the Adults in Correctional Facilities Program.

(b) The amount appropriated in this item shall be allocated based upon prior year rather than current year expenditures.

(c) Funding distributed to each local educational agency (LEA) for reimbursement of services provided in the prior fiscal year for the Adults in Correctional Facilities Program shall be limited to the amount received by the agency for services provided in the 2009–10 fiscal year. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the prior fiscal year, as compared to the level of services provided in the 2009–10 fiscal year. Any funds remaining as a result of those decreased levels of service shall be allocated to provide support for new programs in accordance with Section 41841.8 of the Education Code.

(d) Funding appropriated in this item for growth in average daily attendance (ADA) first shall be allocated to programs that are funded for 20 units or less of ADA, up to a maximum of 20 additional units of ADA per program.

2. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.

3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-161-0001—For local assistance, Department of Education (Proposition 98), Program 10.60-Special Education Programs for Exceptional Children..... 3,117,119,000

Schedule:

(1) 10.60.050.003-Special education instruction..... 3,046,216,000

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(2) 10.60.050.080-Early Education Program for Individuals with Exceptional Needs..... 85,298,000

(3) Reimbursements for Early Education Program, Part C..... −14,395,000

Provisions:

1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 2011–12 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, superseding all prior law.
2. Of the funds appropriated in Schedule (1), up to $13,195,000, plus any cost-of-living adjustment, shall be available for the purchase, repair, and inventory maintenance of specialized books, materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
3. Of the funds appropriated in Schedule (1), up to $10,081,000, plus any cost-of-living adjustment, shall be available for the purposes of vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of Division 4 of Title 2 of the Education Code. As a condition of receiving these funds, each local educational agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision of vocational education for special education pupils shall be maintained at or above the level provided in the 1984–85 fiscal year. The Superintendent of Public Instruction may waive this requirement for local educational agencies that demonstrate that the requirement would impose a severe hardship.
4. Of the funds appropriated in Schedule (1), up to $5,258,000, plus any cost-of-living adjustment (COLA), shall be available for regional occupational centers and programs that serve pupils

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having disabilities; up to $88,542,000, plus any COLA, shall be available for regionalized program specialist services; and up to $2,687,000, plus any COLA, shall be available for small special education local plan areas (SELPAs) pursuant to Section 56836.24 of the Education Code.

5. Of the funds appropriated in Schedule (1), up to $3,000,000 is provided for extraordinary costs associated with single placements in nonpublic, nonsectarian schools, pursuant to Section 56836.21 of the Education Code. Pursuant to legislation, these funds shall also provide reimbursement for costs associated with pupils residing in licensed children's institutes.
6. Of the funds appropriated in Schedule (1), up to $179,930,000, plus any cost-of-living adjustment (COLA), is available to fund the costs of children placed in licensed children's institutions who attend nonpublic schools based on the funding formula authorized in Chapter 914 of the Statutes of 2004.
7. Funds available for infant units shall be allocated with the following average number of pupils per unit:
   (a) For special classes and centers—16.
   (b) For resource specialist programs—24.
   (c) For designated instructional services—16.
8. Notwithstanding any other provision of law, early education programs for infants and toddlers shall be offered for 200 days. Funds appropriated in Schedule (2) shall be allocated by the State Department of Education for the 2011–12 fiscal year to those programs receiving allocations for instructional units pursuant to Section 56432 of the Education Code for the Early Education Program for Individuals with Exceptional Needs operated pursuant to Chapter 4.4 (commencing with Section 56425) of Part 30 of Division 4 of Title 2 of the Education Code, based on computing 200-day entitlements. Notwithstanding any other provision of law, funds in Schedule (2) shall be used only for the purposes specified in Provisions 10 and 11.
9. Notwithstanding any other provision of law, state funds appropriated in Schedule (2) in excess of the amount necessary to fund the

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deficited entitlements pursuant to Section 56432 of the Education Code and Provision 10 shall be available for allocation by the State Department of Education to local educational agencies for the operation of programs serving solely low-incidence infants and toddlers pursuant to Title 14 (commencing with Section 95000) of the Government Code. These funds shall be allocated to each local educational agency for each solely low-incidence child through age two in excess of the number of solely low-incidence children through age two served by the local educational agency during the 1992–93 fiscal year and reported on the April 1993 pupil count. These funds shall only be allocated if the amount of reimbursement received from the State Department of Developmental Services is insufficient to fully fund the costs of operating the Early Intervention Program, as authorized by Title 14 (commencing with Section 95000) of the Government Code.

10. The State Department of Education, through coordination with the special education local plan areas, shall ensure local interagency coordination and collaboration in the provision of early intervention services, including local training activities, child-find activities, public awareness, and the family resource center activities.
11. Funds appropriated in this item, unless otherwise specified, are available for the sole purpose of funding 2011–12 fiscal year special education program costs and shall not be used to fund any prior year adjustments, claims, or costs.
12. Of the amount provided in Schedule (1), up to $188,000, plus any cost-of-living adjustment, shall be available to fully fund the declining enrollment of necessary small special education local plan areas pursuant to Chapter 551 of the Statutes of 2001.
13. Pursuant to Section 56427 of the Education Code, of the funds appropriated in Schedule (1), up to $2,324,000 may be used to provide funding for infant programs, and may be used for those programs that do not qualify for funding pursuant to Section 56432 of the Education Code.
14. Of the funds appropriated in Schedule (1), up to $29,478,000 shall be allocated to local education-

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al agencies for the purposes of Project Workability I.

15. Of the funds appropriated in Schedule (1), up to $1,700,000 shall be used to provide specialized services to pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
16. Of the funds appropriated in Schedule (1), up to $1,117,000 shall be used for a personnel development program. This program shall include state-sponsored staff development for special education personnel to have the necessary content knowledge and skills to serve children with disabilities. This funding may include training and services targeting special education teachers and related service personnel that teach core academic or multiple subjects to meet the applicable special education requirements of the Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.).
17. Of the funds appropriated in Schedule (1), up to $200,000 shall be used for research and training in cross-cultural assessments.
18. Of the amount specified in Schedule (1), up to $31,000,000 shall be available only to provide educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.). The Superintendent of Public Instruction shall allocate these funds to special education local plan areas on a one-time basis in the 2011–12 fiscal year based upon an equal rate per pupil using the methodology specified in Section 56836.07 of the Education Code.
19. Of the amount provided in Schedule (1), $0 is to reflect a cost-of-living adjustment.
20. Of the amount provided in Schedule (2), $0 is to reflect a cost-of-living adjustment.
21. Of the amount appropriated in this item, up to $1,480,000 is available for the state's share of costs in the settlement of Emma C. v. Delaine Eastin, et al. (N.D. Cal. No. C96-4179TEH). The State Department of Education shall report by January 1, 2012, to the fiscal committees of

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both houses of the Legislature, the Department of Finance, and the Legislative Analyst's Office on the planned use of the additional special education funds provided to the Ravenswood Elementary School District pursuant to this settlement. The report shall also provide the State Department of Education's best estimate of when this supplemental funding will no longer be required by the court. The State Department of Education shall comply with the requirements of Section 948 of the Government Code in any further request for funds to satisfy this settlement.

22. Of the funds appropriated in this item, up to $2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of paragraph (14) of subdivision (a) of Section 612 of the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and Section 2122 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.). The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. All programs are to include evaluation components.
23. Notwithstanding any other provision of law, state funds appropriated in Schedule (1) in excess of the amount necessary to fund the defined entitlement shall be to fulfill other shortages in entitlements budgeted in this schedule by the State Department of Education, upon Department of Finance approval, to any program funded under Schedule (1).

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24. The funds appropriated in this item reflect an adjustment to the base funding of 0.23 percent for the annual adjustment in statewide average daily attendance.
25. Of the funds appropriated in Schedule (1), the amount resulting from increases in federal funds reflected in the calculation performed in paragraph (1) of subdivision (c) of Section 56836.08 of the Education Code shall be allocated based on an equal amount per average daily attendance and added to each special education local plan area's base funding, consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code. When the final amount is determined, the State Department of Education shall provide this information to the Department of Finance and the budget committees of each house of the Legislature.
26. Of the amount specified in Schedule (1), $218,786,000 shall be available only to provide educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas in the 2011–12 fiscal year based upon an equal rate per pupil using the methodology specified in Section 56836.07 of the Education Code.
27. Of the amount specified in Schedule (1), up to $3,000,000 shall be made available to the Superintendent of Public Instruction, in collaboration with the Department of Finance and the Legislative Analyst, and subject to approval by the Department of Finance, to administer an extraordinary cost pool associated with educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, for necessary small special education local plan areas as defined in Section 56212 of the Education Code.

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6110-161-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, Program 10.60-Special Education Programs for Exceptional Children..... 1,229,085,000

Schedule:

(1) 10.60.050.012-Local Agency Entitlements, IDEA Special Education..... 1,042,289,000

(2) 10.60.050.013-State Agency Entitlements, IDEA Special Education.... 1,759,000

(3) 10.60.050.015-IDEA, Local Entitlements, Preschool Program..... 67,066,000

(4) 10.60.050.021-IDEA, State Level Activities..... 74,614,000

(5) 10.60.050.030-P.L. 99-457, Preschool Grant Program..... 37,747,000

(6) 10.60.050.031-IDEA, State Improvement Grant, Special Education..... 2,716,000

(7) 10.60.050.032-IDEA, Family Empowerment Centers..... 2,794,000

(8) 20.80.002-Supplemental Grants: Newborn Hearing Grant..... 100,000

Provisions:

1. If the funds for Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) (IDEA) that are actually received by the state exceed $1,215,790,000, at least 95 percent of the funds received in excess of that amount shall be allocated for local entitlements and to state agencies with approved local plans. Up to 5 percent of the amount received in excess of $1,215,790,000 may be used for state administrative expenses upon approval of the Department of Finance. If the funds for Part B of the IDEA that are actually received by the state are less than $1,215,790,000, the reduction shall be taken in other state-level activities.
2. The funds appropriated in Schedule (2) shall be distributed to state-operated programs serving disabled children from 3 to 21 years of age, inclusive. In accordance with federal law, the funds appropriated in Schedules (1) and (2) shall be distributed to local and state agencies on the basis of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) permanent formula.

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4. Of the funds appropriated in Schedule (4), up to $300,000 shall be used to develop and test procedures, materials, and training for alternative dispute resolution in special education.
5. Of the funds appropriated by Schedule (5) for the Preschool Grant Program, $1,228,000 shall be used for in-service training and shall include a parent training component and may, in addition, include a staff training program. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. This program shall include state-sponsored and local components.
6. Of the funds appropriated in this item, $1,420,000 is available for local assistance grants to monitor local educational agency compliance with state and federal laws and regulations governing special education. This funding level is to be used to continue the facilitated reviews and, to the extent consistent with the key performance indicators developed by the State Department of Education, these activities shall focus on local educational agencies identified by the United States Department of Education's Office of Special Education Programs.
7. The funds appropriated in Schedule (7) shall be used for the purposes of Family Empowerment Centers on Disability pursuant to Chapter 690 of the Statutes of 2001.
8. Notwithstanding the notification requirements listed in subdivision (d) of Section 26.00, the Department of Finance is authorized to approve intraschedule transfers of funds within this item submitted by the State Department of Education for the purposes of ensuring that special education funding provided in this item is appropriated in accordance with the statutory funding formula required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the special education funding formula required pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of Division 4 of Title 2 of the Education Code, without waiting 30 days, but shall provide a notice to the Legislature each time a transfer occurs.

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9. Of the funds appropriated in Schedule (4), $69,000,000 shall be available only for the purpose of providing educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas on a one-time basis in the 2011–12 fiscal year as follows:
   (a) The Superintendent of Public Instruction shall allocate these funds to each special education local plan area using data available from the California Special Education Management Information System (CASEMIS) as of December 1, 2010. Each special education local plan area shall receive funding in an amount equal to the applicable of the following:
      (1) $3,607 for each pupil whose individualized education program requires one or more of the following educationally related mental health services: individual counseling, counseling and guidance, parent counseling, social work services, or behavior intervention services.
      (2) Twice the amount specified in paragraph (1) for each pupil whose individualized education program requires psychological services.
      (3) Four times the amount specified in paragraph (1) for each pupil whose individualized education program requires day treatment services.
      (4) Nine times the amount specified in paragraph (1) for each pupil whose individualized education program requires mental health related residential treatment services.
   (b) The Superintendent of Public Instruction shall count individual pupils in only one of the four categories set forth in paragraphs (1) to (4), inclusive, of subdivision (a), based on the most intensive level of services re-

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quired by the pupil's individualized education program.	
(c) If the overall funding allocation is insufficient to fully fund the amount set forth in subdivision (a), or if there is excess funding available, the Superintendent of Public Instruction shall adjust the amount specified in paragraph (1) of subdivision (a), and the corresponding amounts specified in paragraphs (2) to (4), inclusive, of subdivision (a), in order to match the full allocation.	
(d) It is the intent of the Legislature that any funds appropriated for the 2012–13 fiscal year for the purpose of providing the educationally related mental health services identified in this provision shall be allocated based on an equal rate per pupil using a methodology specified in Section 56836.07 of the Education Code and using average daily attendance for the 2011–12 fiscal year.	
10. Of the funds appropriated in Schedule (6), $2,196,000 is provided on a one-time basis for science-based professional development as part of the State Personnel Development grant.	
11. Of the funds appropriated in Schedule (4), up to $3,894,000 shall be available for transfer to the State Special Schools for student transportation allowances. However, of these funds, the State Department of Education (SDE) shall obtain written approval from the Department of Finance prior to spending $924,000 to address transportation contract increases resulting from fuel and insurance costs. The Department of Finance shall act within 30 days of receiving justification from the SDE for the increased costs.	
12. Of the funds appropriated in Schedule (6), $520,000 is provided in one-time carryover funds to be used for professional development in the area of educationally related mental health services, to the extent permitted by the federal State Improvement Grant Program.	
6110-166-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund for purposes of Article 5 (commencing with Section 54690) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code, Partnership Academies Program.....	26,730,000

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Schedule:

(1) 10.70.070.001-California Partnership Academies..... 23,490,000

(2) 10.70.070.002-"Green" California Partnership Academies..... 2,922,000

(2.5) 10.70.070.003-"Clean" Technology Partnership Academies..... 3,240,000

(3) Reimbursements..... −2,922,000

Provisions:

1. If there are any funds in this item that are not allocated for planning or operational grants, the State Department of Education may allocate those remaining funds as one-time grants to state-funded partnership academies to be used for one-time purposes.
2. The State Department of Education shall not authorize new partnership academies without the approval of the Department of Finance and 30-day notification to the Joint Legislative Budget Committee.
3. Notwithstanding Provisions 1 and 2, the funds appropriated in Schedule (2) shall be available consistent with Article 5 (commencing with Section 54690) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code and pursuant to Chapter 757 of the Statutes of 2008.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.
5. Notwithstanding any other provision of law, the funds appropriated in Schedule (2) reflect carryover funds that are available for encumbrance until June 30, 2013.
6. Notwithstanding Provisions 1 and 2, the funds appropriated in Schedule (2.5) shall be available consistent with Article 5.5 (commencing with Section 54698) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code.

6110-166-0890—For local assistance, Department of Education, Program 10.70-Vocational Education, payable from the Federal Trust Fund..... 116,218,000

Provisions:

1. The funds appropriated in this item include federal Carl D. Perkins Career and Technical Education Act of 2006 (P.L. 109-270) funds for the current fiscal year to be transferred to the community colleges by means of interagency agree-

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ments for the purpose of funding career technical education programs in community colleges.

2. The State Board of Education and the Board of Governors of the California Community Colleges shall target funds appropriated by this item to provide services to persons participating in welfare-to-work activities under the CalWORKs program.
3. The Superintendent of Public Instruction shall report, not later than February 1 of each year, to the Joint Legislative Budget Committee and the Director of Finance, describing the amount of carryover funds from this item, reasons for the carryover, and plans to reduce the amount of carryover.
4. Of the funds appropriated in this item, $6,284,000 is provided in one-time carryover funds to support the existing program.

6110-167-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.70-Agricultural Career Technical Education Incentive Program established pursuant to Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code..... 5,157,000

Provisions:

1. As a condition of receiving funds appropriated in this item, a school district shall certify to the Superintendent of Public Instruction both of the following:
   (a) Agricultural Career Technical Education Incentive Program funds shall be expended for the items identified in its application, except that, in items of expenditure classification 4000, only the total cost of expenses shall be required and itemization shall not be required.
   (b) The school district shall provide at least 50 percent of the cost of the items and costs from expenditure classification 4000, as identified in its application, from other funding sources. This provision does not limit the authority of the Superintendent of Public Instruction to waive the local matching requirement established by subdivision (b) of Section 52461.5 of the Education Code.

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2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for an adjustment in statewide average daily attendance.
3. Of the amount appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-170-0001—For local assistance, Department of Education, pursuant to Section 88532 of the Education Code..... 0

Schedule:

(1) 20.40.800-Career Technical Education..... 18,486,000
(2) Reimbursements..... −18,486,000

Provisions:

1. Funding in this item shall be provided through a transfer from Schedule (21) of Item 6870-101-0001, and from the Quality Education Investment Act, in accordance with Section 52055.770 of the Education Code, pursuant to an interagency agreement between the Office of the Chancellor of the California Community Colleges and the State Department of Education.
2. The amounts in this item may be adjusted by budget revision to conform to the interagency agreement between the Chancellor of the California Community Colleges and the Department of Education if approved by the Department of Finance.
3. Of the funds appropriated in this item, $3,486,000 is provided in one-time reimbursement carryover funds to support the existing program.

6110-180-0890—For local assistance, Department of Education, Program 20.10.025-Educational Technology, payable from the Federal Trust Fund..... 490,000

Schedule:

(1) 20.10.025.010-Formula Grants..... 257,000
(2) 20.10.025.011-Competitive Grants..... 4,000
(3) 20.10.025.013-California Technology Assistance Project..... 229,000

Provisions:

1. The funds appropriated in Schedule (1) shall be allocated as formula grants to school districts pursuant to the federal Enhancing Education

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Through Technology program. Of the funds appropriated in Schedule (1), $257,000 is provided in one-time carryover funds.

2. The funds appropriated in Schedule (2) are available for competitive grants pursuant to Chapter 8.9 (commencing with Section 52295.10) of Part 28 of Division 4 of Title 2 of the Education Code and the federal Enhancing Education Through Technology program. The eligibility criteria for these grants shall be consistent with federal law and target local educational agencies with high numbers or percentages of children from families with incomes below the poverty line and one or more schools either qualifying for federal school improvement or demonstrating substantial technology needs. Of the funds appropriated in Schedule (2), $4,000 is provided in one-time carryover funds.
3. The funds appropriated in Schedule (3) are provided for the California Technology Assistance Project to provide technical assistance and support to the program. Of the funds appropriated in Schedule (3), $229,000 is provided in one-time carryover funds.

6110-181-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.10.025-Educational Technology, programs funded pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28 of Division 4 and Chapter 3.34 (commencing with Section 44730) of Part 25 of Division 3 of Title 2 of the Education Code..... 17,555,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
3. As a part of the support system authorized by paragraph (5) of subdivision (a) of Section 51871 of the Education Code, the California Technology Assistance Project regional consortia shall assist school districts in using pupil achievement data to inform instruction and improve pupil learning. The regional consortia shall also support the identification and dissemination

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of best practices in the area of data-driven instructional improvement.

6110-181-0140—For local assistance, Department of Education, payable from the California Environmental License Plate Fund, for purposes of Section 21190 of the Public Resources Code..... 360,000

Schedule:

(1) 20.10.055-Environmental Education..... 548,000

(2) Reimbursements..... −188,000

6110-182-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.20.030-K–12 High-Speed Network..... 10,404,000

Provisions:

1. Expenditure authority of no greater than $15,600,000 is provided for the K–12 High-Speed Network.
   (a) Of the amount authorized for expenditure in this provision, $1,300,000 of unexpended cash reserves from the following appropriations are available to continue management and operation of the network during the 2011–12 fiscal year: Item 6440-001-0001, Schedule (a), Provision 44 of Chapter 52 of the Statutes of 2000; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 106 of the Statutes of 2001; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 379 of the Statutes of 2002; Item 6440-001-0001, Schedule (1), Provision 22 of Chapter 157 of the Statutes of 2003; and Item 6110-182-0001, Chapter 208 of the Statutes of 2004.
   (b) Of the amount authorized for expenditure in this provision, $4,600,000 shall be funded by E-rate and California Teleconnect Fund moneys. The lead educational agency or the Corporation for Education Network Initiatives in California (CENIC), or both, shall submit quarterly reports to the Department of Finance and the Legislature on funds received from E-rate and the California Teleconnect Fund.
   (c) For the 2011–12 fiscal year, all major subcontracts of the K–12 High-Speed Network program shall be excluded from both the eligible program costs on which indirect costs

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are charged and from the calculation of the indirect cost rate based on that year's data. For purposes of this provision, a major subcontract is defined as a subcontract for services in an amount in excess of $25,000.

2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-183-0890—For local assistance, Department of Education, Program 20.10.045-Safe and Drug Free Schools and Communities Act (Part A of Title IV of P.L. 107-110), payable from the Federal Trust Fund..... 9,515,000

Provisions:

1. The funds appropriated in this item are made available through the three-year Safe and Supportive Schools Grant for the purpose of helping schools improve safety and reduce substance use. The State Department of Education shall allocate these funds in a manner consistent with the state's approved application for these funds and with federal regulations.

6110-188-0001—For local assistance, Department of Education (Proposition 98), Program 10.10-School Apportionments Deferred Maintenance, for transfer to the State School Deferred Maintenance Fund..... 312,888,000

Provisions:

1. The funds appropriated in this item shall be transferred to the State School Deferred Maintenance Fund and are available for funding applications received by the Department of General Services, Office of Public School Construction for the purpose of payments to school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-189-0001—For local assistance, Department of Education (Proposition 98), Program 20.20.020.005-Instructional Support, for transfer to State Instructional Materials Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33 of Division 4 of Title 2 of the Education Code (Instructional Materials Block Grant)..... 416,254,000

Provisions:

1. The funds in this item shall be allocated to school districts to purchase standards-aligned instructional materials.

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2. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
3. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-190-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.10.021-School Apportionments, Community Day Schools established pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27 of Division 4 of Title 2 of the Education Code..... 47,248,000

Provisions:

1. Funds appropriated in this item shall not be available for the purposes of Section 41972 of the Education Code.
2. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
3. An additional $4,751,000 in expenditures for this item has been deferred until the 2012–13 fiscal year.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0001—For local assistance, State Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60-Staff Development..... 32,380,000

Schedule:

(1) 20.60.070-Instructional Support: Bilingual Teacher Training Assistance Program..... 2,131,000
(2) 20.60.060-Instructional Support: Teacher Peer Review..... 29,848,000
(3) 20.60.110-Instructional Support: Improving School Effectiveness-Reader Services for Blind Teachers..... 401,000

Provisions:

1. The amount appropriated in Schedule (1) shall be allocated for the purposes of the Bilingual Teacher Training Assistance Program established by Article 4 (commencing with Section 52180) of Chapter 7 of Part 28 of Division 4 of Title 2 of the Education Code.

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2. Of the funds appropriated in Schedule (1), $0 is to reflect a cost-of-living adjustment.
3. The funds appropriated in Schedule (2) shall be allocated in accordance with Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code. If the funds are insufficient to fully fund growth in this program, the State Department of Education may adjust the per-participant rate to conform to available funds. Funds appropriated in Schedule (2) include $0 to reflect a cost-of-living adjustment.
4. The amount appropriated in Schedule (3) shall be allocated for the purposes of the Reader Services for Blind Teachers Program, for transfer to the Reader Employment Fund established by Section 45371 of the Education Code for the purposes of Section 44925 of the Education Code.
5. Of the funds appropriated in Schedule (3), $0 is to reflect a cost-of-living adjustment.
6. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part B of Title II of the Elementary and Secondary Education Act (Mathematics and Science Partnership Grants) payable from the Federal Trust Fund..... 23,501,000

Provisions:

1. Of the funds appropriated in this item, $4,000,000 is provided in one-time carryover funds.

6110-194-0001—For local assistance, Department of Education, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for child care and development programs..... 1,054,461,000

Schedule:

(1.5) 30.10.020-Child Care Services..... 1,597,511,000

Item		Amount
(a)	30.10.020.001-Special Program, Child Development, General Child Development Programs....	685,923,000
(c)	30.10.020.004-Special Program, Child Development, Migrant Day Care.....	29,085,000
(d)	30.10.020.007-Special Program, Child Development, Alternative Payment Program.....	216,586,000
(e)	30.10.020.011-Special Program, Child Development, Alternative Payment Program—Stage 2....	442,456,000
(f)	30.10.020.012-Special Program, Child Development, Alternative Payment Program—Stage 3 Setaside.....	145,955,000
(g)	30.10.020.008-Special Program, Child Development, Resource and Referral.....	18,688,000
(j)	30.10.020.096-Special Program, Child Development, Allowance for Handicapped.....	1,620,000
(k)	30.10.020.106-Special Program, Child Development, California Child Care Initiative.....	225,000

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(*l*) 30.10.020.901-Special Program, Child Development, Quality Improvement..... 49,654,000

(n) 30.10.020.920-Special Program, Child Development, Local Planning Councils..... 3,319,000

(o) 30.10.020.014-Special Program, Child Development, Accounts Payable..... 4,000,000

(3) Amount payable from the Federal Trust Fund (Item 6110-194-0890)..... −543,050,000

Provisions:

2. (a) Alternative payment child care programs shall be subject to the rate ceilings established in the Regional Market Rate Survey of California child care and development providers for provider payments. When approved pursuant to Section 8447 of the Education Code, any changes to the market rate limits, adjustment factors, or regions shall be utilized by the State Department of Education, the California Community Colleges, and the State Department of Social Services in various programs under the jurisdiction of these departments.

(b) The funds appropriated in this item for the cost of licensed child care services provided through alternative payment or voucher programs, including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, shall be used only to reimburse child care costs up to the 85th percentile of the rates charged by providers offering the same type of child care for the same age child in that region, based on the 2005 Regional Market Rate Survey data.

(c) Effective July 1, 2011, the funds appropriated in this item for the cost of license-exempt

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child care services provided through alternative payment or voucher programs, including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, shall be used only to reimburse license-exempt child care costs up to 60 percent of the regional reimbursement rate limits established for family child care homes.

4. Funds in Schedule (1.5)(*l*) shall be reserved for activities to improve the quality and availability of child care, pursuant to the following:
   (a) $2,085,639 is for the schoolage care and resource and referral earmark.
   (b) $11,698,772 is for the infant and toddler earmark and shall be used for increasing the supply of quality child care for infants and toddlers.
   (c) $3,178,000 in one-time federal funding is available for use in the 2011–12 fiscal year. These funds shall be used for child care and development quality expenditures identified by the State Department of Education (SDE) and approved by the Department of Finance.
   (d) From the remaining funds in Schedule (1.5)(*l*), the following amounts shall be allocated for the following purposes: $0 to train former CalWORKs recipients as child care teachers, for which administrative costs shall be minimized to allow for maximum enrollment, with priority for funding given to programs at community colleges that have demonstrated high completion rates; $0 for training license-exempt child care providers, with priority given to participants serving subsidized children; $8,000,000 from federal funds for contracting with the State Department of Social Services (DSS) for increased inspections of child care facilities; $960,000 for Trustline registration workload (Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code); and $455,000 for health and safety training for licensed and exempt child care providers. Of the amounts specified in this

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provision, first priority shall be to fully fund Trustline registration workload as determined by the DSS in conjunction with the SDE.

5. Of the amount appropriated in Schedule (1.5)(*l*), $10,750,000 shall be for child care worker recruitment and retention programs pursuant to Section 8279.7 of the Education Code, and $291,000 shall be for the Child Development Training Consortium.
6. (a) The State Department of Education (SDE) shall conduct monthly analyses of CalWORKs Stage 2 and Stage 3 caseloads and expenditures and adjust agency contract maximum reimbursement amounts and allocations as necessary to ensure funds are distributed proportionally to need. The SDE shall share monthly caseload analyses with the State Department of Social Services (DSS).

   (b) The SDE shall provide quarterly information regarding the sufficiency of funding for Stage 2 and Stage 3 to DSS. The SDE shall provide caseloads, expenditures, allocations, unit costs, family fees, and other key variables and assumptions used in determining the sufficiency of state allocations. Detailed backup by month and on a county-by-county basis shall be provided to the DSS at least on a quarterly basis for comparisons with Stage 1 trends.

   (c) By September 30 and March 30 of each year, the SDE shall ensure that detailed caseload and expenditure data, through the most recent period for Stage 2 and Stage 3 along with all relevant assumptions, is provided to DSS to facilitate budget development. The detailed data provided shall include actual and projected monthly caseload from Stage 2 scheduled to time off of their transitional child care benefit from the last actual month reported by agencies through the next two fiscal years as well as local attrition experience. DSS shall utilize data provided by the SDE, including key variables from the prior fiscal year and the first two months of the current fiscal year, to

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provide coordinated estimates in November of each year for each of the three stages of care for preparation of the Governor's Budget, and shall utilize data from at least the first two quarters of the current fiscal year, and any additional monthly data as they become available for preparation of the May Revision. The DSS shall share its assumptions and methodology with the SDE in the preparation of the Governor's Budget.

(d) The SDE shall coordinate with the DSS to identify annual general subsidized child care program expenditures for Temporary Assistance for Needy Families-eligible children. The SDE shall modify existing reporting forms as necessary to capture this data.

(e) The SDE shall provide to the DSS, upon request, access to the information and data elements necessary to comply with federal reporting requirements and any other information deemed necessary to improve estimation of child care budgeting needs.

7. Notwithstanding any other provision of law, the funds in Schedule (1.5)(f) are reserved exclusively for continuing child care for the following: (a) former CalWORKs families who are working, have left cash aid, and have exhausted their two-year eligibility for transitional services in either Stage 1 or 2 pursuant to subdivision (c) of Section 8351 or Section 8353 of the Education Code, respectively, but still meet eligibility requirements for receipt of subsidized child care services, and (b) families who received lump-sum diversion payments or diversion services under Section 11266.5 of the Welfare and Institutions Code and have spent two years in Stage 2 off of cash aid, but still meet eligibility requirements for receipt of subsidized child care services.

8. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance-of-effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would

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cause their disqualification as a federally allowable maintenance-of-effort expenditure.

9. (a) Notwithstanding any other provision of law, the income eligibility limits pursuant to Section 8263.1 of the Education Code that were in effect for the 2007–08 fiscal year shall be reduced to 70 percent of the state median income that was in use for the 2007–08 fiscal year, adjusted for family size, effective July 1, 2011.
   (b) Notwithstanding any other provision of law, the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years shall be adjusted to reflect the income eligibility limits specified in subdivision (a) for the 2011–12 fiscal year, and shall retain a flat fee per family. The revised fee schedule shall begin at income levels at which families currently begin paying fees. The revised family fees shall not exceed 10 percent of the family's monthly income. The Department of Education shall first submit the adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.
10. The maximum standard reimbursement rate shall not exceed $34.38 per day for general child care programs. Furthermore, the migrant child care and Cal-SAFE child care programs shall adhere to the maximum standard reimbursement rates as prescribed for the general child care programs. All other rates and adjustment factors shall conform.
11. The amounts provided in Schedules (1.5)(a), (1.5)(c), (1.5)(d), and (1.5)(j) of this item reflect a reduction to the base funding of 0.67 percent for a decline in the population of 0–4 year-olds.
12. Notwithstanding Section 8278.3 of the Education Code or any other provision of law, up to $5,000,000 of the Child Care Facilities Revolving Fund balance may be allocated for use on a one-time basis for renovations and repairs to meet health and safety standards, to comply with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and to perform emergency repairs, that were the result

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of an unforeseen event and are necessary to maintain continued normal operation of the child care and development program. These funds shall be made available to school districts and contracting agencies that provide subsidized center-based services pursuant to the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code).

13. If the Department of Education has not provided the study on the characteristics of families and costs of care by March 1, 2011, as required by Provision 13 of Item 6110-196-0001 of the Budget Act of 2010 (Chapter 712, Statutes of 2010) or by June 30, 2011, it shall provide the study to the Department of Finance, the Legislative Analyst, and the Department of Social Services along with the data files, as soon as practicable but no later than August 1, 2011. The Department of Education shall ensure that the characteristics of families and costs of care in CalWORKs Stage 1 are included in the study, as intended by the Administration and the Legislature.
14. Notwithstanding any other provision of law, funds in Schedule (1.5)(o) are available for accounts payable for non-CalWORKs child care programs and to reimburse non-CalWORKs alternative payment programs for actual and allowable costs incurred for additional services, pursuant to Section 8222.1 of the Education Code. The State Department of Education shall give priority for the allocation of these funds for accounts payable.
15. Notwithstanding any other provision of law, the Local Planning Councils shall meet the requirements of Section 8499.5 of the Education Code to the extent feasible and to the extent data is readily accessible.
17. Notwithstanding any other provision of law, the implementation of Provisions 2, 9, 19, and 20 are not subject to the appeal and resolution procedures for agencies that contract with the Department of Education for the provision of child care services or the due process requirements afforded to families that are denied services

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specified in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.

18. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services or State Department of Education may implement Provisions 2, 9, 19, and 20 through all-county letters, management bulletins, or similar instructions.
19. The amounts appropriated in Schedules (1.5)(a), General Child Care, (1.5)(c), Migrant Day Care, (1.5)(d), Alternative Payment Program, (1.5)(f), CalWORKs Stage 3, and (1.5)(j), Allowance for Handicapped, reflect a reduction effective July 1, 2011, to all contracts of 11 percent, and shall be further reduced by whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including as those appropriations may be reduced on January 1, 2012, pursuant to Senate Bill 96 or Assembly Bill 121 of the 2011–12 Regular Session, as applicable. The State Department of Education may consider the contractor's performance or whether the contractor serves children in underserved areas as defined in subdivision (ag) of Section 8208 of the Education Code when determining contract reductions, provided that the aggregate reduction to each program specified above is 11 percent effective July 1, 2011, and includes any further reduction effective January 1, 2012, that is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them after any reduction pursuant to Senate Bill 96 or Assembly Bill 121 of 2011–12 Regular Session.
20. Notwithstanding any other provision of law, families shall be disenrolled from subsidized child care services consistent with the priorities for services specified in subdivision (b) of Section 8263 of the Education Code. Families shall be disenrolled in the following order: (a) families whose income exceeds 70 percent of the state median income (SMI) adjusted for family size, except for families whose children are receiving child protective services or are at risk of being

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neglected or abused, (b) families with the highest income below 70 percent of the SMI adjusted for family size, (c) of families with the same income level, those that have been receiving child care services for the longest period of time, (d) of families with the same income level, those that have a child with exceptional needs, and (e) families with children who are receiving child protective services or are at risk of being neglected or abused, regardless of family income.

6110-194-0890—For local assistance, Department of Education, Program 30—Child Development Programs, payable from the Federal Trust Fund..... 543,050,000

Provisions:

1. Notwithstanding any other provision of law, the funds appropriated in this item, to the extent permissible under federal law, are subject to Section 8262 of the Education Code.
2. Of the funds appropriated in this item, $10,000,000 is from the transfer of funds, pursuant to Item 5180-402, from the federal Temporary Assistance for Needy Families (TANF) Block Grant administered by the State Department of Social Services to the federal Child Care and Development Block Grant for Stage 2 child care.
4. Of the funds appropriated in this item, $3,178,000 is available on a one-time basis for quality projects from federal Child Care and Development Block Grant funds appropriated prior to the 2011–12 federal fiscal year.
5. Of the funds appropriated in this item, $335,000 is available on a one-time basis for CalWorks Stage 3 Child Care from federal Child Care and Development Block Grant funds appropriated prior to the 2011–12 federal fiscal year.

6110-195-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.140-Staff Development: Teacher Improvement, Teacher Incentives National Board Certification..... 3,000,000

Provisions:

1. The funds appropriated in this item shall be for the purpose of providing incentive grants to teachers with certification by the National Board for Professional Teaching Standards that are teaching in low-performing schools pursuant to

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Article 13 (commencing with Section 44395) of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code.

2. The State Department of Education shall not approve new applications from, or new award incentive grants to, teacher participants not already approved in the 2008–09 or prior grant application processes.
3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-195-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part A of Title II of the Elementary and Secondary Education Act (Teacher and Principal Training and Recruiting Fund), payable from the Federal Trust Fund..... 262,666,000

Schedule:

(1) 20.60.280-Improving Teacher Quality Local Grants..... 255,309,000
(2) 20.60.270-Administrator Training Program..... 2,382,000
(3) 20.60.190.300-California Subject Matter Projects..... 4,975,000

Provisions:

1. The funds appropriated in Schedule (2) shall be for the Administrator Training Program authorized pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code.
2. The funds appropriated in Schedule (3) shall be for transfer to the University of California, which shall use the funds for the Subject Matter Projects pursuant to Article 1 (commencing with Section 99200) of Chapter 5 of Part 65 of Division 14 of Title 3 of the Education Code.
3. Of the funds appropriated in Schedule (2), up to $500,000 may be used to provide professional development for private school teachers and administrators in accordance with federal law. By October 15 of each year, the State Department of Education shall submit to the appropriate budget and policy committees of the Legislature, the Legislative Analyst's Office, and the Department of Finance a report of the number of private school teachers and administrators served under this provision and the type of professional development provided.

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4. Of the funds appropriated in Schedule (1), $475,000 is provided in one-time carryover for Improving Teacher Quality Local Grants. None of these funds shall be used for additional indirect administrative costs.
5. Of the funds appropriated in Schedule (2), $1,107,000 is provided in one-time carryover for the Administrator Training Program. None of these funds shall be used for additional indirect administrative costs.
6. Of the funds appropriated in Schedule (3), $1,408,000 is provided in one-time carryover for transfer to the University of California and shall be used for Subject Matter Projects. None of these funds shall be used for additional indirect administrative costs.

6110-196-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of part-day state preschool programs pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code funded in this item, in lieu of the amount that otherwise would be appropriated pursuant to any other statute..... 373,695,000

Schedule:

(1) 30.10.010-Special Program, Child Development, Preschool Education..... 373,695,000

Provisions:

3. Of the amount appropriated in Schedule (1), $50,000,000 is available for prekindergarten and family literacy preschool programs pursuant to Chapter 211 of the Statutes of 2006. Of the amount appropriated in Schedule (1), $5,000,000 is available for the provision of wraparound care to children enrolled in state preschool programs. The Superintendent of Public Instruction shall assign priority for these funds to children enrolled in prekindergarten and family literacy preschool programs authorized by Section 8238.4 of the Education Code.
8. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance-

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of-effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.

9. (a) Notwithstanding any other provision of law, the income eligibility limits pursuant to Section 8263.1 of the Education Code that were in effect for the 2007–08 fiscal year shall be reduced to 70 percent of the state median income that was in use for the 2007–08 fiscal year, adjusted for family size, effective July 1, 2011.
   (b) Notwithstanding any other provision of law, the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years shall be adjusted to reflect the income eligibility limits specified in subdivision (a) for the 2011–12 fiscal year, and shall retain a flat fee per family. The revised fee schedule shall begin at income levels at which families currently begin paying fees. The revised family fees shall not exceed 10 percent of the family's monthly income. The Department of Education shall first submit the adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.
10. The maximum standard reimbursement rate shall not exceed $21.22 per day for state preschool programs.
11. The amount provided in Schedule (1) reflects a reduction to the base funding of 0.67 percent for a decline in the population of 0–4 year-olds.
17. Notwithstanding any other provision of law, the implementation of Provisions 9, 19, and 20 are not subject to the appeal and resolution procedures for agencies that contract with the Department of Education for the provision of child care services or the due process requirements afforded to families that are denied services specified in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.
18. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5

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(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services or State Department of Education may implement Provisions 9, 19, and 20 through all-county letters, management bulletins, or similar instructions.

19. The amount appropriated in Schedule (1), Preschool Education, reflects a reduction effective July 1, 2011, to all contracts of 11 percent, and shall be further reduced by whatever proportion is necessary to ensure that expenditures for preschool education do not exceed the amounts appropriated for the program, including as those amounts may be reduced on January 1, 2012, pursuant to Senate Bill 96 or Assembly Bill 121 of the 2011–12 Regular Session, as applicable. The State Department of Education may consider the contractor's performance or whether the contractor serves children in underserved areas as defined in subdivision (ag) of Section 8208 of the Education Code when determining contract reductions, provided that the aggregate reduction to the program specified above is 11 percent effective July 1, 2011, and includes any further reduction effective January 1, 2012, that is necessary to ensure that expenditures for the program do not exceed the amounts appropriated for the program after any reduction pursuant to Senate Bill 96 or Assembly Bill 121 of 2011–12 Regular Session..
20. Notwithstanding any other provision of law, families shall be disenrolled from subsidized child care services consistent with the priorities for services specified in subdivision (b) of Section 8263 of the Education Code. Families shall be disenrolled in the following order: (a) families whose income exceeds 70 percent of the state median income (SMI) adjusted for family size, except for families whose children are receiving child protective services or are at risk of being neglected or abused, (b) families with the highest income below 70 percent of the SMI adjusted for family size, (c) of families with the same income level, those that have been receiving child care services for the longest period of time, (d) of families with the same income level, those that have a child with exceptional needs, and (e)

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families with children who are receiving child protective services or are at risk of being neglected or abused, regardless of family income.	
6110-197-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, 21st Century Community Learning Centers Program.....	157,605,000
Schedule:	
(1) 30.10.080-Special Program, Child Development, 21st Century Community Learning Centers Program.....	157,605,000
Provisions:	
1. The State Department of Education shall provide an annual report to the Legislature and Director of Finance by April 30 of each year that identifies by cohort for the previous fiscal year each high school program funded, the amount of the annual grant and actual funds expended, the numbers of pupils served and planned to be served, and the average cost per pupil per day. If the average cost per pupil per day exceeds $10 per day, the department shall provide specific reasons why the costs are justified and cannot be reduced. In calculating cost per pupil per day, the department shall not count attendance unless the pupil is under the direct supervision of after school program staff funded through the grant. Additionally, the department shall calculate cost per day on the basis of the equivalent of a three-hour day for 180 days per school year. The department shall also identify for each program, as applicable, if the attendance of pupils is restricted to any particular subgroup of pupils at the school in which the program is located. If such restrictions exist, the department shall provide an explanation of the circumstances and necessity therefor.	
2. Of the funding provided in this item $25,988,000 is available from one-time carryover funds from prior years.	
3. The State Department of Education shall, by March 1 of each year, provide a report to the Director of Finance and the Legislative Analyst's Office that includes, but is not limited to, allocation and expenditure data for all programs funded in this item in the past three years, the	

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reasons for carryover, and the planned uses of carryover funds.

6110-198-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation to school districts and county offices of education, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 57,905,000

Schedule:

(1) 20.60.220-Cal-SAFE Academic and Supportive Services..... 19,800,000

(2) 20.60.221-All Services for Non-converting Pregnant Minors Programs..... 13,327,000

(3) 30.10.020-Cal-SAFE Child Care.... 24,778,000

Provisions:

1. The amounts appropriated in Schedules (1), (2), and (3) are based on estimates of the amounts required by existing programs for operation of Cal-SAFE programs in the current year. By October 31 of each year, the State Department of Education (SDE) shall submit to the Department of Finance current expenditure data for both the prior fiscal year and the current year showing each agency's allocation and supporting detail including average daily attendance and child care attendance and enrollment data. The SDE shall also provide estimates of average daily attendance and child care to be provided in the budget year.
2. Funds appropriated in Schedule (2) are available to provide funding for all child care, as well as both academic and supportive services for programs choosing to retain their Pregnant Minors Program revenue limit. Notwithstanding any other provision of law, the State Department of Education shall compute allocations to these agencies using the respective agencies' 1998–99 Pregnant Minors Program revenue limits. Further, notwithstanding any other provision of law, programs which choose to retain their Pregnant Minors Program revenue limit rather than convert to the Cal-SAFE revenue limit must provide child care within the revenue limit funding for children of pupils comprising base year average daily attendance.

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3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance. No funds may be allocated for the addition of new Cal-SAFE agencies unless an existing grantee ceases providing services. Any allocations for new agencies shall be limited to the amount previously allocated to the agency withdrawing services; however, in no case shall allocations for authorized agencies exceed the amount appropriated in this item.
5. Notwithstanding Section 26.00, the State Department of Education may transfer expenditure authority between Schedule (1) Cal-SAFE Academic and Supportive Services and Schedule (2) All Services for Nonconverting Pregnant Minors Programs, to accurately reflect expenditures in these programs, upon approval of the Department of Finance and notification of the Legislature.
6. In the event that funding in this item is insufficient to serve all eligible pupils, the State Department of Education shall prorate the amounts in Schedules (1) and (2).
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-199-0890—For local assistance, Department of Education, American Recovery and Reinvestment Act (P.L. 111-5), payable from the Federal Trust Fund..... 3,551,000

Provisions:

1. The funds appropriated in this item are made available through a three-year grant under the American Recovery and Reinvestment Act to support the activities of the State Advisory Council on Early Childhood Education and Care (ELAC) established pursuant to Executive Order S-23-09. The State Department of Education shall allocate these funds in a manner consistent with the state's approved application for these funds and as further directed by the ELAC.
2. Of the funds appropriated in this item, $117,000 shall be transferred to Item 6110-001-0890 for state operations costs to support the activities of the State Advisory Council on Early Childhood

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Education and Care, subject to approval of a budget revision by the Department of Finance.	
6110-201-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition School Breakfast and Summer Food Service Program grants pursuant to Article 11 (commencing with Section 49550.3) of Chapter 9 of Part 27 of the Education Code.....	1,017,000
6110-201-0890—For local assistance, Department of Education, Program 30.20-Child Nutrition, payable from the Federal Trust Fund.....	2,202,181,000
Schedule:	
(1) 30.20.010-Child Nutrition Programs..... 2,173,181,000	
(2) 30.20.040-Summer Food Service Program..... 29,000,000	
Provisions:	
1. Of the amount appropriated in Schedule (1), $11,973,000 is provided on a one-time basis for Fresh Fruit and Vegetable Program grants to local educational agencies.	
6110-202-0001—For local assistance, Department of Education, Program 30.20.010-Child Nutrition Programs.....	10,422,000
Provisions:	
1. Funds appropriated are for child nutrition programs pursuant to Section 41311 of the Education Code. Claims for reimbursement of meals pursuant to this appropriation shall be submitted no later than September 30, 2012, to be eligible for reimbursement.	
2. Funds appropriated shall be available for allocation in accordance with Section 49536 of the Education Code, except that the allocation shall not be made based on all meals served, but based on the number of meals that are served and that qualify as free or reduced-price meals in accordance with Sections 49501, 49550, and 49552 of the Education Code.	
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.	

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6110-203-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition Programs, established pursuant to Sections 41311, 49501, 49536, 49550, 49552, and 49559 of the Education Code..... 155,232,000

Schedule:

(1) 30.20.010-Child Nutrition Programs..... 155,574,000

(2) Reimbursements..... −342,000

Provisions:

1. Funds appropriated in Schedule (1) shall be allocated pursuant to Section 41311 of the Education Code. Claims for reimbursement of meals pursuant to this allocation shall be submitted by school districts on or before September 30, 2012, to be eligible for reimbursement.
2. Funds designated for child nutrition programs in Schedule (1) shall be allocated in accordance with Section 49536 of the Education Code; however, the allocation shall be based not on all meals served, but on the number of meals that are served and that qualify as free or reduced-price meals in accordance with Sections 49501, 49550, and 49552 of the Education Code.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. If the appropriation in this item is insufficient to fully fund all eligible reimbursement claims pursuant to Section 49430.5 of the Education Code, the State Department of Education shall reimburse eligible claims at a prorated share of the funds appropriated in this item.
5. The State Department of Education shall notify the Department of Finance in writing 30 days prior to paying prior year reimbursement claims from this item pursuant to Section 16304.1 of the Government Code. No reimbursements shall be made prior to final approval of the Department of Finance.
6. Of the funds appropriated in this item, $3,700,000 is for the purpose of providing a growth adjustment due to an increase in the projected number of meals served.

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6110-204-0001—For local assistance, Department of Education (Proposition 98), Program 20-Instructional Support for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction.....	72,752,000
Provisions: 1. The funds appropriated in this item are available to assist eligible pupils, pursuant to Section 37254 of the Education Code, who are required to pass the California High School Exit Examination in order to receive a diploma. 2. Of the amount appropriated in this item, $0 is to reflect a cost-of-living adjustment. 3. The per-pupil amount for grade 12 may not exceed $520 in the 2011–12 fiscal year. 4. The funds in this item shall be allocated by the State Department of Education as specified in this item no later than October 1 of each fiscal year. 5. The amount appropriated in this item shall be reduced pursuant to Section 12.42.	
6110-208-0001—For local assistance, Department of Education (Proposition 98), Program 20, for transfer to Section A of the State School Fund, for allocation to the Center for Civic Education.....	250,000
Provisions: 1. The funds appropriated in this item are for the purpose of implementing a middle school and junior high school civic education program at participating schools. 2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.	
6110-209-0001—For local assistance, Department of Education (Proposition 98), Program 10.10.090.002-Teacher Dismissal Apportionments, for transfer to Section A of the State School Fund and allocation by the Controller for payment of claims received pursuant to Section 44944 of the Education Code....	48,000
Provisions: 1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment. 2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.	

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Provisions:

1. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-150-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.051-American Indian Early Childhood Education Program established pursuant to former Chapter 6.5 (commencing with Section 52060) of Part 28 of Division 4 of Title 2 of the Education Code..... 662,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-151-0001—For support of Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.50-California American Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of Division 2 of Title 2 of the Education Code..... 4,916,000

Provisions:

1. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-156-0001—For local assistance, Department of Education (Proposition 98), Program 10.50.010-Instruction, for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 745,978,000

Schedule:

(1) 10.50.010.001-Adult Education.... 745,978,000
(2) 10.50.010.008-Remedial education services for participants in the CalWORKs program..... 8,739,000
(3) Reimbursements-CalWORKs..... −8,739,000

Provisions:

1. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days in which the pupil has

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met the minimum day requirements set forth in Section 46141 of the Education Code.

2. The funds appropriated in Schedule (2) constitute the funding for both remedial education and job training services for participants in the CalWORKs program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code). Funds shall be apportioned by the Superintendent of Public Instruction for direct instructional costs only to school districts and regional occupational centers and programs (ROC/Ps) that certify that they are unable to provide educational services to CalWORKs recipients within their adult education block entitlement or ROC/P block entitlement, or both. Allocations shall be distributed by the Superintendent of Public Instruction as equal statewide dollar amounts, based on the number of CalWORKs-eligible family members served in the county.
3. Providers receiving funds under this item for adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall, to the extent possible, grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). Citizenship and naturalization preparation services funded by this item shall include, to the extent consistent with applicable federal law, all of the following: (a) outreach services, (b) assessment of skills, (c) instruction and curriculum development, (d) professional development, (e) citizenship testing, (f) naturalization preparation and assistance, and (g) regional and state coordination and program evaluation.
4. The funds appropriated in Schedule (2) shall be subject to the following:
   (a) The funds shall be used only for educational activities for welfare recipient pupils and those in transition off of welfare. The educational activities shall be limited to those designed to increase self-sufficiency, job training, and work. These funds shall be used to supplement and not supplant existing

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funds and services provided for welfare recipient pupils and those in transition off of welfare.

(b) Notwithstanding any other provision of law, each local educational agency's individual cap for the average daily attendance of adult education and regional occupational centers and programs (ROC/Ps) shall not be increased as a result of the appropriations made by this item.

(c) Funds may be claimed by local educational agencies for services provided to welfare recipient pupils and those in transition off of welfare pursuant to this section only if all of the following occur:

(1) Each local educational agency has met the terms of the interagency agreement between the State Department of Education and the State Department of Social Services pursuant to Provision 2.

(2) Each local educational agency has fully claimed its respective adult education or ROC/Ps average daily attendance cap for the current year.

(3) Each local educational agency has claimed the maximum allowable funds available under the interagency agreement pursuant to Provision 2.

(d) Each local educational agency shall be reimbursed at the same rate as it would otherwise receive for services provided pursuant to this item or Item 6110-105-0001 or pursuant to Section 1.80, and shall comply with the program requirements for adult education pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of Division 4 of Title 2 of the Education Code, and ROC/Ps requirements pursuant to Article 1 (commencing with Section 52300) of, and Article 1.5 (commencing with Section 52335) of, Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code, respectively.

(e) Notwithstanding any other provision of law, funds appropriated in this section for average daily attendance (ADA) generated by participants in the CalWORKs program may be apportioned on an advance basis to local

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educational agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.	
(f) The State Department of Education shall maintain a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs and regional occupational centers and programs. The system shall collect information on (1) program funding levels and sources, (2) characteristics of participants, and (3) pupil and program outcomes. The department shall meet all information technology reporting requirements of the State Chief Information Officer.	
(g) As a condition of receiving funds provided in Schedule (2) or any General Fund appropriation made to the State Department of Education specifically for education and training services to welfare recipient pupils and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this item and as required by the State Department of Education. The State Department of Education shall require that local providers submit to the state aggregate data for the period July 1, 2012, to June 30, 2013, inclusive.	
5. An additional $45,896,000 in expenditures for this item has been deferred until the 2013–14 fiscal year.	
6. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.	
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.	
6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust Fund.....	91,296,000

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Provisions:

1. The State Department of Education shall reimburse claims on a quarterly basis from qualifying community-based organizations that provide adult basic education under this item.
2. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (non-LEA) receiving greater than $500,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.

   All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California, (2) a member of the department's staff of auditors, or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Government Auditing Standards issued by the Comptroller General of the United States.

   The audit shall be in accordance with State Department of Education audit guidelines and Office of Management and Budget (OMB), Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

   Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the audit shall cover the period from the beginning of the contract through the date of termination.

   Non-LEA entities receiving funds pursuant to this item shall be held liable for all department costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

   (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legisla-

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tive Audit Committee limited-scope audit reports of all subrecipients it is responsible for monitoring that receive between $25,000 and $500,000 of federal awards, and that do not have an organizationwide audit performed. These limited-scope audits shall be conducted in accordance with the State Department of Education audit guidelines and OMB, Circular No. A-133. The department may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited-scope audits shall include agreed-upon procedures engagements conducted in accordance with either American Institute of Certified Public Accountants (AICPA) generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities, allowable costs and cost principles, eligibility, matching, level of effort, earmarking, and reporting.

The department shall contract for the limited-scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

3. On or before March 1 of each year, the State Department of Education shall report to the appropriate subcommittees of the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review on the following aspects of Title II of the federal Workforce Investment Act of 1998 (P.L. 105-220): (a) the makeup of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school districts, community colleges, community-based organizations, or other local entities), (b) the extent to which participating programs were able to meet planned performance targets, and (c) a breakdown of the types of courses (English as a Second Language (ESL), ESL-Citizenship, adult basic education, or adult secondary education) included in the performance targets of participating agencies.

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4. The State Department of Education shall continue to ensure that outcome measures for State Department of State Hospitals and State Department of Developmental Services clients are set at a level where these clients will continue to be eligible for adult education services in the current fiscal year and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the State Department of State Hospitals, State Department of Developmental Services, and Department of Finance for this purpose.
5. Of the funds appropriated in this item, $5,594,000 is provided in one-time carryover funds to support the existing program.

6110-158-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund in lieu of the amount that otherwise would be appropriated pursuant to Section 41841.5 of the Education Code, Program 10.50.010.002-Adults in Correctional Facilities..... 18,670,000

Provisions:

1. Notwithstanding Section 41841.5 of the Education Code, or any other provision of law, all of the following shall apply:
   (a) The amount appropriated in this item and any amount allocated for this program in this act shall be the only funds available for allocation by the Superintendent of Public Instruction to school districts or county offices of education for the Adults in Correctional Facilities Program.
   (b) The amount appropriated in this item shall be allocated based upon prior year rather than current year expenditures.
   (c) Funding distributed to each local educational agency (LEA) for reimbursement of services provided in the prior fiscal year for the Adults in Correctional Facilities Program shall be limited to the amount received by the agency for services provided in the 2009–10 fiscal year. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the prior fiscal year, as compared to the level of ser-

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vices provided in the 2009–10 fiscal year. Any funds remaining as a result of those decreased levels of service shall be allocated to provide support for new programs in accordance with Section 41841.8 of the Education Code.

(d) Funding appropriated in this item for growth in average daily attendance (ADA) first shall be allocated to programs that are funded for 20 units or less of ADA, up to a maximum of 20 additional units of ADA per program.

2. Of the funds appropriated in this item, $0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $0 is to reflect a cost-of-living adjustment.

3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-161-0001—For local assistance, Department of Education (Proposition 98), Program 10.60-Special Education Programs for Exceptional Children..... 3,226,560,000

Schedule:

(1) 10.60.050.003-Special education instruction..... 3,180,260,000

(2) 10.60.050.080-Early Education Program for Individuals with Exceptional Needs..... 60,695,000

(3) Reimbursements for Early Education Program, Part C..... −14,395,000

Provisions:

1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 2012–13 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, superseding all prior law.

2. Of the funds appropriated in Schedule (1), up to $13,208,000, plus any cost-of-living adjustment, shall be available for the purchase, repair, and inventory maintenance of specialized books,

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materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.

3. Of the funds appropriated in Schedule (1), up to $10,081,000, plus any cost-of-living adjustment, shall be available for the purposes of vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of Division 4 of Title 2 of the Education Code. As a condition of receiving these funds, each local educational agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision of vocational education for special education pupils shall be maintained at or above the level provided in the 1984–85 fiscal year. The Superintendent of Public Instruction may waive this requirement for local educational agencies that demonstrate that the requirement would impose a severe hardship.
4. Of the funds appropriated in Schedule (1), up to $5,258,000, plus any cost-of-living adjustment (COLA), shall be available for regional occupational centers and programs that serve pupils having disabilities; up to $88,657,000, plus any COLA, shall be available for regionalized program specialist services; and up to $2,699,000, plus any COLA, shall be available for small special education local plan areas (SELPAs) pursuant to Section 56836.24 of the Education Code.
5. Of the funds appropriated in Schedule (1), up to $3,000,000 is provided for extraordinary costs associated with single placements in nonpublic, nonsectarian schools, pursuant to Section 56836.21 of the Education Code. Pursuant to legislation, these funds shall also provide reimbursement for costs associated with pupils residing in licensed children's institutes.
6. Of the funds appropriated in Schedule (1), up to $158,108,000, plus any cost-of-living adjustment (COLA), is available to fund the costs of children placed in licensed children's institutions who attend nonpublic schools based on the

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funding formula authorized in Chapter 914 of the Statutes of 2004.

7. Funds available for infant units shall be allocated with the following average number of pupils per unit:
   (a) For special classes and centers—16.
   (b) For resource specialist programs—24.
   (c) For designated instructional services—16.
8. Notwithstanding any other provision of law, early education programs for infants and toddlers shall be offered for 200 days. Funds appropriated in Schedule (2) shall be allocated by the State Department of Education for the 2012–13 fiscal year to those programs receiving allocations for instructional units pursuant to Section 56432 of the Education Code for the Early Education Program for Individuals with Exceptional Needs operated pursuant to Chapter 4.4 (commencing with Section 56425) of Part 30 of Division 4 of Title 2 of the Education Code, based on computing 200-day entitlements. Notwithstanding any other provision of law, funds in Schedule (2) shall be used only for the purposes specified in Provisions 10 and 11.
9. Notwithstanding any other provision of law, state funds appropriated in Schedule (2) in excess of the amount necessary to fund the deficited entitlements pursuant to Section 56432 of the Education Code and Provision 10 shall be available for allocation by the State Department of Education to local educational agencies for the operation of programs serving solely low-incidence infants and toddlers pursuant to Title 14 (commencing with Section 95000) of the Government Code. These funds shall be allocated to each local educational agency for each solely low-incidence child through age two in excess of the number of solely low-incidence children through age two served by the local educational agency during the 1992–93 fiscal year and reported on the April 1993 pupil count. These funds shall only be allocated if the amount of reimbursement received from the State Department of Developmental Services is insufficient to fully fund the costs of operating the Early Intervention Program, as authorized by Title 14

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(commencing with Section 95000) of the Government Code.

10. The State Department of Education, through coordination with the special education local plan areas, shall ensure local interagency coordination and collaboration in the provision of early intervention services, including local training activities, child-find activities, public awareness, and the family resource center activities.
11. Funds appropriated in this item, unless otherwise specified, are available for the sole purpose of funding 2012–13 fiscal year special education program costs and shall not be used to fund any prior year adjustments, claims, or costs.
12. Of the amount provided in Schedule (1), up to $188,000, plus any cost-of-living adjustment, shall be available to fully fund the declining enrollment of necessary small special education local plan areas pursuant to Chapter 551 of the Statutes of 2001.
13. Pursuant to Section 56427 of the Education Code, of the funds appropriated in Schedule (1), up to $2,324,000 may be used to provide funding for infant programs, and may be used for those programs that do not qualify for funding pursuant to Section 56432 of the Education Code.
14. Of the funds appropriated in Schedule (1), up to $29,478,000 shall be allocated to local educational agencies for the purposes of Project Workability I.
15. Of the funds appropriated in Schedule (1), up to $1,700,000 shall be used to provide specialized services to pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
16. Of the funds appropriated in Schedule (1), up to $1,117,000 shall be used for a personnel development program. This program shall include state-sponsored staff development for special education personnel to have the necessary content knowledge and skills to serve children with disabilities. This funding may include training and services targeting special education teachers and related service personnel that teach core academic or multiple subjects to meet the applicable special education requirements of the fed-

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eral Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

17. Of the funds appropriated in Schedule (1), up to $200,000 shall be used for research and training in cross-cultural assessments.
18. Of the amount appropriated in this item, up to $1,480,000 is available for the state's share of costs in the settlement of Emma C. v. Delaine Eastin, et al. (N.D. Cal. No. C96-4179TEH). The State Department of Education shall report by January 1, 2013, to the fiscal committees of both houses of the Legislature, the Department of Finance, and the Legislative Analyst's Office on the planned use of the additional special education funds provided to the Ravenswood Elementary School District pursuant to this settlement. The report shall also provide the State Department of Education's best estimate of when this supplemental funding will no longer be required by the court. The State Department of Education shall comply with the requirements of Section 948 of the Government Code in any further request for funds to satisfy this settlement.
19. Of the funds appropriated in this item, up to $2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of paragraph (14) of subdivision (a) of Section 612 of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Section 2122 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.). The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local medi-

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ation of disputes. All programs are to include evaluation components.

20. Notwithstanding any other provision of law, state funds appropriated in Schedule (1) in excess of the amount necessary to fund the defined entitlement shall be to fulfill other shortages in entitlements budgeted in this schedule by the State Department of Education, upon Department of Finance approval, to any program funded under Schedule (1).
21. Of the funds appropriated in Schedule (1), the amount resulting from increases in federal funds reflected in the calculation performed in paragraph (1) of subdivision (c) of Section 56836.08 of the Education Code shall be allocated based on an equal amount per average daily attendance and added to each special education local plan area's base funding, consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code. When the final amount is determined, the State Department of Education shall provide this information to the Department of Finance and the budget committees of each house of the Legislature.
22. Of the amount specified in Schedule (1), $321,885,000 shall be available only to provide educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas in the 2012–13 fiscal year based upon an equal rate per pupil using the methodology specified in Section 56836.07 of the Education Code.
23. Of the amount specified in Schedule (1), up to $3,000,000 shall be made available to the Superintendent of Public Instruction, in collaboration with the Department of Finance and the Legislative Analyst, and subject to approval by the Department of Finance, to administer an extraordinary cost pool associated with educationally related mental health services, including out-of-

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home residential services for emotionally disturbed pupils, for necessary small special education local plan areas as defined in Section 56212 of the Education Code.

24. The funds appropriated in this item reflect an adjustment to the base funding of 0 percent for the annual adjustment in statewide average daily attendance.
25. Of the amount provided in Schedule (1), $0 is to reflect a cost-of-living adjustment.
26. Of the amount provided in Schedule (2), $0 is to reflect a cost-of-living adjustment.
27. Of the funds appropriated in Schedule (1), $51,750,000 shall be available only for the purpose of providing educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas on a one-time basis in the 2012–13 fiscal year as follows:
    (a) The Superintendent of Public Instruction shall allocate these funds to each special education local plan area using data available from the California Special Education Management Information System (CASEMIS) as of December 1, 2010. Each special education local plan area shall receive funding in an amount equal to the applicable of the following:
        (1) $3,607 for each pupil whose individualized education program requires one or more of the following educationally related mental health services: individual counseling, counseling and guidance, parent counseling, social work services, or behavior intervention services.
        (2) Twice the amount specified in paragraph (1) for each pupil whose individualized education program requires psychological services.
        (3) Four times the amount specified in paragraph (1) for each pupil whose indi-

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vidualized education program requires day treatment services.

(4) Nine times the amount specified in paragraph (1) for each pupil whose individualized education program requires mental health related residential treatment services.

(b) The Superintendent of Public Instruction shall count individual pupils in only one of the four categories set forth in paragraphs (1) to (4), inclusive, of subdivision (a), based on the most intensive level of services required by the pupil's individualized education program.

(c) If the overall funding allocation is insufficient to fully fund the amount set forth in subdivision (a), or if there is excess funding available, the Superintendent of Public Instruction shall adjust the amount specified in paragraph (1) of subdivision (a), and the corresponding amounts specified in paragraphs (2) to (4), inclusive, of subdivision (a), in order to match the full allocation.

(d) It is the intent of the Legislature that any funds appropriated for the 2013–14 fiscal year for the purpose of providing the educationally related mental health services identified in this provision shall be allocated based on an equal rate per pupil using a methodology specified in Section 56836.07 of the Education Code and using average daily attendance for the 2012–13 fiscal year.

6110-161-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, Program 10.60-Special Education Programs for Exceptional Children..... 1,235,823,000

Schedule:

(1) 10.60.050.012-Local Agency Entitlements, IDEA Special Education..... 1,047,814,000

(2) 10.60.050.013-State Agency Entitlements, IDEA Special Education.... 1,759,000

(3) 10.60.050.015-IDEA, Local Entitlements, Preschool Program..... 67,066,000

(4) 10.60.050.021-IDEA, State Level Activities..... 76,768,000

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(5) 10.60.050.030-P.L. 99-457, Preschool Grant Program..... 36,117,000
(6) 10.60.050.031-IDEA, State Improvement Grant, Special Education..... 3,405,000
(7) 10.60.050.032-IDEA, Family Empowerment Centers..... 2,794,000
(8) 20.80.002-Supplemental Grants: Newborn Hearing Grant..... 100,000

Provisions:

2. The funds appropriated in Schedule (2) shall be distributed to state-operated programs serving disabled children from 3 to 21 years of age, inclusive. In accordance with federal law, the funds appropriated in Schedules (1) and (2) shall be distributed to local and state agencies on the basis of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) permanent formula.
3. Of the funds appropriated in Schedule (4), up to $300,000 shall be used to develop and test procedures, materials, and training for alternative dispute resolution in special education.
4. Of the funds appropriated by Schedule (5) for the Preschool Grant Program, $1,228,000 shall be used for in-service training and shall include a parent training component and may, in addition, include a staff training program. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. This program shall include state-sponsored and local components.
5. Of the funds appropriated in this item, $1,420,000 is available for local assistance grants to monitor local educational agency compliance with state and federal laws and regulations governing special education. This funding level is to be used to continue the facilitated reviews and, to the extent consistent with the key performance indicators developed by the State Department of Education, these activities shall focus on local educational agencies identified by the United States Department of Education's Office of Special Education Programs.
6. The funds appropriated in Schedule (7) shall be used for the purposes of Family Empowerment

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Centers on Disability pursuant to Chapter 690 of the Statutes of 2001.

7. Notwithstanding the notification requirements listed in subdivision (d) of Section 26.00, the Department of Finance is authorized to approve intraschedule transfers of funds within this item submitted by the State Department of Education for the purposes of ensuring that special education funding provided in this item is appropriated in accordance with the statutory funding formula required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the special education funding formula required pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of Division 4 of Title 2 of the Education Code, without waiting 30 days, but shall provide a notice to the Legislature each time a transfer occurs.
8. Of the funds appropriated in Schedule (4), $46,554,000 shall be available only for the purpose of providing educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act of 2004 (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas in the 2012–13 fiscal year based upon an equal rate per pupil using the methodology specified in Section 56836.07 of the Education Code.
9. Of the funds appropriated in Schedule (6), $2,192,000 is provided for scientifically based professional development as part of the State Personnel Development grant.
10. Of the funds appropriated in Schedule (4), up to $3,894,000 shall be available for transfer to the State Special Schools for student transportation allowances. However, of these funds, the State Department of Education (SDE) shall obtain written approval from the Department of Finance prior to spending $924,000 to address transportation contract increases resulting from fuel and insurance costs. The Department of Finance shall

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act within 30 days of receiving justification from the SDE for the increased costs.

11. Of the funds appropriated in Schedule (4), $24,600,000 shall be available to provide educationally related occupational and physical therapy services required by an individualized education program pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and as described in Section 56363 of the Education Code. The Superintendent of Public Instruction shall allocate these funds to special education local plan areas based on an equal rate per pupil using the methodology specified in Section 56836.07 of the Education Code.
12. Of the funds appropriated in Schedule (4), up to $2,154,000 shall be available in a one-time federal Individuals with Disabilities Education Act (IDEA) carryover.
13. Of the funds appropriated in Schedule (6), $1,213,000 is available in one-time carryover funds to support the state personnel development contract with the Napa County Office of Education.

6110-162-0001—For local assistance, Department of Education (Proposition 98), for early mental health services pursuant to Part 4 (commencing with Section 4370) of Division 4 of the Welfare and Institutions Code..... 15,000,000

Provisions:

1. Notwithstanding any other provision of law, priority for allocating funds pursuant to this item shall be for local education agencies that have not previously received grant funding for this program.

6110-166-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund for purposes of Article 5 (commencing with Section 54690) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code, Partnership Academies Program..... 26,730,000

Schedule:

(1) 10.70.070.001-California Partnership Academies..... 23,490,000
(2.5) 10.70.070.003-"Clean" Technology Partnership Academies..... 3,240,000

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Provisions:

1. If there are any funds in this item that are not allocated for planning or operational grants, the State Department of Education may allocate those remaining funds as one-time grants to state-funded partnership academies to be used for one-time purposes.
2. The State Department of Education shall not authorize new partnership academies without the approval of the Department of Finance and 30-day notification to the Joint Legislative Budget Committee.
3. Notwithstanding Provisions 1 and 2, the funds appropriated in Schedule (2.5) shall be available consistent with Article 5.5 (commencing with Section 54698) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-166-0890—For local assistance, Department of Education, Program 10.70-Vocational Education, payable from the Federal Trust Fund..... 119,803,000

Provisions:

1. The funds appropriated in this item include federal Carl D. Perkins Career and Technical Education Act of 2006 (P.L. 109-270) funds for the current fiscal year to be transferred to the community colleges by means of interagency agreements for the purpose of funding career technical education programs in community colleges.
2. The State Board of Education and the Board of Governors of the California Community Colleges shall target funds appropriated by this item to provide services to persons participating in welfare-to-work activities under the CalWORKs program.
3. The Superintendent of Public Instruction shall report, not later than February 1 of each year, to the Joint Legislative Budget Committee and the Director of Finance, describing the amount of carryover funds from this item, reasons for the carryover, and plans to reduce the amount of carryover.
4. Of the funds appropriated in this item, $6,960,000 is provided in one-time carryover funds to support the existing program.

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6110-167-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.70-Agricultural Career Technical Education Incentive Program established pursuant to Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28 of Division 4 of Title 2 of the Education Code..... 5,157,000

Provisions:

1. As a condition of receiving funds appropriated in this item, a school district shall certify to the Superintendent of Public Instruction both of the following:
   (a) Agricultural Career Technical Education Incentive Program funds shall be expended for the items identified in its application, except that, in items of expenditure classification 4000, only the total cost of expenses shall be required and itemization shall not be required.
   (b) The school district shall provide at least 50 percent of the cost of the items and costs from expenditure classification 4000, as identified in its application, from other funding sources. This provision does not limit the authority of the Superintendent of Public Instruction to waive the local matching requirement established by subdivision (b) of Section 52461.5 of the Education Code.
2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for an adjustment in statewide average daily attendance.
3. Of the amount appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-170-0001—For local assistance, Department of Education, pursuant to Section 88532 of the Education Code..... 0

Schedule:

(1) 20.40.800-Career Technical Education..... 16,865,000
(2) Reimbursements..... −16,865,000

Provisions:

1. Funding in this item shall be provided from the Quality Education Investment Act, in accordance

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with Section 52055.770 of the Education Code, pursuant to an interagency agreement between the Office of the Chancellor of the California Community Colleges and the State Department of Education.

2. Funds appropriated in this item are for the purpose of aligning career-technical education curriculum between K–12 and community colleges in targeted industry-driven programs. Prior to the allocation of these funds, the Chancellor of the California Community Colleges, in conjunction with the State Department of Education, shall submit a proposed expenditure plan for the funds contained in this item, and the rationale therefor, to the Department of Finance by August 1 of each year for approval.
3. The amounts in this item may be adjusted by budget revision to conform to the interagency agreement between the Chancellor of the California Community Colleges and the Department of Education if approved by the Department of Finance.
4. Of the funds appropriated in this item, $1,865,000 reflects one-time reimbursement carryover funds to support the existing program.

6110-181-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.10.025-Educational Technology, programs funded pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28 of Division 4 and Chapter 3.34 (commencing with Section 44730) of Part 25 of Division 3 of Title 2 of the Education Code..... 17,555,000

Provisions:

1. As a part of the support system authorized by paragraph (5) of subdivision (a) of Section 51871 of the Education Code, the California Technology Assistance Project regional consortia shall assist school districts in using pupil achievement data to inform instruction and improve pupil learning. The regional consortia shall also support the identification and dissemination of best practices in the area of data-driven instructional improvement.
2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent

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for the annual adjustment in statewide average daily attendance.	
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.	
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.	
6110-181-0140—For local assistance, Department of Education, payable from the California Environmental License Plate Fund, for purposes of Section 21190 of the Public Resources Code.....	360,000
Schedule:	
(1) 20.10.055-Environmental Education..... 548,000	
(2) Reimbursements..... −188,000	
6110-182-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.20.030-K–12 High-Speed Network.....	10,404,000
Provisions:	
1. Expenditure authority of no greater than $15,600,000 is provided for the K–12 High-Speed Network.	
(a) Of the amount authorized for expenditure in this provision, $1,300,000 of unexpended cash reserves from the following appropriations are available to continue management and operation of the network during the 2012–13 fiscal year: Item 6440-001-0001, Schedule (a), Provision 44 of Chapter 52 of the Statutes of 2000; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 106 of the Statutes of 2001; Item 6440-001-0001, Schedule (1), Provision 24 of Chapter 379 of the Statutes of 2002; Item 6440-001-0001, Schedule (1), Provision 22 of Chapter 157 of the Statutes of 2003; and Item 6110-182-0001, Chapter 208 of the Statutes of 2004.	
(b) Of the amount authorized for expenditure in this provision, $4,600,000 shall be funded by E-rate and California Teleconnect Fund moneys. The lead educational agency or the Corporation for Education Network Initiatives in California (CENIC), or both, shall submit quarterly reports to the Department of Finance and the Legislature on funds received from E-rate and the California Teleconnect Fund.	

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(c) For the 2012–13 fiscal year, all major subcontracts of the K–12 High-Speed Network program shall be excluded from both the eligible program costs on which indirect costs are charged and from the calculation of the indirect cost rate based on that year's data. For purposes of this provision, a major subcontract is defined as a subcontract for services in an amount in excess of $25,000.

2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-183-0890—For local assistance, Department of Education, Program 20.10.045-Safe and Drug Free Schools and Communities Act (Part A of Title IV of P.L. 107-110), payable from the Federal Trust Fund..... 9,990,000

Provisions:

1. The funds appropriated in this item are made available through the three-year Safe and Supportive Schools Grant for the purpose of helping schools improve safety and reduce substance use. The State Department of Education shall allocate these funds in a manner consistent with the state's approved application for these funds and with federal regulations.
2. Of the funds appropriated in this item, $475,000 is provided in one-time carryover funds to support the existing program.

6110-188-0001—For local assistance, Department of Education (Proposition 98), Program 10.10-School Apportionments Deferred Maintenance, for transfer to the State School Deferred Maintenance Fund..... 312,888,000

Provisions:

1. The funds appropriated in this item shall be transferred to the State School Deferred Maintenance Fund and are available for funding applications received by the Department of General Services, Office of Public School Construction for the purpose of payments to school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.
2. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

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6110-189-0001—For local assistance, Department of Education (Proposition 98), Program 20.20.020.005-Instructional Support, for transfer to State Instructional Materials Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33 of Division 4 of Title 2 of the Education Code (Instructional Materials Block Grant)..... 416,254,000

Provisions:

1. The funds in this item shall be allocated to school districts to purchase standards-aligned instructional materials.
2. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-190-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.10.021-School Apportionments, Community Day Schools established pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27 of Division 4 of Title 2 of the Education Code..... 47,248,000

Provisions:

1. Funds appropriated in this item shall not be available for the purposes of Section 41972 of the Education Code.
2. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
3. An additional $4,751,000 in expenditures for this item has been deferred until the 2013–14 fiscal year.
4. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60-Staff Development..... 32,380,000

Schedule:

(1) 20.60.070-Instructional Support: Bilingual Teacher Training Assistance Program..... 2,131,000

(2) 20.60.060-Instructional Support: Teacher Peer Review..... 29,848,000

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(3) 20.60.110-Instructional Support: Improving School Effectiveness-Reader Services for Blind Teachers..... 401,000

Provisions:

1. The amount appropriated in Schedule (1) shall be allocated for the purposes of the Bilingual Teacher Training Assistance Program established by Article 4 (commencing with Section 52180) of Chapter 7 of Part 28 of Division 4 of Title 2 of the Education Code.
2. The amount appropriated in Schedule (3) shall be allocated for the purposes of the Reader Services for Blind Teachers Program, for transfer to the Reader Employment Fund established by Section 45371 of the Education Code for the purposes of Section 44925 of the Education Code.
3. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance.
4. Of the funds appropriated in Schedule (1), $0 is to reflect a cost-of-living adjustment.
5. The funds appropriated in Schedule (2) shall be allocated in accordance with Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code. If the funds are insufficient to fully fund growth in this program, the State Department of Education may adjust the per-participant rate to conform to available funds. Funds appropriated in Schedule (2) include $0 to reflect a cost-of-living adjustment.
6. Of the funds appropriated in Schedule (3), $0 is to reflect a cost-of-living adjustment.
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-193-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part B of Title II of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6661 et seq.; Mathematics and Science Partnership Grants) payable from the Federal Trust Fund..... 18,683,000

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Provisions:

1. Of the funds appropriated in this item, $1,700,000 is provided in one-time carryover funds to support the existing program.

6110-194-0001—For local assistance, Department of Education, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for child care and development programs included in this item, in lieu of the amount that otherwise would be appropriated pursuant to any other statute..... 800,603,000

Schedule:

(1.5) 30.10.020-Child Care Services..... 1,359,885,000

(a) 30.10.020.001-Special Program, Child Development, General Child Development Programs.... 481,618,000

(c) 30.10.020.004-Special Program, Child Development, Migrant Day Care..... 26,993,000

(d) 30.10.020.007-Special Program, Child Development, Alternative Payment Program..... 201,004,000

(e) 30.10.020.011-Special program, Child Development Alternative Payment Program—Stage 2.... 419,286,000

(f) 30.10.020.012-Special program, Child Development Alternative Payment Program—Stage 3 Setaside..... 153,758,000

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(g) 30.10.020.008-Special Program, Child Development, Resource and Referral..... 18,688,000
(j) 30.10.020.096-Special Program, Child Development, Allowance for Handicapped..... 1,504,000
(k) 30.10.020.106-Special Program, Child Development, California Child Care Initiative..... 225,000
(*l*) 30.10.020.901-Special Program, Child Development, Quality Improvement..... 49,490,000
(n) 30.10.020.920-Special Program, Child Development, Local Planning Councils..... 3,319,000
(o) 30.10.020.014-Special Program, Child Development, Accounts Payable..... 4,000,000

(3) Amount payable from the Federal Trust Fund (Item 6110-194-0890)..... −559,282,000

Provisions:

1. Funds in Schedule (1.5)(*l*) shall be reserved for activities to improve the quality and availability of child care, pursuant to the following:
   (a) $2,085,639 is for the schoolage care and resource and referral earmark.
   (b) $11,698,772 is for the infant and toddler earmark and shall be used for increasing the supply of quality child care for infants and toddlers.
   (c) $3,014,000 in one-time federal funding is available for use in the 2012–13 fiscal year. These funds shall be used for child care and development quality expenditures identified

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by the State Department of Education and approved by the Department of Finance.

(d) From the remaining funds in Schedule (1.5)(*l*), the following amounts shall be allocated for the following purposes: $8,000,000 from federal funds for contracting with the State Department of Social Services for increased inspections of child care facilities; $960,000 for Trustline registration workload (Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code); and $455,000 for health and safety training for licensed and exempt child care providers. Of the amounts specified in this provision, first priority shall be to fully fund Trustline registration workload as determined by the State Department of Social Services in conjunction with the State Department of Education.

3. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance-of-effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.

4. Notwithstanding Section 8278.3 of the Education Code or any other provision of law, up to $5,000,000 of the Child Care Facilities Revolving Fund balance may be allocated for use on a one-time basis for renovations and repairs to meet health and safety standards, to comply with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and to perform emergency repairs, that were the result of an unforeseen event and are necessary to maintain continued normal operation of the child care and development program. These funds shall be made available to school districts and contracting agencies that provide subsidized center-based services pursuant to the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code).

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5. Notwithstanding any other provision of law, funds in Schedule (1.5)(o) are available for accounts payable for alternative payment programs for actual and allowable costs incurred for additional services, pursuant to Section 8222.1 of the Education Code. The State Department of Education shall give priority for the allocation of these funds for accounts payable.
6. The amounts provided in Schedules (1.5)(a), (1.5)(c), (1.5)(d), and (1.5)(j) of this item reflect an adjustment to the base funding of −0.25 percent for an increase in the population of 0–4 year-olds.
7. The maximum standard reimbursement rate shall not exceed $34.38 per day for general child care programs. Furthermore, the migrant child care and Cal-SAFE child care programs shall adhere to the maximum standard reimbursement rates as prescribed for the general child care programs. All other rates and adjustment factors shall conform.
8. (a) Alternative payment child care programs shall be subject to the rate ceilings established in the Regional Market Rate Survey of California child care and development providers for provider payments. When approved pursuant to Section 8447 of the Education Code, any changes to the market rate limits, adjustment factors, or regions shall be utilized by the State Department of Education, the California Community Colleges, and the State Department of Social Services in various programs under the jurisdiction of these departments.
   (b) The funds appropriated in this item for the cost of licensed child care services provided through alternative payment or voucher programs, including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, shall be used only to reimburse child care costs up to the 85th percentile of the rates charged by providers offering the same type of child care for the same age child in that region,

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based on the 2005 Regional Market Rate Survey data.

(c) The funds appropriated in this item for the cost of license-exempt child care services provided through alternative payment or voucher programs, including those provided under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, shall be used only to reimburse license-exempt child care costs up to 60 percent of the regional reimbursement rate limits established for family child care homes.

9. Of the amount appropriated in Schedule (1.5)(*l*), $10,750,000 shall be for child care worker recruitment and retention programs pursuant to Section 8279.7 of the Education Code, and $291,000 shall be for the Child Development Training Consortium.

10. (a) The State Department of Education (SDE) shall conduct monthly analyses of CalWORKs Stage 2 and Stage 3 caseloads and expenditures and adjust agency contract maximum reimbursement amounts and allocations as necessary to ensure funds are distributed proportionally to need. The SDE shall share monthly caseload analyses with the State Department of Social Services (DSS).

(b) The SDE shall provide quarterly information regarding the sufficiency of funding for Stage 2 and Stage 3 to DSS. The SDE shall provide caseloads, expenditures, allocations, unit costs, family fees, and other key variables and assumptions used in determining the sufficiency of state allocations. Detailed backup by month and on a county-by-county basis shall be provided to the DSS at least on a quarterly basis for comparisons with Stage 1 trends.

(c) By September 30 and March 30 of each year, the SDE shall ensure that detailed caseload and expenditure data, through the most recent period for Stage 2 and Stage 3 along with all relevant assumptions, is provided to DSS to facilitate budget develop-

ment. The detailed data provided shall include actual and projected monthly caseload from Stage 2 scheduled to time off of their transitional child care benefit from the last actual month reported by agencies through the next two fiscal years as well as local attrition experience. DSS shall utilize data provided by the SDE, including key variables from the prior fiscal year and the first two months of the current fiscal year, to provide coordinated estimates in November of each year for each of the three stages of care for preparation of the Governor's Budget, and shall utilize data from at least the first two quarters of the current fiscal year, and any additional monthly data as they become available for preparation of the May Revision. The DSS shall share its assumptions and methodology with the SDE in the preparation of the Governor's Budget.

(d) The SDE shall coordinate with the DSS to identify annual general subsidized child care program expenditures for Temporary Assistance for Needy Families-eligible children. The SDE shall modify existing reporting forms as necessary to capture this data.

(e) The SDE shall provide to the DSS, upon request, access to the information and data elements necessary to comply with federal reporting requirements and any other information deemed necessary to improve estimation of child care budgeting needs.

11. Notwithstanding any other provision of law, the funds in Schedule (1.5)(f) are reserved exclusively for continuing child care for the following: (a) former CalWORKs families who are working, have left cash aid, and have exhausted their two-year eligibility for transitional services in either Stage 1 or 2 pursuant to subdivision (c) of Section 8351 or Section 8353 of the Education Code, respectively, but still meet eligibility requirements for receipt of subsidized child care services, and (b) families who received lump-sum diversion payments or diversion services under Section 11266.5 of the Welfare and Institutions Code and have spent two years in Stage 2 off of cash aid, but still meet eligibility require-

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ments for receipt of subsidized child care services.

12. Notwithstanding any other provision of law, each local planning council shall meet the requirements of Section 8499.5 of the Education Code to the extent feasible and to the extent data is readily accessible.
13. Notwithstanding any other provision of law, the implementation of Provisions 15 and 16 is not subject to the appeal and resolution procedures for agencies that contract with the State Department of Education for the provision of child care services or the due process requirements afforded to families that are denied services specified in Chapter 19 (commencing with Section 18000) of Division 1 of Title 5 of the California Code of Regulations.
14. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Education may implement Provisions 15 and 16 through management bulletins or similar instructions.
15. The amounts appropriated in Schedules (1.5)(a), General Child Care, (1.5)(c), Migrant Day Care, (1.5)(d), Alternative Payment Program, (1.5)(f), CalWORKs Stage 3, and (1.5)(j), Allowance for Handicapped, reflect a reduction effective July 1, 2012, to all contracts of 5.5 percent. The State Department of Education may consider the contractor's performance or whether the contractor serves children in underserved areas as defined in subdivision (ag) of Section 8208 of the Education Code when determining contract reductions, provided that the aggregate reduction to each program specified above is 5.5 percent effective July 1, 2012.
16. Notwithstanding any other provision of law, families shall be disenrolled from subsidized child care services consistent with the priorities for services specified in subdivision (b) of Section 8263 of the Education Code. Families shall be disenrolled in the following order: (a) families with the highest income below 70 percent of the State Median Income (SMI) adjusted for family size, (b) of families with the same income level,

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those that have been receiving child care services for the longest period of time, (c) of families with the same income level, those that have a child with exceptional needs, and (d) families with children who are receiving child protective services or are at risk of being neglected or abused, regardless of family income.

6110-194-0890—For local assistance, Department of Education, Program 30-Child Development Programs, payable from the Federal Trust Fund..... 559,282,000

Provisions:

1. Notwithstanding any other provision of law, the funds appropriated in this item, to the extent permissible under federal law, are subject to Section 8262 of the Education Code.
2. Of the funds appropriated in this item, $10,000,000 is from the transfer of funds, pursuant to Item 5180-402, from the federal Temporary Assistance for Needy Families (TANF) Block Grant administered by the State Department of Social Services to the federal Child Care and Development Block Grant for CalWORKs Stage 2 child care.
3. Of the funds appropriated in this item, $3,014,000 is available on a one-time basis for quality projects from federal Child Care and Development Block Grant funds appropriated prior to the 2012–13 federal fiscal year.
4. Of the funds appropriated in this item, $20,726,000 is available on a one-time basis for CalWORKs Stage 3 child care from federal Child Care and Development Block Grant funds appropriated prior to the 2012–13 federal fiscal year.

6110-195-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.140-Staff Development: Teacher Improvement, Teacher Incentives National Board Certification..... 3,000,000

Provisions:

1. The funds appropriated in this item shall be for the purpose of providing incentive grants to teachers with certification by the National Board for Professional Teaching Standards that are teaching in low-performing schools pursuant to Article 13 (commencing with Section 44395) of

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Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code.

2. The State Department of Education shall not approve new applications from, or new award incentive grants to, teacher participants not already approved in the 2008–09 or prior grant application processes.
3. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

6110-195-0890—For local assistance, Department of Education, Program 20.60-Instructional Support, Part A of Title II of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6621 et seq.; Teacher and Principal Training and Recruiting Fund), payable from the Federal Trust Fund..... 265,709,000

Schedule:

(1) 20.60.280-Improving Teacher Quality Local Grants..... 254,178,000
(2) 20.60.270-Administrator Training Program..... 1,275,000
(3) 20.60.190.300-California Subject Matter Projects..... 3,567,000
(4) 20.60.300-Improving Teacher Quality Higher Education Grants.... 6,689,000

Provisions:

1. The funds appropriated in Schedule (2) shall be for the Administrator Training Program authorized pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25 of Division 3 of Title 2 of the Education Code.
2. The funds appropriated in Schedule (3) shall be for transfer to the University of California, which shall use the funds for the Subject Matter Projects pursuant to Article 1 (commencing with Section 99200) of Chapter 5 of Part 65 of Division 14 of Title 3 of the Education Code.
3. Of the funds appropriated in Schedule (2), up to $500,000 may be used to provide professional development for private school teachers and administrators in accordance with federal law. By October 15 of each year, the State Department of Education shall submit to the appropriate budget and policy committees of the Legislature, the Legislative Analyst's Office, and the Department of Finance a report of the number of private school teachers and administrators

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served under this provision and the type of professional development provided.

4. The funds appropriated in Schedule (4) shall be for local assistance activities for the Improving Teacher Quality Higher Education grants, funded through the federal No Child Left Behind Act of 2001 (P.L. 107-110).

6110-196-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of part-day state preschool programs pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code funded in this item, in lieu of the amount that otherwise would be appropriated pursuant to any other statute..... 510,975,000

Schedule:

(1) 30.10.010-Special Program, Child Development, Preschool Education..... 510,975,000

Provisions:

2. Nonfederal funds appropriated in this item which have been budgeted to meet the state's Temporary Assistance for Needy Families maintenance-of-effort requirement established pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) may not be expended in any way that would cause their disqualification as a federally allowable maintenance-of-effort expenditure.
3. The amount provided in Schedule (1) reflects an adjustment to the base funding of −0.25 percent for an increase in the population of 0–4 year-olds.
4. The maximum standard reimbursement rate shall not exceed $21.22 per day for state preschool programs.
5. Of the amount appropriated in Schedule (1) up to $5,000,000 is available for the family literacy supplemental grant provided to California state preschool programs pursuant to Section 8238.4 of the Education Code.

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6110-197-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, 21st Century Community Learning Centers Program..... 143,949,000

Schedule:

(1) 30.10.080-Special Program, Child Development, 21st Century Community Learning Centers Program..... 143,949,000

Provisions:

1. The State Department of Education shall, by March 1 of each year, provide a report to the Director of Finance and the Legislative Analyst's Office that includes, but is not limited to, allocation and expenditure data for all programs funded in this item in the past three years, the reasons for carryover, and the planned uses of carryover funds.
2. Of the funding provided in this item, $22,382,000 is available from one-time carryover funds from prior years.

6110-198-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation to school districts and county offices of education, in lieu of the amount that otherwise would be appropriated pursuant to statute..... 57,905,000

Schedule:

(1) 20.60.220-Cal-SAFE Academic and Supportive Services..... 19,800,000
(2) 20.60.221-All Services for Nonconverting Pregnant Minors Programs..... 13,327,000
(3) 30.10.020-Cal-SAFE Child Care.... 24,778,000

Provisions:

1. The amounts appropriated in Schedules (1), (2), and (3) are based on estimates of the amounts required by existing programs for operation of Cal-SAFE programs in the current year. By October 31 of each year, the State Department of Education (SDE) shall submit to the Department of Finance current expenditure data for both the prior fiscal year and the current year showing each agency's allocation and supporting detail including average daily attendance and child care attendance and enrollment data. The SDE shall also provide estimates of average daily at-

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tendance and child care to be provided in the budget year.

2. Funds appropriated in Schedule (2) are available to provide funding for all child care, as well as both academic and supportive services for programs choosing to retain their Pregnant Minors Program revenue limit. Notwithstanding any other provision of law, the State Department of Education shall compute allocations to these agencies using the respective agencies' 1998–99 Pregnant Minors Program revenue limits. Further, notwithstanding any other provision of law, programs which choose to retain their Pregnant Minors Program revenue limit rather than convert to the Cal-SAFE revenue limit must provide child care within the revenue limit funding for children of pupils comprising base year average daily attendance.
3. Notwithstanding Section 26.00, the State Department of Education may transfer expenditure authority between Schedule (1) Cal-SAFE Academic and Supportive Services and Schedule (2) All Services for Nonconverting Pregnant Minors Programs, to accurately reflect expenditures in these programs, upon approval of the Department of Finance and notification of the Legislature.
4. In the event that funding in this item is insufficient to serve all eligible pupils, the State Department of Education shall prorate the amounts in Schedules (1) and (2).
5. The funds appropriated in this item reflect an adjustment to the base funding of 0.0 percent for the annual adjustment in statewide average daily attendance. No funds may be allocated for the addition of new Cal-SAFE agencies unless an existing grantee ceases providing services. Any allocations for new agencies shall be limited to the amount previously allocated to the agency withdrawing services; however, in no case shall allocations for authorized agencies exceed the amount appropriated in this item.
6. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.
7. The amount appropriated in this item shall be reduced pursuant to Section 12.42.

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6110-199-0890—For local assistance, Department of Education, American Recovery and Reinvestment Act of 2009 (P.L. 111-5), payable from the Federal Trust Fund..... 9,638,000

Provisions:

1. The funds appropriated in this item are made available through a three-year grant under the federal American Recovery and Reinvestment Act of 2009. The State Department of Education shall allocate these funds in a manner consistent with the state's approved application for these funds and as further directed by the State Board of Education.
2. Of the funds appropriated in this item, $162,000 shall be transferred to Item 6110-001-0890 for state operations costs to support the State Advisory Council on Early Childhood Education and Care, subject to approval of a budget revision by the Department of Finance.

6110-200-0890—For local assistance, Department of Education, American Recovery and Reinvestment Act of 2009 (P.L. 111-5), as amended, payable from the Federal Trust Fund..... 11,913,000

Provisions:

1. The funds appropriated in this item are available to support local quality improvement activities under the Race to the Top-Early Learning Challenge Grant (RTT-ELC). Of the funds appropriated in this item, $10,059,000 shall be available for allocation to local regional leadership consortia, to improve upon or develop local quality rating improvement systems, consistent with the state's application for RTT-ELC funds. Encumbrance of the remaining funds in this item shall be contingent upon submission of an expenditure plan to the Department of Finance and the fiscal committee of the Legislature.
2. The State Department of Education may use funds appropriated in this item to reimburse regional leadership consortia for costs incurred in the 2011–12 fiscal year.
3. The State Department of Education shall submit a report to the fiscal committees of the Legislature and the administration by March 1 of each fiscal year on the state and local activities undertaken with the Race to the Top-Early Learning Challenge Grant. The department shall submit

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this report each year until a final report on the project is completed. The report shall include funding allocations and a detailed description for each activity funded with the grant.

6110-201-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition School Breakfast and Summer Food Service Program grants pursuant to Article 11 (commencing with Section 49550) of Chapter 9 of Part 27 of the Education Code..... 1,017,000

6110-201-0890—For local assistance, Department of Education, Program 30.20-Child Nutrition, payable from the Federal Trust Fund..... 2,348,681,000

Schedule:

(1) 30.20.010-Child Nutrition Programs..... 2,319,681,000

(2) 30.20.040-Summer Food Service Program..... 29,000,000

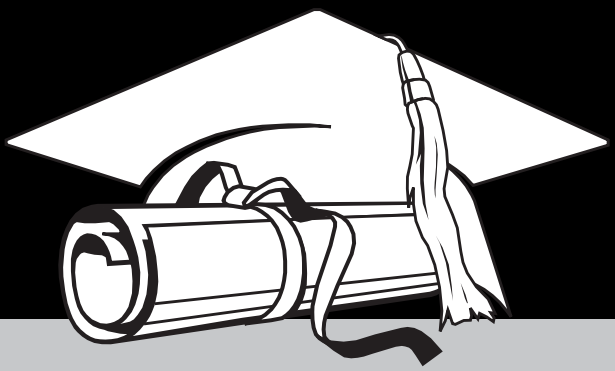
6110-202-0001—For local assistance, Department of Education, Program 30.20.010-Child Nutrition Programs..... 10,100,000

Provisions:

1. Funds appropriated in this item are for child nutrition programs pursuant to Section 41311 of the Education Code. Claims for reimbursement of meals pursuant to this appropriation shall be submitted no later than September 30, 2013, to be eligible for reimbursement.
2. Funds appropriated in this item shall be available for allocation in accordance with Section 49536 of the Education Code, except that the allocation shall not be made based on all meals served, but based on the number of meals that are served, and that qualify, as free or reduced-price meals in accordance with Sections 49501, 49550, and 49552 of the Education Code.
3. Of the funds appropriated in this item, $0 is to reflect a cost-of-living adjustment.

6110-203-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 30.20.010-Child Nutrition Programs, established pursuant to Sections 41311, 49501, 49536, 49550, 49552, and 49559 of the Education Code..... 156,624,000

EDUCATION



LAO

60 YEARS OF SERVICE

2005-06 Analysis

MAJOR ISSUES

Education

☑ **Proposition 98—Governor Proposes $2.9 Billion Increase**

- The budget proposes to leave 2004-05 Proposition 98 appropriations at roughly the level provided in the *2004-05 Budget Act*. This proposal would create $2.3 billion in General Fund savings over the two years. While the Governor's 2005-06 spending plan for K-14 grows by $2.9 billion, it does not include funding to cover all K-14 operating expenses that districts would incur under the budget proposal.
- We recommend the Legislature build a base budget for 2005-06 that fully funds the current K-14 education program (see page E-13).

☑ **State Teachers' Retirement System (STRS) Proposal Lacks Benefits**

- The Governor proposes to shift financial responsibility from the state to K-14 education for $469 million in annual contributions to STRS. The proposal, however, may not achieve the intended short-term goal of budgetary savings and does not resolve the longer-term issues with the current plan (see page E-28).

☑ **Some School Districts Face Difficult Fiscal Conditions**

- Some school districts face huge fiscal liabilities to pay for retiree health benefits. It will be difficult for districts to deal with these obligations without a long-term strategy. We recommend the Legislature take various actions to start addressing this problem (see page E-47).

- Around 40 percent of school districts face declining enrollment. The state continues to have inequities in revenue limit (general purpose) funding across school districts. We recommend an approach to address both of the problems, allowing declining enrollment districts to increase their per pupil revenue limit until they reach the equalization target (see page E-53).

☑ **Legislature Should Reject "Autopilot" Budgeting in Higher Education**

- The Governor's budget for the University of California (UC) and the California State University (CSU) follows his "compact" that establishes annual funding targets for the segments through 2010-11. By mapping out these funding choices six years ahead of time, the Governor's compact would put these budgets on autopilot.

- We recommend the Legislature disregard the compact, and instead consider its various funding choices annually based on what is needed to achieve the state's higher education goals as expressed in the Master Plan (see page E-149).

- The Governor's budget does not account for anticipated revenue from planned fee increases at UC and CSU. We recommend the Legislature include this revenue in its budget plan. This approach would allow for budgets that fully fund anticipated growth and inflation-driven cost increases while freeing up some General Fund monies relative to the Governor's proposal (see page E-178).

☑ **Set Community College Fees to Maximize Federal Funding**

- We also recommend the Legislature increase community college fees from $26 per unit to $33 per unit. This would raise about $100 million in new fee revenue that could fund legislative priorities. It would also leverage about $50 million in federal funds to reimburse middle-income families for the higher fees. Financially needy students are exempt from paying fees at community colleges (see page E-195).

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OVERVIEW

Education

The Governor's budget includes a total of $58 billion in operational funding from state, local, and federal sources for K-12 schools for 2005-06. This is an increase of $1.6 billion, or 2.9 percent, from estimated appropriations in the current year. The budget also includes a total of $34.6 billion in state, local, and federal sources for higher education. This is an increase of $1.3 billion, or 4 percent, from estimated expenditures in the current year.

Figure 1 shows support for K-12 and higher education for three years. It shows that spending on education will reach almost $93 billion in 2005-06 from all sources (not including capital outlay-related spending).

Figure 1

K-12 and Higher Education Funding

(Dollars in Millions)

	Actual 2003-04	Estimated 2004-05	Proposed 2005-06	Change From 2004-05	
				Amount	Percent
K-12[a]	$54,673	$56,470	$58,123	$1,653	2.9%
Higher education[b]	32,016	33,232	34,567	1,335	4.0
Totals	**$86,688**	**$89,701**	**$92,689**	**$2,988**	**3.3%**

[a] Includes state, local, and federal funds. Excludes debt service for general obligation bonds and local debt service.

[b] Includes state, local, and federal funds and student fee revenue. Excludes debt service for general obligation bonds.

FUNDING PER STUDENT

The Proposition 98 request for K-12 in 2005-06 represents $7,377 per student, as measured by average daily attendance (ADA). Proposed spending from all funding sources (excluding capital outlay and debt service) totals about $9,586 per ADA.

The Proposition 98 budget request for California Community Colleges (CCC) represents about $4,370 per full-time equivalent (FTE) student. When other state funds and student fee revenue are also considered, CCC will receive about $5,000 per FTE student. This compares to proposed total funding (General Fund and student fees) of $23,000 for each FTE student at the University of California (UC) and $11,500 for each FTE student at the California State University (CSU).

PROPOSITION 98

California voters enacted Proposition 98 in 1988 as an amendment to the State Constitution. The measure, which was later amended by Proposition 111, establishes a minimum funding level for K-12 schools and CCC. A small amount of annual Proposition 98 funding provides support for direct educational services provided by other agencies, such as the state's schools for deaf and blind individuals and the California Youth Authority. Proposition 98 funding constitutes over 70 percent of total K-12 funding and about two-thirds of total CCC funding.

The minimum funding levels are determined by one of three specific formulas. Figure 2 briefly explains the workings of Proposition 98, its "tests," and other major funding provisions. The five major factors involved in the calculation of each of the Proposition 98 tests are: (1) General Fund revenues, (2) state population, (3) personal income, (4) local property taxes, and (5) K-12 ADA.

Proposition 98 Allocations

Figure 3 (see page E-10) displays the budget's proposed allocations of Proposition 98 funding for K-12 schools and CCC. The budget proposes only technical adjustments to the current-year spending level of $47.1 billion, and increases funding to $50 billion for Proposition 98 in 2005-06 (an increase of $2.9 billion). The Governor does not provide the additional $1.1 billion in 2004-05 and $1.2 billion in 2005-06 that would have been needed to meet the funding target established in Chapter 213, Statutes of 2004 (SB 1101, Budget and Fiscal Review Committee). Under the Governor's budget, the General Fund cost of Proposition 98 is $2.4 billion more than

the current year, but a portion of this higher cost ($675 million) is to backfill local property tax revenues that the state transferred to local government. Proposition 98 funding issues are discussed in more detail in the "Proposition 98 Budget Priorities" section of this chapter.

Figure 2

Proposition 98 Basics

✓ ***Over time, K-14 funding increases to account for growth in K-12 attendance and growth in the economy.***

✓ ***There Are Three Formulas ("Tests") That Determine K-14 Funding.*** The test used to determine overall funding in a given budget year depends on how the economy and General Fund revenues grow from year to year.

- ***Test 1—Share of General Fund.*** Provides 39 percent of General Fund revenues. This test has not been used since 1988-89.
- ***Test 2—Growth in Per Capita Personal Income.*** Increases prior-year funding by growth in attendance and *per capita personal income*. Generally, this test is operative in years with normal to strong General Fund revenue growth.
- ***Test 3—Growth in General Fund Revenues.*** Increases prior-year funding by growth in attendance and *per capita General Fund revenues*. Generally, this test is operative when General Fund revenues fall or grow slowly.

✓ ***Legislature Can Suspend Proposition 98.*** With a two-thirds vote, the Legislature can suspend the guarantee for one year and provide any level of K-14 funding.

ENROLLMENT FUNDING

The Governor's budget makes changes to enrollment funding levels for K-12 and higher education. The budget fully funds a 0.79 percent increase in K-12 enrollment, a level which is considerably lower than annual enrollment growth during the 1990s. The K-12 enrollment is expected to grow even more slowly in coming years, as the children of the baby boomers move out of their K-12 years. Community college enrollment is funded for 3 percent growth in 2005-06, which is about one and one-half times the expected rate of growth in the adult population. Consistent with the Governor's "compacts" with the public universities, the Governor's budget funds enrollment increases of 2.5 percent at UC and CSU.

Figure 3

Governor's Proposed Proposition 98 Funding

(Dollars in Millions)

	2004-05		2005-06	Change From 2004-05 Revised	
	Budget Act	Revised[a]	Proposed	Amount	Percent
K-12 Proposition 98					
General Fund	$30,874	$30,992	$33,117	$2,125	6.9%
Local property tax revenue	11,214	11,192	11,593	401	3.6
Subtotals[b]	($42,087)	($42,183)	($44,710)	($2,527)	(6.0%)
CCC Proposition 98					
General Fund	$3,035	$3,036	$3,321	$285	9.4%
Local property tax revenue	1,772	1,750	1,827	77	4.2
Subtotals[b]	($4,807)	($4,787)	($5,148)	($361)	(7.5%)
Total Proposition 98[c]					
General Fund	$34,003	$34,124	$36,532	$2,410	7.1%
Local property tax revenue	12,986	12,941	13,420	479	3.7
Totals[b]	**$46,989**	**$47,065**	**$49,953**	**$2,888**	**6.1%**

a These dollar amounts reflect appropriations made to date or proposed by the Governor in the current year. The revised spending level reflects a $3.1 billion suspension of the minimum guarantee.

b May not add due to rounding.

c Total Proposition 98 also includes around $95 million in funding that goes to other state agencies for educational purposes.

SETTING EDUCATION PRIORITIES FOR 2005-06

In this chapter, we evaluate the proposed budget for K-12 and higher education, including proposed funding increases and reductions, budget/policy reforms, fund shifts and fee increases, and projected enrollment levels. The difficult fiscal environment that the state faces in 2005-06 makes it all the more important for the Legislature to reassess the effectiveness of current education policies and finance mechanisms. In both K-12 and higher education, we provide the Legislature with alternative approaches to the budget's proposal.

K-14 Priorities. An overriding issue for the Legislature in crafting the 2005-06 budget for K-12 education and CCC (both funded largely through Proposition 98 funds) is whether to maintain current-year spending at the level appropriated in the *2004-05 Budget Act*, augment current-year appropriations to the Chapter 213 target level ($2.3 billion more over the two years), or provide some funding level in between. In developing its 2005-06 Proposition 98 budget, we recommend the Legislature use a "current services" budget approach that fully funds the existing K-14 program. We identify some key areas of the K-14 budget where we recommend a different approach than that taken in the Governor's budget. These include State Teachers' Retirement System funding, mental health costs for special education students, and several of the Governor's other reform proposals. We also raise concerns about the current fiscal condition of school districts and the impact on districts of declining student enrollment.

Higher Education Priorities. For UC and CSU, the Governor's budget proposal largely follows the compacts he developed with the segments in spring 2004. Notwithstanding the compacts, the Governor's proposal offers little rationale for the proposed fee increases and growth funding for UC and CSU. We offer our own analysis of UC and CSU's funding needs, including recommendations with regard to student fees and enrollment growth.

For CCC, the Governor proposes a substantial increase for enrollment growth, but no new funding to advance the effort, begun in 2004-05, to equalize per student funding among community college districts. In the "California Community Colleges" section of this chapter, we assess the Governor's enrollment growth funding and accountability proposals. We also recommend increasing student fees at CCC to $33 per unit, which could increase total state funding on education by about $100 million, while leveraging about $50 million in federal financial aid. At the same time, it would add almost no new net costs for students with family incomes up to about $100,000.

CROSSCUTTING ISSUES

Education

PROPOSITION 98 BUDGET PRIORITIES

The Governor's budget proposes to leave 2004-05 Proposition 98 appropriations at roughly the level provided in the* 2004-05 Budget Act.** ***The proposal would create $2.3 billion in General Fund savings over two years. While the Governor's 2005-06 spending plan for K-14 grows by $2.9 billion, it does not include funding to cover all K-14 operating expenses that districts would incur under the budget proposal.

GOVERNOR'S MAJOR PROPOSALS

The Governor's budget proposes an increase in the Proposition 98 guarantee of $2.9 billion in 2005-06 compared to the revised 2004-05 spending level. This increase is sufficient to provide adjustments for K-14 growth in the student populations and the cost of living, a $329 million increase to K-12 school district revenue limits that partially restores reductions made during 2003-04, and $51 million for additional community college growth above the level suggested by demographic growth.

Budget Creates Costs Without Identifying Funding

The Governor's budget for K-14 education also includes several major policy issues that affect schools and community colleges. The budget, however, does not reflect the financial impact of these policy initiatives. Most importantly, the 2005-06 budget proposes to shift from the state to school districts and community colleges $469 million in annual State Teachers'

Retirement System (STRS) costs. The state has contributed this amount of non-Proposition 98 funds each year to pay for a portion of the system's costs. Beginning in 2005-06, the Governor's budget proposes that school and community college districts assume responsibility for these costs. No additional funds are proposed in the budget to help school districts pay for these new retirement costs.

The Governor also proposes to shift to school districts fiscal responsibility for mental health services needed by special education students. Under current law, these services are provided by county mental health agencies under a reimbursable state-mandated local program. Based on the most recent county claims, costs of this program totaled $143 million (non-Proposition 98 funds). By shifting responsibility for these services to school districts, the budget would also shift the cost of these mental health services to local education agencies. The special education budget includes $100 million that could be used to pay for these costs. No additional funds are proposed to cover the remaining $43 million of services.

Two other important proposals follow this same pattern. First, the budget includes a major vocational education initiative, requesting $20 million in one-time funds for the community colleges in support of the proposed reforms. Given the Governor's goal—to bring a "renewed emphasis" on vocational education in high school—it seems probable that the long-term cost of the plan would be much larger than the $20 million included in the proposal. Second, a pilot program is proposed to assess the impact of greater school-level control over the use of funding. No support, however, is requested for additional district costs associated with schoolsite budgeting or for the costs of an evaluation to determine whether the reforms increase student achievement.

Proposed Constitutional Amendments Affect K-14

The Governor also called a special session of the Legislature to address four major changes to the State Constitution that would affect school districts or community colleges. Specifically, the proposals:

- ***Proposition 98.*** Revamp the constitutional spending requirements of Proposition 98 as part of a larger reform of the state budget process. The measure would eliminate options for the state to reduce Proposition 98 funding levels during difficult budgetary times (Test 3 and suspension). Funding for K-14, however, would be subject to "across-the-board" reductions to the state budget that could occur under certain circumstances.
- ***Retirement.*** Prohibit all public agencies in California, including K-12 and community college districts, from enrolling new em-

ployees in a retirement plan that guarantees a specific benefit level upon retirement (known as a "defined benefit" plan). Instead, public agencies could only offer new employees (beginning July 1, 2007) "defined contribution" plans. These plans do not guarantee specific retirement benefits, but offer employers and employees certain other advantages.

- ***Merit Pay and Tenure.*** Alter existing regulation of local school district employee practices. The proposal would require districts to base employment decisions only on employee performance and the needs of the district and its students. The proposal also would extend from two years to ten years the amount of time teachers must perform satisfactorily before receiving employment protections known as "tenure."
- ***School Budget Reports.*** Require school districts to annually report to the public each school's revenues and expenditures.

CURRENT-YEAR GUARANTEE LEVEL IS PIVOTAL

A central issue facing the Legislature in developing the 2005-06 budget is the amount of Proposition 98 spending that ultimately is approved for 2004-05. As part of the *2004-05 Budget Act*, the state suspended the minimum Proposition 98 guarantee and set a target appropriation level that was $2 billion lower than the amount called for by the guarantee. The legislation authorizing the suspension—Chapter 213, Statutes of 2004 (SB 1101, Committee on Budget and Fiscal Review)—establishes a target funding level for K-14 education. The target suggests that higher General Fund revenues in 2004-05 would result in an increased funding level and lower revenues would reduce it.

The Governor's budget assumes that General Fund revenues in 2004-05 will be $2.2 billion higher than previously assumed. This would translate into an increase in the minimum guarantee of $1.1 billion in 2004-05. This higher current-year base also results in an increase in the guarantee of $1.2 billion in 2005-06. The budget, however, does not propose to appropriate these funds to schools and community colleges, only making technical adjustments to the current-year funding level. By leaving the level of Proposition 98 spending at roughly the level included in the *2004-05 Budget Act*, the Governor's budget frees about $2.3 billion over the two years to help address the state's budget problem.

What Level of Appropriation Is Required in 2004-05? Under the State Constitution, a suspension overrides all other Proposition 98 formulas (or tests) and establishes a new minimum guarantee based on the *amount*

appropriated for K-14 education in that year. Suspension means that any changes to the economy or student population have no impact on the required level of spending. Instead, the guarantee for that year is defined by the amount actually appropriated for schools and community colleges. Because the requirements of Proposition 98 are suspended in 2004-05, the $2.2 billion increase in General Fund revenues has no direct impact on the amount the state must spend.

While Chapter 213 signals the intent of the Legislature to appropriate additional Proposition 98 funding if revenues increased, the statute does not contain appropriation authority. Because the statute does not provide this authority, we believe the Legislature would have to take positive action in the future to do so. Absent such action, the minimum guarantee would "default" to the current level of appropriations. Thus, in our view the Legislature could achieve the $2.3 billion savings simply by not making additional Proposition 98 appropriations in the current year. For transparency, however, we would suggest that the Legislature amend Chapter 213 to clarify that the suspension level for 2004-05 should depend on the amount appropriated, and not a specified amount below the Proposition 98 minimum guarantee. This would eliminate any ambiguity.

LAO Forecast—Higher Revenues, Lower Guarantee

Our updated economic and revenue forecasts indicate that General Fund revenues will be significantly higher in 2004-05 and modestly higher in 2005-06 compared to the administration's revenue forecast. While this is good news for the state's overall fiscal picture, our projected increases would actually result in a lower estimate of the minimum guarantee under Proposition 98 in 2005-06.

Cost of Reaching Chapter 213 Target Would Increase to $4 Billion. Specifically, our forecast projects General Fund revenues will be $1.4 billion higher in 2004-05 and $765 million higher in 2005-06 compared to the amounts assumed in the Governor's budget. Figure 1 shows the impact that these revenues would have on the Proposition 98 obligations relative to the Governor's proposal. First, in the current year, the higher revenues would have no impact on Proposition 98 obligations if the Legislature concurs with the Governor's plan to remain at the current-year funding level ($47.1 billion). If however, the Legislature wanted to meet the target of Chapter 213, the Legislature would need to provide an additional $1.9 billion in the current year (using our revenue estimates). This would lead to an increase in budget-year obligations of $2.1 billion, for a two-year impact of $4 billion in additional costs.

Figure 1

Proposition 98 Spending Under Different Revenue Scenarios

(In Billions)

	2004-05	2005-06	Change
Governor's Budget Revenues			
Chapter 213 target	$48.2	$51.2	$3.0
Revised 2004-05 budget	47.1	50.0	2.9
Additional cost to reach Chapter 213 target	$1.1	$1.2	$0.1
Two-Year Totals		**$2.3**	
LAO Revenues			
Chapter 213 target	$49.0	$51.7	$2.7
Revised 2004-05 budget	47.1	49.6	2.5
Additional cost to reach Chapter 213 target	$1.9	$2.1	$0.2
Two-Year Totals		**$4.0**	

More Revenues But Lower 2005-06 Guarantee? Our Proposition 98 forecast provides an unintuitive outcome. While we forecast *higher* revenues in both years, the growth rate in revenues between years actually generates a *lower* guarantee level in 2005-06 than assumed in the Governor's budget. As stated above, we project $1.4 billion higher revenues in 2004-05 and only $765 million in additional revenues in 2005-06. Thus, approximately one-half of the higher revenues are one-time in nature. Since Proposition 98 drives off of year-to-year growth in General Fund revenues, the one-time revenues in 2004-05 actually decrease the year-to-year growth in General Fund revenues between 2004-05 and 2005-06. As a result, the year-to-year growth in Proposition 98 is actually less under our revenue forecast compared to the Governor. Under our forecast, Proposition 98 would grow by $2.5 billion in 2005-06, roughly $420 million less than the Governor.

BALANCE STATE AND LOCAL FISCAL NEEDS

We recommend the Legislature base the 2005-06 Proposition 98 spending level on the amount schools and community colleges need to continue current programs.

Our recommendation on the appropriate level of Proposition 98 spending in both the current and budget years reflects our view that the state needs to resolve its structural budget problem by bringing revenues and expenditures into alignment. The Governor's proposal to leave the 2004-05 appropriation level essentially unchanged is a critical component of the budget's plan for closing the budget gap over the next two years. As a result, moderating increases in the minimum guarantee will greatly assist the Legislature in addressing the state's structural budget problem.

We are reluctant, however, to recommend that the Legislature reduce 2005-06 Proposition 98 spending consistent with our revenue forecast (that is, $420 million below the Governor's proposed level). Our lower estimate is an artifact of the Proposition 98 formulas and not caused by a worsening in the state's revenue situation. The May Revision will provide updated information on the overall General Fund condition and amount required under the minimum guarantee for the budget year. That will give the Legislature another opportunity to balance its spending priorities—including K-14 education—with the need to address the state's budget problem as it completes work on the 2005-06 budget.

To develop its Proposition 98 spending plan, we recommend the Legislature develop a budget for schools and community colleges that provides for adjustments in workload and other anticipated costs for 2005-06. This approach has a couple of advantages for the Legislature. First, it helps the Legislature create a funding base that would allow schools and community colleges to continue current programs under most circumstances. Second, developing a workload budget helps ensure that the spending plan adequately funds the workload and costs the budget would impose on schools and colleges.

A workload budget also would provide a base the Legislature could build on if it decides to appropriate a higher level of funds for Proposition 98. If the Legislature wants to follow this path, we recommend using any additional funds to begin reducing the education "credit card" debt—state obligations to schools and community colleges the state has failed to pay in past years. We discuss the credit card debt later in this section.

Building a Base Budget for 2005-06

Figure 2 displays the elements of a current services budget for K-14 in 2005-06. We made the following workload adjustments:

- ***Growth and Cost-of-Living Adjustments (COLAs).*** Updating the 2004-05 base for changes in K-14 enrollment and the cost of living adds $2.4 billion. Our estimate of the COLA is slightly higher than the figure used in the Governor's budget—4.1 percent com-

pared to 3.93 percent—and adds $80 million in additional costs to the K-14 budget. Our higher estimate is based on data that were not available at the time the Governor's budget was developed.

- ***Ongoing Mandate Costs.*** We added $315 million to our workload budget for the ongoing cost of school district and community college mandates. The last time the state budget included ongoing funding for this constitutional obligation was 2001-02. The Governor's budget would continue the recent practice of deferring all Proposition 98 mandate costs in 2005-06—in effect, borrowing the funds from school districts. We recommend instead the Legislature include ongoing funding for this important state obligation.
- ***One-Time Funds.*** Another $185 million was added to restore to the ongoing budget program funding that was supported with one-time funds in 2004-05.

Figure 2

A Proposition 98 K-14 "Current Services" Budget

2005-06
(In Billions)

2004-05 base	$47.1
Growth	0.5
Cost of living	1.9
Restore base (one-time funds)	0.2
Ongoing cost of mandates	0.3
Total	**$50.0**
Amount above Governor's budget	—[a]
Amount above LAO guarantee	$0.5

[a] Less than $50 million.

Our current services budget exceeds slightly the amount of the minimum guarantee projected in the Governor's budget and in our alternate estimate of the minimum spending level. Specifically, the current services budget is $43 million higher than the level proposed in the Governor's

budget for 2005-06 and $463 million higher than our estimate of the guarantee under our revenue assumptions.

Align Budget With Workload Priorities

We recommend the Legislature delete $382 million for revenue limit deficit reduction and higher community college growth because the proposals represent increases that are not needed to maintain existing programs. In addition, we recommend the Legislature add $315 million for K-14 mandates.

Our current services budget highlights the fact that the proposed budget provides approximately the amount of funds needed to fund a current services budget. The budget contains two main proposals that exceed a current services level of funding—$329 million to restore cuts in K-12 revenue limits and $51 million for "excess growth" in community colleges (that is, above growth in adult population). The savings our budget achieves by excluding these discretionary increases are more than offset by increases for mandate costs and our higher COLA.

Our workload budget also shows that the proposed budget does not fully fund all K-14 costs it would create. Most significantly, the Governor's budget does not fund the ongoing costs of K-14 mandates. In our view, providing a funding source for ongoing K-14 mandates in the base budget constitutes a higher priority than discretionary increases for revenue limits or community college growth.

Therefore, we recommend the Legislature align the budget bill with the spending priorities of our K-14 workload budget. This would require the following specific changes:

- Delete $381 million in discretionary increases—$329 million for deficit factor reduction and $51 million for excess growth in community colleges.
- Restore annual ongoing funding for K-14 mandates ($315 million).

STRS Proposal Lacks Benefits

The Governor's budget also proposes to shift financial responsibility from the state to K-14 education for $469 million in annual contributions to STRS. Later in this section, we discuss this proposal and conclude that the Governor's plan fails to create short- or long-term benefits for the state. In the short run, the proposed shift is intended to save $469 million by requiring K-14 education to absorb these retirement costs. In our view, the proposal may not save the state any funds because we believe the Legislature could have to "rebench" the Proposition 98 guarantee and

appropriate the $469 million to schools and community colleges to pay for the increased local retirement contributions.

In the long run, the Governor's proposal does not offer the state, districts, or local employees any significant advantages. For the state, the proposal misses an opportunity to clarify the state's responsibility for long-term retirement fund liabilities. For districts and local employees, the proposal fails to offer additional flexibility over retirement benefits. For these reasons, we conclude that there is no strong rationale to support the STRS proposal. (Please see our discussion of the proposal in the "Crosscutting Issues" section of this chapter.)

K-14 Priorities Under a Higher Guarantee

If the Legislature chooses to provide a higher level of funding than suggested by our workload budget, additional funds would help the Legislature address a number of borrowing issues that have resulted from the lingering budget crisis. We have referred to this as the education credit card to reflect the amounts the state has borrowed from schools and community colleges. Figure 3 displays the "charges" on the education credit card.

Figure 3
Status of the Education Credit Card Debt

(In Millions)

One-time (Through 2004-05)		Ongoing (2005-06)	
Unpaid K-12 mandate payments	$1,400[a]	Ongoing K-14 mandate payments to budget	$315[a]
CCC and K-12 deferrals	1,271	Revenue limit reductions made in 2003-04	646
Total	**$2,667**	**Total**	**$961**
Grand Total		**$3,628**	

[a] Includes funding for the Standardized Testing and Reporting mandate, which is under review by the Commission on State Mandates.

The figure shows that our estimate of the credit card debt totals $3.6 billion. The largest charge results from unpaid school district claims for the cost of state-mandated local programs. Funding for mandates in the annual budget act ceased after 2001-02. We estimate that the ongoing cost of

mandated programs totals $315 million in 2005-06. The backlog in payments through 2004-05 totals $1.4 billion.

The second largest major contributor to the credit card is $1.3 billion in program deferrals. The deferrals created one-time savings by shifting costs from one fiscal year to the next. For instance, the budget shifts the June payment for school district general purpose funds (revenue limits) to July 1, thereby paying this obligation with funds from the succeeding year's Proposition 98 funds. Until the state pays the $1.3 billion one-time cost to retire this "loan," the state will need to extend this deferral each year if it does not want to negatively impact education programs.

The third element of the credit card is $646 million in revenue limit "deficit factor"—funds saved each year by the state resulting from past reductions in general purpose funding. While past-year savings from these cuts do not have to be repaid, restoring them would build these additional costs into the K-12 base budget. Repaying deficit factor, therefore, requires the Legislature to use ongoing funds. The 2005-06 budget proposes to spend $329 million to partially restore school district and county office revenue limits. If the Legislature wants to provide additional funding to K-14 education in either the current or budget years, we would suggest that it dedicate funds to reduce the outstanding obligations on the education credit card.

GOVERNOR'S VOCATIONAL EDUCATION REFORM

The 2005-06 budget proposes $20 million in support of a broad-based reform of vocational education in K-12 education. We believe the Governor's proposal addresses a significant problem, but lacks the level of detail necessary for the Legislature to fully evaluate it. We therefore recommend the Legislature direct the Department of Finance to provide to the budget subcommittees prior to budget hearings (1) the details of the proposed plan and (2) responses to our initial concerns about the proposal.

The *2005-06 Governor's Budget* proposes to strengthen vocational education in high schools to ensure "that all students have educational opportunities that lead to successful employment." According to the administration, the proposal builds on successful programs that are currently in place to create a "renewed emphasis" on vocational education in high schools.

The administration's reform package has two key elements. First, the proposal would dedicate $20 million in one-time Proposition 98 Reversion Account funds to encourage high schools to work with local California Community Colleges (CCC) to expand and improve vocational courses available to high school students. The plan seeks to build on successful "2+2" programs, in which students take two years of high school vocational courses that lead into a two-year CCC vocational credential or diploma program. Funds could be used for a wide variety of local activities, including curriculum development and equipment purchases.

Second, the plan calls for all middle school students to take a new vocational awareness class. The administration proposes to mandate middle school introductory vocational courses to (1) help students consider their long-term career goals and (2) provide information about available vocational options. According to the administration, the new course would replace an existing elective course.

The reform plan includes several other supporting changes, including:

- ***Increasing K-12 Accountability.*** The proposal would add to the existing School Accountability Report Card (SARC) new indicators that measure the success of schools in offering vocational courses and in helping students who take vocational education courses.
- ***Supporting Local Efforts to Expand Options.*** The reform proposal also would (1) revise K-12 and teacher credential requirements to help schools and colleges hire teachers who are familiar with the current skill needs of business and (2) allow CCC to increase the proportion of part-time faculty (above the existing 25 percent target) as needed to meet demand for vocational education courses.

Proposal Addresses an Important Problem

We think the Governor's budget has identified an important problem. In a forthcoming report (expected later this year), we discuss how a strong secondary vocational education system can mitigate several major problems in high schools.

May Help Reduce Dropouts. By giving students a greater range of choices in high school, improving vocational education could help address the state's high dropout rates. About 30 percent of students who begin ninth grade drop out before finishing high school. Low academic achievement is a major factor in dropping out. Convinced that academic success is unlikely, many low-performing students see little reason to stay in school. A range of academic and vocational choices could help keep students in school by giving them greater control over what they study and help them use high school to achieve their postgraduation goals.

Increase Financial Returns to Students. Successfully restructuring vocational programs into sequences of high-level courses would increase the value of these courses to students. Research suggests that most existing high school vocational courses deliver students few benefits (such as higher wages or higher rates of employment). This is because the courses taken by students do not build on each other. Research shows that sequences of high-level secondary or community college courses lead to higher-level occupational skills, which in turn can generate significant payoffs for students.

Create Better Alternatives to a College Diploma. Vocational sequences that prepare students for high-level jobs may encourage students to pursue more realistic postgraduation goals. Perhaps because high school vocational programs have low returns, high school students see college as virtually the only road to success. Surveys show that 56 percent of California's tenth graders want to attend a four-year university and 22 percent plan on

attending a two-year college after graduating from high school. Only about 10 percent of students plan on going directly into the workforce.

Data show a disconnect between these aspirations and actual experience. Less than one-half of those tenth graders attend university or college in the two years after graduating, and fewer than one in five earn a university or college degree. Most students who go to CCC drop out before receiving a diploma or transferring to a four-year institution.

When students fail to complete a rigorous academic or vocational program in high school or college, they enter the labor market with fewer saleable occupational skills. Strong secondary vocational programs expand the number of attractive options available to high school students. This can help students enter the labor market as adults with skills that improve their long-term job prospects.

Proposal Not Fully Developed

At the time this analysis was prepared, few details on the proposed changes were available. From the information that was available, the plan appears to address many of the critical areas that we see as problems for vocational education in high schools. The proposal, for instance, promotes an early focus on careers and the options available to high school students who are interested in specific occupation areas. The eighth grade "exploratory" class would help students (and their parents) develop a plan for taking the courses needed to achieve the students' postgraduation goals. We also think increasing the number of students involved in CCC vocational programs is a worthy goal—research shows very high wage returns to students who graduate from community college vocational programs. Finally, by adding data on the quality of school vocational programs into SARC, the proposal addresses the need to increase local accountability.

In concept, therefore, we think the proposed plan is headed in the right direction. We have several areas of concern with the reform plan, however, that warrant further legislative discussion.

The Eighth Grade Career Exploratory Course Would Create a Reimbursable State-Mandated Local Program. The Governor's plan would require districts to provide a middle school vocational course, which likely would result in a new state-mandated local program. In general, we advise against creating new programs through state mandates for two reasons. First, under the state mandate reimbursement process, it takes several years before the state begins to reimburse district costs. Second, the state has little control over the cost of new mandates, and our review of district mandate claims shows that local per pupil costs vary tremendously.

In addition, the Governor's proposal does not include an estimate of the likely costs of the new middle school course. An existing mandate that accomplished a similar goal—altering the courses needed to graduate from high school—costs about $13.5 million annually. There also may be additional one-time district costs to create a syllabus for the new exploratory course, obtain needed materials or textbooks, and train teachers.

We think the Legislature needs additional information on why the administration proposes to implement the middle school exploratory course through a state-mandated local program. In addition, the Legislature needs better information on the projected costs—one-time and ongoing—of the new course requirement.

Uses for CCC Funding Should Be Specified. As noted earlier, the Governor's proposal would provide $20 million to CCC for aligning vocational curricula between K-12 schools and community colleges' economic development programs. While we recognize the need for better alignment between vocational offerings in these two systems, we cannot determine the extent to which this funding would advance that goal. The administration could not provide us with many specifics about what kinds of activities would be funded with this money, on what basis it would be distributed, and what accountability provisions, if any, would be implemented. As a result, the administration could not explain why $20 million is the correct amount of funding to provide at this time.

The administration also proposes budget bill language that would make the allocation of the $20 million by CCC dependent on the submission of an expenditure plan that would be approved by the Department of Finance (DOF). In other the words, the Governor is asking the Legislature to approve the $20 million without knowing how the money will be spent. From our perspective, the budget process should allow the Legislature to review the administration's expenditure plan and include its own priorities for the use of the state's money. We believe a sufficiently detailed expenditure plan can be developed and reviewed within normal budget process timeframes.

The Legislature needs the details of how the $20 million fits into the overall reform plan. Without an expenditure plan that includes details on the proposed uses of the new funds, we would recommend the Legislature delete the $20 million appropriation.

Regional Occupational Programs and Centers (ROC/Ps) Have No Explicit Role in the Reform Program. About 40 percent of vocational courses taken by high school students are provided through ROC/Ps. These agencies provide regional support for vocational education. Most ROC/Ps are operated by county offices of education.

The Governor's proposal makes no mention of the role of ROC/Ps. From our perspective, ROC/Ps would contribute significantly to a strengthened system of secondary vocational education. Several changes to the mission of these agencies may be necessary, however. Switching the focus of ROC/Ps from administering individual low-level training classes to participating in sequences that result in two- and four-year skill certificates would align the goals of these regional agencies with the proposed reforms.

Reducing the number of adults served by ROC/Ps also would increase the amount of vocational resources available to high schools. In 2002-03, about one-third of ROC/P students were adults. Bringing all ROC/P resources to support vocational options for high school students would strengthen the proposed reform plan significantly. For these reasons, we think the Legislature needs more information on the role of ROC/Ps in the Governor's reform plan.

Students Need Better Information About the Likelihood of Success in College. As noted above, most high school students see college as virtually the only road to success in life. Research shows many high school graduates enroll in CCC without the academic skills needed to do college-level work. These students assume they are ready for college because they received reasonably good grades in high school. When they arrive at college, however, many students are required to retake courses they took in high school. Not surprisingly, perhaps, these students are less likely to earn a CCC degree or transfer to a four-year institution.

These findings indicate that students need early and ongoing information about whether they are "on track" for gaining the academic skills needed for college. Students and parents need data *other than grades* (which follow no statewide standard) with which to evaluate a student's likelihood of success in an academic college or university program. In addition, the information would help students and parents assess the academic requirements of the different vocational choices available at a high school.

Legislature Needs Details

While we think the broad outlines of the proposal hold promise, key details of the plan are unavailable. Therefore, we recommend the Legislature direct DOF to provide prior to budget hearings the specifics of the proposals contained in the proposed reform package, including responses to the specific concerns raised in this analysis.

STATE TEACHERS' RETIREMENT SYSTEM (1920)

The Governor's budget proposes shifting the state's contribution for basic teacher retirement to schools. (This includes K-12 school districts, county offices of education, and community colleges.) The budget assumes $469 million in General Fund savings from this reduction in state contributions to the State Teachers' Retirement System (STRS).

In this piece, we:

- Describe the retirement plan for teachers, its funding, and its unfunded liability.
- Lay out criteria for increasing local control, flexibility, and responsibility for a teacher retirement system.
- Describe and evaluate the Governor's proposal to shift contributions to school districts in the context of these goals.

BACKGROUND

The Basics of the STRS Plan

Defined Benefit Pays 2 Percent at 60. All K-12 and community college teachers in public schools who work at least half-time are required to participate in the state-sponsored retirement plan administered by STRS. This is a "defined benefit" program, which guarantees a certain lifetime monthly pension benefit based on salary, age, and years of service at retirement. The basic defined benefit pension for retired teachers pays 2 percent of salary for each year of service at age 60.

Recent Benefit Enhancements. Beginning in the late 1990s, when STRS investment returns had resulted in full plan funding, the state approved a series of benefit enhancements. Effective in 1999, the state approved higher

percent-of-salary formulas to calculate pension benefits for teachers who are above 60 years of age and/or have 30 years of service.

Effective in 2001, the state again enhanced benefits as investments continued to surge. These changes instituted the following:

- Highest one-year salary (rather than the standard three-year period) to calculate pensions for teachers with 25 or more years of service.
- Additional dollar amounts per month for teachers who retire by the end of 2010 with 30 or more years of service.
- Diversion of 25 percent of teacher contributions—2 percent of the total 8 percent—to a new defined benefit supplement (DBS) program. This program includes individual accounts designed to provide extra retirement income above the defined benefit pension. This diversion is in effect through 2010.
- The STRS payment of Medicare Part A (hospitalization insurance) premiums for retiring teachers who did not pay Medicare taxes (hired before April 1986) and must, therefore, pay the full Part A premium to participate in the federal program.

In addition, the state also approved:

- Allowing retirement credit for accumulated sick leave.
- Increasing the inflation protection benefit from 75 percent up to 80 percent. This benefit increases retirees' pensions when inflation erodes their initial allowances to below 80 percent of their original purchasing power.

Three Contribution Sources Finance Benefits. Contributions to STRS are fixed in statute. Teachers contribute 8 percent of salary to STRS, while school districts contribute 8.25 percent. Figure 1 (see next page) compares employee and employer contribution rates for STRS and related or comparable Public Employees' Retirement System (PERS) plans.

In addition to the teacher and school contributions, the state contributes 4.517 percent of teacher payroll to STRS (calculated on payroll data from two fiscal years ago). The state contribution includes:

- 2.017 percent for the enhanced defined benefit program. This payment would be $469 million in 2005-06, if not for the Governor's proposal to shift the payment to school districts.
- 2.5 percent to finance purchasing power protection at 80 percent. This payment will contribute $581 million in 2005-06.

Figure 1

STRS Retirement Contributions Less Than Average PERS Contributions

	STRS	PERS Miscellaneous Tier 1	PERS School Employees
Employees			
Pension	8.0%	5.0%[a]	7.0%
Social Security	—	6.2	6.2
Totals	**8.0%**	**11.2%**	**13.2%**
Employers			
Pension	8.25%	12.4%[b]	7.6%[b]
Social Security	—	6.2	6.2
Totals	**8.25%**	**18.6%**	**13.8%**

[a] On amount of monthly salary in excess of $513.

[b] Varies annually for State Miscellaneous Tier 1 and noncertificated school employees. Amount shown is the 25-year average contribution rate.

Unlike typical defined benefit programs such as those administered by PERS, neither the STRS employer nor the state contribution rate varies annually to make up funding shortfalls or assess credits for actuarial surpluses.

Surcharge Triggered for First Time. The state also pays a surcharge when the teacher and school district contributions noted above are not sufficient to fully fund the pre-enhancement benefits within a 30-year period. Because of the downturn in the stock market, an actuarial valuation as of June 30, 2003 showed a $118 million shortfall in these baseline benefits—one-tenth of 1 percent of accrued liability. Consequently, this surcharge kicked in for the first time in the current year at 0.524 percent for three quarterly payments. This amounts to an additional $92 million from the General Fund in 2004-05.

The Governor's budget assumes this surcharge is discontinued in 2005-06 based on greater-than-assumed investment returns for 2003-04. It will not be known, however, whether the surcharge will continue until a new valuation becomes available in the spring. If it does continue, the 2005-06 General Fund cost for a full year would be between an estimated $120 million and $170 million.

Actuarial Valuation Finds Funding Shortfall

In addition to the small shortfall in pre-enhancement benefits (triggering the current-year surcharge), the recent valuation also showed a substantial $23 billion unfunded liability for the entire system, including enhanced benefits. That is, existing contributions from teachers, school districts, and the state are not sufficient to fully fund retirement benefits. As a result, STRS has just 82 percent of the assets necessary to pay accrued benefits.

As noted above, the pre-enhancement benefit structure has just a fractional shortfall. Consequently, the large systemwide unfunded liability results from the recent benefit enhancements. As described in the nearby box, STRS is currently reviewing options to address this shortfall.

Local Program Has No Local Control or Responsibility

System Problems

We believe there are three main problems with the current method of providing teacher retirement benefits.

Passive State Role in Teacher Compensation, Except for Retirement. As described above, the state is extensively involved in providing teacher retirement benefits and designating funding for this local program. This active role is contrary to the state's passive role in other forms of teacher compensation. The most significant form of compensation—teacher salaries—is left to local school districts and their employees to determine through collective bargaining. Moreover, because the state contributes to the retirement system, local districts do not bear the full costs of retirement plans, unlike teacher salaries.

No Plan Flexibility. In addition, the state-run system limits the choices of both school districts and teachers. With a single benefit structure and required contributions spelled out in statute, districts and teachers have no choices about how best to meet their pension needs. For example, some districts might prefer to use retirement contributions to finance other pension plans that better meet their overall funding needs. Similarly, teacher retirement needs may vary dramatically. Some teachers may prefer to weight their compensation toward present needs. Other teachers may want to forego some current salary for an even more generous retirement allowance than that provided through the STRS program.

State Viewed as Funder of Last Resort. As noted above, all contributing parties—teachers, school districts, and the state—have fixed contributions in statute. Thus, there is no designated responsibility for long-term fund-

ing shortfalls, such as the current $23 billion gap. In fact, because the state requires school district participation and designates the rates paid by teachers and school districts, the Legislature may feel compelled to pick up some or all of the unfunded liability despite the local nature of the program. In this way, the current system prevents funding decisions from being viewed as a local responsibility.

Long-Term Solutions

In our view, the long-term solution to these issues is to put decision making and responsibility for school retirement (including nonteaching or noncertificated employees) at the local level with employers (school districts) and employees (teachers). In other words, treat teacher retirement the same as other local government retirement programs. This would include:

- Having all costs borne by school districts and/or teachers, rather than the state being responsible for some share of costs.

Larger State Teachers' Retirement System (STRS) Funding Issue Looms

Shortfall Amounts to an Extra $1 Billion in Annual Contributions. The Governor's cost-shift proposal comes at a time when STRS faces another significant funding issue—the $23 billion unfunded liability noted in the main text. The STRS estimates that the retirement fund needs the equivalent of an additional 4.438 percent of salary over a 30-year period to retire the unfunded liability. This amounts to additional contributions exceeding $1 billion annually.

Options for Closing the Gap. The STRS has developed a dozen options for the board to consider to address the identified shortfall. Most of these options would require legislative action. The options can be grouped into three categories:

- ***Rescinding Recent Benefit Increases.*** The majority of the options would roll back benefits provided to teachers in recent years. In most cases, these changes could only be implemented for teachers who begin working after the new changes take effect. (Courts have considered pension plans to be part of the employment contract. Once a teacher begins working, therefore, the pension is not changeable without some offsetting benefit.)

Continued

- Allowing local flexibility for schools to choose different retirement plans—for teachers and noncertificated staff—that best meet local needs. This could be through STRS, PERS, or other venues such as joint powers authorities.
- Assuring fiscal soundness in that all potential costs are designated to be covered by employers and employees without the necessity of future statutory changes.

It is these criteria that we use to evaluate the long-term impact of the Governor's proposal for teacher retirement. In addition, there are short-term issues the proposal raises as a 2005-06 budget balancing solution.

GOVERNOR PROPOSES COST SHIFT TO SCHOOL DISTRICTS

Proposal

The budget proposes shifting the state's benefits contribution to school districts. (The state would continue annually paying 2.5 percent of payroll

- ***Additional Contributions.*** The state could increase contributions for teachers, school districts, and/or the state to cover the liability. As with reductions in benefits, the state generally would not be able to increase current teachers' contribution rates.
- ***Refinancing the Unfunded Liability.*** The STRS typically amortizes unfunded liabilities over a 30-year period. One refinancing option developed by STRS would stretch these payments over 40 years. (This time period would exceed the bounds of what is allowed for private pensions and is outside the norm for the state's practice.) Another option would be the issuance of a pension obligation bond. By issuing a bond at a lower interest rate than STRS' assumed rate of return (currently 8 percent), the state could reduce its interest payments over time. The Legislature would have to determine who is responsible for providing the resources to pay off the bond.

STRS Board Will Weigh Options This Spring. The STRS board has asked constituent groups for their comments, preferences, and recommendations on these options. The board has also requested an updated actuarial valuation as of June 30, 2004, which will be available in the spring. After this process, the board plans to bring proposals to the Legislature to address the unfunded liability.

to the inflation protection account.) The proposal would increase districts' contributions by 2 percent of payroll, resulting in a total district payment of 10.25 percent. (The state's contribution of 2.017 percent of payroll from two years ago is equivalent to a district payment of 2 percent at current payroll.) This amounts to roughly $500 million in additional contributions. The Governor's proposal would allow school districts to pass through to employees this additional contribution through collective bargaining. Consequently, teachers could contribute as much as 10 percent of their wages toward retirement.

To maintain take-home pay, however, teachers would also have the option of ending the equivalent diversion—2 percent—of the employee contribution to DBS (described previously). This component of the Governor's proposal is not contingent on school districts passing through the shifted responsibility for the 2 percent benefits contribution. Teachers could elect to stop contributing to DBS and receive that compensation in take-home pay regardless of whether districts or teachers pay the benefits contribution.

The administration proposal to shift the state's benefits contribution to school districts also includes eliminating the statutory provision for the surcharge when there is an unfunded liability in the pre-enhancement benefits.

Administration Asserts State Commitment Fulfilled. The administration asserts that the state fulfilled its 1971 promise—included in Chapter 1305, Statutes of 1971 (AB 543, Barnes)—to contribute a fixed dollar amount to the system for 30 years. This period would have ended in 2001-02, four years after the STRS program reached 100 percent funding.

Short Term: Does the Governor's Proposal Work As a 2005-06 Budget Solution?

We find that the Governor's proposal to shift the state benefits contribution to school districts likely would not achieve the intended savings under current law.

The Governor's proposed budget solution assumes the shift of STRS costs would provide ongoing General Fund relief. As we discuss below, however, these savings may not be achievable.

Shift Could Require Proposition 98 "Rebenching." Retirement contributions for school teachers and administrators are an operating cost schools face, like salaries and other benefits. When the state was implementing Proposition 98, however, it decided which programs to include within the minimum guarantee. At that time, the state decided to keep its STRS contri-

butions outside of the guarantee. While the state can move a funding responsibility from outside of Proposition 98 into the guarantee, state law requires that the minimum guarantee be rebenched to reflect this added responsibility. Thus, the Governor's proposal would likely require a $469 million upward rebenching of the minimum guarantee. If so, the proposal would not result in any General Fund savings.

Long Term: Does the Proposal Move Toward the Goals of Local Control and Responsibility?

The Governor's proposal would not fundamentally reform the State Teachers' Retirement System. To move towards a retirement system that emphasizes local control and responsibility, the Legislature would need to focus on a new approach for new teachers.

Shortcomings in System Would Remain. On a long-term basis, the Governor's proposal would not bring the state significantly closer to a teachers' retirement system which reflects local control and responsibility.

- ***Local Control.*** The Governor's proposal would shift the costs of a local program to the local level. Yet, the proposal would not fundamentally change the state's role with regard to STRS. First, the state would continue to have an active role in the costs of the program—by contributing to the purchasing protection program. Second, the state would remain actively involved in determining future benefit changes.
- ***Local Flexibility.*** The Governor's proposal also would not increase flexibility for school districts or teachers. Every school district would continue to offer the same retirement plan for teachers, regardless of local circumstances.
- ***Designated Funding Responsibility.*** Finally, the proposal would not designate which entity would be responsible for any financial shortfalls. Consequently, the state could continue to be viewed as the funder of last resort, reducing local responsibility for the program.

Limitations on Changing System for Existing Teachers. For these reasons, the Governor's proposed cost shift would not fundamentally reform the existing STRS system. For existing teachers, the Legislature may find it difficult to reach the long-term goals of local control, flexibility, and designated funding responsibility with any proposal. Once in place, retirement systems are difficult to alter. By viewing a retirement program as part of the employer-employee contract, the courts have placed significant limits on the types of changes that can be made to a current employee's retirement

program. Additionally, the state will be required to designate a source of funding to pay off the current STRS unfunded liability.

Proposals Regarding New Teachers. For new teachers, however, the Legislature would have significantly more flexibility in designing a system that focused on local control and responsibility. The Governor, for example, has proposed requiring all new state, local government, and school employees in California to participate in defined contribution retirement plans. We discuss his proposal in detail—as well as alternatives—in "Part V" of *The 2005-06 Budget: Perspectives and Issues*.

INTRODUCTION

K-12 Education

The budget proposes to provide a $2.5 billion (6 percent) increase in K-12 Proposition 98 funding from the 2004-05 level. Most of the new funding is used to fully fund attendance growth, and provide a cost-of-living adjustment (COLA) plus an additional $329 million to restore part of a prior-year COLA. Adjusting for deferrals funding, schools would receive $7,377 per pupil, or 5.2 percent, more than revised per pupil expenditures in the current year. The Governor proposes not to fund a $1.1 billion increase in funding in the current year that would be needed to meet the targeted funding level in the bill suspending Proposition 98 for 2004-05. The two-year savings from this proposal is $2.3 billion. The Governor proposes to transfer from the state to school districts and community colleges a $469 million State Teachers' Retirement System cost obligation (the K-12 share is $433 million).

Overview of K-12 Education Spending

Figure 1(see next page) displays all significant sources for K-12 education for the budget year and two previous years. As the figure shows, Proposition 98 funding constitutes over 70 percent of overall K-12 funding. Proposition 98 funding for K-12 increases $2.5 billion (6 percent) from the 2004-05 level. However, other funding for K-12 falls by a combined $723 million (see Figure 1).

Local Government Deals Require Higher General Fund Support for Proposition 98. The $2.5 billion increase in K-12 Proposition 98 funding is supported mainly by the General Fund ($2.1 billion). Since 2003-04 the K-12 share of Proposition 98 supported by the General Fund has increased from 67 percent in 2003-04 to 74 percent in the proposed budget. The main cause of the increased General Fund share of Proposition 98 is transfers of local property tax revenues from schools to local government to meet the requirements of the vehicle license fee (VLF) "swap" and the "triple flip" payment mechanism for the deficit reduction bond passed by the voters in March 2004. The Department of Finance (DOF) forecasted that underlying local property tax revenues would grow by 9 percent, which would have provided almost $1.1 billion in year-to-year growth. However, technical

adjustments to the VLF swap and triple flip amounts require an additional $675 million to be transferred from schools to local government. Thus, the growth in local property tax revenues in 2005-06 is only $401 million (3.6 percent).

Figure 1

K-12 Education Budget Summary

(Dollars in Millions)

	Actual 2003-04	Revised 2004-05	Proposed 2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
K-12 Proposition 98					
State General Fund	$28,154	$30,992	$33,117	$2,125	6.9%
Local property tax revenue	13,656	11,192	11,593	401	3.6
Subtotals, Proposition 98	($41,810)	($42,183)	($44,710)	($2,527)	(6.0%)
Other Funds					
General Fund					
Teacher retirement	$469	$1,050	$502	-$549	-$52.3%
Bond payments	890	1,674	1,825	151	9.0
Other programs	254	720	441	-280	-38.8
State lottery funds	873	810	810	—	—
Other state programs	112	110	105	-5	-4.5
Federal funds	7,154	7,584	7,533	-51	-0.7
Other local funds	5,195	5,206	5,217	10	0.2
Subtotals, other funds	($14,948)	($17,155)	($16,433)	(-$723)	(-4.2%)
Totals	**$56,758**	**$59,339**	**$61,143**	**$1,804**	**3.0%**
K-12 Proposition 98					
Average daily attendance (ADA)	5,958,356	6,015,984	6,063,491	47,507	0.8%
Budgeted amount per ADA	$7,017	$7,012	$7,374	$362	5.2

Totals may not add due to rounding.

Proposed Reductions in Non-Proposition 98 Spending. The budget proposes to decrease non-Proposition 98 funding for K-12 by a net of $723 million in 2005-06. The key changes include:

- ***Shifting the Responsibility for the State Teachers' Retirement System (STRS) Contributions From State to School Districts—Decrease of $433 Million.*** The state's General Fund currently contributes roughly 2 percent of teacher payroll annually for the STRS base

program. The budget proposes to shift this payment to school districts and/or teachers. This would result in 2005-06 General Fund savings of $469 million ($433 million of this is costs shifted to school districts and the remainder is shifted to the community colleges).

- ***One-Time STRS Surcharge Triggers Off—Decrease of $94 Million.*** In the current year, a funding shortfall in the STRS base program triggered a 0.524 percent General Fund surcharge for three-quarters of the year. This amounts to $94 million. The administration assumes that this surcharge will not continue in 2005-06 (at a full year cost of at least $122 million) because greater-than-assumed investment returns in 2003-04 may have erased the small shortfall that triggered the surcharge. It is our understanding that the statutory provision for a surcharge would be eliminated as part of the administration's proposed benefits funding shift.

- ***School Bond Debt Service—Increase of $151 Million.*** The budget's increase in debt service on school bonds reflects recent investments the state has made in school construction and renovation through Proposition 1A (1998) and Proposition 47 (2002).

- ***Proposition 98 Reversion Account Reductions—Decrease of $203 Million.*** Most of the decrease in "General Fund—Other programs" in Figure 1 results from a $203 million reduction in funds available in the Proposition 98 Reversion Account. The Reversion Account reappropriates funds that were appropriated to Proposition 98 in the past, but were not used. The Reversion Account balances are projected to be less for 2005-06 largely because the state has reduced funding for many of the programs that have historically generated reversion funding. Starting in 2005-06, one-half of the funds in the Reversion Account are transferred to an emergency fund for facilities as part of the *Williams v. California* lawsuit settlement.

- ***Federal Funding Reductions Reflect Conservative Estimate—Decrease of $51 Million.*** The Governor's budget makes conservative assumptions about the availability of federal funding in 2005-06 because the federal budget was passed too late to incorporate into the budget. We now have early estimates of the year-to-year change in federal funding. The federal Department of Education estimates that federal funding for California education will increase around $75 million in 2005-06. Thus, the Governor has underbudgeted federal funds by around $125 million. The DOF informs us that they will reflect additional federal funds in the May Revision.

Per Pupil Spending Grows by $362 in 2005-06

The Governor's budget provides an additional $362 per pupil, a 5.2 percent increase from the current year. Figure 2 shows per pupil spending in actual dollars over the last decade. The figure shows two distinct trends—a fast growth period in the late 1990s, and a slow growth period between 2000-01 and 2004-05. Spending per pupil increased in each year of this period. However, these spending levels do not take into account the effects of inflation. Figure 3 adjusts per pupil spending for inflation. K-12 spending since 2000-01 has not kept pace with rising costs, declining 1.3 percent per year, on average, between 2000-01 and 2004-05. Looking at changes over the last decade, spending (in inflation-adjusted terms) has increased by approximately $930 per pupil (14 percent). The Governor's proposal would end the recent trend of reduction, growing per pupil spending 2.3 percent after adjusting for the effect of inflation.

Figure 2

K-12 Per Pupil Spending

(Nominal Dollars)

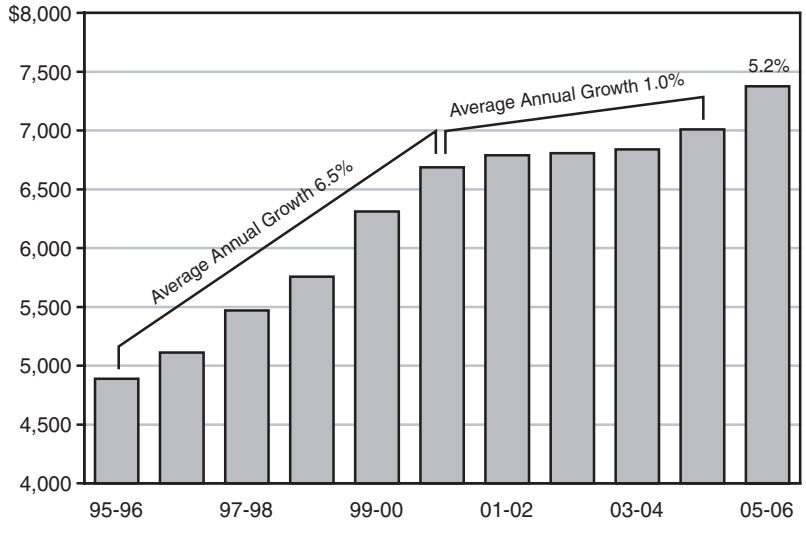
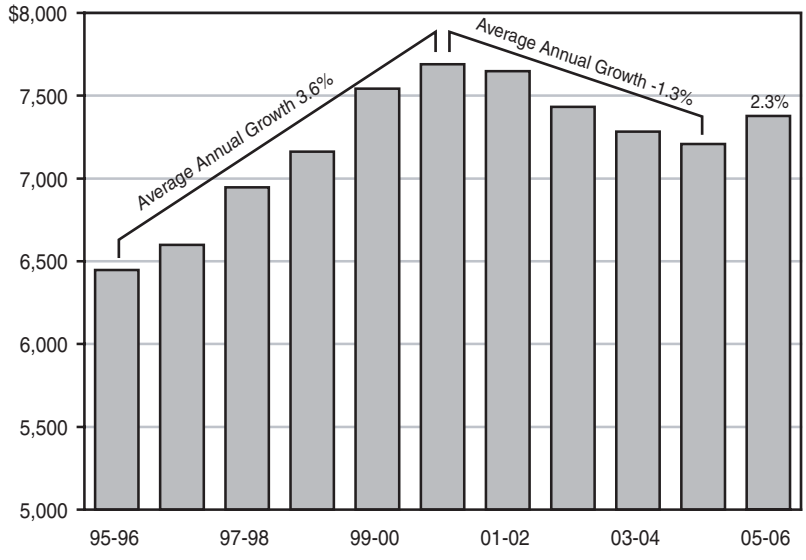


Figure 3

K-12 Per Pupil Spending Adusted for Inflation



Major K-12 Funding Changes

Figure 4 (see next page) displays the major K-12 funding changes from the *2004-05 Budget Act*. In the current year, the Governor's budget reflects a net $89 million increase resulting mainly from higher-than-expected attendance. In 2005-06, the Governor's budget proposes about $2.5 billion in new K-12 expenditures for the following purposes.

- ***Revenue Limit Growth and COLAs—$1.5 Billion.*** The Governor fully funds 0.79 percent growth in revenue limits ($234.7 million), and a 3.93 percent COLA ($1.2 billion).
- ***Deficit Factor Reduction—$329 Million.*** In 2003-04, the state did not provide a COLA (1.8 percent), and reduced revenue limits by 1.2 percent. At that time, the state created an obligation to restore the reductions at some point in the future. That obligation is referred to as the "deficit factor." The budget provides $329 million to reduce the deficit factor from around 2.1 percent to 1.1 percent.
- ***Categorical Growth and COLAs—$588 Million.*** The Governor fully funds growth and COLAs for categorical programs including $427.6 million for COLAs and $160 million for growth.

- ***Restoration of Categorical Funding.*** To help balance the 2004-05 budget, the state used one-time funds to support ongoing education programs. The Governor provides ongoing funding for these programs starting in 2005-06.

Figure 4

Major K-12 Proposition 98 Changes

(In Millions)

2004-05 Budget Act	**$42,087.3**
Additional K-12 revenue limit	$93.2
Other	-4.7
2004-05 Revised K-12 Spending Level	**$42,183.3**
Revenue Limit	
Cost-of-living adjustments (COLAs)	$1,222.1
Growth	234.7
Deficit factor reduction	329.3
Subtotal	($1,786.1)
Categorical Programs	
COLAs	$427.6
Growth	160.0
Restore categoricals funded with one-time funds	146.5
Other	6.5
Subtotal	($740.6)
Total Changes	**$2,526.7**
2005-06 Proposed	**$44,710.0**
Change From Revised 2004-05	
Amount	$2,526.7
Percent	6%

Proposition 98 Spending by Major Program

Figure 5 shows Proposition 98 spending for major K-12 programs adjusted for funding deferrals. The budget provides almost $33 billion for revenue limits, $3.2 billion for special education, and almost $1.7 billion for K-3 class size reduction (CSR).

Figure 5

Major K-12 Education Programs Funded by Proposition 98

(Dollars in Millions)

	Revised 2004-05[a]	Proposed 2005-06[a]	Change Amount	Change Percent
Revenue Limits				
General Fund	$19,513.2	$20,912.8	$1,399.7	7.2%
Local property tax	10,859.1	11,245.3	386.2	3.6
Subtotals	($30,372.3)	($32,158.2)	($1,785.8)	(5.9%)
Categorical Programs				
Special education[b]	$3,051.2	$3,239.2	$188.0	6.2%
K-3 class size reduction	1,651.8	1,671.6	19.8	1.2
Child development and care	1,097.4	1,177.9	80.5	7.3
Targeted Instructional Improvement Block Grant[c]	930.2	974.4	44.2	4.8
Adult education	606.5	646.1	39.6	6.5
Economic Impact Aid	536.2	585.2	48.9	9.1
Regional Occupation Centers and Programs	393.3	419.5	26.2	6.7
Instructional Materials Block Grant	363.0	380.2	17.2	4.8
Public School Accountability Act	249.2	249.2	—	—
Deferred maintenance	250.4	267.4	17.0	6.8
Home-to-school transportation	541.9	567.7	25.8	4.8
School and Library Improvement Block Grant[c]	402.5	421.6	19.1	4.8
Professional Development Block Grant[c]	239.1	248.6	9.5	4.0
Pupil Retention Block Grant[c]	164.3	174.1	9.8	6.0
Mandated supplemental instruction (summer school)	281.3	293.5	12.2	4.3
Other	1,161.7	1,255.0	93.3	7.9
Deferrals and other adjustments	-111.2	-19.3	91.9	-82.6
Subtotals	($11,810.7)	($12,551.9)	($741.2)	(6.3%)
Totals	**$42,183.0**	**$44,710.1**	**$2,527.0**	**6.0%**

a Amounts adjusted for deferrals. We count funds toward the fiscal year in which school districts programmatically commit the resources. The deferrals mean, however, that the districts technically do not receive the funds until the beginning of the next fiscal year.

b Special education includes both General Fund and local property tax revenues.

c Chapter 871, Statutes of 2004 (AB 825, Firebaugh), created these new categorical block grants. The 2004-05 amounts include funding provided for the predecessor programs.

Enrollment Trends

Enrollment growth significantly shapes the Legislature's annual K-12 budget and policy decisions. When enrollment grows slowly, for example, fewer resources are needed to meet statutory funding obligations for revenue limits and K-12 education categorical programs. This leaves more General Fund resources available for other budget priorities both within K-12 education and outside it. Conversely, when enrollment grows rapidly (as it did in the 1990s), the state must dedicate a larger share of the budget to education. In light of the important implications of enrollment growth, we describe below two major trends in the K-12 student population.

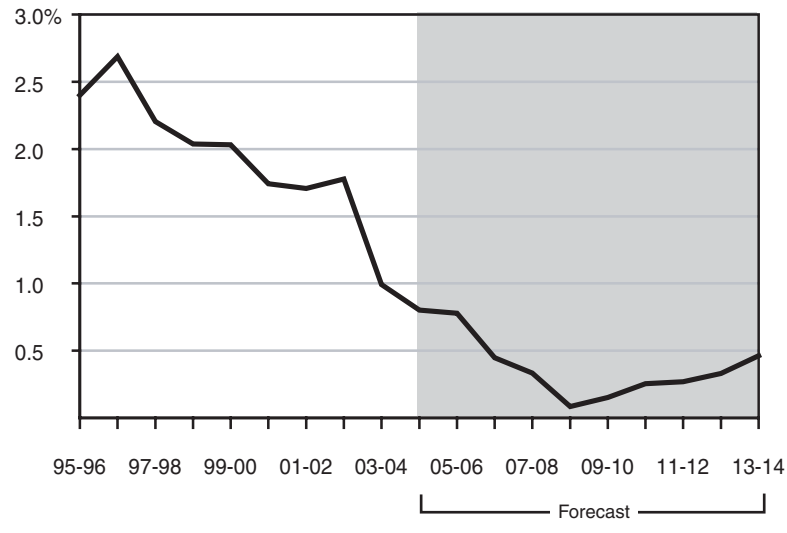
The enrollment numbers used in this section are from DOF's Demographic Research Unit and reflect aggregate, statewide enrollment. While the enrollment trends described here will likely differ from those in any given school district, they reflect the overall patterns the state is likely to see in the near future.

K-12 Enrollment Growth to Slow Significantly. K-12 enrollment is projected to increase by about 0.8 percent in 2005-06, bringing total enrollment to about 6.3 million students. Figure 6 shows how enrollment growth has steadily slowed since the mid-1990s. The figure also indicates that K-12 enrollment growth will continue to slow until 2008-09, when it will turn upward.

Figure 6

K-12 Enrollment Growth

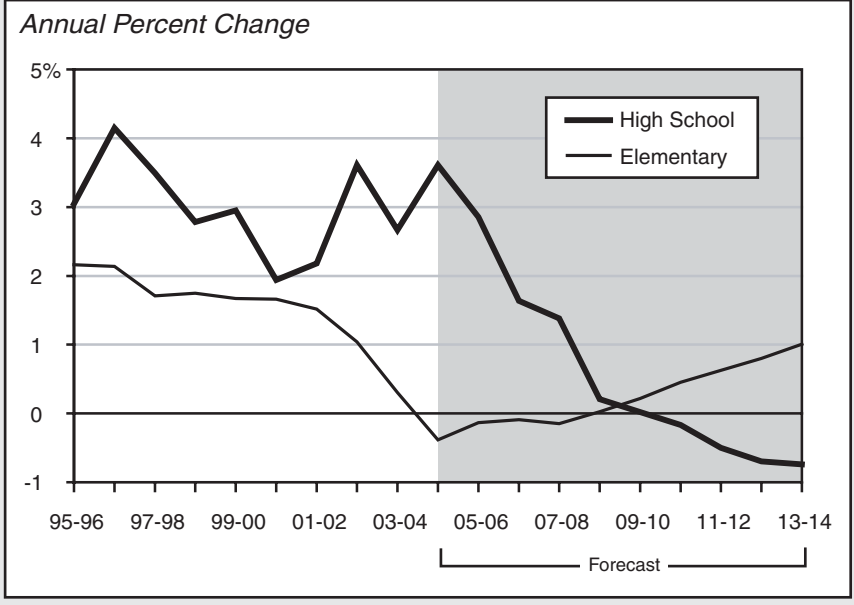
Annual Percent Change



Divergent Trends in Elementary and High School Enrollment. Figure 7 shows that the steady decline in K-12 enrollment growth masks two distinct trends in elementary (grades K-8) and high school (grades 9 through 12) enrollment. Elementary school enrollment growth has gradually slowed since 1995-96. This enrollment is expected to decline annually between 2004-05 and 2008-09. In contrast, high school enrollment growth has been growing rapidly, with a 3.6 percent increase in 2004-05. Beginning in the budget year, growth is expected to slow sharply, becoming negative in 2010-11. Expected growth from the current year to 2007-08 is approximately 115,000 pupils (6 percent). Between 2007-08 and 2013-14, however, enrollment will fall by almost 40,000 students.

Figure 7

Elementary and High School Enrollment Growth



Budget and Policy Implications. These enrollment trends have significant budgetary and policy implications for issues such as CSR, teacher demand, and facilities investment. A few of the major implications include:

- A 1 percent increase in K-12 enrollment requires an increase of approximately $450 million to maintain annual K-12 expenditures per pupil.

- As enrollment growth slows, a smaller share of the state's new revenues will be consumed by costs associated with funding additional pupils. The Legislature will then have the option of devoting these revenues to increasing per pupil spending or to other budget priorities.
- In the near term, programs aimed at elementary grades (such as K-3 CSR) will face reduced cost pressures related to enrollment. Programs aimed at high school grades will face increased cost pressures. This could present cost challenges for many unified school districts because per pupil costs of educating high school students tend to be higher than for elementary school students.
- Because of declining enrollment provisions in state law, more school districts—especially elementary school districts—will benefit from the one-year hold harmless provision in current law, increasing state costs per pupil.
- Despite the general downward trend in enrollment growth, significant variation is expected to occur across counties. For example, between 2004-05 and 2013-14, Los Angeles' enrollment is expected to decline almost 120,000 students (a 7 percent decline), whereas Riverside's enrollment is expected to increase by over 90,000 students (a 25 percent increase).
- The percent of Hispanic students will continue to increase. In 1995-96, 39 percent of students were Hispanic. By 2013-14, 54 percent will be Hispanic. The state will need to increase its focus on the language development skills of the state's English learner population.

BUDGET ISSUES

K-12 Education

SCHOOL DISTRICT FINANCIAL CONDITION

School districts face a number of difficult financial challenges in 2005-06 and beyond, including falling revenues due to declining enrollment and long-term costs for retiree benefits.

School districts have not been immune to budget cuts during this current fiscal crisis. Midyear cuts reduced funding for categorical programs and mandates in 2002-03. In 2003-04, no cost-of-living adjustments (COLAs) were provided and the state actually reduced district general purpose funding by a small amount. In 2004-05, schools received a COLA and a partial repayment of the cut in general purpose funds. The 2005-06 proposed budget promises another COLA and partial general purpose funding restoration.

During this time, a significant number of districts also began losing students due to demographic changes in the K-12 population. As enrollment fell several years in a row, so did state funding for these districts. Recent data suggest that 40 percent of districts statewide experienced declining enrollment for both 2002-03 and 2003-04. The decline in district enrollments combined with modest increases in state funding over this period translated into flat or declining revenues for many districts.

Looking to 2005-06, school districts face a number of revenue and cost pressures (see Figure 1, next page). Declining enrollment will continue to affect many districts. In fact, our projection of K-12 enrollments shows very little growth during the next five years. These losses reduce district revenues, requiring budget cuts at the local level.

The figure also lists three other types of financial pressures facing districts. Districts must restore, beginning in 2005-06, unrestricted reserves and maintenance spending to levels required by the state. As part of the 2003-04 budget plan, the state allowed districts to reduce general purpose reserve levels, cut spending on maintenance, and transfer available categorical fund balances at the end of 2002-03 into the districts' general fund. In 2005-06, districts must restore reserve levels and maintenance spending to the state-required levels. For districts that used the full flexibility afforded by the state, the cost of restoring reserves and maintenance spending equals about 2.5 percent of local budgets.

Figure 1

Financial Pressures Facing School Districts

2005-06

✓ **Adjust to Lower Revenues From Declining Enrollment**

✓ **Restore State-Required Funding Levels**
- Unrestricted reserves.
- Long-term maintenance.

✓ **Restore Operating Budget Balance**
- Borrowing from self-insurance reserves.
- Using one-time funds for ongoing expenses.

✓ **Absorb Higher Costs**
- Liability for retiree health benefits.
- Health insurance premiums.
- Employee wage increases.

Based on our discussions with district and county fiscal officers, districts also are under pressure to get their operating budgets back in balance. In many cases, they have taken one-time actions to help finance spending that is above ongoing revenues. The figure shows some of the more common practices, including borrowing from other district funds (such as self-insurance funds) and using one-time funds for ongoing expenses. All of these practices can be justified as reasonable short-term actions if they are accompanied by a plan for ending the practice. Failure to end them—

that is, by aligning ongoing revenues and expenditures and repaying internal borrowing—often results in a bigger problem as time goes on.

Districts also face several significant cost increases in the budget year. Health insurance costs have been increasing at annual rates above 10 percent over the past several years, affecting the cost of current employees and retirees whose health benefits are covered by districts. Salary costs are also a concern; since employee salaries comprise the largest component of local budgets, any increase in wages has a major impact on district finances.

Districts With Financial Problems Increasing. Preliminary information for 2004-05 suggests an increasing number of districts need to take steps to remain financially healthy. The state maintains a fiscal oversight process (known as the AB 1200 process) that makes county offices of education (COEs) responsible for reviewing school district budgets and assisting districts that are experiencing financial difficulties. Twice each year, COEs certify the fiscal condition of districts—that is, they report the likelihood that each district will be able to meet its financial obligations over the next three fiscal years. The first 2004-05 reports were due to the State Department of Education (SDE) on December 15, 2004.

While these first 2004-05 reports were not available at the time this analysis was written, the Fiscal Crisis and Management Assistance Team (FCMAT) projects an increase in the number of districts given a "qualified" or "negative" certification. This team is established in state law to provide fiscal and management assistance to school districts and COEs. A qualified rating means the district may not be able to meet its financial obligations. A negative certification means the district will not be able to meet its obligations in the current or subsequent fiscal year. A negative or qualified certification initiates the development of a plan for addressing the causes of the district's financial instability.

The FCMAT projects the number of negative or qualified districts will increase in 2004-05. It expects 11 districts to receive a negative certification, up from 9 last spring. In addition, it expects 44 districts to receive a qualified certification, an increase from 36 in spring 2004. In addition to these districts, we know of several districts that made midyear reductions in order to avoid a negative or qualified certification. While the number of districts with a negative or qualified certification is still relatively small, the increase reflects the fiscal pressures districts face. We think the pressure is likely to mount in spring 2005, when districts begin their budget planning for next year in earnest.

In the following sections, we recommend the Legislature address two financial pressures faced by districts. The first is the problem of long-term retiree health benefits. Many districts face large liabilities for future retiree health care costs. We think the state needs to begin a process for recogniz-

ing these costs and requiring districts to develop plans for addressing long-term liabilities for these benefits.

The second issue is declining enrollment. Because statewide growth in the K-12 population is likely to be stagnant for the next five years, declining enrollment is likely to affect the majority of districts in the state. We suggest the Legislature consider an alternate declining enrollment funding formula that would give districts more time to adjust to the financial impact of fewer students.

RETIREE BENEFITS POSE LONG-TERM CHALLENGE

We recommend the Legislature require county offices of education and school districts to take steps addressing districts' long-term retiree health benefit liabilities.

In 2004, the Governmental Accounting Standards Board (GASB) issued a new policy describing how state and local governments (including schools and community colleges) must account for nonpension retirement benefits such as health insurance. For K-12 and community college districts, the GASB policy requires each district to include its long-term liabilities for post-retirement benefits in its annual financial statement. One component of this new liability statement is an identification of the amount that, if paid on an ongoing basis, would provide sufficient funds to pay for benefits as they come due.

In other words, GASB requires districts to account for health and other retirement benefits similarly to the way they account for pension costs. For retirement, an amount is contributed to a fund each year for each employee. Over the years, these payments are set at a level sufficient to pay for the full cost of retirement benefits for the average employee. In effect, the retirement benefits are "prefunded"—that is, their costs are provided for over the working life of the employee. (Also, contributions are set aside in a special "trust" fund so they cannot be used for any other purpose.) The new GASB policy encourages districts to pay for retiree health benefits in the same way, thereby avoiding the accumulation of large unfunded liabilities for future benefits. The GASB policy, however, does not require such annual payments or public agencies to act on any past liabilities—it only requires the reporting of such liabilities. We are not aware of any school district that has prefunded its retiree health benefits. Instead, these costs are paid out of districts' operating budgets as they are incurred by retirees.

Some District Liabilities Are Huge

The liabilities some districts face are very large—so large they potentially threaten the district's ability to operate in the future. For instance, Los Angeles Unified School District (LAUSD) estimates its current "actuarial liability" for retiree health benefits at $5 billion. This figure is the amount the district would need to place in an interest-bearing account in 2005 to pay for these benefits over time. To provide a sense of the size of this liability, the $5 billion estimate for LAUSD is the equivalent of about 80 percent of the district's general purpose annual operating budget. Other districts face a similar problem. Fresno Unified estimates its liability at $1.1 billion—almost twice its annual budget. The cost for both districts is very high because each provides lifetime health benefits to retirees.

While these costs are not yet at a stage that will seriously erode the district's ability to function, both districts are experiencing rapidly increasing annual costs for these benefits. In Los Angeles, for instance, the district budget includes about $170 million for retiree health benefits in 2004-05. The district estimates the annual cost of these benefits will grow to about $265 million by 2010 and $360 million by 2015. The district would have to add $500 million to the budget—about 8 percent of its overall budget—starting next year and continuing for the next 30 years to pay off its unfunded liabilities and prefund future retiree health benefits.

Weak District Incentives to Face Liabilities. Districts do not have much incentive to address this problem. In the short run, the need to set aside funds for this obligation would only complicate budgeting as it would reduce funding available for other local priorities. Furthermore, any financial crisis resulting from these liabilities may be years or decades away. For these reasons—and especially given the number of financial pressures districts currently face—districts will be reluctant to take the needed steps to address this problem. There is one way, however, that the new GASB policy may prod districts to address these liabilities. Large liabilities could affect a district's bond rating and increase the costs of borrowing. Pressure from credit agencies, therefore, represents one of the few short-term incentives for addressing retiree costs that will result from the new policy.

Liabilities Could Be Even Larger. Districts may also have an incentive to understate their actual liabilities. The GASB policy left many details of the actuarial calculation of liabilities to local agencies. While this makes sense given the range of state and local agencies affected by this policy, it also allows local agencies the ability to make assumptions that minimize their apparent liability. Small changes in the underlying assumptions used in these studies have a major impact on the results. For instance, the LAUSD's actuarial study determined a $5 billion actuarial liability using "best estimate" assumptions. This figure increased to $7 billion if all cur-

rent and retired employees were included in the calculation instead of retirees plus those employees whose health retirement benefits are vested. Moreover, the figure grew to $11 billion if the long-term interest rate the district would earn on its annual contributions was reduced from 6 percent to 4 percent. Thus, we think it is in the state's interest to ensure districts use reasonable assumptions in their actuarial studies.

Require District Plans for Addressing Liabilities

The size of retiree health benefit liabilities is so large that unless steps are soon taken to address the issue, it seems likely that districts will eventually seek financial assistance from the state. As a first step, we think the Legislature needs to establish a process for ensuring that districts identify and address the liabilities created by post-retirement benefits. Currently, there is no state or local process for collecting information on the financial liabilities districts presently face or whether districts have a plan for addressing these liabilities. In addition, the long-term liabilities of retiree benefits are not part of the AB 1200 district fiscal review process. As a result, COEs are not always aware of which districts provide retiree benefits or the magnitude of the costs for those benefits.

About 150 districts present the most serious problem. Of these, 70 districts provide lifetime health benefits to retirees and represent the districts that probably have the most serious fiscal problem. Another 80 districts provide health benefits from the time an employee retirees to a specific age—most commonly age 70. These districts also may face significant fiscal challenges.

To address this problem we recommend the Legislature enact legislation to achieve the following:

Require districts to provide COEs by October 1, 2005, with a copy of any actuarial study of its retiree benefits liability. Until the GASB issued its new policy, the state required districts to assess their outstanding liabilities for certain post-retirement benefits every three years. The COEs should receive a copy of these studies so they are informed of the size of any existing liabilities.

Require districts to provide COEs by June 30, 2006, with a plan for addressing retiree benefits liabilities. The GASB policy requires large local agencies to make public data on retiree benefit liabilities beginning in 2007. Because of the prior state requirement and the new GASB policy, most districts with significant liabilities are aware of the problem. We think encouraging districts to develop a plan for addressing these long-term liabilities as soon as possible is in the districts' and state's interest. These plans could address district liabilities in several ways including prefunding

benefits, restructuring or eliminating benefits for new employees, and partial prefunding that protects districts during years when benefit costs are high.

Modify AB 1200 to require COEs to review whether districts' funding of long-term liabilities adequately cover likely costs. This change would have two elements. First, COEs would assess whether districts are following their plan for addressing the long-term liabilities for retiree benefits. This review would occur each time districts revise their actuarial estimate of liability. Second, SDE would add to existing AB 1200 regulations new guidelines for the development of future actuarial studies of retiree benefits. This would ensure that district studies used reasonable assumptions in their assessment of local liability.

Require SDE to report to the fiscal committees by December 15, 2005 on the size of retiree health liabilities in the 150 districts that provide the most extensive benefits. This would inform the Legislature's discussion about any future steps that may be needed to deal with this problem.

CREATE A NEW DECLINING ENROLLMENT OPTION

We recommend the Legislature adopt legislation to establish an alternate declining enrollment formula that would give districts more time to adjust to the financial impact of fewer students. Our recommendation would create no additional state costs in 2005-06 but would probably result in a 2006-07 cost of $80 million to $100 million. This cost would grow modestly over time until districts reach their equalization targets.

Each district is assigned a unique revenue limit, or per-pupil funding rate. Revenue limits are comprised of two main parts. First, each district receives a *base* revenue limit, which accounts for 95 percent of the amount of revenue limit funds provided to districts. Base revenue limits are determined largely by historical factors, including a district's spending levels at the time Proposition 13 was approved by voters in 1978. Since then, the Legislature has added "equalization" funding to revenue limits several times to reduce differences among districts in base revenue limits.

Second, the other 5 percent of revenue limit funding is for ten "add-on" programs. These add-ons, for instance, include funding for minimum teacher salary incentive programs, the Unemployment Insurance program, and longer school day and year incentives. Since districts receive significantly different amounts from these adjustments, the add-on programs introduce a second factor contributing to differences in district revenue limits among districts.

In our past reports on K-12 finance, we have recommended the Legislature address these two problems. In our view, most of the differences in

revenue limit funding levels among districts have no analytical basis. Instead, most of the variation stems from decisions made during the 1970s and 1980s that have little policy relevance today. To correct these problems, we have recommended the Legislature make progress in equalizing revenue limits. We have also recommended consolidating most of the add-on funding into base revenue limits so that the Legislature could equalize the amount of general purpose funds districts actually receive, not just the amounts represented by base revenue limits.

Recently, the Legislature made revenue limit equalization a funding priority. The *2004-05 Budget Act* provides $110 million for this purpose, setting the goal of equalization at the 90th percentile of all districts within each size and type. The 2005-06 budget proposal does not include any new funds to continue progress towards more uniform base funding levels.

Declining Enrollment Affects Many Districts

Another feature of the revenue limit system is known as the "declining enrollment adjustment." This adjustment gives districts a one-year reprieve from funding reductions caused by declining attendance. Technically, the adjustment allows districts to claim the higher of the current or prior year's average daily attendance (ADA). Since, in declining enrollment districts, the prior-year total exceeds the current-year ADA, the adjustment maintains a district's previous year's funding level (increased by a COLA).

A fall in the number of elementary school age students in California is creating declining enrollment in many school districts. In 2003-04, elementary and unified districts reported that 13,800 fewer students were enrolled in grades K-6 than in the previous year. This *net* decline is relatively small—only a 0.4 percent reduction in enrollment. However, the net figure masks the fact that the losses are not uniform across the state.

Forty Percent of Districts Are Declining. The most recent data available show that 412 districts (or 42 percent) experienced declining enrollments in 2003-04. The data suggest that attendance in most of these districts fell in both 2002-03 and 2003-04. The declining enrollment adjustment cost the state about $130 million in 2003-04.

The typical declining enrollment district lost 1.7 percent of its previous year's ADA. About one-fifth of districts reporting declines, however, lost more than 5 percent of their students. Districts of all sizes are experiencing falling enrollment. Most are small—about half enroll fewer than 1,000 students. Thirty-nine of the declining districts, however, are large, enrolling more than 10,000 students.

Declining revenues associated with falling enrollments create difficult fiscal issues for districts. Falling enrollments mean that districts need fewer

teachers. As districts stop hiring new teachers, the average teacher salary grows (simply because districts have more experienced, higher wage staff whose salaries are not offset by newer, lower-wage staff), which requires additional cost reductions. If the decline is large or continues over an extended period of time, districts typically need to close schools.

School fiscal experts advise that districts should accommodate declining enrollment by making cost adjustments *before* the decline actually occurs. Often, enrollment trends are known in advance. In some cases, however, falling enrollments can occur relatively quickly. Enrollment increases in one year may be followed by sharp declines in the next—with no transition year in between. In these instances, or when districts fail to adequately plan for sustained reductions in enrollment, the financial consequences can be severe.

Our fall 2004 estimate of future K-12 attendance growth projected a continuing decline in the growth rate of the student population. By 2008-09, we estimate no growth in ADA statewide. As a result, we expect declining enrollment will play an important role in district finance for several years. Many districts that are currently declining will continue to lose students. A portion of districts that are still growing will become declining enrollment districts in the near future.

Option: Permanently Increase Revenue Limits

For districts that face significant long-term reductions in ADA, the existing declining enrollment adjustment may not provide a sufficient amount of time for districts to adjust to the fiscal consequences of falling enrollments. In the first year of decline, the adjustment maintains the prior-year funding level (plus a COLA). Beginning in the second year of ADA reductions, however, districts lose revenue limit funding commensurate with the size of the ADA decline in the previous year. While the declining enrollment adjustment actually provides a series of one-time financial benefits to districts in this situation, the current formula still requires districts to ratchet down their annual spending as enrollment falls.

There are two basic ways the Legislature could help districts facing multiyear enrollment declines. First, it could expand the existing temporary protection, such as extending the funding adjustment to two years. This would provide districts with an additional year of constant funding before the impact of falling attendance reduced total revenue limit funding.

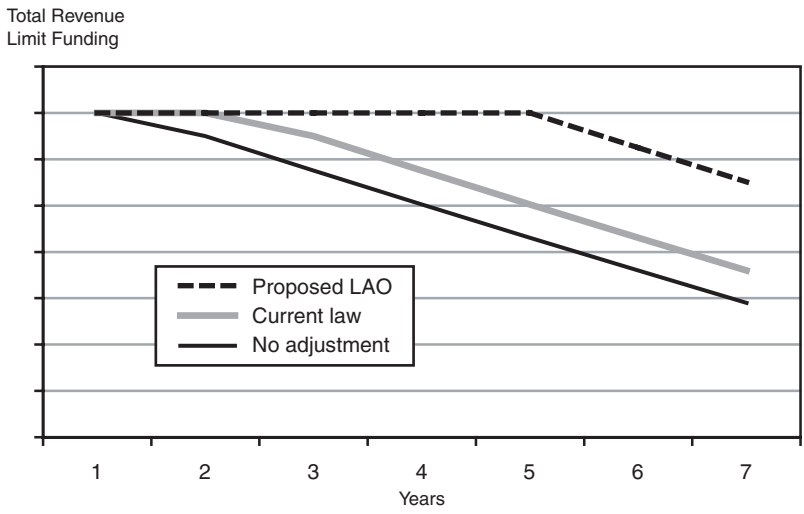
The second way is to provide a more lasting adjustment. We propose an option that increases revenue limits by an amount sufficient to offset the enrollment decline. This option would allow a district to maintain its prior-year level of funding over time. By allowing this option to be used only by

districts which are *below* the state's equalization target, it would have the dual benefit of helping the state make progress toward its equalization goal.

How Would This Option Work? Figure 2 illustrates the difference in the impact of the current adjustment and our alternative adjustment in a hypothetical district that experiences falling attendance over many years. The dark line shows how total revenue limit funding would decline without *any* funding adjustment; revenues would fall with enrollment. The existing declining enrollment adjustment is shown as a parallel line to the "no adjustment" scenario. The current adjustment delays the revenue reduction of falling attendance by one year. As a result, after one year of holding the district harmless from the effect of falling enrollment, the district experiences annual cuts in revenues equal to the previous year's reduction in attendance.

Figure 2

Funding Options for Districts With Declining Enrollment[a]



[a]Assumes district experiences declining enrollment each year, beginning in year 2.

Our proposed declining enrollment adjustment would operate quite differently. As the figure illustrates, total revenues for the hypothetical district would stay constant for several years. During this time, the district's per-pupil revenue limit would be increased annually to offset the fall in attendance and keep total funding constant. In year five, however, the revenue limit increases cause the district to reach the state's equalization tar-

get. After that point, the district no longer qualifies for our proposed adjustment, and further enrollment declines reduce district revenues.

Proposal Helps Districts, Makes Progress Towards Equal Funding. Our proposed revenue limit increase has two main advantages over the current declining enrollment formula. First, it provides a higher level of funding protection for most districts that are losing students. This increase in a district's per-pupil revenue limit would be permanent—it would not revert back to its previous level the next year as the current ADA adjustment does. Per-pupil revenue limit adjustments would continue only until the district reaches the state's equalization target. Since almost all districts are within about 10 percent of the state's equalization target, districts experiencing significant, sustained, declines would reach the 90th percentile funding level relatively quickly.

The second advantage of our proposal is that increasing district revenue limits to the state's equalization target makes progress on another state priority—a system of uniform revenue limits. Currently, districts are required to reduce spending due to declining enrollment regardless of whether they receive less per pupil than other similar districts. By holding total funding constant from year to year, the state can make progress towards its goal of reducing these differences.

Another advantage of our proposal is that the revenue limit adjustment would occur automatically. Like the existing adjustment, our proposal would automatically increase district revenue limits to compensate for declining enrollments. The Legislature would not be required to make a specific appropriation in the budget. Funds would flow to districts as part of the existing statutory appropriation. In this way, the state would make annual progress towards a more equal system of revenue limits.

It is important to recognize our alternate adjustment has a long-term cost. Since our proposal would generate the same amount of revenue limit funding to districts in the first year as the existing adjustment, our formula would not create any additional cost in 2005-06. Beginning in 2006-07, however, our formula would provide these districts a higher level of funding. Data are not available to allow us to make a precise estimate of the cost of this formula. Depending on the number of districts in decline and the size of the declines, the cost could total between $80 million and $100 million in 2006-07. This cost probably would increase modestly each year until districts reach their equalization targets. The total possible cost of the formula, however, cannot exceed the amount of funds needed to equalize revenue limits to the 90th percentile for all districts. We calculate this amount to be about $300 million.

Add a Declining Enrollment Revenue Limit Adjustment

We recommend the Legislature adopt legislation to create a new declining enrollment revenue limit adjustment that would begin in 2005-06. As discussed earlier in this section, we are concerned by the size and number of financial pressures districts currently face. We also see enrollment declines as a statewide problem that probably will continue for some time. Based on our K-12 enrollment projections, the financial pressures associated with declining enrollment will continue for at least the next five years. Our proposal is not intended to prevent declining districts from making cost reductions warranted by a long-term fall in ADA. Instead, our formula would give districts a longer period for adjusting to the financial pressures created by falling attendance.

Our analysis also suggests another way the Legislature could help declining enrollment districts and make progress towards a more uniform funding system—providing additional equalization funding for all districts. Equalization funding would help both declining and growing districts with revenue limits below the state's equalization targets.

We also recommend two additional steps that we think should accompany this new formula, as follows.

Limit Increases to 5 Percent. As discussed above, about one-fifth of the current declining enrollment districts experienced reductions of more than 5 percent in 2002-03. Districts that sustain such large declines in student attendance need to make immediate efforts to bring costs into line with revenues. Therefore, we recommend the Legislature limit annual revenue limit increases to 5 percent. Under our proposal, a district that lost 10 percent of its ADA would be able to choose between our formula (which would provide an ongoing 5 percent increase) and the existing adjustment (which would provide a one-time 10 percent increase).

Consolidate "Add-On" Funding Into Revenue Limits. The state's equalization targets focus on differences in district base revenue limits. As noted above, however, the revenue limit add-on funds alter the distribution of revenue limit funding. As a consequence, successfully bringing all district base revenue limits to the state's equalization targets would not eliminate funding disparities introduced by the add-ons. As part of our alternate declining enrollment formula, therefore, we recommend the Legislature merge most of the add-on funds into base revenue limits and reset the equalization targets based on the consolidated amounts.

CATEGORICAL REFORM

Recent categorical reform enacted through Chapter 871, Statutes of 2004 (AB 825, Firebaugh), consolidates 26 existing programs into six block grants to take effect in 2005-06. It requires that districts and county offices of education (COEs) use the consolidated funding for the purpose of the programs subsumed in each block grant. Figure 1 (see next page) shows the programs included in the six block grants.

Chapter 871 contains several provisions pertaining to flexibility over the use of the block grant monies. The law, for instance, allows districts and COEs to transfer annually up to 15 percent of funding from four of the block grants into the other block grants or into other categorical programs. No funds, however, may be transferred out of the Pupil Retention and Teacher Credentialing block grants. The total funding a district or COE may expend for a program to which funds are transferred may not exceed 120 percent of the amount apportioned for that program in that fiscal year.

We have particular concerns about the Pupil Retention Block Grant (PRBG) and the two teacher training block grants. In the sections that follow, we discuss these concerns.

CATEGORICAL REFORM AND SUPPLEMENTAL INSTRUCTION

We recommend the Legislature adopt trailer bill language adding two supplemental instruction programs to the new Pupil Retention Block Grant along with a requirement specifying that "first call" on funds in the block grant must be for these supplemental instruction program costs.

The PRBG, one of the six block grants created by Chapter 871, consolidates 11 programs that support supplementary instruction and services for students at risk of academic failure. The budget includes $173 million for this block grant and will provide an additional $26.7 million of deferred amounts in a trailer bill.

Figure 1

Six New Block Grants

Pupil Retention Block Grant—$172.9 Million

- "Core" programs supplemental instruction.
- Continuation high schools.
- Drop Out Prevention and Recovery.
- Reading, writing, math supplemental instruction.
- Tenth Grade Counseling.
- High-Risk Youth Education and Public Safety.
- Opportunity Programs.
- Los Angeles Unified At-Risk Youth Program.
- Intensive reading supplemental instruction.[a]
- Algebra academies supplemental instruction.[a]
- Early Intervention for School Success.[a]

School Safety Consolidated Competitive Grant—$16.3 Million

- Safe school planning and partnership mini-grants.
- School community policing.
- Gang Risk Intervention Program.
- Safety plans for new schools.
- School community violence prevention.
- Conflict resolution.

Teacher Credentialing Block Grant—$83.9 Million

- Beginning Teacher Support and Assessment program.

Professional Development Block Grant—$248.6 Million

- Staff Development Buyout Days.
- Comprehensive Teacher Education Institutes.
- College Readiness Program.
- Teaching as a Priority Block Grant.[b]

Targeted Instructional Improvement Block Grant—$874.5 Million

- Targeted Instructional Improvement Grant Program.
- Supplemental Grants.

School and Library Improvement Block Grant—$421.6—Million

- School library materials.
- School Improvement Program.

[a] These programs were not funded in 2004-05, but school districts are allowed to use new block grant monies for their purposes.

[b] Program defunded as of 2003-04, but school districts are allowed to use new block grant monies for its purposes (teacher recruitment and retention).

Figure 2 shows the programs that are consolidated in the block grant. More than one-half of the funding comes from the "core" supplemental instruction program. Other programs included in the block grant support various other supplemental instruction programs and interventions for at-risk youth. Three programs, intensive reading supplemental instruction, algebra academies supplemental instruction, and Early Intervention for School Success, were not funded in 2004-05 and therefore do not add to the total amount in the block grant for 2005-06.

Figure 2

Programs in the Pupil Retention Block Grant

2005-06
(In Millions)

Program	Services	Amount[a]
"Core" programs supplemental instruction	Supplemental instruction in core academic areas for K-12 education.	$93.2
Continuation high schools	Extra funding for new continuation high schools.	35.1
Drop Out Prevention and Recovery	Services to reduce dropout rates.	23.7
Reading, writing, and math supplemental instruction	Supplemental instruction for students falling behind in reading, writing, and math for grades 2 through 6.	19.8
Tenth Grade Counseling	Support for completing high school and pursuing educational opportunities.	12.4
High-Risk Youth Education and Public Safety	Prevention program for high-risk youth.	11.9
Opportunity Programs	Classes for pupils who are truant or insubordinate.	2.8
Los Angeles Unified At-Risk Youth Program	Intensive program for at-risk youth with school-based and residency component.	0.6
Intensive reading supplemental instruction	Reading instruction for grades 1 through 4.	—[b]
Algebra academies supplemental instruction	Intensive algebra instruction for grades 7 through 8.	—[b]
Early Intervention for School Success	Staff development in reading instruction.	—[b]
Subtotal		($199.6)
Less deferrals[c]		-26.7
Total Block Grant Amount		**$172.9**

a Amount added to block grant based on prior-year funding.

b Not funded in 2004-05.

c Deferred amounts will be provided in a separate trailer bill.

Complex "Holdback" for At-Risk Instructional Programs

Chapter 871 also creates a unique funding interaction between the PRBG and two programs for supplemental instruction that are *not* included in the block grant. These two programs provide extra help to students in grades 7 through 12 who are at risk of failing the California High School Exit Exam and students in grades 2 through 9 who have been recommended for retention. The 2005-06 budget proposes $165 million for the grades 7 through 12 program and $40 million for the grades 2 through 9 program. State law, however, entitles districts to full reimbursement for the number of instructional hours provided for at-risk students through the two supplemental instruction programs.

Chapter 871 establishes the following process to create a funding set aside for any unfunded costs of the two supplemental instruction programs:

- The act directs the State Department of Education (SDE) to allocate 75 percent of the block grant to districts.
- The other 25 percent will be held back until the required supplemental instruction has been fully funded.
- If the 25 percent holdback proves insufficient to cover the remaining costs of the additional supplemental instruction programs, the State Controller will transfer any amounts necessary from the current budget or subsequent budgets for the PRBG to cover the deficits.
- Any remaining block grant funds left from the 25 percent holdback will be distributed to districts.

Mandate Ruling Creates Another Cost Pressure

Recent action by the Commission on State Mandates (CSM) will increase the cost of the supplemental instruction program for students in grades 2 through 9. Current law requires districts to develop policies for retaining low-achieving students in grade. Students who are identified for retention under this policy must be offered supplemental instruction. The CSM found this state law to constitute a reimbursable state-mandated program.

The commission's findings are likely to substantially increase the cost of the grades 2 through 9 supplemental instruction program. In adopting the reimbursement methodology for the mandate (through the "parameters and guidelines"), CSM provided districts substantial latitude in determining the level of activities and services to comply with the state's mandate for the program. For example, the parameters and guidelines do not stipulate the allowed teacher-pupil ratios, number of hours of supplemental instruction, length of intervention, or proportions of the districts' students eligible to receive these services. While CSM's current estimate of the

mandate's cost is low, districts are likely to adapt their service models to provide more costly instruction to take advantage of the uncapped funding. As a result, we think the cost is likely to grow substantially in the future—possibly into the tens of millions of dollars annually.

Block Grant Faces Implementation Problems

While the intent behind the holdback—to contain the statewide costs of the two supplemental instruction programs—has merit, it renders the PRBG unworkable from a district perspective. In addition, the holdback does nothing to alter district incentives that could significantly increase the cost of the required supplemental instruction. We describe these potential problems below.

Block Grant Robs Peter to Pay Paul. As currently structured, the holdback provision of the block grant does not encourage districts to contain the costs of the two supplemental instruction programs. Instead, Chapter 871 would pay for increased district costs for supplemental instruction by redirecting block grant funds away from other districts. As a result, districts have little incentive to contain the costs of the supplemental instruction programs.

Timing Problems Create Budget Uncertainties for Districts. Districts' efforts to plan and implement programs using the new block grant will be constrained by the timing of the 25 percent holdback provision. Current apportionment practices at SDE suggest that the department will not allocate the 25 percent holdback for at least two years after the close of the fiscal year in order to tally the final cost of the two instructional programs. As a result, districts will either have to fund programs before they know whether state dollars will be provided or reduce services to students.

Funding Inequities Among Districts May Result. Claims for the supplemental instruction programs are currently concentrated in relatively few districts. Our review shows that only 92 districts have filed any claims for the two instructional programs. As a result, these districts would likely receive funding for supplemental instruction through the holdback provision of Chapter 871. Districts that do not submit claims for the two programs may be disadvantaged, as their 25 percent holdbacks are used to fund the other districts' mandate claims. As a result, the holdback provision may increase funding inequities among districts.

Add the Required Supplemental Instruction Programs To the Block Grant

As described above, the holdback provision results in many problems. To address these concerns, we recommend the Legislature revise the struc-

ture of the PRBG to take advantage of the strengths of a block grant in encouraging districts to control the cost of the supplemental instruction programs. The current structure creates the wrong incentives for districts and makes administration of the fund problematic. Instead, we recommend the Legislature give districts freedom over the use of a fixed level of funding for *all* pupil retention and promotion programs. With this change, the state would create strong local incentives to promote the efficient and locally appropriate use of those funds.

Specifically, we recommend the Legislature:

- Adopt trailer bill language to eliminate the holdback provisions from the PRBG.
- Consolidate the two supplemental instruction programs into the new block grant. This would increase the amount in the block grant by $205 million in 2005-06 (plus $63 million in deferred payments).
- Add language in the budget bill and trailer bill to require that first call on the PRBG funds must be for all costs—including any mandated costs—of the two instructional programs. We also recommend the Legislature add trailer bill language that limits the hourly reimbursement rate under the grades 2 through 9 instructional program to the amount provided in the annual budget act. Together, these two changes would significantly reduce the likelihood of any additional district claims for the two programs.

By including the required programs in the block grant, our recommendation would require districts to determine how best to use funds in the PRBG. Consequently, districts would allocate the block grant resources among the various intervention programs. We think this would greatly strengthen local incentives for cost containment because any "excess" costs for the two programs would reduce the amount of block grant funds available for other programs funded from the grant. It also would eliminate the problem of the two-year delay in knowing the amount of block grant funds available to each districts.

LINKING TEACHING WITH LEARNING

For the last several years, we have expressed concern with the state's approach toward K-12 professional development—funding dozens of different programs that ostensibly serve the same general purpose, though they are not well coordinated and entail considerable state and local administrative burden. We also have had an overriding concern with the state's incapacity to determine the value of its various professional development investments. This incapacity is due largely to the lack of a

state-level database that tracks program outcomes. Thus, we continue to recommend that the state build a teacher database that can be linked with its student database.

Below, we review recent developments relating to the state's teacher training programs. We then describe the Governor's budget-year teacher training block grant proposal and recommend specific changes to it. Most importantly, as a condition of receiving block grant monies, we recommend participating districts be required to supply the state with the data needed to do meaningful program evaluations.

Recent Developments Enhance Flexibility, Ignore Accountability

Chapter 871 established six block grants, including two teacher training block grants—the Teacher Credentialing Block Grant and the Professional Development Block Grant—that would take effect in 2005-06 (see Figure 3 next page). The Governor's budget proposal would add three programs to the Professional Development Block Grant. The 2005-06 budget also includes trailer bill language that would nominally merge the two block grants into a new "Professional Development and Teacher Credentialing Block Grant," though the teacher credentialing component, for all practical purposes, would be preserved as a distinct program—having a separate appropriation, funding mechanism, and expenditure requirements.

Chapter 871 Provides Small Increase in Flexibility. As established by Chapter 871, the Professional Development Block Grant consolidates funding for the sizeable Staff Development Buyout Day program and two small intersegmental programs. The Professional Development Block Grant provides some additional flexibility by allowing districts to use block grant monies for teacher recruitment and retention (such as offering signing bonuses and housing subsidies) as well as professional development. It somewhat reduces this flexibility, however, by requiring districts to provide all K-6 teachers with professional development in reading language arts. The credentialing block grant is itself a misnomer. It contains only one existing program (Beginning Teacher Support and Assessment [BTSA]) and makes no changes to the associated spending requirements, thereby offering no additional flexibility.

Governor's Budget Proposal Would Provide Another Small Increase in Flexibility. As shown in Figure 1, the administration proposes to add three programs to the newly created Professional Development Block Grant—the most notable being the Peer Assistance and Review program. It also would slightly increase local flexibility by allowing block grant monies to be used for teacher training relating to the Advancement Via Individual Determination program. The block grant would not include the Mathemat-

Figure 3

Summary of Teacher Training Block Grants

(In Millions)

	2005-06 Proposed
Teacher Credentialing Block Grant	
Beginning Teacher Support and Assessment	**$83.9**
Professional Development Block Grant	
Chapter 871 Consolidated:	
Staff Development Buyout Days	
Comprehensive Teacher Education Institutes	$248.6
College Readiness Program	
Governor's Budget Proposal Adds:	
Peer Assistance and Review	$27.3
Bilingual Teacher Training	1.9
Teacher Dismissal Apportionments	—[a]
Total, Professional Development Block Grant	**$277.9**
Grand Total, Teacher Training Block Grants	**$361.8**

[a] The Governor's budget includes $43,000 for this program.

ics and Reading Professional Development (MRPD) program—despite it being the state's largest existing professional development program.

Neither Chapter 871 Nor Governor's Proposal Enhances Accountability. Chapter 871 is clear in its intent to: (1) "refocus attention . . . on pupil learning rather than on state spending and compliance with operational rules for categorical programs" and (2) "provide schools increased flexibility in the use of available funds in exchange for accountability." The teacher training block grants, however, neither focus directly on student learning nor enhance accountability. Similarly, the Governor's proposal contains no link between teacher training and student learning, no data requirements, and no accountability provisions. It would provide $362 million for teacher training without any meaningful mechanism for assessing whether the state investment was worthwhile and cost-effective compared to other education programs.

Enhance Flexibility and Strengthen Accountability

We recommend the Legislature approve the Governor's proposed additions to the Professional Development Block Grant with three modifications. Unlike the Governor's budget proposal, we recommend including the Mathematics and Reading Professional Development program in the block grant and excluding Teacher Dismissal Apportionments. Additionally, we recommend the Legislature require school districts, as a condition of receiving block grant monies, to provide the State Department of Education with specific teacher-level data that can be linked with student-level Standardized Testing and Reporting data.

In general, we recommend approval of the Governor's proposal to merge additional teacher training programs into the Professional Development Block Grant. We think, however, that increased local flexibility should be accompanied by enhanced accountability—particularly by strengthening the state's capacity to conduct comparative program evaluations. Below, we discuss our specific recommendations for changes to the Governor's budget proposal.

Include the MRPD Program. Established in 2001, the MRPD program provides teachers with 120 hours of highly structured, standards-aligned training—including 40 hours of initial intensive training and 80 hours of onsite follow-up support and coaching. School districts receive $2,500 per participating teacher and are required to use state-approved professional development providers. The Governor's proposal excludes this program because it "provide[s] specific training to teachers . . . during a limited time period." All professional development programs presumably provide some type of training to teachers, so it is unclear why this would be a criterion for exclusion from a teacher training block grant. Moreover, the MRPD program is to sunset on January 1, 2007, but it has been funded with ongoing Proposition 98 monies ever since its inception—indicating an intent to use the funds for an ongoing education purpose, such as professional development. Furthermore, the MRPD program is the state's largest remaining professional development program; excluding it would undermine one of the major advantages of block granting—increased flexibility. Finally, the Governor's proposal includes new budget bill language that would require *all* professional development activities to be aligned with the state's academic content standards and curriculum frameworks—what some believed to be the unique advantage of the MRPD program. For these reasons, we recommend including it in the Professional Development Block Grant.

Exclude Teacher Dismissal Monies. The administration proposes to include Teacher Dismissal Apportionments—a tiny budget item ($43,000) unrelated to professional development. As its name suggests, the program relates to teacher dismissal and suspension. If a governing school board

seeks to dismiss or suspend a permanent employee of the district, the employee may request a hearing. The board and employee each select an individual to sit on a review panel (accompanied by an administrative law judge). If the panel members need to conduct the employee review during the summer or vacation period and they determine the employee should be dismissed or suspended, then the state (rather than the school district) reimburses them for their time (at their regular rate). It is unclear why the state would fold this item into a virtually unrelated block grant. Therefore, we recommend it be excluded.

Integrated Data System Essential for Meaningful State-Level Program Evaluations and Local-Level Accountability. If the state is setting aside monies specifically for a teacher training block grant to improve teacher quality, then it needs data on teachers' professional development activities and the effect of these activities on student learning. Under the current system (with a few exceptions), school districts fill out applications, the state gives them money, and the cycle begins anew. The state, however, does not know if programs meet their objective, if teaching and learning actually are improved, if any particular program achieves better results at a lower cost, or if certain program components are especially effective in helping schools with disadvantaged students. Without this type of information, the state will not be able to determine what types of professional development enhance student learning. With this information, professional development programs can be compared, their cost-effectiveness assessed, and budget decisions refined. This is why, for the last two years, we have recommended the state establish an integrated teacher-student data system. (Please see "Enhance State's Teacher Information System," *2003-04 Analysis of the Budget Bill* [pages E-158 to E-161], and "Enhance Accountability for Improving Teacher Quality, *2004-05 Analysis of the Budget Bill* [pages E-62 to E-64].) We would also note that many education groups have expressed interest in such systems (see nearby box).

To help the state collect the data needed for program evaluation, we recommend the Legislature require school districts, as a condition of receiving Teacher Credentialing or Professional Development Block Grant monies, to provide SDE with specific teacher-level data linked with students' Standardized Testing and Reporting (STAR) scores. Specifically, participating school districts should be required to:

- Identify the type of professional development undertaken and completed by each teacher, using a unique teacher identifier.
- Complete the currently optional STAR item identifying a student's teacher, using the same unique teacher identifier that is used to track professional development activities.

As a condition of receiving Teacher Credentialing Block Grant monies, we recommend participating BTSA programs be required to:

- Share with SDE teacher-level demographic, retention, and assessment information that it already collects, using the same unique teacher identifier. (The BTSA program currently uses a consent form to collect participating teachers' social security numbers, demographic information, teaching assignments, and education backgrounds.)

In conclusion, we recommend the Legislature establish an integrated teacher-student data system that would both promote meaningful state-level program evaluations and help hold districts accountable for using block grant monies in ways that actually improve teacher quality. Importantly, this state-level system would not be intended to replace existing processes for local teacher evaluations (some of which, however, already use locally integrated teacher-student systems). It would be intended to maximize the benefits of any potential categorical reform of K-12 professional development programs.

Nine Groups Come Together to Support Statewide Teacher Data System

In September 2004, nine groups in California came together to express their interest in developing a reliable, comprehensive teacher data system. The Teacher Information System Working Group includes representatives from teacher groups (California Federation of Teachers and California Teachers Association), school administrators (Association of California School Administrators and California County Superintendents Educational Services Association), various state agencies (State Department of Education, Commission on Teacher Credentialing, California State University, and California School Information Services), and a research center (Center for the Future of Teaching and Learning). The group believes that "gaps in the collection, use, and availability of data seriously compromise efforts to plan and monitor the teacher workforce at both the state and local level." The group already has compiled a master list of teacher data currently collected by state agencies. It continues to seek opportunities and funding for making system improvements that would maximize the usefulness and reliability of teacher data.

Assure Block Grant Monies Are Tied to Need

We recommend the Legislature adopt trailer bill language to change the funding mechanism for both the Teacher Credentialing and Professional Development block grants to ensure they remain responsive to changes in districts' needs. Specifically, we recommend Teacher Credentialing block grant allocations be determined annually based on the number of first-year and second-year teachers in the district. We recommend Professional Development Block Grant allocations be determined annually based on the number of teachers in the district with three or more years of experience.

In developing the new teacher training block grants, Chapter 871 changed the existing funding mechanisms from being dynamic and need-based to locking in the current funding distribution into perpetuity. Prior to Chapter 871, BTSA monies were allocated based on the number of participating first- and second-year teachers. Thus, it targeted funds to hard-to-staff schools with high teacher turnover as well as to growing schools with large numbers of first- and second-year teachers. Moreover, it annually adjusted districts' allocations in response to changes in staffing needs. Although less need-based, the Staff Development Buyout Day program was linked to the number of teachers attending professional development workshops. It too adjusted districts' allocations annually based on changes in the number of teachers receiving training.

Chapter 871 Severs Link to Need. By comparison, both of the new block grants lock in place the 2005-06 funding distributions and thereafter adjust them for inflation and growth in average daily attendance. Funding, therefore, will no longer be responsive to districts' staffing needs. Instead, they will create new funding inequities. Those areas most needing additional funding—those serving additional beginning teachers and those fastest growing—virtually are assured of *not* receiving it.

Re-Establish Link Between Funding and Need. We recommend re-establishing the link between districts' funding allocations and their staffing needs. Specifically, we recommend that districts' allocations for the credential and professional development block grants be made annually based on the number of beginning and veteran teachers, respectively. This will ensure that funding allocations remain dynamic and responsive to changing needs—providing more funding to those districts that most need it.

SPECIAL EDUCATION

In 2003-04, 682,000 students age 22 and under were enrolled in special education programs in California, accounting for about 11 percent of all K-12 students. Special education is administered through a regional planning system consisting of Special Education Local Plan Areas (SELPAs). In 2003-04, there were 116 SELPAs.

Figure 1 displays the amounts proposed for special education in 2004-05 and 2005-06. The Governor's budget proposes total expenditures of $4.4 billion for special education in 2005-06, an increase of $215 million, or 5.1 percent. Under this proposal, General Fund support for special education would increase by $135 million or 4.9 percent. The budget proposes sufficient funding to accommodate a projected 0.79 percent increase in the number of students in the state, a 3.93 percent cost-of-living adjustment (COLA), and an augmentation of $25 million to base SELPA funding levels.

Figure 1

Special Education Funding

(Dollars in Millions)

			Change	
	2004-05	2005-06	Amount	Percent
General Fund	$2,756.7	$2,891.3	$134.6	4.9%
Local property taxes	332.6	347.9	15.3	4.6
Federal funds	1,046.2	1,110.9	64.7	6.2
Totals	**$4,135.5**	**$4,350.1**	**$214.6**	**5.1%**

Our review of the 2005-06 proposed budget identifies several major issues:

- ***Technical Budgeting Issues.*** There are two significant technical issues with the proposed special education budget. Addressing these

issues would increase the Legislature's fiscal flexibility in the budget year.

- ***Mental Health Services.*** The Governor's proposal does not provide a long-term solution regarding the provision of mental health services for special education students.
- ***Incidence Adjustment.*** The budget includes no proposal for updating the special education incidence adjustment, despite the fact the adjustments are based on data that is now eight years old.

We discuss these issues in detail below.

TECHNICAL ISSUES OFFER SAVINGS

The state's special education budget is supported from three sources: local property tax collections, federal special education funds, and the state General Fund. Together, the state uses these three sources to maintain a system of relatively uniform per-pupil SELPA funding levels.

The Department of Finance (DOF) developed the 2005-06 special education budget by adding funding for the anticipated level of growth in the student population in 2005-06, a COLA, and other adjustments to the 2004-05 special education budget. As part of that process, DOF revised the 2003-04 and 2004-05 figures to reflect more recent estimates of program expenditures and growth in the student population. These base adjustments are important, as they can have a significant effect on the 2005-06 budget proposal.

We have identified two major technical budgeting issues with the 2005-06 special education budget that could reduce program costs by $61 million. First, we propose an alternative method for calculating the amount of federal funds that can be counted as an offset to the General Fund. Second, we identify technical problems in the special education budget that would, if corrected, generate significant General Fund savings.

Revise Federal Supplanting Calculation

We recommend the Legislature adopt an alternative calculation for complying with new federal supplanting rules. This recommendation would reduce General Fund special education costs in 2005-06 by $9.9 million.

Congress reauthorized the federal special education law in 2004. One new provision in the act prohibits states from using federal funds to pay for "state-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or in-

flation." It appears the new language is designed to prohibit states from using federal funds to supplant state funds for normal budget increases such as growth and COLA.

California has used federal special education funds in ways that the new federal law appears to prohibit. The *2004-05 Budget Act,* for instance, used $124 million in new federal funds to pay for growth and COLA for the entire special education budget—including the state's share. Using federal funds in this way reduced the state's cost of special education. It appears, however, that the new federal law prohibits this from occurring in the future.

The budget proposes to comply with the new federal restriction, proposing to use $38.1 million of the increase in federal funds to offset growth and COLA and $24.8 million to augment the base program. We think the budget's new supplanting calculation would not work, for two reasons. First, despite the administration's intent to comply with the new federal law, the proposal uses a portion of the federal funds to pay for state growth adjustments—something specifically prohibited by the new federal rule. Of the $38.1 million in new federal funds the budget would use to pay for prior-year adjustments, we identified $5 million in budget increases that fall into the category of "state-law mandated funding obligations." Second, we think the calculation would disadvantage the state in 2006-07 and beyond. The budget's proposed new supplanting formula works for only one year—in future years the state likely would have to pass through to SELPAs all new federal funds in the form of program augmentations.

We think there are simpler options for complying with the new federal supplanting rules that would continue to allow the state to satisfy the new law but also not disadvantage the state over the longer run. Our proposal accomplishes this goal by separating the state and federal funding for budgeting purposes. The state would be responsible for providing growth and COLA adjustments on the portion of special education funds supported by state and property tax funds. The federal government would provide funding for growth and COLA increases on the portion support by federal funds. Any increase in federal funds above the level needed for growth and COLA would be used for statewide program augmentations. Any federal increase below that level would mean that SELPAs would not be fully compensated for the effects of growth and inflation. Under this proposal, only $14.9 million must be passed through to increase special education funding—$9.9 million less than proposed in the Governor's budget.

In sum, we recommend the Legislature adopt our alternative methodology for budgeting special education federal funds at the state level. Our proposal provides a simpler, more straightforward way to comply with the intent of the new federal law than the calculation proposed in the budget.

In addition, our methodology would generate $10 million in General Fund savings. The purpose of our proposal, however, is to comply with the new federal law while protecting the state's system of local grants—not to generate short-term savings. Below, we discuss our proposal for the use of the $9.9 million and the $14.9 million in "pass-through" funds.

Significant Technical Problems With Budget Proposal

We recommend the Legislature make two technical corrections in the proposed special education budget that will free more than $36 million in funds for other special education and Proposition 98 programs.

As noted above, the DOF revised the 2003-04 and 2004-05 estimates of special education spending in the development of the 2005-06 proposed budget. Our review found two major technical problems with the adjustments to the 2003-04 and 2004-05 budgets:

- ***Lower Estimated 2003-04 Growth.*** The Governor's budget fails to recognize $16.1 million in savings resulting from the revised estimate of student growth in 2003-04, which is significantly lower than assumed in the *2003-04 Budget Act*. Because of federal "maintenance of effort" rules, these funds must be spent on special education.
- ***Overbudgeting the New Licensed Children's Institution (LCI) Formula.*** The 2005-06 budget inadvertently assumes a $19.2 million increase in 2004-05 special education costs of students residing in LCIs compared to the level included in the *2004-05 Budget Act*. This technical error results in overbudgeting the LCI formula by $20.2 million in the 2005-06 budget.

We recommend the Legislature correct these technical errors, for a total savings of $36.3 million.

Use Funds to Meet Special Education and Other Priorities

We recommend the Legislature spend $61 million resulting from our recommendations for various special education programs in 2004-05 and 2005-06.

Figure 2 summarizes the impact of the technical budgeting recommendations made above. The figure includes the $24.8 million in funds discussed in our recommendation for an alternative supplanting calculation. It also contains the $36.3 million in savings from our recommendation to correct two technical errors in the special education budget. This brings total funds available from our recommendations to $61.1 million.

Figure 2

LAO Savings and Spending Recommendations Special Education

2005-06
(In Millions)

Sources	Total
Augmentation to the LCI[a] formula	$20.2
Lower 2003-04 growth in K-12 ADA[b]	16.1
LAO supplanting proposal	24.8
Total	**$61.1**
Uses	
Mental health shift	$42.8
LCI[a] formula correction	4.4
One-time block grant	13.9
Total	**$61.1**

a Licensed children's institutions.
b Average daily attendance.

Figure 2 also shows our suggested uses of the $61 million. The 2003-04 savings are one-time in nature and, therefore, should be spent on one-time activities. The remaining funds represent 2005-06 funds that may be used for any special education purpose. Our proposal also is shaped by issues raised by the Governor's proposed special education budget for 2005-06. Specifically, we recommend the Legislature use the savings as follows:

- $42.8 million to increase support for mental health services for special education students. This would use most of the ongoing funding that is available from our savings recommendations. We discuss this issue further below.
- $4.4 million ($2.2 million in 2004-05 and $2.2 million in 2005-06) to add to the LCI formula a class of group homes that was inadvertently excluded by the enabling legislation. We discuss this issue further below.
- $13.9 million in 2003-04 funds would be distributed to SELPAs in a per-pupil block grant that could be used for any local purpose. Federal MOE rules require the state to spend these funds for spe-

cial education. By using the funds as a one-time block grant, the Legislature would honor the federal rules but not permanently increase special education funding.

MAKE MENTAL HEALTH SHIFT PERMANENT

We recommend the Legislature eliminate two county mental health mandates. We further recommend the Legislature provide a total of $143 million in state and federal funds to support Special Education Local Plan Areas costs of providing mental health services to special education students.

Federal law requires schools to provide mental health services to help special education students benefit from educational services. In practice, mental health services for this population range from short-term counseling on an outpatient basis to long-term psychiatric therapy for students in residential care facilities.

In the early 1980s, the state shifted responsibility for providing more intensive mental health services from school districts to county mental health agencies. This shift created a reimbursable state-mandated program that, by 2002-03, resulted in annual county claims of $123 million. This mandated program is often referred to as the "AB 3632" program, in reference to its enabling legislation. In 1996, the state also shifted responsibility for mental health services of students placed in out-of-state residential facilities to county mental health agencies. Claims for these out-of-state students totaled $22 million in 2002-03, resulting in total claims for the two mandates of $145 million.

As with most other education mandates, the state deferred payment of the two mandates in the *2004-05 Budget Act*—that is, the mandate was kept in place but no direct county reimbursement was provided in the Department of Mental Health's budget. To help pay for these mental health services, however, the special education budget included $69 million in federal funds for distribution to county mental health agencies. These funds provide partial state reimbursement for county AB 3632 costs. An additional $31 million from the General Fund was appropriated to support mental health services provided by SELPAs.

Budget Would Suspend Mandates

The Governor's budget proposes to suspend the two mandates in 2005-06. The passage of Proposition 1A in fall 2004 requires the state to either fund or suspend local government mandates each year. Suspending the mandate frees local government from the service requirement for 2005-06.

The budget proposes no county funding for AB 3632 or out-of-state students. Because state law would not require county mental health agencies to provide services to special education students in 2005-06, responsibility for services would fall to SELPAs and school districts. (This is because federal law requires these services to be provided to special education students.) The special education budget proposes to continue the 2004-05 funding set-asides for mental health services ($69 million in federal funds for counties and $31 million from the General Fund for SELPAs). The administration has not stated its long-term intent for funding the two mental health mandates.

We recommend the Legislature permanently assign this program responsibility to SELPAs, for several reasons. A one-year suspension, as proposed in the Governor's budget, would place SELPAs in a form of limbo: Does the proposal represent a permanent shift of responsibilities to education or would the mandates be funded in the future (thereby shifting program responsibility back to county mental health agencies)? A one-year suspension, therefore, would inhibit SELPAs from making the significant local administrative changes they would need to make if the shift in responsibilities is intended to be permanent.

In addition, the proposal muddies what have been clear lines of local responsibility. By continuing to funnel $69 million in special education funding to county mental health agencies, for instance, the budget proposal gives SELPAs financial responsibility for services, but does not give them administrative or policy control related to the services provided.

Finally, we recommend the Legislature make the shift of responsibility permanent because we are convinced that, by assigning full responsibility for these services to education, the state would foster a more efficient and effective service delivery system of mental health services to students. We discuss these issues further below.

Education Would Have Incentives to Provide Services Efficiently. In our view, the shift in responsibilities would result in a more efficient system primarily because educators would have strong incentives to be a "prudent purchaser" of services. Under the existing reimbursement system, educators and county mental health agencies have incentives to *increase* the state's mandated costs. Educators have the incentive to shift all mental health costs to the county agencies—including the cost of services that remained education's responsibility after the passage of AB 3632. County mental health agencies have the incentive to include all mental health services needed by students under the mandate—even if they are not required under federal law. In addition, by reimbursing 100 percent of a county's program costs, the system also reduces pressure on county agencies to limit the unit cost of services.

Recent audits by the State Controller's Office (SCO) confirms our view that the mandate reimbursement system encourages counties to inflate the actual cost of providing required mental health services to special education students. For instance, an audit of Los Angeles County's AB 3632 claim for services provided from 1998 through 2001 disallowed 21 percent, or $8.8 million, of the county's charges. These costs were disallowed because the county charged the state for (1) services that were not covered by the mandate, (2) services that were funded by other programs, (3) offsetting funding that was not identified, and (4) costs associated with overbilling and data entry errors. The county concurred with the SCO findings. Audits of other county AB 3632 claims show similar problems.

Placing SELPAs in charge of mental health services would strengthen local incentives for the efficient use of state mental health funds. By adding funding for these services into base special education grants, SELPAs would have the resources needed to provide mental health services directly or through county mental health agencies or other contracting entities. The SELPAs, however, would have the incentive to keep these costs to a minimum—any funds not needed for mental health services could be used to pay for other special education services. As a result, by giving SELPAs a reasonable amount of funds to pay for mental health services, we think the state would establish the incentives needed for a more efficient program structure.

Shift Could Improve Effectiveness of Services to Students. Returning responsibility for mental health services to SELPAs also would result in a more effective delivery system if it encouraged educators to increase the use of less-intensive preventive mental health services. As noted above, one consequence of AB 3632 is that the program creates an incentive for educators to shift as many mental health costs to county agencies as possible. In legislative discussions on AB 3632 last spring, county mental health agency staff expressed the belief that many schools fail to provide the early intervention services that remained the responsibility of education even after AB 3632 was enacted. To address this concern, the Legislature included $31 million in the 2004-05 special education budget to *require* SELPAs to provide more early intervention services.

Placing SELPAs in charge of mental health services, however, would encourage schools to recreate the capacity to provide these intervention services. Early intervention often is more cost effective. The proposal to shift responsibility back to education, therefore, may encourage educators to intervene earlier when behavioral problems can be treated with less intensive services. This would be good for students (avoiding the need for more intensive services) and it would represent another way that changing the local incentives for mental health services would benefit the state.

For the above reasons, we recommend that the Legislature eliminate the existing mental health mandates on counties. Federal law requires school districts provide these services. By eliminating the state mandate on counties, our recommendation has the effect of returning these responsibilities to school districts.

We also recommend the Legislature revise the proposed Budget Bill language and add the full $100 million earmarked for mental health services into the base special education funding formula. In addition, we recommend the Legislature redirect $42.8 million more in funding to SELPAs for mental health services (we discussed the source of these funds earlier in this section). This would provide a total of $142.8 million to SELPAs for mental health services in 2005-06. Based on past claims (and the magnitude of disallowed county costs), we believe our proposal provides a reasonable amount to allow SELPAs to pay for the needed mental health services.

OTHER ISSUES

Cleanup Needed on New Formula

We recommend the Legislature adopt trailer bill language to recognize the special education costs for residents of a class of licensed children's institutions that was inadvertently excluded from last year's trailer legislation. Fixing this error would cost $2.2 million in both 2004-05 and 2005-06.

As part of the *2004-05 Budget Act*, the Legislature revamped the funding formula for the support of special education students who reside in an LCI. In 2002-03, more than 50,000 K-12 students lived in an LCI (including foster family homes or group homes) because the youth's family was unable to provide needed care. The Department of Social Services licenses group homes based on the services needed by youth living in each home.

Since the enactment of the new formula, however, the State Department of Education (SDE) discovered that the trailer legislation inadvertently omitted a class of group homes from the formula. Specifically, the formula failed to include 129 community care facilities that serve disabled youth who are referred by regional centers for the disabled. Adding these group homes to the new LCI model increases costs by $2.2 million in both 2004-05 and 2005-06.

To correct for this oversight, we recommend the Legislature adopt trailer bill language that adds the community care facilities to the list of group homes used to distribute special education funds. We also recommend the Legislature add $4.4 million ($2.2 million in one-time funds that must be spent on special education programs for the 2004-05 costs and $2.2 mil-

lion in ongoing 2005-06 funds) to the special education budget to pay for costs associated with the additional facilities.

Incidence Factor Remains Outdated

We recommend the State Department of Education report to the budget subcommittees before March 1 on the feasibility of assuming responsibility for calculating the special education "incidence" adjustment.

The 2005-06 budget proposes $84 million to pay for the special education "incidence" adjustment in 2005-06. State law calls for these supplements to local apportionments as a way of acknowledging that, for a variety of factors, some SELPAs experience higher costs than the typical SELPA. The current adjustments were calculated in 1998 using 1996-97 cost data. Since the factors underlying local cost profiles change over time, the existing adjustments likely no longer reflect actual SELPA costs.

To update the adjustments, the Legislature required SDE to contract for a study in 2002-03. This study was completed in the fall of 2003. Despite significant data problems, the study recommended a new set of incidence adjustments. The data problems, however, were so severe that they clouded the legitimacy of these new adjustments in the eyes of many SELPA administrators. The credibility of the incidence adjustments is very important, as the adjustments are designed to increase the fairness of the state's system of uniform base special education grants.

The study identified data quality as a prime concern. The SDE maintains a comprehensive special education database that provided the data for the 1998 and 2003 incidence factor studies. According to SDE, changes to the database made in 2001-02 resulted in local coding errors that reduced the accuracy of the data. The department believes these problems have been corrected with the 2002-03 data.

The study also suggested that the state update the incidence adjustments annually in order to avoid "radical changes in funding for some SELPAs" that may occur if the adjustments are reassessed only every five years. Indeed, changes to the adjustments identified in the 2003 study were so large that the study recommended a phased approach to implementing the new adjustments. The study suggests that a more frequent calculation of the adjustments would ease transition problems.

In our view, the problems with the 2001-02 data require updating the incidence adjustments. This would be no small task, however. The study presents a series of technical and policy issues that have to be resolved each time the adjustment is recalculated. In our discussion on this issue, we asked SDE to assess the feasibility and cost of assuming responsibility

for this task. At the time this analysis was written, the department was in the process of determining what resources would be needed to replicate the study.

In our view, the long-term viability of the incidence factor rides on the department's capacity to update the adjustment. The current reliance on the 1998 adjustments can no longer be defended given the many changes to SELPA costs that have occurred over the past eight years. In addition, the use of outside contractors to recalculate the adjustment is expensive and time-consuming—particularly if the Legislature would like to update the adjustment more often than every five years. If the department does not believe it can reasonably develop the capacity to assume this responsibility, the Legislature will need to either (1) consider eliminating the adjustment or (2) spend about $150,000 each year or two to update the adjustment.

To assist the Legislature in assessing its options for the long-term viability of the incidence adjustment, we recommend SDE report to the budget subcommittees on the costs and feasibility of the department assuming responsibility for calculating the special education incidence adjustment.

CHARTER SCHOOLS

Ever since it was first implemented in 1999-00, we have had concerns with the calculation of the charter school categorical block grant funding level. The basic area of disagreement has revolved around which programs are in and out of the block grant. The Governor's budget addresses these existing disagreements in one way by "delinking" the charter school categorical block grant from any set of underlying categorical programs. This delinking approach, however, undermines the purpose of the block grant and is very likely to be unworkable. We recommend the Legislature pursue an alternative reform strategy based upon a new control section in the annual budget act that would provide charter schools a share of categorical funding that is equivalent to the proportion of K-12 students they serve. This alternative approach would be simple, workable, and consistent with the original intent of the block grant.

Below, we identify the basic problems with the existing charter school block grant funding model. These problems became so significant in 2004-05 that the budget act essentially suspended the existing model and authorized a working group to try to improve it. We summarize the progress the working group made toward developing a new model. We then describe the Governor's budget proposal to reform the model, discuss our concerns with the proposal, and recommend an alternative reform approach. We conclude this section with a brief discussion of a related budget proposal that would allow colleges and universities to authorize charter schools. As we recommended last year, we think a system of multiple charter authorizers, with certain accompanying safeguards, could enhance charter school oversight and accountability.

Existing Block Grant Funding Model Has Become Virtually Unworkable

The charter school block grant was established in 1999 to provide charter schools with categorical program funding similar to public schools serving similar student populations. The block grant currently suffers from two basic problems. The primary problem is a lack of consensus regarding

which programs are in and out of the block grant. A secondary problem is the funding formula used to calculate the block grant funding level is overly complex.

Categorical Confusion. Since its inception, our office and the Department of Education (SDE) have interpreted statute to include several programs in the charter school block grant that the Department of Finance (DOF) has excluded when determining the block grant funding level. Several of the programs at the center of contention are large programs with large fiscal implications for charter schools—Targeted Instructional Improvement, Regional Occupation Centers and Programs, Teaching as a Priority, Library Materials, Deferred Maintenance, and Mandates. In addition, statute is ambiguous as to whether county-administered programs, such as the California Technology Assistance Project, County Office Fiscal Oversight, California Student Information System, and the K-12 High Speed Network, are to be in or out of the block grant. A new area of ambiguity involves the block grants created by Chapter 871, Statutes of 2004 (AB 825, Firebaugh). Four of the six new block grants consolidate programs that are in the charter school block grant with programs that charter schools formerly had to apply for separately. It is unclear whether these block grants are to be subsumed into the charter school block grant, whether charter schools now have to apply separately for all six block grants, or whether all the pre-existing programs need to be tracked separately just for charter school funding purposes.

Methodological Madness. A secondary problem with the block grant is its overly complex funding formula. The formula uses 1998-99 as a base year and measures all changes from this year. Locking in 1998-99 as a base year has led to accidental funding errors (when the base year was not correctly updated to reflect budget-year adjustments). The base year also has become increasingly obsolete, with few of the categorical programs in the original block grant still remaining and many new categorical programs since created. These changes have made the formula increasingly difficult to use and have called into question the validity of the formula to account accurately for current categorical funding. In addition, the formula is sensitive to changes in revenue limits—changes that occur throughout the year and for which information is not generally available.

Working Group Makes Some Progress Toward New Model

As of a result of these problems, the *2004-05 Budget Act* contained language directing the Legislative Analyst's Office and DOF to coordinate a working group to "develop a simpler and clearer method for calculating the charter school block grant appropriation in future years." The working group, which held three meetings during fall 2004, included representa-

tives from SDE, the Office of the Secretary for Education, the California Charter School Association, the Charter School Development Center, EdVoice, the Association of California School Administrators, the California School Boards Association, the California Teachers Association, the California County Superintendents Educational Services Association, and legislative staff. Although the group did not ultimately agree as to exactly which programs should be in and out of the block grant or on all aspects of a new block grant method, it did achieve notable consensus in important areas.

Agreed on Purpose of Block Grant. The group generally agreed that existing statute provided sufficient guidance as to the basic intent of the charter school funding system. Existing statute states, "It is the intent of the Legislature that each charter school be provided with operational funding that is equal to the total funding that would be available to a similar school district serving a similar pupil population." Moreover, the group generally agreed that the specific purpose of the block grant was to provide charter schools with funding in lieu of categorical programs.

Agreed on Principles to Guide Development of New Block Grant Model. The group generally agreed that the following principles should guide development of a new model.

- The block grant calculation should be simple.
- The calculation and its outcome should be transparent.
- The calculation should entail as little administrative burden as practicable at the local level as well as the state level.
- The calculation should result in comparable funding rates for similarly situated charter schools and other public schools.
- The calculation should not require the state to overappropriate the Proposition 98 minimum guarantee.
- Charter schools should retain existing flexibility to use block grant funds for general education purposes.

Agreed on Some Methodological Changes. The group agreed the model should no longer rely on a base year. It also preferred having one budget section govern the block grant appropriation rather than having charter provisions embedded within the budget items for every associated categorical program. It also agreed changes should be made to clarify which programs did not apply to charter schools as well as which programs charter schools were to apply for separately. However, the working group did not achieve consensus on all aspects of a new block grant model.

Governor's Proposal Is Not Viable Reform Option

The Governor's budget contains a charter finance reform proposal that attempts to address the difficulties with the current system. The Governor's funding proposal provides $68 million for the charter school block grant—a $10 million augmentation over the current year. As Figure 1 shows, this augmentation funds anticipated growth in charter average daily attendance (ADA), a cost-of-living adjustment, and a $2.9 million base augmentation. The DOF states the base augmentation is provided in recognition of charter schools' low participation in certain categorical programs and inability to access funding for other categorical programs.

Figure 1

Governor's Budget Proposal
Charter School Categorical Block Grant

(In Millions)

2004-05 Funding Level	**$58.1[a]**
Change From Current Year	
Average daily attendance growth (8 percent)	$4.6
Cost-of-living adjustment (3.93 percent)	2.5
Base augmentation	2.9
Total augmentation	$10.0
2005-06 Funding Level	**$68.1[b]**

a Of this amount, $5.3 million is deferred until 2005-06.

b Of this amount, $5.9 million is deferred until 2006-07.

The funding proposal is associated with accompanying trailer bill language that would significantly change the charter school categorical block grant by delinking it from any underlying set of categorical programs. That is, the block grant funding level would no longer represent in-lieu funding for a set of specified categorical programs. Under the proposal, once the 2005-06 funding level has been set, the block grant funding level would be adjusted in future years for growth in ADA and inflation. The block grant funding level would be reviewed every three years, beginning in 2008-09, to determine how its growth compared with growth in K-12 categorical funding generally, less a small set of special categorical programs.

Proposal Undermines Purpose of Charter School Block Grant. Despite controversy regarding exactly which programs are in and out of the block grant, the general purpose of the block grant, as indicated above, has rarely been questioned and remains quite clear—the block grant is to provide charter schools with in-lieu categorical funding. When originally established, the block grant provided charter schools with in-lieu funding for 33 categorical programs. By disconnecting it from categorical programs, the Governor's proposal undermines the policy basis of the block grant.

Proposal Very Likely to Be Unworkable. Under the Governor's proposal, it is unclear how charter schools, the Legislature, and state agencies would know which programs charter schools could apply for separately. The DOF suggests charter schools could apply separately only for those programs for which they currently can apply separately. Given the existing disagreement over which programs charter schools can apply for separately, this new statutory ambiguity is likely to generate even greater confusion over which programs are in and out of the block grant. Moreover, despite DOF's intention, the proposed language would seem to allow charter schools to apply separately for all categorical programs except Economic Impact Act. Having to apply separately for virtually every categorical program undermines one of the primary legislative purposes of charter schools, which was to offer schools greater fiscal autonomy in exchange for performance-based accountability. Nonetheless, if charter schools actually did apply separately for all categorical programs, then their categorical block grant appropriation would represent a windfall—providing charter schools with almost $300 more per ADA than noncharter schools.

Alternative Approach Could Achieve Simplicity, Clarity, and Comparability

We recommend the Legislature repeal the existing block grant model, reject the Governor's reform proposal, and adopt an alternative reform approach. The alternative approach we recommend would link charter schools' share of categorical funding with the share of K-12 students they serve. The resulting block grant amount then would be distributed among charter schools using a simple conversation factor to ensure more per pupil funding was provided for disadvantaged students. This approach is simple to understand, yields comparable charter and noncharter categorical funding rates, protects against an unintentional Proposition 98 overappropriation, remains dynamic such that it can respond to a changing array of categorical programs, and might become so automated and uncontroversial that the Legislature would not need to address the charter school finance system every year.

As with the Governor's reform proposal, we recommend the Legislature repeal the existing code sections that detail the charter school categorical block grant and its funding formula (Education Code Section 47634 and Section 47634.5). In its place, we recommend the Legislature create a new in-lieu categorical funding system for charter schools. Below, we describe each component of this alternative reform approach.

Clarifies Programs for Which Charter Schools Are Not Eligible. To address existing statutory ambiguity regarding certain types of county-run programs, we recommend the Legislature adopt a new code section that would list the categorical programs for which charter schools are *not* eligible. For these programs, charter schools neither could apply nor receive direct or in-lieu funding. We recommend this list contain programs funded and administered directly by a select group of county offices for nonclassroom-based county-level activities. Figure 2 lists the programs we recommend including in this category.

Figure 2

Programs for Which Charter Schools Would Not Be Eligible[a]

2005-06
(In Millions)

Program	Proposed Funding Level
K-12 High Speed Network	$21.0
California Technology Assistance Project	16.0
County Offices of Education Fiscal Oversight	10.5
American Indian Education Centers	4.7
Center for Civic Education	0.3
California Association of Student Councils	—[b]
Total	**$52.8**

a As recommended by the Legislative Analyst's Office.

b The Governor's budget includes $33,000 for this program.

Clarifies Programs for Which Charter Schools Must Apply Separately. We also recommend a new code section to clarify exactly which categorical programs charter schools must apply for separately. This section would be intended to reduce potential controversy regarding which programs are

out of the block grant. Figure 3 lists the Proposition 98 programs for which we recommend charter schools be required to apply. As the figure shows, we recommend charter schools continue to apply separately for testing and student-information monies (to ensure their performance can be tracked), special education, and programs intended for non-K-12 populations (adult education and child development). This list is almost identical with existing statute governing the block grant funding formula and is largely consistent with the Governor's proposed trailer bill language for reviewing the block grant funding level. It also tries to be as consistent as possible with statutory directives that the charter school funding model be simple and allow for fiscal autonomy. (Nonetheless, this list still includes ten programs representing almost $5 billion in categorical funding, or approximately 40 percent of all Proposition 98 categorical funding.)

Figure 3

Programs Charter Schools Would Have to Apply for Separately[a]

2005-06
(In Millions)

Program	Proposed Funding Level
Special Education	$2,891.3
Child Development	1,177.9
Adult Education	600.3
After School Education and Safety[b]	121.6
Pupil Testing	85.9
Adults in Correctional Facilities	15.3
California School Information Services	4.5
Pupil Residency Verification	0.2
Teacher Dismissal Apportionments	—[c]
Mandates	—[d]
Total	**$4,897.0**

a As recommended by the Legislative Analyst's Office.

b Proposition 49 requires charter schools to apply separately for this program.

c The Governor's budget includes $43,000 for this program.

d The Governor's budget includes $36,000 for mandates.

Automates Funding While Ensuring Parity and Protecting Against Overappropriations. Third, we recommend the Legislature adopt a new system for providing charter schools with in-lieu categorical funding. The system would be described in statute but implemented through an annual budget control section. For all remaining Proposition 98 categorical programs (those that do not fall into the two above categories), we recommend control language that would provide charter schools a share of funding equal to the share of K-12 students they serve. Specifically, as part of the annual May Revision, SDE would project charter school's share of ADA in the budget year. This estimate would be included in the control section, accompanied with language providing the same share of funding from these remaining categorical programs to charter schools. This approach would allow SDE to distribute categorical funds immediately following enactment of the budget.

This approach eliminates the need for a base year, is not sensitive to changes in revenue limits, contains all relevant funding information in a single place, is dynamic such that it can reflect ongoing changes to the categorical landscape, and establishes a funding process that automatically produces parity. Thus, if any midyear adjustments, year-end pro-rata adjustments, or deferrals are made to any of these categorical programs, charter schools are automatically affected to the same degree as noncharter schools. Moreover, these adjustments are made without affecting overall Proposition 98 spending.

Simplifies Process, Strengthens Incentives to Serve Disadvantaged Students. Once charter schools' overall categorical funding level has been determined, we recommend a simple conversion factor be used to ensure charter schools receive more per pupil funding for the disadvantaged students they serve. Serving disadvantaged students is one of the legislative objectives of charter schools, and a supplemental disadvantaged-student funding rate is a core aspect of the existing charter school funding model. A conversion factor (for example, providing 25 percent more for every student eligible for free and reduced price meals) would be a simple means to generate incentives to serve disadvantaged students while ensuring the aggregate charter funding allocation is not exceeded.

Equalizes Funding Without Major Disruption. The model described above would provide charter schools with just over $200 million of in-lieu categorical funding in 2005-06. (This is based on DOF and SDE's assumption that charter schools will serve approximately 3 percent of all K-12 ADA in 2005-06 and on the Governor's proposed funding levels for categorical programs.) It is difficult to calculate how this compares to the amount charter schools currently are receiving. In a 2003 report, RAND found that, in California, charter schools received less categorical funding compared to noncharter public schools. If this is so, then our proposal,

which provides similar funding for charter and noncharter schools, would likely result in charter schools receiving an increase in funding and noncharter public schools experiencing a slight decrease. Since the decrease would be spread over approximately 40 categorical programs, the impact on any district for any program would be minimal.

The reason that we are not able to quantify the exact impact on charter and noncharter schools is because we do not know precisely what share of categorical funding charter schools currently receive. For example, charter schools currently do apply separately for some programs (such as K-3 Class Size Reduction and English Language Learner Assistance) for which, under our alternative approach, they would receive direct in-lieu funding. To derive a precise estimate of "new" funding would require a comprehensive accounting of charter schools' existing categorical participation. Nonetheless, it is likely that charter schools with very high categorical participation and very few disadvantaged students would experience a slight reduction in funding. Similarly, noncharter schools with very high categorical participation rates would experience a slight reduction in categorical funding. In contrast, charter schools with low categorical participation and many disadvantaged students would experience an increase in funding. Noncharter schools with low categorical participation would be virtually unaffected by the new model. In short, the new system would involve some equalization and benefit charter schools with low categorical participation and many disadvantaged students.

Alternative Approach Creates Reform Structure. This alternative approach is not dependent upon any particular view of categorical programs. In other words, the Legislature might adopt the basic reform structure even if it decided to modify the list of programs for which charter schools would not be eligible or would have to apply for separately. Regardless of the treatment of specific categorical programs, we think the basic reform structure would simplify and clarify charter school finance.

In sum, we recommend the Legislature repeal the existing charter school block grant model, which has become virtually unworkable. We also recommend the Legislature reject the Governor's reform proposal, which too is very likely to be unworkable. Instead, we recommend the Legislature establish a simpler, more transparent model that results in more comparable charter and noncharter funding rates. A major advantage of the new model we describe is that it would be able to respond to an ever-changing categorical landscape—perhaps the greatest challenge confronting the existing system. The model would be directly linked to underlying categorical programs and automatically adjusted as funding for these programs changed. Indeed, it could operate so automatically that the Legislature would not need to review the charter school finance system every year. This would allow the Legislature to turn attention from the relatively tech-

nical issue of a funding formula to more meaningful issues of oversight and quality.

Alternative Authorizers Could Improve Quality

We recommend the Legislature adopt in concept the Governor's proposal to allow colleges and universities to authorize and oversee charter schools. We think a system of alternative authorizers has the potential to notably improve charter school development, oversight, and accountability. In establishing an alternative authorizer system, we recommend further attention be given both to the criteria an entity should meet prior to chartering schools and the conditions under which the state would revoke an entity's chartering authority.

The *Governor's Budget Summary* includes a proposal to allow alternative authorizers to charter K-12 schools. The proposal currently is not associated with a funding request. At the time of this writing, bill language had not yet been released, but the intent apparently is to allow colleges and universities, upon approval by the State Board of Education, to charter schools. In our January 2004 report, *Assessing California's Charter Schools*, we recommended a multiple authorizer system as one strategy for enhancing charter school development, oversight, and accountability. Below, we discuss our concerns with the existing authorizer system, explain how a multiple authorizer system might address these concerns, and highlight components of the Governor's proposal that require additional development.

Poor Incentives Embedded Within Existing System. Under the existing authorizer system, school districts are required to initially approve charter petitions that are adequately developed—even if the school districts are unlikely later to be able to conduct the oversight needed to ensure schools are honoring their charters. We have concerns with three particular types of school districts.

- ***Those Authorizing Few Charter Schools.*** RAND's 2002 charter authorizer survey found that slightly more than two-thirds of charter authorizers had authorized only one charter school. School districts authorizing only one charter school are likely to be unfamiliar and inexperienced with the petition review, oversight, evaluation, and renewal process.
- ***Those Experiencing Fiscal Difficulties.*** Some school districts are facing serious fiscal problems but nonetheless are required to authorize charter schools. We question whether these types of school districts can devote sufficient attention and resources to conducting rigorous charter oversight.

- ***Those Likely to Be Overly Receptive or Unreceptive to Charter Schools.*** School districts face various incentives stemming from their local environments that might contribute to lax or inappropriate oversight. For example, school districts experiencing facility problems or rapid growth might view charter schools as expedient solutions and be less likely to revoke charters. Conversely, school districts experiencing declining or shifting enrollment might be unreceptive to charter schools and conduct inappropriate oversight. In either case, the charter school accountability system is weakened.

Multiple Authorizers Could Improve Incentives and Constrain Costs. Allowing charter groups choice among potential authorizers might notably enhance the quality of charter development, oversight, and accountability. Charter groups might connect with authorizers who are familiar, experienced, and reputable at conducting high quality oversight and providing meaningful local assistance. They might bypass school districts that are distracted with serious fiscal problems or otherwise likely to be unable to provide adequate oversight and service. A multiple authorizer system also could have the ancillary benefit of constraining oversight costs, as schools might act as savvy consumers, selecting authorizers who provide the best service for the lowest price.

Certain Safeguards Likely to Be Needed. Although we think allowing colleges and universities to charter schools could potentially improve the charter school system, two components of the Governor's proposal require further development—the criteria entities must meet to be allowed initial chartering authority and the conditions under which this authority would be revoked. The state can provide some safeguard against errant authorizing by setting clear expectations as to the minimum qualifications expected of new authorizers. Minnesota, for example, recently began requiring initial training for new authorizers. (Minnesota has a relatively broad array of charter authorizers. Currently, the state department, 29 school districts, 20 postsecondary institutions, and 14 nonprofit organizations charter schools.) The state can provide further safeguard by setting clear expectations as to the conditions under which authorizing power would be revoked. For example, the state would want to retain power to revoke chartering authority from agencies that were negligent, mismanaged, or corrupt.

In sum, we think the Governor's proposal to allow colleges and universities to charter schools has the potential to notably improve charter schools generally, but we think some of the proposal's details require further development.

MANDATES

The Governor's budget recognizes 36 state-mandated local programs for K-12 education in 2005-06. These mandates require districts and county offices of education (COEs) to conduct a wide range of instructional, fiscal, and safety activities, and require districts to administer local processes designed to protect parent and student rights.

The State Constitution requires the state to reimburse local governments for the costs of complying with mandated local programs. The Commission on State Mandates (CSM) determines whether state laws or regulations create a mandated local program and whether the mandate requires reimbursing local governments for the costs of following the mandate. The CSM also develops claiming guidelines for the specific mandated activities that are eligible for reimbursement.

For several years, the state has not provided reimbursements to K-12 school districts for mandated programs. The *2001-02 Budget Act* was the last time the state made major appropriations for K-12 mandates. The state has instead "deferred" payments, which means that funds will be provided at some unspecified future time. Even though payments have been deferred, school districts are still required to perform the mandated services.

The budget again proposes basically no funding for K-12 mandates in 2005-06. The budget would defer payment for district and COE claims to future budgets due to the fiscal condition of the state. With this new proposed deferral (estimated at roughly $315 million), we estimate the state will owe about $1.7 billion in unpaid K-12 mandate claims by the end of the budget year. Proposition 1A, which requires the state to pay for mandates or relieve local government of the service requirements, does not apply to local education agencies. As a result, the state may continue deferring K-12 mandate costs. These deferred costs would be paid from future Proposition 98 funds.

Chapter 895, Statutes of 2004 (AB 2855, Laird), eliminated six state mandates affecting K-12 education beginning in 2005-06. Two other mandates that affected both K-12 education and other local government agen-

cies also were eliminated. Based on 2002-03 final claims from districts and COEs, we estimate savings from eliminating the eight mandates totals more than $6 million annually. In addition, Chapter 895 directs CSM to review its decisions on the Standardized Testing and Reporting (STAR) program and the School Accountability Report Card mandates "in light of federal statutes enacted and state court decisions rendered since these statutes were enacted."

From our review of K-12 mandates, we have identified four issues:

- The budget should identify new mandates that have been approved by the Legislature.
- The State Department of Education (SDE) and the State Controller's Office (SCO) need to establish a process for sharing information on "offsetting revenues."
- The mandated cost of the new Comprehensive School Safety Plan mandate could be reduced by recognizing available revenues as offsets.
- Costs associated with the mandate to provide supplemental instruction to students in grades 2 through 9 could be reduced by limiting per pupil costs to the amount provided by the state for supplemental instruction programs.

We discuss the first three issues below. The fourth issue is discussed in the "Categorical Reform" section earlier in this chapter.

Newly Identified Mandate Review

We recommend the Legislature add eight new mandates to the budget bill in order to signal its recognition of the state's mandate liabilities.

Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the Legislative Analyst's Office to review each mandate included in CSM's annual report of newly identified mandates. In compliance with this requirement, this analysis reviews eight new education mandates. Figure 1 displays the new mandates and the costs associated with each one. The CSM estimates total district costs of $77 million for the eight mandates through 2004-05. This estimate is based on actual district claims through 2002-03. In 2005-06, we estimate the new mandates will cost the state about $11.3 million.

Before the current budget crisis, the state maintained a process for including new mandates in the budget. Specifically, once CSM had completed its determination of a mandate's costs, an appropriation for the approved costs would be included in an annual "mandate claims bill."

The claims bill allowed the Legislature to review and approve the cost of new mandates—or direct CSM to reassess its approved costs based on specific issues identified during the deliberations on the bill.

Figure 1

New Mandates Approved by The Commission on State Mandates in 2004

(In Millions)

Mandate	Requirement	Accrued Costs Through 2004-05	Estimated Cost In 2005-06
Comprehensive School Safety Plan	Develop and annually update a comprehensive school safety plan.	$37.1	$5.5
Immunization Records: Hepatitis B	Ensure students have needed immunizations before entering school.	29.6	4.3
Pupil Promotion and Retention	Provide supplemental instruction to students at risk of academic failure.	9.0	1.4
Standards-Based Accountability	Provide specific accountability information (one-time).	0.6	—
Charter Schools II	Requires districts and counties to review charter petitions.	0.3	0.1
Criminal Background Check II	Requires background checks on employees and contractors.	0.3	0.1
School District Reorganization	Provide specific information on school district reorganization petitions.	—a	—
Attendance Accounting	Provide information for state change in attendance accounting (one-time).	—a	—
Totals		**$76.9**	**$11.3**

a Less than $50,000.

Because the state has ceased all education mandate payments, there has been no K-12 claims bill. This leaves the budget process as the primary vehicle for the Legislature's review of new mandates. The 2005-06 Governor's budget recognizes only one of the new K-12 mandates—the Comprehensive School Safety Plan. According to the Department of Finance, the commission's actions on the other K-12 mandates are still under review and may be included in an April budget revision letter or in the May Revision.

Our review of the CSM decisions on the new mandates did not identify any issues with the commission's determination of mandated costs. By adding the new mandates to the budget bill, the Legislature would signal its recognition of the state's mandate liabilities. For this reason, we recommend the Legislature amend the budget bill to include the eight mandates approved by CSM during 2004.

Offsetting Revenues Process Is Needed

We recommend the Legislature direct the State Department of Education and the State Controller's Office submit a joint plan to the budget subcommittees by April 1, 2005, outlining a process for sharing information needed to reduce the state cost of state-mandated local programs.

In past recommendations on state-mandated programs, we have discussed the problem that districts sometimes fail to recognize state funds that districts should have used as an offsetting revenue in their claims for reimbursement of mandated costs. For instance in our *Analysis of the 2004-05 Budget Bill* (please see page E-104), we noted that several district claims we reviewed for the STAR program did not recognize the annual apportionment for local program costs that is included in the budget each year. Statute directs local governments to recognize any such revenues as an offset that reduces their total claim for reimbursement.

The SCO processes school district claims for mandate reimbursement. While SCO reviews the claims for completeness and accuracy, it does not have access to data on the amount of state funds districts receive in programs that have been identified as offsetting revenues to specific mandates. Without that information, the SCO review cannot assess whether a district claim appropriately identified the availability of such revenues.

The state would benefit from ongoing exchange of information on state mandates between SCO and SDE. The SDE maintains data on the amount provided to each district in K-12 categorical program funding. If SDE supplied SCO with district allocations for specific programs, the Controller would be able to double check that districts were identifying offsetting revenues for specific mandates. Because district claims appear to be weak in this area, giving the Controller apportionment data could save the state a significant amount of funds.

The SCO also has information that would be useful to SDE. Specifically, SCO could provide feedback to SDE on current issues with specific mandates. For instance, SCO could inform the department when claims for specific mandates increase significantly. Since SCO also audits district mandate claims, it could discuss problems with specific mandates that are discovered through the audit process, such as offsetting revenues, that sig-

nificantly increase state costs. With this information, SDE could advise the Legislature about statutory or budget changes to address these issues.

While sharing information seems like a simple task with significant benefits, it does not routinely occur. Therefore, we recommend the budget subcommittees direct SDE and SCO to jointly develop a plan for sharing data needed by both agencies. To give the subcommittees time to review the plan, we recommend the subcommittees require the agencies to submit the report by April 1, 2005.

Strengthen Language on Offsetting Revenues

We recommend the Legislature add budget bill and trailer bill language to ensure that districts use available funds to pay for local costs of the new Comprehensive School Safety Plan mandate.

The Comprehensive School Safety Plan mandate requires each K-12 school to develop and annually update a school safety plan. The plan must identify "strategies and programs that will provide or maintain a high level of school safety." The planning requirements are quite specific. For instance, the law requires schools to consult with local law enforcement in the writing of the school plan. The plan also requires schools to include in the plan (1) procedures for child abuse reporting; (2) the definition of "gang-related apparel;" and (3) other existing policies on sexual harassment, emergency disasters, and school discipline. We estimate the costs of the mandated planning process in 2005-06 at about $5.5 million. Since only about one-third of districts submitted a claim for this mandate, the long-term cost could be considerably higher.

The statute requiring the safety plans expresses the Legislature's intent that districts use existing funds to pay for the costs of developing the plans. The language, however, does not specifically identify any existing program that the Legislature intended districts to use for the planning process. The commission identified at least two possible funding programs that could support the mandated activities. Without an explicit requirement in law, however, CSM could not identify these programs as a required offsetting revenue. In this case, unless *districts* identify the funding sources as an offset, the state cannot require districts to use the funds to pay for the mandated planning process.

The two programs identified by CSM include a grant program for new school safety plans and the Carl Washington School Safety and Violence Prevention Act. In 2004-05, the budget act contains $1 million for the new school safety planning grants program. The program was merged into the School Safety Consolidated Competitive Grant program by Chapter 871, Statutes of 2004 (AB 825, Firebaugh), beginning in 2005-06. The Carl Wash-

ington program supports local activities to improve middle and high school safety programs. The budget proposes $91 million for this program in 2005-06.

Budget Proposes New Provisional Language. The proposed budget bill contains provisional language placing "first call" on funds in these two programs for any local costs of the Comprehensive School Safety Plan mandate. This language would require districts to first use funds to pay for the costs of the planning mandate. This language is appropriate because it would induce districts to use these school safety funds as offsets to any subsequent district claim for costs associated with this mandate. We think, however, a couple of other changes are necessary. First, we suggest adding a *statutory* first call provision to both programs, which would reinforce the priority of the programs' funds for mandated planning costs. Second, we have identified several technical issues that need to be corrected with the new language.

We also have identified an appropriate fund source for the cost of planning in elementary schools—the School Improvement Program (SIP). The SIP supports a wide range of school site activities, guided by a parent-teacher school site council. Since the Comprehensive School Safety Plan mandate directs site councils to develop the safety plan, we think the Legislature should require districts to use SIP funds to pay for the mandated school plans. Virtually all elementary schools receive significant annual funding under SIP.

As part of Chapter 871, the Legislature consolidated SIP into a new School and Library Improvement Block Grant. The budget proposes $419 million for the block grant in 2005-06—virtually all of these funds are currently part of the 2004-05 SIP appropriation. Thus, adding both budget and statutory direction for districts to use funds in the School and Library Improvement Block Grant would recognize that, in creating the Comprehensive School Safety Plan mandate, the Legislature added another duty to school site councils that should be paid from funds provided to the council.

AFTER SCHOOL PROGRAMS AND PROPOSITION 49

21ST CENTURY COMMUNITY LEARNING CENTERS NOT SPENDING FEDERAL GRANTS

The state has had problems in taking full advantage of federal funds for the 21st Century Community Learning Centers Program (21st Century program). By the end of 2004-05, the state could have up to $100 million in carryover funds. We suggest various steps the Legislature could take to reduce the carryover problems over the next several years.

Below, we first describe the purpose and structure of the 21st Century program and compare it to the state's After School Education and Safety (ASES) Program. In the following section, we describe the problems with unspent funds and discuss possible causes. We then provide several recommendations to begin reducing the level of unspent funds.

Background

The 21st Century program is a federally funded before and after school program that provides disadvantaged K-12 students with academic enrichment opportunities and supportive services to help the students meet state and local standards in core academic content areas. In the past, the federal Department of Education (DOE) awarded three-year competitive grants for these centers directly to school districts. In 2001, the reauthorized Elementary and Secondary Education Act converted the 21st Century program to a state formula program. Starting in 2002, DOE began phasing out the direct federal grants and began transitioning the program to a state-administered one.

The federal grant to California, which was $41.3 million in 2002-03, has steadily increased since then. In 2005-06 the federal grant amount is $136 million. The state has 27 months from the date the state appropriates funding in the annual budget act to spend these 21st Century program funds. Unspent funds are returned to DOE.

State Law Restricts 21st Century Program. The state implemented the 21st Century program at the elementary and middle school levels generally to parallel the state ASES program:

- ***Maximum Grants.*** Grant levels are capped at $75,000 for elementary schools with 600 or fewer students, $100,000 for middle schools with 900 or fewer students, and $250,000 for high schools. For larger schools, a per pupil funding formula allows higher maximum grant amounts.
- ***Per Pupil Reimbursement Rates.*** The elementary and middle school programs are reimbursed at a rate of $5 per student per day. (The state program, however, requires a 50 percent local match, increasing the total spending level to $7.50 per student per day. Federal law prohibits a local match on the 21st Century program.)

Small portions of the federal funds are used for high school grants, "equitable access," and support of family literacy programs.

Funds Are Consistently Underutilized

Since the inception of the state-administered 21st Century program, the State Department of Education (SDE) has experienced problems using these funds to serve eligible schools and students. Each year, SDE has carried over a substantial portion of appropriated funds into the following budget year. Figure 1 shows the state appropriations for the three years of the state-administered program and the amounts and proportions of funds that are expected to be spent by specified dates. For example, only 42 percent of the 2002-03 appropriation and 55 percent of the 2003-04 appropriation has been spent to date. The SDE has estimated that $119 million of the current year's appropriation (74 percent) will be spent. We think that this estimate is overly optimistic, given past experience, and would expect that much less will actually be spent.

Figure 1
21st Century Program Spending Lags Appropriations

(Dollars in Millions)

	2002-03	2003-04	2004-05
State appropriation	$40.9	$75.5	$162.8
Spending (estimate)	17.1	41.3	119.8
Percent spent	42%	55%	74%

Spending Roadblocks. The SDE and school districts are both responsible for these funds not being used to serve more students. Most of the problems are concentrated with the elementary and middle school grantees. Two primary issues appear to account for this:

- ***SDE Slow in Awarding Grants.*** First, SDE has not provided grant funds to grantees until the fiscal year is well underway in most years. For example, in 2002-03, grant award letters were not sent until April 2003, and in 2003-04, award letters for new grantees were not sent until July 2004—after the close of the fiscal year. For 2004-05, award letters were mailed in the late fall; however because of the paperwork requirements, funds were not disbursed until January 2005. When grantees do not know whether or when they will receive their grants, their efforts at program planning can be significantly hampered. For example, the new cohort of schools funded in 2003-04 only spent 15 percent of their funds in the fiscal year.

- ***Schools Do Not Fill All of Their Slots.*** The SDE grants a maximum dollar amount to a school—for example, $75,000 for an elementary school. The elementary and middle schools then must earn the grant at a rate of $5 per student per day (except for in the first year of the grant, when up to 15 percent can be used for start-up costs). Most schools are not able to earn their grant and must return funds to the state at the end of the fiscal year. Based on the short history of the program, schools on average have only earned about one-half of their grants, returning funds to the state at the end of the year.

Reversions of Federal Dollars a Threat by End of the Budget Year. The state avoided returning any 2002-03 federal monies (which had to be fully spent by September 2004) and it may spend enough by September 2005 to avoid reverting 2003-04 federal funds. However, available data from SDE suggest that $100 million of the 2004-05 federal funds will not be spent in the current year. As a result, these unspent funds could revert to DOE in September 2006 unless the Legislature takes action to change key aspects of the state's approach to disbursing 21st Century program funds.

One-Time Grants a Bad Strategy. Late in spring 2004, SDE notified the Legislature of the large carryover balances in this program, leaving the Legislature little time to develop a longer-term strategy. So, the state gave providers one-time grants totaling $25 million on a statewide basis from these carryover funds. Because these funds must be used for one-time purposes, it is not likely that they were used to serve additional students—the goal of the program. A better approach for taking full advantage of these funds is to restructure the program. We discuss such an approach to serve more kids below.

Restructure Program and Serve More Kids

We recommend the Legislature pass legislation creating a new group of grantees to begin in late summer 2005. In addition, we recommend the Legislature increase reimbursement rates, annual grant caps, and start-up funding for the elementary and middle school programs in their first year.

We believe that the Legislature needs to take action immediately to restructure this program. We recommend a series of measures aimed at increasing the possibility that grantees will be able to earn their grants within the budget year. Our recommendations will establish funding rate parity between the 21st Century program and ASES, provide grantees with the ability to establish program infrastructure prior to enrolling students, and enable grantees to start programs at the beginning of the fiscal year.

Create New Cohort. We recommend the Legislature pass urgency legislation this spring to appropriate funding for a new cohort of schools. This accelerated timeline would allow SDE to issue grants in summer 2005, and provide an opportunity for new grant recipients to earn a larger share of their grants in the first year by beginning the program with the school year.

Increase Elementary and Middle School Daily Reimbursement Rate and Increase Grant Caps. We recommend increasing the reimbursement rate for elementary and middle schools to $7.50 per student per day and increasing the statutory spending caps for the elementary and middle school programs. The current reimbursement rate for the elementary and middle school programs of $5 per pupil per day is less than the state rate of $7.50 per pupil per day (including the state required local match). Since the federal government prohibits a local match, the rate increase is a way to equalize funding between the state and federal programs.

If the Legislature acts to increase the reimbursement rate, we recommend it also increase the statutory schoolwide spending caps. The combination of the current $75,000 cap for an elementary school with 600 or fewer students and a $7.50 reimbursement rate would mean that elementary schools could serve a maximum of only 55 students per year. In a school with 600 students, 55 students would represent only 9 percent of the student body. We recommend the Legislature increase the school grant caps to $150,000 for elementary schools and $200,000 for middle schools.

Provide Larger Start-Up Grants for Elementary and Middle Schools. Currently, the elementary and middle school grantees must earn their grants by documenting student attendance. However, any program has start-up costs and fixed operating expenses that are required for any level of service. Currently, SDE provides 15 percent of the first-year grant amount that grantees do not have to "earn" with student attendance. Given the significant start-up investments that programs must make in order to attract and

enroll students, 15 percent may be inadequate. We propose the Legislature amend state law to increase the first-year start-up amount that does not need to be earned with attendance to 25 percent of the total grant amount. This would allow schools to address some of the facility, staff, equipment, and materials costs that are part of starting up a new program. From the state level, it would also help to ensure that a larger portion of first-year grants are actually used.

We believe that this three-pronged approach of a new cohort, higher reimbursement rates, and larger start-up grants would help the state to begin reducing the level of unspent funds and serve more children.

PROPOSITION 49: AFTER SCHOOL EDUCATION AND SAFETY PROGRAM

We recommend the Legislature enact legislation placing before the voters a repeal of Proposition 49 because (1) it triggers an autopilot augmentation even though the state is facing a structural budget gap of billions of dollars, (2) the additional spending on after school programs is a lower budget priority than protecting districts' base education program, and (3) existing state and federal after school funds are going unused.

As approved by voters in 2002, Proposition 49 requires the state to provide substantially more funding for the ASES program beginning some time between 2005-06 and 2007-08. When certain conditions are met (please see nearby box next page), the proposition triggers an automatic increase in state funding for the program—from the $122 million provided in 2003-04 to $550 million (a $428 million increase). Importantly, when these additional funds are provided for the program, they will be "on top of" the state's Proposition 98 minimum funding guarantee (referred to as an "overappropriation"). Proposition 49 also converted after school funding to a "continuous appropriation" (that is, no annual legislative action is needed to appropriate funds).

We have serious concerns with the proposition, which we discuss in detail below.

Autopilot Spending Badly Timed. Proposition 49's intent was to give after school programs the first call on additional General Fund revenues. Since its passage, the fiscal environment has changed significantly—with the state struggling through several consecutive years of budget difficulties. Whether Proposition 49 triggers in the budget year or as late as 2007-08, the state is likely still to be facing a significant budget problem. Moreover, the autopilot formula that triggers Proposition 49 creates additional spending obligations without the Legislature and Governor being able to assess

Disagreements Linger Over Proposition 49 "Trigger"

Proposition 49 requires the state to provide additional funding for after school programs when General Fund spending reaches a certain level. Specifically, the Proposition 49 trigger is calculated by (1) determining, for 2000-01 through 2003-04, when the level of "nonguaranteed" General Fund appropriations was at its highest level and (2) adding $1.5 billion to that base-year funding level. Two technical issues complicate the calculation of the trigger.

- ***What Are Nonguaranteed Appropriations?*** The definition of this term is open to interpretation. We think the term refers to non-Proposition 98 General Fund appropriations plus any overappropriations of the Proposition 98 minimum guarantee. Others believe Proposition 98 overappropriations are guaranteed. Under the latter view, Proposition 49 triggers sooner.
- ***Treatment of Vehicle License Fee (VLF) "Swap."*** The state's actions in the current year to meet local government VLF obligations with property tax revenues instead of General Fund payments (the VLF swap) essentially converted $4.8 billion of General Fund monies from nonguaranteed to guaranteed appropriations. The statutory language in Proposition 49 is unclear as to whether the base-year General Fund nonguaranteed spending should be adjusted (or rebenched) downward to account for this type of action. If rebenched, Proposition 49 would trigger sooner.

The figure below shows the uncertainty these two technical issues cause for determining when the Proposition 49 funding requirement is triggered. Depending upon how overappropriations and the VLF swap are treated, the trigger could be as soon as the budget year or as late as 2007-08. Since the trigger would likely require the entire $428 million augmentation be provided all at once, this uncertainty is a significant budget risk.

When Does Proposition 49 Trigger? Assumptions Matter

	Rebench for VLF[a] Swap	
Proposition 98 Overappropriations	**Yes**	**No**
Treat as nonguaranteed	2006-07	2007-08
Treat as guaranteed	2005-06	2007-08

[a] Vehicle license fee.

the merits of the augmentation. The additional spending also likely would require the state either to raise additional General Fund revenues and/or make program cuts in other areas.

Lower K-12 Education Priority. In previous sections, we have discussed the fiscal problems that school districts will face over the near future to maintain their base education programs. From our perspective, maintaining the base program is a higher priority than expanding after school funding. We think this is particularly the case given that some school districts are struggling with basic solvency issues. If the state were planning to overappropriate Proposition 98, we think providing the funding to address the $3.6 billion on the education credit card (discussed in the "Proposition 98 Budget Priorities" write-up in the "Crosscutting Issues" section of this chapter) would be a better strategy for helping districts address some of their current fiscal challenges.

Proposition 49 Funding Not Likely to Be Spent in a Timely Manner. As discussed above, the state is having a difficult time spending its relatively small increases in federal after school funding in a timely fashion. Since 2002-03, federal after school funding has grown to an annual level of $136 million, yet the state has been spending only about one-half its federal allotment and is now at risk of reverting federal monies. Since the late 1990s, the state also has had difficulty expending its state-funded ASES program. The program continues to revert funding annually, spending around 80 percent of the grant annually.

Given that the trigger mechanism likely would provide a $428 million augmentation all in one year, schools also are not likely to be able to spend much of the new funding in the near term. As with any new grant program, the state typically has a difficult time spending the allotted funds in the first couple of years. Given the size of the augmentation, as well as the poor track record of getting additional after school funding to schools, the state is likely to have hundreds of millions of dollars revert annually in the initial years of implementation.

In summary, because of the autopilot nature of the trigger, the impact that this appropriation could have on the budget problem, the relatively lower priority of after school programs compared to schools' base education program, and the small likelihood funding actually would be spent in the near term, we recommend the Legislature enact legislation placing before the voters a repeal of Proposition 49.

CHILD CARE

California's subsidized child care system is primarily administered through the State Department of Education (SDE) and the Department of Social Services (DSS). A limited amount of child care is also provided through the California Community Colleges. Figure 1 summarizes the funding levels and estimated enrollment for each of the state's various child care programs as proposed by the Governor's 2005-06 budget.

As the figure shows, the budget proposes about $2.6 billion ($1.3 billion General Fund) for the state's child care programs. This is an increase of about $33 million from the estimated current-year level of funding for these programs. About $1.2 billion (46 percent) of total child care funding is estimated to be spent on child care for current or former California Work Opportunity and Responsibility to Kids (CalWORKs) recipients. Virtually all of the remainder is spent on child care for non-CalWORKs low-income families. The total proposed spending level will fund child care for approximately 488,700 children statewide in the budget year.

Families receive subsidized child care in one of two ways: either by (1) receiving vouchers from county welfare departments or Alternative Payment (AP) program providers, or (2) being assigned space in child care or preschool centers under contract with SDE.

Eligibility Depends Upon Family Income and CalWORKs Participation

CalWORKs and non-CalWORKs families have differential access to child care in the current system. While CalWORKs families are guaranteed access to child care, eligible non-CalWORKs families are not guaranteed access, are often subject to waiting lists, and many never receive subsidized care, depending on their income.

CalWORKs Guarantees Families Child Care. State law requires that adequate child care be available to CalWORKs recipients receiving cash aid in order to meet their program participation requirements (a combination of work and/or training activities). If child care is not available, then

Figure 1

California Child Care Programs

2005-06
(Dollars in Millions)

Program	State Control[a]	Estimated Enrollment	Governor's Budget
CalWORKs[b]			
Stage 1[c]	DSS	98,000	$498.8
Stage 2[c]	SDE	94,000	575.4
Community colleges (Stage 2)	CCC	3,000	15.0
Stage 3[d]	SDE	14,500	87.6
Subtotals		(209,900)	($1,167.8)
Non-CalWORKs[b,e]			
General child care	SDE	88,000	$632.1
Alternative Payment programs	SDE	71,000	430.0
Preschool	SDE	101,000	325.4
Other	SDE	18,700	54.2
Subtotals		(278,800)	($1,441.6)
Totals—All Programs		**488,700**	**$2,609.4**

a Department of Social Services, State Department of Education, and California Community Colleges.

b California Work Opportunity and Responsibility to Kids.

c Includes holdback of reserve funding which will be allocated during 2005-06 based on actual need.

d Significantly reduced due to Governor's reform proposal to move current Stage 3 recipients to general child care.

e Does not include after school care, which has a budget of $250 million and is estimated to provide care for 249,500 school-aged children.

the recipient does not have to participate in CalWORKs activities for the required number of hours until child care becomes available. The CalWORKs child care is delivered in three stages:

- ***Stage 1.*** Stage 1 is administered by county welfare departments (CWDs) and begins when a participant enters the CalWORKs program. While some CWDs oversee Stage 1 themselves, 32 contract with AP providers to administer Stage 1. In this stage, CWDs or APs refer families to resource and referral agencies to assist them with finding child care providers. The CWDs or APs then pay providers directly for child care services.

- ***Stage 2.*** The CWDs transfer families to Stage 2 when the county determines that participants' situations become "stable." In some counties, this means that a recipient has a welfare-to-work plan or employment, and has a child care arrangement that allows the recipient to fulfill his or her CalWORKs obligations. In other counties, stable means that the recipient is off aid altogether. Stage 2 is administered by SDE through a voucher-based program. Participants can stay in Stage 2 while they are in CalWORKs and for two years after the family stops receiving a CalWORKs grant.
- ***Stage 3.*** In order to provide continuing child care for former CalWORKs recipients who reach the end of their two-year time limit in Stage 2, the Legislature created Stage 3 in 1997. Recipients timing out of Stage 2 are eligible for Stage 3 if they have been unable to find other subsidized child care. Assuming funding is available, former CalWORKs recipients may receive Stage 3 child care as long as their income remains below 75 percent of the state median income level and their children are below age 13.

Non-CalWORKs Families Receive Child Care If Space Is Available. Non-CalWORKs child care programs (primarily administered by SDE) are open to all low-income families at little or no cost to the family. Access to these programs is based on space availability and income eligibility. Because there are more eligible low-income families than available child care slots, waiting lists are common. As a result, many non-CalWORKs families are unable to access child care.

GOVERNOR'S CHILD CARE REFORM PROPOSALS

Figure 2 shows the child care reforms proposed by the Governor and their fiscal impact. The Governor's reforms fall into two broad categories: (1) eligibility for child care services and (2) provider reimbursement rates. The changes to eligibility feature a redistribution of child care slots to promote greater equity in child care access between CalWORKs recipients and the working poor. At the center of the rate reforms is a quality-driven tiered reimbursement rate structure. Most of the reforms would only affect the voucher program, leaving the SDE contracted programs basically unaltered.

Figure 2

Administration's Child Care Proposals

2005-06
(In Millions)

Reform	Cost/ Savings
Eligibility	
Moving Stage 3 Child Care Permanently expand the general Alternative Payment (AP) program by shifting all current CalWORKs Stage 3 child care recipients, and the associated funding, to the AP program, limiting guaranteed child care to a maximum of eight years and limiting Stage 3 to one year.	—
Creating Centralized Waiting Lists Require counties to create a two-tiered waiting list for all subsidized child care: the first tier for families below 138 percent of the federal poverty level (FPL) and the second tier for families above that level.	$7.9
Rebenching Child Care Eligibility Shift eligibility determination to FPL measures rather than the current State Department of Education state median income calculations.	—
After School Care for 11- and 12-Year-Olds Designate after school care as the default placement and require parents to submit a reason in writing that they cannot use the available after school program.	-$23.8
Reimbursement Rates	
Tiered Reimbursement Rates Reduce the amount the state is willing to pay license-exempt providers. Further, create fiscal incentives for all providers to raise the quality of the care they provide and encouraging additional training.	-$140.1
Equitable Provider Rates Adopt regulations establishing an alternative rate setting mechanism for providers that only serve subsidized families. These regulations have been suspended for the last two years.	-$8.2

ELIGIBILITY REFORMS

Shifting CalWORKs Families to AP Programs

The Governor proposes to shift Stage 3 California Work Opportunity and Responsibility to Kids (CalWORKs) child care to the State Department of Education's Alternative Payment (AP) program, in addition to creating centralized county waiting lists for subsidized child care. Timing problems under the Governor's proposal may disadvantage current CalWORKs recipients' attempts to receive long-term subsidized child care. To address this issue, we recommend delaying the shift of the Stage 3 program to the AP program until counties have created centralized waiting lists. We also recommend placing current CalWORKs participants on the waiting lists based upon the date that they first had earned income in the program.

Eliminating the Long-Term CalWORKs Child Care Guarantee

Under current law, current and former CalWORKs families are guaranteed child care as long as they meet eligibility requirements and have a need for child care. The Governor proposes shifting all current CalWORKs Stage 3 families (former CalWORKs recipients) into the AP program along with the associated funding and ending the child care guarantee for CalWORKs families. In other words, all families who are receiving Stage 3 child care as of June 30, 2005 would in the future be served by the non-CalWORKs AP voucher program. (Local AP providers assist families in locating child care and distribute vouchers to those families.) This shift would permanently expand the AP program. There would be no impact on families currently receiving service as their child care guarantee would not change. However, any families coming into Stage 3 CalWORKs after this point would be limited to one or two years.

Under this proposal, families who leave CalWORKs after June 30, 2005 would be allowed two years of transitional child care in Stages 1 and 2, and one year in Stage 3. In other words, they would be guaranteed child care for three years after leaving aid. If a family is currently off aid and in Stage 1 or Stage 2, the family would receive two years of Stage 3 child care while they are on the waiting list for a child care slot in the AP child care program. These families' child care guarantee would be for a maximum of four years after leaving aid, depending on the time they have left in Stage 2. Figure 3 shows the guaranteed time in child care for current and former CalWORKs families under current law and under the Governor's proposed reform.

Figure 3

CalWORKs[a] Child Care Current Law and Governor's Proposal

Family Status	CalWORKs Child Care Guarantee: Current Law[b]	CalWORKs Child Care Guarantee: Governor's Proposal	Centralized Waiting List
Aided family with earnings	Until family's income exceeds 75 percent of SMI[c] or children age out.	Remaining time in CalWORKs plus three years. Same age/income limits.	As soon as list is created.
Aided family without earnings	Same as above.	Same as above.	When parents become employed.
Formerly aided family in Stage 2	Same as above.	Up to two years in Stage 2 and two years in Stage 3.	As soon as list is created.
Formerly aided family in Stage 3	Same as above.	Until family's income exceeds 75 percent of SMI[c] or children age out.	Child care guaranteed. No waiting list.

a California Work Opportunity and Responsibility to Kids.

b Current practice has been to fully fund Stage 3 child care, which allows all former CalWORKs families to be served. However, Stage 3 is not an entitlement and is therefore subject to the appropriation of adequate funding.

c State median income.

This proposal allows all CalWORKs families to place their names on the waiting list as soon as they have earned income. Therefore, CalWORKs families would not have to wait until leaving aid before they can compete for SDE's subsidized child care. However, they would need to wait until they have earned income, which would be problematic for the families nearing their CalWORKs time limits who have been participating in welfare-to-work activities other than employment (such as community service or vocational education). Adults in CalWORKs have a five-year time limit.

We note that in contrast to last year, this proposal preserves the child care guarantee for families already in Stage 3 and allows aided families to place their names on centralized waiting lists as soon as they have earned income. These changes address the major concerns we raised in the *Analysis of the 2004-05 Budget Bill*.

Two-Tiered Waiting Lists

In addition to the changes in Stage 3, the Governor has proposed creating centralized county waiting lists for SDE subsidized child care.

Current Waiting Lists for Subsidized Child Care. There is not enough funding available to serve all of the working poor non-CalWORKs families who qualify for subsidized child care. Therefore, providers create waiting lists for those families seeking subsidized child care. Families place their names on waiting lists in the hopes of receiving assistance with the cost of child care. While there is currently no information on the number of families on waiting lists or the amount of duplication among the lists, it is commonly believed that families place their names on multiple lists in order to increase their chances of receiving subsidized child care. When a provider has a space for a subsidized family, that provider is required to serve the family on their list with the lowest income first, unless the family is referred by child protective services, in which case they receive priority.

Centralized List. The Governor proposes eliminating provider waiting lists and requiring each county to develop a centralized waiting list for all subsidized non-CalWORKs child care. The budget includes $7.9 million (General Fund) for this purpose. County waiting lists would be split into two different tiers, while maintaining the existing priority for families referred by child protective services. Families earning less than $2,168 per month (for a family of four) would be placed in the first tier of the waiting list and would be provided with child care on a first-come, first-served basis. This would include all CalWORKs families with earned income because under current law, a family of four is no longer eligible for CalWORKs once they have an income of $1,951 per month.

The second tier would be for families who have a monthly income above 138 percent of the federal poverty level (FPL), approximately $2,168 per month for a family of four. These families would be served only after all first-tier families have been served. From this list, families would be served based on income, with the lowest-income family served first.

Advantages to Governor's Proposal

Dismantling Stage 3 Helps Create Parity Among All Working Poor Families. Under the current system, families that receive child care through the CalWORKs system have traditionally been guaranteed subsidized child care until their incomes exceed eligibility limits or their children age out of the child care system. Conversely, working poor families that have not participated in the CalWORKs program must compete for the limited subsidized child care slots in their communities. The Governor's proposal permanently expands non-CalWORKs subsidized child care and effectively limits Stage 3 CalWORKs child care to one year. While the total number of child care slots would not change, this would provide greater access to child care for working poor non-CalWORKs families. Some of these work-

ing poor families may have family income significantly below many of the Stage 3 CalWORKs families.

Centralized Waiting Lists Would Provide Critical Information for Policymakers. As mentioned previously, there are virtually no centralized waiting lists in counties and those counties with centralized waiting lists cannot require providers to participate. Consequently, the Legislature and the administration have no way of knowing how many families need subsidized child care and are not receiving it, or the length of time families remain on waiting lists without being served. Centralizing the waiting lists would allow counties to establish an accurate count of families in their communities that are eligible and waiting for subsidized child care, and would allow them to clean up waiting lists by removing duplicate names or families that are no longer eligible for child care. They would also be able to determine the average length of time a family remains on the waiting lists. Having data provides the Legislature with the information it needs to determine the adequacy of California's subsidized child care system.

Implementation Concerns

Centralized Waiting Lists Should Be Created First. The Governor's proposal moves all of the current Stage 3 child care cases as of June 30, 2005 to general AP child care upon passage of the budget. This shift would not impact the current families in Stage 3. However, families in Stage 2 that would be moving to Stage 3 within the next year or so could be adversely affected during the transition period. This is because it will take time for counties to collect and merge all of the existing provider waiting lists in each county and then to sort through duplicate entries and determine whether a family should be placed on the first tier or second tier of the waiting list and in what order. Until this process is completed, there will not be a centralized waiting list for CalWORKs families on which to place their names. Moreover, to the extent that families leave the general AP program before the lists are created, those child care slots may remain unused or will only be available to working poor families on current waiting lists. In order to avoid this confusion and the delay in families receiving subsidized child care, the centralized waiting lists should be created before Stage 3 child care is dismantled.

CalWORKs Recipients May Be Located at the Bottom of the Waiting Lists. According to the administration, the centralized waiting lists in each county will be established by merging all of the existing lists that subsidized child care providers now maintain. As these lists are merged, families will be placed in the higher second tier (above 138 percent of the FPL) in lowest-income-first order. The remaining families (at or below 138 per-

cent of the FPL) will be placed in first-come, first-served order based upon the length of time they have been on their existing lists.

For the most part, the existing waiting lists do not contain the names of current and former CalWORKs families because those families have been served under the CalWORKs child care program. This means that all current or former CalWORKs families with earned income who need child care and are not currently in Stage 3 will have to place their names on the centralized county waiting lists. Most of them will be eligible for the lower first tier (below 138 percent of the FPL) of the waiting lists. Because the waiting lists would be created by merging existing lists that do not include these families, virtually all of the CalWORKs families will be placed at the bottom of the lists. Depending on the availability of subsidized child care and the length of the waiting lists in each county, CalWORKs families that have exhausted much of their five-year CalWORKs time limit will be at a disadvantage and are less likely to receive subsidized child care once their time in the CalWORKs child care program comes to an end.

In order to address this problem, during the initial development of the lists, CalWORKs families with earned income could be placed on the waiting list according to the date that they began working. Theoretically, non-CalWORKs working poor families placed their names on waiting lists when they had their first child and/or began working. Placing CalWORKs families in a similar position on the waiting lists by their work dates creates parity between the two groups. There may be some slight CalWORKs administrative costs associated with determining the appropriate dates for families. However, those costs should be minimal.

Funding May Grow Slightly Faster Under Governor's Proposal. We would note that funding for these former Stage 3 child care slots may grow faster under the Governor's proposal than under the current program. This is because the cost-of-living adjustments (COLAs) and growth adjustments used for subsidized child care are projected to increase at a greater rate than the caseload and COLAs used for CalWORKs child care.

LAO Recommendation

We believe there is considerable merit to the Governor's proposed changes to subsidized child care for CalWORKs families. Shifting CalWORKs Stage 3 child care to AP child care and creating centralized two-tiered waiting lists will allow more equitable access to subsidized child care for all families with very low incomes, whether they have participated in the CalWORKs program or not. However, in transitioning to this new system and essentially dismantling Stage 3 child care, it is important that current CalWORKs families not be disadvantaged. Accordingly, we recommend delaying the shift from Stage 3 to AP child care by

six months, thereby allowing enough time for counties to develop centralized waiting lists that include CalWORKs families within that six-month period. Once a county has a functioning waiting list, it can then shift its child care program.

In order to avoid placing existing CalWORKs families at the bottom of the waiting lists, we recommend placing CalWORKs families on the waiting list based upon the date they first had earned income in the program. However, CalWORKs families will still be expected to take the initiative of signing up for AP child care. To avoid lingering administrative problems, we recommend that CalWORKs families only be given 120 days once the list is functioning to ask to be placed, based upon their employment date. Once the 120-day period is up, CalWORKs families would be placed on the centralized waiting lists on a first-come, first-served basis.

Making these two adjustments to the Governor's proposal will ensure that existing CalWORKs families will be given a level playing field to compete with other working poor families for subsidized child care.

Governor Proposes Further Reforms for 11- and 12-Year-Olds

The Legislature was concerned about the Governor's 2004-05 budget proposal to shift 11- and 12-year-old children to after school programs. Many working poor families, whether CalWORKs or non-CalWORKs, are employed in nontraditional jobs that require working evenings, nights, and weekends. For these families, after school care usually is not a realistic option for their children. Therefore, the Legislature modified the Governor's proposal to encourage, rather than mandate, after school placement. Specifically, families were not required to shift their children to after school care and the Legislature established a reserve to continue to fund child care for these families.

To further strengthen the after school reform from the prior year while recognizing the difficulties faced by some families, the Governor has proposed making after school care the default placement for 11- and 12-year-olds. However, to the extent that this type of care is not acceptable or practical for families, they may submit their reason in writing and receive an alternate form of child care for their children. The budget assumes that 25 percent of families with 11- and 12-year-olds will shift them from child care to after school care.

We believe this modification allows families to continue to have flexibility in their child care decisions and addresses the concerns expressed by the Legislature in the previous budget.

REIMBURSEMENT RATE REFORMS

The Governor's proposal includes two reforms related to provider rates. The first would create a new system of tiered provider reimbursement. The second would revise regulations for determining rates for providers who do not have private pay clients.

Two Types of Service Models—Vouchers and Direct State Contracts

Currently, the state provides child care through two main mechanisms: vouchers and direct contracts with child care centers.

Most Families Receive Child Care Through a Voucher System. The CalWORKs families in any of the three stages of child care receive a voucher from CWD or AP. In addition, the state provides vouchers to working poor families through APs. The combined programs provide about 272,900 children with child care vouchers. The AP or CWD assists families in finding available child care in the family's community, typically placing families in one of three settings—licensed centers, licensed family child care homes (FCCHs), and license-exempt care. The licensed programs must adhere to requirements of Title 22 of the California Code of Regulations, which are developed by DSS' Community Care Licensing Division. These programs are often referred to as Title 22 programs. Currently, Title 22 centers and FCCH providers are reimbursed up to a maximum rate or ceiling of the 85th percentile of the rates charged by private market providers in the area offering the same type of child care. The 85th percentile is determined by the Regional Market Rate's (RMR) survey of public and private child care providers that determines the cost of child care in specific regions of the state. License-exempt care providers are reimbursed up to 90 percent of the FCCHs maximum rate (85th percentile). The relatively high reimbursement level of the vouchers for subsidized care reflects an attempt to ensure that low-income families can receive similar levels of child care service as wealthier families in the same region.

SDE Contracts Directly With Child Care and Preschool Centers. For child care and preschool, SDE contracts directly with 850 different agencies through approximately 2,100 different contracts. These providers are reimbursed with the Standard Reimbursement Rate, $28.82 per full day of enrollment. These providers must adhere to the requirements of Title 5 of the California Code of Regulations and are generally referred to as Title 5 providers.

In the nearby box, we provide a list of the child care terms and corresponding definitions used throughout the remainder of this section.

CHILD CARE TERMINOLOGY

Types of Providers

Voucher Providers. Providers who serve the California Work Opportunity and Responsibility to Kids (CalWORKs) and non-CalWORKS families who receive vouchers for child care.

- ***License-Exempt.*** Relatives or friends without a license for providing childcare.
- ***Title 22 Family Child Care Homes (FCCHs).*** Licensed providers caring for a small number of children typically in their own homes.
- ***Title 22 Centers.*** Licensed centers.

State Department of Education (SDE) Contractors/Title 5 Providers. Providers who contract directly with SDE to provide child care and preschool for primarily non-CalWORKs working poor families.

- ***Title 5 FCCHs.*** Licensed providers caring for a small number of children typically in their own homes. These FCCHs have not only obtained a license, but also meet SDE standards.
- ***Title 5 Centers, Including Preschool.*** Licensed centers that also meet SDE standards.

Other Terms

- ***Alternative Payment (AP) Program.*** The SDE-administered voucher program for non-CalWORKS working poor families.
- ***Standard Reimbursement Rate (SRR).*** The per child rate paid to Title 5 providers that contract with SDE.
- ***Regional Market Rate (RMR).*** Regionally-based market rates used to determine reimbursements to voucher providers.
- ***Maximum Rate.*** The rate ceiling for voucher providers. If they serve private pay clients, providers receive reimbursements equal to their private pay rates, up to the maximum rate. If they do not serve private pay clients, providers are reimbursed at the maximum rate.
- ***FCCH Maximum Rate.*** The 85th percentile of the maximum rate paid to Title 22 FCCHs. Serves as the basis for the license-exempt care rates.

Figure 4 shows the major care types and associated regulations offered through voucher providers and SDE contractors for preschool-aged children. Moving from the left-hand side of Figure 4 to the right, the requirements to provide the specific type of child care become more difficult to meet and suggest a higher level of quality.

Figure 4

Subsidized Child Care Providers Safety and Educational Requirements

Current Law for Preschool-Aged Children

	Voucher Providers			SDE Contractors
	License-Exempt Providers	Title 22 FCCHs	Title 22 Centers	Title 5 Providers Including Preschool
Provider/teacher education and training	None.	None.	Child Development Associate Credential or 12 units in ECE/CD.	Child Development Teacher Permit (24 units of ECE/CD plus 16 general education units).
Provider health and safety training	Criminal background check required (except relatives). Self-certification of health and safety standards.	15 hours of health and safety training. Staff and volunteers are fingerprinted.	Staff and volunteers fingerprinted and subject to health and safety standards.	Staff and volunteers fingerprinted and subject to health and safety standards.
Required ratios	None.	1:6 adult-child ratio.	1:12 teacher-child ratio or 1 teacher and 1 aide for 15 children.	1:24 teacher child ratio and 1:8 adult-child ratio.
Accountability, monitoring, and oversight	None.	Unannounced visits every five years or more frequently under special circumstances.	Unannounced visits every five years or more frequently under special circumstances.	Onsite reviews every three years. Annual outcome reports, audits, and program information.

FCCHs = family child care homes; SDE = State Department of Education; and ECE/CD = Early Childhood Education/Child Development.

The minimum standards for child care offered through the voucher, especially those for license-exempt providers, are generally lower than the standards for Title 5 providers contracted with SDE. For example, license-exempt providers, who are typically relatives, friends, or neighbors of the family needing child care, are *not* required to have any training or to adhere

to adult-to-child ratios. The Title 22 FCCH providers are required to meet minimal health and safety standards, adhere to an adult-to-child ratio, and require a site visit every five years for licensure. Title 22 centers require providers to have some college-level education. The Title 5 providers require a Child Development Teacher Permit, which is issued by the California Commission on Teacher Credentialing. In addition, they have annual program outcome reports and are required to have onsite reviews every three years.

Proposal Creates a Tiered Reimbursement Rate Structure for AP Providers

The Governor proposes to implement a tiered reimbursement rate structure for the voucher child care programs. Tiered reimbursement for child care provides differential reimbursement rates that encourage providers to improve program quality by obtaining additional training and education and improving outcomes as measured by independent standards of quality. We believe that the Legislature should first consider whether tiered reimbursement is desirable, and then decide upon specific levels of reimbursement.

Below, we (1) describe the Governor's proposal, (2) examine the merits of tiered reimbursement, and (3) discuss the appropriate levels for the rates in tiered reimbursement.

Governor's Tiered Reimbursement Proposal

The Governor's proposal creates a five-tiered child care reimbursement rate structure that reimburses voucher providers from 55 percent to 100 percent of the current maximum rates, depending on independent quality ratings, licensing, accreditation, education, and health and safety training. The proposal is summarized in Figures 5 and 6 (see next page). The intent of the proposal is to provide higher reimbursement rates to providers that exhibit higher quality. Figures 5 and 6 show the reimbursement rates for three categories of care—license-exempt, family home care, and center-based care. The figures also show the education and training requirements for the various levels of rates under the Governor's proposal. For license-exempt care, there are two levels: license-exempt and license-exempt plus. The FCCHs and centers are rated according to a three-star system whereby the highest quality providers receive three stars and the lowest one star. Please note that Figure 6 uses the term "environmental rating scale," which is explained below.

Figure 5

Governor's Tiered Reimbursement Proposal For License-Exempt Providers

	Percent of FCCH[a] Maximum	Additional Requirements
License-exempt	55 percent	None.
License-exempt plus	60 percent	License-exempt training, assistant teacher permit, or heath and safety training.

[a] Family child care homes.

Figure 6

Governor's Tiered Reimbursement Proposal For Licensed Providers

Star Rating	Maximum Rate	Additional Requirements	
		FCCHs[a]	Centers
*	75 percent of the 85th percentile RMR.[b]	None.	None.
**	85 percent of the 85th percentile RMR.[b]	Environmental rating scale average of 4 or associate teacher permit.	Environmental rating scale average of 4 or all teachers have teacher permit.
***	85th percentile RMR.[b]	Environmental rating scale average of 5.5, teacher permit, associates degree, or accreditation.	Environmental rating scale average of 5.5, all teachers have bachelor's degree, or accreditation.

[a] Family child care homes.

[b] Regional Market Rate (RMR) survey of providers in the area offering the same type of child care. The RMR will vary by care type.

License-Exempt Rate Reduction of $140 Million. The Governor's entire 2005-06 savings estimate for the tiered reimbursement proposal is based on reductions to license-exempt care rates for the voucher program (CalWORKs Stages 1, 2, and 3 and AP). Under the proposal, the rates of license-exempt care providers with no training would be cut to 60 percent

of the 85th percentile. This reduction would take effect on July 1, 2005. These providers would then have 90 days to obtain the specified training for the second reimbursement tier, license-exempt plus, or their rates will be further cut to 55 percent of the 85th percentile. Figure 7 shows how the changes would affect license-exempt provider rates in a sample of counties in various geographic regions throughout the state. In these counties, license-exempt providers' rates would be reduced by between $182 and $303 per child per month.

Figure 7

Monthly Child Care Maximum Reimbursement Rates

License-Exempt Providers

Percent of FCCH[a] Maximum	Sacramento	San Francisco	Los Angeles	Contra Costa	Fresno	Shasta
90 percent[b]	$526	$780	$585	$624	$488	$468
60 percent[c]	351	520	390	416	325	312
55 percent[d]	321	476	357	381	298	286
Potential Reduction	**-$205**	**-$303**	**-$227**	**-$242**	**-$190**	**-$182**

a Family child care homes.

b Current license-exempt rate limits are based on 90 percent of the FCCH rate maximum (85th percentile) for full-time monthly care for a child age two through five.

c Reflects the maximum reimbursement rates if exempts are limited to 60 percent of the 85th percentile of the FCCH rate maximum.

d Reflects the maximum reimbursement rates if exempts are limited to 55 percent of the 85th percentile of the FCCH rate maximum.

License-exempt providers also would have the option to become licensed as FCCHs. If current license-exempt providers obtain the 15-hour health and safety training in order to meet the license-exempt plus rating, they will have completed the educational and training component of the FCCH licensing requirements. If licensed, providers would have their rates increased significantly, as shown in Figure 6.

Reimbursement Reforms for FCCH and Center-Based Providers Would Not Affect Rates for Two Years. Currently, FCCHs and centers are reimbursed up to the 85th percentile of the RMR. Under the Governor's proposal, providers' rates would be reduced starting in 2007-08 unless the providers demonstrated high program quality through (1) educational attainment, (2) program quality review, or (3) accreditation. Available data

suggest that most providers would need to make significant investments to attain either a two-star or three-star rating.

Educational Attainment Options for Providers. The FCCH providers could achieve a three-star rating (highest rating) by completing 24 units in Early Childhood Education or Child Development, or obtaining a child care teacher permit (which requires 24 units). A two-star rating would require an associate teacher permit. For centers, the education requirements are more stringent. Teachers must have permits (24 units) for a two-star rating center or bachelor's degrees for a three-star rating.

Program Quality Review Options. The FCCH and center providers could agree to an independent assessment of their program through an environmental rating scale system. (See nearby box for a description of environmental rating scales.) Providers would need to score an average of 4 out of 7 on all the subscales for two stars or an average of 5.5 for three stars. The feasibility of meeting rating scale standards is difficult to assess since currently there is no system for independent assessments using environmental rating scales in California.

Program Accreditation. To receive three stars, the FCCHs also could become accredited through the National Association for Family Child Care, and centers could become accredited through either the National Association for the Education of Young Children or the National After School Association. Accreditation can be an arduous and costly process. Currently,

Environmental Rating Scales

Environmental rating scales are used to assess the quality of child care programs. There are numerous such assessments specific to the different ages of children served and the type of care provided. The Early Childhood Environmental Rating Scale (ECERS) has been designed for use in preschool, kindergarten, and child care classrooms which serve children ages two and one-half through five. The ECERS evaluates 43 specific items in seven main categories related to the quality of care: physical environment, basic care, schedule structure, program structure, curriculum, interaction, parenting classes, and staff education. For each of the 43 items, centers are rated on a 7-point scale ranging from inadequate (1) to excellent (7).

Assessment of a single classroom by an experienced rater requires approximately three hours. Generally, anyone can receive training to become a rater. Raters typically are evaluated on a regular basis to calibrate their scoring against standard benchmarks and against scores given by other raters.

less than 1 percent of the FCCH and less than 5 percent of the center-based programs in California are accredited.

The Governor's proposal does not include any savings estimates for the proposed changes to FCCH and center reimbursement maximum rates because they will not take effect for two years. At that point, savings could reach tens of millions of dollars annually.

Proposal to Create Incentives for Quality Makes Sense

We recommend the Legislature consider the Governor's tiered reimbursement proposal in two parts. First, the Legislature should determine if a tiered reimbursement rate structure that provides incentives for quality makes sense. Then the Legislature should determine the appropriate rates for the tiers.

The policy of tying reimbursement rates to a provider's level of training, education, and other factors has merit in that it (1) attempts to promote what research suggests are the characteristics of high quality care; (2) better reflects the cost of providing care; and (3) creates a rating system that is transparent, allowing parents and other stakeholders to easily identify quality options.

Reform Could Promote Child Development

The number of families utilizing nonparental child care has increased significantly in part due to enactment of the 1996 federal welfare reforms and the expansion of federal child care vouchers for low-income families. One federal study in 2000 suggested that the number of families receiving public child care support has increased by over one million nationwide since the 1996 reforms. The voucher system that has emerged in this context reflects an attempt to respond to increasing demand by offering parents choice and flexibility so that they can transition off cash aid and/or maintain employment.

The effort to provide parents with a variety of child care options, however, can result in tension with efforts to provide age-appropriate development and early learning to children served through child care. For example, some families may choose license-exempt care for reasons of convenience and availability. (Many centers and FCCHs have shortages of infant care slots and/or do not operate during nontraditional work hours.) Also, certain regions, especially rural areas, tend to have limited center-based and FCCH providers. At the same time, as we discuss below, placing children in exempt care may result in the children not receiving the learning and development opportunities to which their peers in center-based care and,

to some extent, FCCHs have access. While the child care system should strive to meet the needs of poor and working parents, it should also take into consideration the important early learning and development needs of their children.

Research Suggests Quality Differences by Care Type. Several small demonstration programs, such as the Perry Preschool Project and the Chicago Parent-Child Centers, have established a positive relationship between enrollment in the center-based preschool programs and children's cognitive development. While these studies provide preliminary evidence of the benefits of high quality preschool programs, it is difficult to generalize their findings to the larger child care and preschool market because of their unique qualities as demonstration programs. However, recent academic studies investigating the relative benefits of different child care types in existing settings have provided evidence that center-based programs offer a higher quality of care relative to FCCHs and license-exempt care. Exposure to the higher quality care appears to have significant positive cognitive effects on young children. Particularly important factors in the quality of care are (1) provider education and training, and (2) the stability of the environment (including provider turnover). Stability of care is often problematic when parents must rely on license-exempt providers. Data from Alameda County showing a two-thirds turnover rate among exempt providers in the span of one year suggest that lack of stability may be a significant problem in license-exempt care.

One-Half of Children in Lowest Quality Care. As shown in Figure 8, in California's voucher programs, close to one-half (48 percent) of the children are cared for by license-exempt providers. While the percentage of children enrolled in license-exempt care is highest in Stage 1 (60 percent), the percentage in license-exempt care remains close to 50 percent through Stages 2 and 3. Data from SDE for Stages 2 and 3 and AP show that among the children cared for by licensed providers, less than one-third are enrolled in center-based care. (Data showing the Stage 1 distribution by care type of children in licensed care were not available from DSS.)

Incentives Weighted Toward Lowest Quality Care. As discussed above, Title 5 providers have the highest standards. Yet, in some counties, providers with the lowest standards (license-exempt) are paid at a higher reimbursement rate than the Title 5 providers. Figure 9 compares child care reimbursement rates for the voucher system with the state contracted system. While statewide average rates are similar across care types, in some high-cost counties voucher providers can receive significantly higher reimbursements than the Title 5 contract providers.

Figure 8

Proportion of Children Served in Each Care Type by Program

Care Type	CalWORKs[a] Stage 1	CalWORKs Stage 2	CalWORKs Stage 3	Alternative Payment	Totals
License-exempt	60%	50%	47%	28%	48%
FCCHs	]—40[b]	29	27	39	]—52%[b]
Centers		21	26	33	
Totals	**100%**	**100%**	**100%**	**100%**	**100%**

a California Work Opportunity and Responsibility to Kids.

b Family child care homes. The Stage 1 distribution between centers and FCCHs was not available from the Department of Social Services.

Figure 9

Regional Reimbursement Rates for Voucher and Title 5 Providers

Dollars Per Month for Full Day Care

	Vouchers			
	License-Exempt Rate	Family Care Maximum Rate	Center Maximum Rate	Title 5 Providers
High-cost county	$780	$866	$988	$586
Low-cost county	384	427	355	586
Average statewide	505	561	556	586

In fact, in eight Bay Area counties, the current reimbursement rate for license-exempt care providers is greater than the rate for the Title 5 providers. In 21 counties, the rate maximum for Title 22 centers is higher than the rate for Title 5 providers.

These rate differentials are particularly prevalent in some of the most populous regions in the state, thus affecting a disproportionately large number of children. Fifteen percent of children in license-exempt care are cared for by providers who are reimbursed at rates higher than

Title 5 providers. Similarly, more than one-half of the children cared for in Title 22 centers and FCCHs have rate maximums that are higher than the Title 5 reimbursement rate. Under current law, most FCCHs only serve subsidized children, and are thus reimbursed at the maximum rate (please see discussion on the "Pick-Five" regulations below). Data are not available showing the actual rates that Title 22 centers receive, only that the rate maximum exceeds the Title 5 rate for two-thirds of the kids. Given the higher program requirements of Title 5 providers (as discussed in Figure 4), it seems counterintuitive that their reimbursement rates would be lower than the voucher programs.

Tiered System Would Reflect Real Cost of Service Differences

Tiered reimbursement would reflect the differences in the costs associated with providing care and the providers' differential investments of time and money for required training and education. As noted, license-exempt providers' investments and costs, particularly in terms of education and training, are minimal. In contrast, Title 22 centers have to maintain a facility and materials as well as a qualified staff. Title 5 providers not only have significant overhead and operating costs but also have the additional responsibility for student learning and development outcomes through SDE's Desired Results System. The Desired Results System is an evaluation and accountability system to measure the achievement of identified results for children and families.

A Star Rating System Would Make Quality Differences Transparent

The APs and Resource and Referral Networks (R&Rs)—local agencies that help parents place their children in child care settings—currently do not have the authority to recommend one provider over another because of the subjective assessment that such recommendations would involve. A rating system similar to that proposed by the Governor would create a set of transparent and objective criteria that APs and R&Rs could provide to parents attempting to find the best settings for their children. The simplicity of the star-rating system would enhance parents' ability to distinguish between different child care options and give the public at large access to information about the quality of child care offerings.

A Tiered Reimbursement Could Address Significant Problems in the Current System

The current system of reimbursements creates the wrong incentives for providers. Not only is lower quality care often reimbursed at higher rates than higher quality care, these rate differentials can reach in excess of

$200 per child per month. Moreover, the current system only creates a limited impetus for child care providers to seek the higher levels of training and education that research suggests can promote cognitive development in young children. Also, the state does not differentiate the reimbursement rate provided to those with higher educational/quality attainment, and therefore the nonsubsidized public may have a difficult time measuring the quality of a program.

Rate tiers would create a way to address these problems by providing reimbursements that better reflect differences in the cost of care and provide incentives for providers to seek higher levels of education and training. In doing so, tiered reimbursement would also create transparency in the child care system by giving stakeholders an objective basis for making child care placements and holding providers accountable for the quality of the care they offer. Finally, if California adopts a tiered system, it would be following in the footsteps of many other states that have adopted such reforms. According to a national clearinghouse for child care information, 34 states had implemented a tiered rating system for improving child care quality as of 2002. Almost all of them provide financial incentives for higher levels of quality. For these reasons, we recommend that the Legislature transform the current reimbursement rate structure into a tiered reimbursement structure.

Transition Title 5 Provider Reimbursement to RMRs

We recommend the Legislature transition reimbursement rates for Title 5 providers to be based on the rate provided to voucher providers.

As discussed above, Title 5 providers have the highest expectations of the state's subsidized child care programs. However, in some counties the Title 5 reimbursement rates are substantially lower than the market rates. This makes it difficult for Title 5 providers in these areas to compete for qualified teachers and to maintain the quality care that is expected of them. In many counties, these centers would be better off if they became Title 22 centers with lower quality expectations and potentially higher reimbursement rates. In other counties (primarily rural ones), Title 5 providers are reimbursed at rates that are substantially above local market rates. To address this differential treatment of Title 5 providers, we recommend the Legislature transition Title 5 providers to the RMR structure and that they receive the maximum RMR for their region. These changes to the Title 5 provider rates would promote parity with the voucher providers' rates and would help ensure that Title 5 provider rates better reflect regional cost variations. Under this system, many Title 5 providers' rates would increase, while some may decrease.

Reimbursement Rates Should Reflect a Systematic Approach to Improving Quality in Child Care

We recommend the Legislature consider an approach to reimbursement rates that promotes quality and child development while preserving family choice.

As the Legislature considers child care reimbursement rate options, we recommend weighing the Governor's rate reductions and corresponding savings against the potential benefits of alternative approaches to reimbursement rates. We suggest a structure that adheres to the following guiding principles:

- ***Promote Quality and Child Development.*** Reimbursement rate structures should promote quality child care through a system of tiered reimbursements that rewards providers with more advanced training and education, accreditation, and/or higher independent ratings of quality within and across care types. This approach should specifically incorporate SDE contracted Title 5 providers.
- ***Maintain Choice.*** Any modifications to current rates should aim to preserve families' ability to choose from a variety of child care options. Families opt for different child care settings for a variety of reasons and rates should be sufficient to preserve the current range of options, including exempt care.

The first principle appears to generally undergird the Governor's proposal. However, as noted above, the proposal does not address inequities between the Title 5 and the voucher providers.

With regard to the second guiding principle, it is unclear how the Governor's proposal would affect families' choices. Specifically, we are unable to predict how the Governor's proposal would influence child care supply because we do not know how the proposed license-exempt rate reductions would affect license-exempt providers' decisions to leave the child care market, continue providing care at lower rates, or seek licensure as a means to access higher rates. However, we suggest that the Legislature devote attention to these issues as it balances any reductions in child care spending against other K-12 priorities.

There are many different possibilities for rate reforms that could incorporate these guiding principles and also meet other objectives—such as generating savings or maintaining current child care funding levels. If the Legislature wants to implement a reform that is cost neutral, it could pursue a strategy that would implement the proposed five-tiered system while

modifying the proposed rates. Such an approach could preserve current reimbursement rates for FCCH and center-based providers who meet two-star standards and enhance funding for those that attain three-star quality. Reductions in the current license-exempt care rates and one-star providers could offset the increased costs of funding enhancements for the three-star providers. This approach would ensure that centers and FCCHs are able to maintain current levels of service and at the same time offer incentives for improving quality. Under this rate structure, license-exempt care providers could choose to pursue advanced training to enhance their rates as exempt providers or obtain FCCH licensure.

The practices of other states suggest that lowering the license-exempt care reimbursement maximum rate is a reasonable mechanism for generating savings to offset increased rates for higher quality providers. Several other large states reimburse license-exempt care providers at lower rates than California does currently. Most reimburse license-exempt providers between 50 percent and 80 percent of the licensed FCCH rate.

"Pick-Five" Regulations Would Enhance Rate Equity

We recommend the Legislature adopt the Governor's proposal to implement regulations for an alternative rate setting methodology for subsidized child care provider reimbursements when they serve no private pay customers.

Statute requires the state to provide reimbursement rates for voucher programs that do not exceed the local market rates for a provider's community. Also, providers cannot charge the state more than they charge a private paying customer. For providers that serve no private pay customers, it is difficult for the state to determine an appropriate reimbursement rate level. Under current practice, the state reimburses providers without private pay customers at the RMR's maximum rate. This approach likely overpays many providers, especially FCCH providers, and creates negative incentives to serve private pay customers.

Because of these factors, statute directed SDE to develop regulations to determine an alternative reimbursement approach. The State Board of Education adopted regulations for the 2003-04 fiscal year. These regulations, commonly referred to as the Pick-Five regulations, determine the rate for a provider with no private pay customers based on the rates charged by five randomly selected providers in the same or comparable zip codes that have private pay customers. Nevertheless, the Legislature enacted legislation to suspend implementation of these regulations. We believe, however, that the regulations have merit in creating rates for providers without private pay clients. Below, we explain the rationale for the regulations.

There are some communities where it would be difficult for providers to find private paying customers. At the same time, there are many communities where providers could enroll private pay customers, but choose not to because the state will reimburse them at higher-than-market rates if they do not serve private pay customers. This practice appears common in the FCCH environment. Under these circumstances, the state is providing a reimbursement rate that exceeds local market rates. While the Pick-Five regulations do not provide a perfect estimate of the local market costs, they do provide a reasonable proxy. We believe that the Pick-Five system is an improvement on current practice because it does not overpay providers and eliminates the incentive to discourage private pay customers. Accordingly, we recommend that the Legislature permit the existing suspension to expire on June 30, 2005, thus allowing the Pick-Five regulations to be implemented in the budget year. The Department of Finance (DOF) estimates that these regulations would save $8.2 million annually.

New RMR Survey Methodology Shows Promise

We recommend the Legislature require the State Department of Education to report at hearings on the new Regional Market Rate methodology, including how the new survey may improve the accuracy of the Pick-Five regulations.

The SDE has contracted with an independent research firm for a new RMR survey methodology. The new methodology would address problems in the current RMR survey. By reducing nonresponse rates and using a sophisticated new method of grouping providers based on demographic variables, the approach is expected to increase the accuracy of the estimates of market costs of child care in particular communities. The SDE is currently in the process of final reviews and adjustments to the methodology and aims to secure the required approval for adoption from DSS and DOF during the current tear. The SDE is planning to implement the new RMR survey in 2005-06.

In setting reimbursement rates for child care, the Legislature should strive to use the most accurate data possible. It appears that the new methodology may offer some distinct advantages over the previous survey approach. We recommend that the Legislature request a complete report on the new RMR survey methodology at hearings. While we support the new methodology in concept, we believe it requires substantial review because it is likely to significantly affect reimbursement rates providers receive in the budget year. We also think that this new methodology may improve the quality of the information used to meet the Pick-Five regulations, especially in communities with limited numbers of providers serving private

pay customers. For these communities, the new methodology may be able to use information on provider rates in demographically similar communities in other parts of the state.

COMMISSION ON TEACHER CREDENTIALING (6360)

The Commission on Teacher Credentialing (CTC) was created in 1970 to establish and maintain high standards for the preparation and licensing of public school teachers and administrators. The CTC issues permits and credentials to classroom teachers, student services specialists, school administrators, and child care instructors and administrators. In total, it issues almost 200 different types of documents. In addition to setting teaching standards and processing credentials, the commission (1) performs accreditation reviews of teacher preparation programs; (2) develops, monitors, and administers licensure exams; and (3) investigates allegations of wrongdoing made against credential holders. The CTC also administers two local assistance activities—the Internship and Paraprofessional Teacher Training programs.

The CTC receives revenue from two primary sources—credential application fees and teacher examination fees. Application fee revenue is deposited into the Teacher Credential Fund (TCF) and examination fee revenue is deposited into a subaccount within the TCF, the Test Development and Administration Account (TDAA). These revenues support CTC's operations. The General Fund supports CTC's two local assistance programs.

Below, we discuss concerns we have with CTC's TCF and TDAA fund conditions for 2004-05 and 2005-06. We first discuss discrepancies in the current-year TDAA fund condition. We then discuss the Governor's budget proposal, under which both the TCF and TDAA would end 2005-06 without a prudent reserve.

Revised TDAA Fund Condition Requires Additional Explanation

We recommend the Legislature direct the Commission on Teacher Credentialing to explain during budget hearings why its 2004-05 beginning balance and revenue assumptions have changed so significantly within such a short amount of time.

Figure 1 compares the 2004-05 TDAA fund condition as estimated in January 2004 and November 2004. The January fund statement is critical because it was presented to the Legislature as part of the 2004-05 proposed budget, and its revenue and expenditure estimates form the basis of the *2004-05 Budget Act*. The November fund statement revises the 2004-05 budget and establishes a base for the Governor's 2005-06 budget proposal.

As Figure 1 shows, there are large differences between the original and revised TDAA fund condition for 2004-05. In every respect, the revised fund condition is troubling. The CTC now expects to have a 2004-05 beginning balance only one-half of what it had originally estimated. In addition, its revenue estimate is down by $4.1 million. This represents a substantial decline (41 percent) even though the TDAA revenue stream tends to be rather stable. Whereas revenues are now expected to be much lower than originally anticipated, expenditures have increased slightly. The result of all these revisions is that CTC now expects to end the current year with a reserve of $2.3 million rather than the $9.3 million assumed in the *2004-05 Budget Act*.

Figure 1

Large Current-Year Fund Changes Require Additional Explanation

Test Development and Administration Account (In Millions)

	2004-05	
	January 2004	November 2004
Revenues		
Beginning balances	$5.1	$2.5
Revenues	13.9	9.8
Subtotals	($19.0)	($12.3)
Expenditures/ Transfers		
Expenditures	$9.7	$9.7[a]
Transfers to TCF[b]	—	0.3
Subtotals	($9.7)	($10.0)
Ending Balances	**$9.3**	**$2.3**

[a] Expenditures have increased by $56,000.

[b] Teacher Credential Fund.

In response to our inquiries, CTC was not able to provide clear answers as to why its current-year budget had experienced such unforeseen changes. It asserts that the changes are due to a transition it currently is undergoing with its test contractors. Rather than test fees being funneled through CTC, test fees are now to flow directly from test takers to test contractors. Changing its relationship with its test contractors in this way would reduce the amount of test revenue it reflects in its fund condition, but it also would reduce, dollar-for-dollar, its expenditures. Thus, it seems very unlikely that this transition is explaining the large discrepancies noted above in the TDAA fund balance.

The Legislature needs an accurate current-year fund statement both to ensure CTC has proper fiscal management and to make well-informed budget-year decisions. One of the reasons the Legislature did not raise the credential application fee in 2004-05 was because the TDAA was projected to end the year with a substantial reserve. Without confidence in the fund statements, the Legislature is likely to have difficulty deciding how to proceed in the budget year, and it might be placed in the awkward position of increasing the credential application fee unnecessarily or having CTC run a deficit without a reserve to cover it. For these reasons, we recommend the Legislature direct CTC to explain (1) why such large changes to its TDAA fund statement have occurred in such a short amount of time and (2) if other revisions are expected.

If Fund Statements Reliable, Action Should Be Taken to Keep CTC Solvent

If the Commission on Teacher Credentialing (CTC) can show that it will not have a prudent reserve at the end of 2005-06, then we recommend the Legislature consider various options for maintaining CTC's solvency.

One of the reasons the current-year TDAA fund balance is so critical is because, under the Governor's budget proposal, both the TCF and TDAA would end 2005-06 with no reserve. Figure 2 shows the TCF and TDAA fund balances for the prior year, current year, and budget year.

If CTC can provide clear and accurate fund statements that show it would end 2005-06 without a prudent reserve, then we recommend the Legislature consider the following options for maintaining CTC's solvency.

Increase the Credential Application Fee. Every $5 increase in the application fee generates an estimated $1.1 million. This amount equates to a TCF reserve of 7 percent, which typically would be deemed a modest reserve for a small state agency. (Given the TDAA also is to end the budget year without a prudent reserve, the Legislature might want to consider a slightly larger fee increase in 2005-06 or 2006-07.)

Figure 2

If Fund Statements Reliable, CTC Would End 2005-06 With No Reserve

(Dollars in Millions)

	2003-04 Actual	2004-05 Estimated	2005-06 Budgeted
Teacher Credential Fund (TCF)			
Revenues/Transfers			
Beginning balances	$0.4	$1.3	—
Revenues	13.2	13.2	$13.2
Transfers from TDAA	3.0	0.3	1.9
Subtotals	($16.6)	($14.8)	($15.1)
Expenditures	$15.4	$14.8	$15.1
Ending Balances:			
Amount	$1.3	—	—
Percent of expenditures	8%	—	—
Test Development and Administration Account (TDAA)			
Revenues			
Beginning balances	$4.9	$2.5	$2.3
Revenues	11.5	9.8	9.8
Subtotals	($16.3)	($12.3)	($12.1)
Expenditures/Transfers			
Expenditures	$10.9	$9.7	$10.2
Transfers to TCF	3.0	0.3	1.9
Subtotals	($13.8)	($10.0)	($12.1)
Ending Balances:			
Amount	$2.5	$2.3	—
Percent of expenditures	23%	23%	—

Automate or Devolve Credentialing Authority. The Governor's budget includes a proposal that would entrust accredited university-run teacher preparation programs with essentially preapproving the credential applications they submit to CTC, and CTC in turn would grant the official credential without further review. As CTC currently evaluates more than 50,000 applications submitted from universities, this would notably re-

duce CTC's workload. Given it represents a reasonable and feasible option for achieving greater efficiencies, the Legislature may want to approve this proposal.

The Legislature also may want to consider related options that might achieve even more substantial efficiencies. It could consider authorizing a similar preapproval process for district-run teacher preparation programs and community college child development programs. (In addition to the credential applications noted above, CTC currently reviews approximately 10,000 child development permits.)

Alternatively, the Legislature could consider establishing a pilot program that would devolve issuance authority to teacher preparation and child development programs. These programs already hire their own credential/permit analysts, already review their students' applications, and already recommend approved candidates to the CTC. A pilot program would entrust these campuses with actually issuing the credential/permit to the applicants, thereby eliminating CTC's cursory review process altogether. Participating campuses could be required to issue their credentials/permits prior to the beginning of the school year. This in turn would reduce county workload because county offices of education must issue temporary county certificates to credential applicants who, prior to the beginning of the school year, have not yet received their official CTC document.

Pursue Additional Efficiencies. The *2004-05 Budget Act* included budget bill language requiring CTC to submit a report to the Legislature and the Department of Finance that identified "at least three feasible options to further reduce processing time that could be implemented in 2005-06." The CTC submitted its report, which contains five efficiency options. (The commission is in the process of implementing some of these options.) Among the options is a proposal to conduct a public relations campaign to encourage more teachers to renew their credentials online and two proposals to eliminate hard copies of documents and instead provide only online access. Several of these proposals hold promise. The public relations campaign, for instance, could yield considerable long-term pay-off (as only 36 percent of eligible applicants currently renew online). The two online proposals also would reduce workload and postage costs. The Legislature may want CTC to provide periodic updates on its implementation of these efficiency initiatives.

In sum, the Legislature has a number of options for addressing a funding shortfall. Unless CTC can provide more reliable fund statements, it will however have difficulty knowing whether CTC is actually likely to experience a shortfall. If CTC can provide clear and accurate fund statements that show a likely budget-year shortfall, then it should offer the Legislature viable alternatives for addressing it. Ideally, CTC would submit a proposal

that contains revenue options (for example, an increase in the credential application fee) and expenditure options (for example, an estimate of personnel savings under various efficiency options). We recommend the Legislature direct CTC both to provide more reliable fund statements and present various options for addressing a potential shortfall.

OTHER ISSUES

Few Details on Other Proposals

We recommend the Legislature reject several new initiatives proposed in the budget unless the administration makes available complete proposals including a narrative that explains their rationale.

The Governor's budget for K-12 education contains a number of other proposals for which few details were available at the time this analysis was prepared. A complete budget proposal generally includes a narrative explaining the need for the program and the rationale for the approach proposed, a detailed description of the fiscal structure of the new program, and proposed budget or statutory language needed to implement the proposal. The budget provides none of this supporting material for the proposals discussed below. In several cases, the budget proposal also fails to identify how the new activities would be funded in the budget year.

The Legislature's budget process is designed to ensure that the state's fiscal plan targets funds to the state's highest priorities. Without a thorough understanding of the recommended changes, the Legislature is unable to evaluate the costs and benefits of the Governor's proposals. Therefore, unless the administration provides the Legislature with a complete package of supporting material for these proposals, we recommend the Legislature reject them.

This would be unfortunate because, in most cases, the concepts forwarded in the Governor's budget for K-12 appear to have merit. Below, we describe each proposal for which we received no supporting material and discuss our initial reaction to it.

Accelerated English Language Acquisition Program (ELAP). The budget would redirect $57.6 million in funds for ELAP and use the funds to provide staff development in teaching instruction to English learner (EL) students. Currently, ELAP funds are distributed to districts for services to EL students in grades 4 through 8. The new staff development program would serve teachers in these grades with services modeled on the existing Reading First staff development program. Reading First is a federally funded

program that provides districts with a minimum of $6,500 per K-3 teacher for reading professional development.

The most recent evaluation of ELAP suggests the current program has little impact on student learning. For this reason, we would support proposals that use these funds more effectively. In addition, we also believe that helping EL students learn English quickly is a critical task for the state's education system. The proposal raises several issues, however. Dedicating $50 million for a yet-unproven staff development program appears to be going too far, too fast. Moreover, no justification has been given why the Reading First model would be an effective approach for helping teachers meet the needs of EL students. Finally, given that English language development for most EL students in California begins in kindergarten, it is not evident why focusing on teachers in grades 4 through 8 is the most effective approach to helping this group of students.

Intervention in Low-Performing Schools. The budget proposes to convert failing schools into charter schools or assume management of the schools through a School Recovery Team. The budget proposal would place an unknown number of schools that are failing to meet state or federal performance goals into this intervention program.

Most critically, the budget does not identify how the administration proposes to support the new program. The budget is silent on the cost of the intervention, the length of time state teams would manage the schools, and what happens to the schools after the state leaves. We also note the budget proposal continues the past focus of intervention on individual schools. We think the state should concentrate most of its efforts on improving low-performing *districts* rather than schools. Since districts affect so many elements of school success—including teacher assignment, curriculum and instructional development, and resource decisions—we think a focus on improving districts has more promise than a state takeover of schools.

Delegating Budget Decisions to the School Site. The Governor's budget proposes a pilot program for determining the costs and benefits of school site budgeting and decision making. The pilot would test the concept in a small number of districts that volunteer for the program. As part of the pilot, schools would be given more flexibility over the use of state categorical program funds in order to help the sites use funds most effectively to meet student needs.

Districts in California and in other states currently are devolving a greater amount of budget discretion to school sites. Decentralization appears sufficiently promising that a study of the costs and benefits of the approach has merit. Details of the proposal, however, were not available at the time this analysis was prepared. How the proposal would extend greater

flexibility over categorical program resources to participating schools constitutes a critical detail. The proposal also failed to clearly specify the goals of the pilot and the criteria that would be used to measure its success. In addition, the Governor's proposal does not provide any resources to districts for planning or for the evaluation of the pilot.

Fitness and Nutrition Initiative. The budget proposes an initiative to prevent child obesity. According to the budget document, the initiative includes several school-based efforts such as improving the nutritional quality of food and beverages, increasing opportunities for physical activities, and making fresh fruit and vegetables more available. The budget includes $6 million in the Department of Health Services (DHS) budget for a series of obesity reforms, but provides no funding in the K-12 portion of the budget.

Data provided in the budget document indicate that the number of overweight children has grown significantly over the last two decades. The proposal, however, provides no specific details about how the school-based initiatives would be funded or implemented. Funding proposed in the DHS budget could support some of the proposed activities in schools. For example, the proposal provides $3 million for grants to community organizations to implement projects involving schools and other local agencies. No information was available on whether the DHS program was intended to support the K-12 activities or whether the administration expects to identify another funding source for the education component of the program. (Please see our analysis of the DHS proposal in the "Health and Social Services" chapter.)

INTRODUCTION

Higher Education

The Governor's budget proposes a $663 million augmentation in General Fund expenditures for higher education in 2005-06. This represents a 7.5 percent increase from the revised 2004-05 amount. The Governor's proposal also assumes the enactment of student fee increases which, when coupled with changes in all other revenue sources, would increase total higher education funding by $1.3 billion, or 4 percent. The budget funds cost-of-living adjustments and enrollment growth at the three public higher education segments, as well as increased costs of the Cal Grant program.

Total Higher Education Budget Proposal

As Figure 1 (see next page) shows, the 2005-06 budget proposal provides a total of $34.6 billion from all sources for higher education. This amount is $1.3 billion, or 4 percent, more than the Governor's revised current-year proposal. The total includes funding for the University of California (UC), the California State University (CSU), California Community Colleges (CCC), Hastings College of the Law, the Student Aid Commission (SAC), and the California Postsecondary Education Commission. Funded activities include instruction, research, and related functions, as well as other activities, such as providing medical care at UC hospitals and managing three major U.S. Department of Energy laboratories. The Governor's current-year estimates include a variety of technical adjustments.

Major Funding Sources

The 2005-06 budget proposal provides $9.5 billion in General Fund appropriations for higher education. This amount is $663 million, or 7.5 percent, more than proposed current-year funding. The budget also projects that local property taxes will contribute $1.8 billion for CCC in 2005-06, which reflects an increase of $77 million, or 4.4 percent, from the revised current-year amount.

Figure 1

Governor's 2005-06 Higher Education Budget Proposal

(Dollars in Millions)

	2004-05	2005-06	Change Amount	Change Percent
UC				
General Fund	$2,708.8	$2,806.3	$97.5	3.6%
Fee revenue	1,800.0	1,949.9	149.9	8.3
Subtotals	($4,508.8)	($4,756.2)	($247.4)	(5.5%)
All other funds	$14,162.5	$14,637.3	$474.9	3.4%
Totals	**$18,671.3**	**$19,393.5**	**$722.2**	**3.9%**
CSU				
General Fund	$2,496.7	$2,607.2	$110.5	4.4%
Fee revenue	1,111.3	1,212.5	101.2	9.1
Subtotals	($3,608.0)	($3,819.7)	($211.7)	(5.9%)
All other funds	$2,222.1	$2,197.5	-$24.5	-1.1%
Totals	**$5,830.1**	**$6,017.3**	**$187.2**	**3.2%**
CCC				
General Fund	$3,050.6	$3,349.7	$299.1	9.8%
Local property tax	1,750.4	1,827.0	76.7	4.4
Fee revenue	357.5	368.2	10.7	3.0
Subtotals	($5,158.5)	($5,545.0)	($386.5)	(7.5%)
All other funds	$2,168.2	$2,165.0	-$3.3	-0.2%
Totals	**$7,326.7**	**$7,709.9**	**$383.2**	**5.2%**
SAC				
General Fund	$589.4	$745.5	$156.1	26.5%
All other funds	758.6	646.9	-111.7	-14.7
Totals	**$1,348.0**	**$1,392.4**	**$44.4**	**3.3%**
Other				
General Fund	$10.2	$10.4	$0.2	2.4%
Fee revenue	25.5	26.2	0.7	2.8
All other funds	20.1	16.8	-3.2	-16.2
Totals	**$55.7**	**$53.4**	**-$2.3**	**-4.1%**
Grand Totals	**$33,231.7**	**$34,566.5**	**$1,334.7**	**4.0%**
General Fund	$8,855.7	$9,519.1	$663.4	7.5%
Fee revenue	3,294.3	3,556.8	262.5	8.0
Local property tax	1,750.4	1,827.0	76.7	4.4
All other funds	19,331.4	19,663.5	332.1	1.7

[a] Excludes payments on general obligation bonds.

In addition, student fee revenue at all the public higher education segments account for $3.6 billion of proposed expenditures. This is $263 million, or 8 percent, greater than student fee revenue in the current year. This increase is primarily due to planned fee increases at UC and CSU. (The Governor does not propose any fee increase for CCC.) The budget also includes $968 million in other state funds (such as lottery and tobacco funds), reflecting a decrease of $143 million, or 12.9 percent.

Finally, the budget includes $18.7 billion in nonstate revenue—including federal funding, private contributions to the universities, and other revenue. This amount is $475 million, or 2.6 percent, more than the revised current-year level. The amounts in Figure 1 do not include capital outlay expenditures or the General Fund costs associated with paying off general obligation bonds. These costs are discussed in the "Capital Outlay" chapter of this *Analysis*.

Funding by Segment

For UC, the budget proposal provides General Fund appropriations of $2.8 billion, which is a net $97.5 million, or 3.6 percent, more than the proposed current-year estimate. The Governor's budget also anticipates that, largely as a result of planned fee increases, student fee revenue will increase by $150 million. When General Fund and fee revenue are combined, UC's budget would increase by 5.5 percent.

For CSU, the budget proposes $2.6 billion in General Fund support, which is a net increase of $111 million, or 4.4 percent, from the revised current-year level. With proposed fee increases, student fee revenue would increase by $101 million. Total General Fund and fee revenue combined would increase by 5.9 percent.

For CCC, the Governor's budget proposes $3.4 billion in General Fund support, which is $299 million, or 9.8 percent, above the current-year amount. Local property tax revenue (the second largest source of CCC funding) would increase by 4.4 percent, to $1.8 billion. The Governor's budget does not propose an increase in student fee levels at CCC. Combined, these three sources of district apportionments (General Fund support, property taxes, and fee revenue) would amount to $5.5 billion, which reflects an increase of $387 million, or 7.5 percent.

Major Cost Drivers for Higher Education

Year-to-year changes in higher education costs are influenced by three main factors: (1) enrollment, (2) inflation, and (3) student fee levels.

Enrollment Growth. For UC and CSU, the state uses a "marginal cost" formula that estimates the added cost imposed by enrolling one additional full-time equivalent student. This estimate includes instructional costs (such as faculty salaries and teaching assistants), related educational costs (such as instructional materials and libraries), administrative costs, and student services. Because faculty (particularly at UC) spend part of their time performing noninstructional activities such as research, the marginal cost formula "buys" part of these other activities with each additional student enrolled. A similar approach is used for funding enrollment growth at CCC, although there are technical differences in how funding is calculated. (We discuss marginal cost funding in some detail in an intersegmental issue later in this chapter.)

Inflation. Higher education costs rise with general price increases. For example, inflation increases the costs of supplies, utilities, and services that are purchased by campuses. In addition, price inflation creates pressure to provide cost-of-living adjustments to maintain the buying power of faculty and staff salaries.

Student Fees. Student fees and General Fund support are the two primary funding sources for the segments' instructional programs. The Legislature generally considers fee increases either to (1) *maintain the share* of costs supported by fees as the segments' budgets increase yearly, or (2) *increase the share* of total costs supported by fees.

Major Budget Changes

The Governor's higher education budget proposal results primarily from base increases (essentially to compensate for inflation), enrollment increases, and increased financial aid costs. Figure 2 shows the major General Fund budget changes proposed by the Governor for the three segments.

Enrollment Growth. The Governor proposes enrollment increases of 2.5 percent at UC and CSU, and 3 percent at CCC. Figure 3 (see page E-146) shows enrollment changes at the three segments. We discuss proposed enrollment levels in more detail later in this chapter.

Student Fees. For UC and CSU, the Governor proposes fee increases of 8 percent for undergraduate students and teacher credential students, and 10 percent for graduate students. The Governor's budget does not account for the continued phase-in of higher fees for students taking "excess" course units. That fee phase-in was proposed by the Governor in the 2004-05 budget, and accepted by the Legislature. For 2005-06, the excess course unit policy is to generate $25.5 million in General Fund savings. Once fully implemented over five years, the excess course unit policy would raise student fees to the full marginal cost of education for students taking more than 110 percent of the credit units required for graduation.

Figure 2

Higher Education
Proposed Major General Fund Changes

University of California	**Requested:**	**$2.8 billion**	
	Increase:	**$97.5 million**	**(+3.6%)**

Base Augmentation: Provides $76.1 million for a 3 percent base funding increase.

Enrollment Growth: Provides $37.9 million for 2.5 percent enrollment growth, which is sufficient to fund 5,000 additional full-time equivalent (FTE) students.

Budget Reductions: Eliminates $3.8 million for Labor Institutes, and makes a $17.3 million reduction to enrollment and/or outreach. (The university would decide how to allocate this reduction between these two activities.)

California State University	**Requested:**	**$2.6 billion**	
	Increase:	**$111 million**	**(+4.4%)**

Base Augmentations: Provides $71.1 million for a 3 percent base funding increase, and $44.4 million for increased retirement costs.

Enrollment Growth: Provides $50.8 million for 2.5 percent enrollment growth, which is sufficient to fund 8,100 additional FTE students.

Budget Reduction: Includes a $7 million reduction to enrollment and/or outreach. (The university would decide how to allocate this reduction between these two activities.)

California Community Colleges	**Requested:**	**$3.3 billion**	
	Increase:	**$299 million**	**(+9.8%)**

Cost-of-Living Adjustments (COLAs): Provides $196 million for a COLA of 3.93 percent for apportionments and selected categorical programs.

Enrollment Growth: Provides $142 million for 3 percent enrollment growth (to fund about 34,000 additional FTE students).

Other Augmentations: Includes $20 million one-time funding to create new vocational curricula that link K-12 and community college classroom work. Also, sets aside an additional $31.4 million that would be added to general apportionments, contingent on the Board of Governors' adequately responding to legislation requiring the development of a district-level accountability proposal.

Technical Reductions: Reduction of $90.1 million which adjusts for increased fee and property tax estimates.

Figure 3

Higher Education Enrollment

Full-Time Equivalent Students

	Actual 2003-04	Budgeted 2004-05	Proposed 2005-06	Change	
				Amount	Percent
University of California					
Undergraduate	155,754	155,647	159,730	4,083	2.6%
Graduate	32,874	32,963	33,860	897	2.7
Health sciences	13,268	12,366	12,386	20	0.2
UC Totals	**201,896**	**200,976**	**205,976**	**5,000**	**2.5%**
California State University					
Undergraduate	278,774	272,419	279,207	6,788	2.5%
Graduate/postbacalaurate	52,931	51,701	53,016	1,315	2.5
CSU Totals	**331,705**	**324,120**	**332,223**	**8,103**	**2.5%**
California Community Colleges	1,108,348	1,142,987	1,177,276	34,289	3.0%
Hastings College of the Law	1,261	1,250	1,250	—	—
Grand Totals	**1,643,210**	**1,669,333**	**1,716,725**	**47,392**	**2.8%**

For CCC, the Governor proposes no increase in student fees. Resident students at CCC would continue to pay $26 per unit—the lowest fee in the country. Proposed student fees are shown in Figure 4, and are discussed in more detail later in this chapter.

Student Financial Aid. The Governor's budget provides $746 million in General Fund support for SAC, primarily for the Cal Grant programs. This reflects an increase of $156 million from the revised current-year level. About two-thirds of this increase would be used to backfill a reduction in funding from the Student Loan Operating Fund (SLOF). About $147 million in surplus funding in the SLOF was used on a one-time basis in the current year to achieve General Fund savings. For 2005-06, the Governor proposes a smaller one-time shift of $35 million from the SLOF. The remaining increase in General Fund support for SAC is largely due to higher fees at UC and CSU (which are covered by Cal Grants) and a projected increase in the number of Cal Grant awards.

Figure 4

Annual Education Fees for Full-Time Resident Students[a]

	Actual 2003-04	Actual 2004-05	Proposed 2005-06	Change From 2004-05	
				Amount	Percent
University of California					
Undergraduate	$4,984	$5,684	$6,141	$457	8%
Graduate	5,219	6,269	6,897	628	10
Select professional programs[b]					
Nursing	8,389	8,389	9,105	716	9
Pharmacy	10,339	14,139	15,027	888	6
Medicine	14,013	18,513	19,532	1,019	6
Business	14,824	19,324	20,368	1,044	5
Hastings College of the Law	$13,735	$18,750	$19,725	$975	5%
California State University					
Undergraduate	$2,046	$2,334	$2,520	$186	8%
Teacher education	2,256	2,706	2,922	216	8
Graduate	2,256	2,820	3,102	282	10
California Community Colleges	$540	$780	$780	—	—

a Fees shown do not include campus-based fees.

b The University of California currently charges special fee rates for nine professional programs—including the four shown. The Governor's budget proposes to charge a special rate ($10,897) for three additional programs—Public Health, Public Policy, and International Relations and Pacific Studies.

BUDGET ISSUES

Higher Education

INTERSEGMENTAL: HIGHER EDUCATION "COMPACT"

The Governor's 2005-06 budget proposal generally follows a "compact" between the Governor and the University of California (UC) and the California State University (CSU), agreed to in spring 2004. In return for specific funding commitments over the next six years, UC and CSU have agreed to meet various performance expectations negotiated with the Governor. Below, we explain our concerns with the Governor's compact and advise the Legislature to disregard it for budgeting purposes. Instead, we recommend the Legislature continue to use the annual budget process as a mechanism to fund its priorities and to hold the segments accountable for fulfilling the mission assigned to them by the **Master Plan for Higher Education.**

Background

In 1960, the state adopted a fiscal and programmatic roadmap for higher education in the form of the *Master Plan for Higher Education*. This document defines California's higher education goals and outlines strategies for achieving them. The guiding principle expressed in the Master Plan is that all qualified Californians should have the opportunity to enroll in high quality, affordable institutions of higher education. To achieve this goal, the Master Plan addresses various overarching matters, including governance structures and mission differentiation. It also establishes guidelines for eligibility pools, transfer policies, enrollment planning, facility utilization, financial aid, and other policy areas. The Master Plan has proven

to be a remarkably enduring planning document, enjoying bipartisan support since its adoption. Starting in the mid-1990s, the state's public universities have entered into a series of nonbinding funding compacts to try to gain greater fiscal and programmatic stability.

Previous Higher Education Funding Agreements. In 1995, UC and CSU entered a four-year compact with the Wilson Administration following several years of fiscal uncertainty caused in large part by the state's economic recession. Under the agreement, the Governor committed to request at least a specified level of General Fund revenue in his annual budget proposals to support base budget increases, enrollment growth, and other priorities. In return, UC and CSU agreed to meet certain program objectives. Desiring to extend this arrangement, UC and CSU negotiated a new agreement with the Davis Administration in 1999. This agreement, known as the "Partnership," contained many of the same provisions of the previous compact. The Partnership agreement lasted from 1999 through 2003.

Previous Agreements Did Not Deliver Expected Funding. The Partnership agreement included provisions for a 5 percent annual base increase for UC and CSU. However, the state experienced a pronounced fiscal deterioration, caused by significantly lower-than-expected revenues. As a result, the Governor proposed in the May Revision to his 2001-02 budget to provide UC and CSU with a 2 percent base increase instead of the 5 percent called for under the Partnership. The following year he proposed a 1.5 percent base increase—again, less than outlined in the agreement. As shown by these and other experiences, the provisions of the segments' funding agreements are primarily expressions of intent at a point in time. They have not and cannot guarantee budgetary predictability to the public universities.

Development of the Current Agreement. In developing his budget proposal for 2004-05, the Schwarzenegger Administration confronted an estimated $17 billion General Fund shortfall. The Governor proposed to make up for some of this with General Fund reductions for UC and CSU, much of which was "backfilled" with revenue from student fee increases. While this budget proposal was being deliberated in the Legislature, the Governor developed a new compact with UC and CSU to provide annual budget increases beginning in 2005-06. The 2004-05 budget adopted by the Legislature approved some of the Governor's proposals for reductions at UC and CSU and significantly modified a few of them. The enacted budget made no reference to the compact.

Major Terms of the Current Agreement. The current compact would guide the Governor's budget proposals for the public universities through 2010-11. As Figure 1 shows, the compact establishes annual funding targets, including base increases of 3 percent (increasing to 4 percent in 2007-08

and 5 percent in 2008-09), 2.5 percent annual increases in enrollment funding, and annual fee increases that would generate additional funding to be used at the segments' discretion. As part of the compact, the segments agree to meet various programmatic expectations and to provide annual reports with specified information. (These are outlined in Figure 2 (see next page) and discussed in further detail later in this section.)

Figure 1

Major Funding Provisions of the Governor's Compact With UC and CSU

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
General Fund Augmentations						
Base increase	3.0%	3.0%	4.0%	5.0%	5.0%	5.0%
Enrollment growth	2.5	2.5	2.5	2.5	2.5	2.5
Student Fee Increases						
Undergraduate fees	8.0%	8.0%	—[a]	—[a]	—[a]	—[a]
Graduate fees (minimum increase)	10.0	10.0	—[b]	—[b]	—[b]	—[b]

Other Provisions

Phase in excess course unit fee (over five-year period ending in 2008-09).

Full funding of lease-revenue debt service, annuitant health benefits, and other expenses.

General obligation bond support of $345 million per segment, per year, for capital outlay.

a Starting in 2007-08, undergraduate fees are to change at the same rate as per capita personal income. The compact permits fees to increase further—up to 10 percent—if required by "fiscal circumstances."

b Graduate student fees are dependent on the development of a fee policy in which graduate fees gradually increase to 150 percent of undergraduate fees.

CONCERNS WITH THE COMPACT

The Governor's budget proposal for higher education largely is guided by his compact. Below, we identify several concerns with it.

Compact's Funding Targets Are Disconnected From Master Plan

The compact's funding expectations for enrollment growth, base increases, and student fees have no direct link to funding needs derived from the Master Plan.

No Link Between Master Plan and Compact's Enrollment Targets. The Master Plan provides guidance on eligibility criteria for each of the higher

education segments. Specifically, UC is directed to accept students from the top one-eighth (12.5 percent) of high school graduates, CSU from the top one-third (33.3 percent) of high school graduates, and community colleges are to accept all applicants 18 years of age and older who can benefit from attendance. A recent report by the California Postsecondary Education Commission (CPEC) showed that in 2003, UC and CSU's eligibility criteria were not aligned with the eligibility targets outlined in the Master Plan. According to CPEC's analysis, UC drew its students from the top 14.4 percent of high school graduates (exceeding its 12.5 percent target by about one-seventh) and CSU drew its students from the top 28.8 percent of high school graduates (falling short of its 33.3 percent target by a similar proportion).

Figure 2

Major Accountability Provisions of the Governor's Compact With UC and CSU

- ✓ Meet Master Plan eligibility targets.
- ✓ Complete lower division major preparation agreements by the end of 2005-06.
- ✓ Provide summer instruction to at least 40 percent of the average fall/winter/spring enrollment by 2010-11.
- ✓ Improve student persistence and graduation rates.
- ✓ Improve supply of science and mathematics teachers.
- ✓ Approve college preparatory courses that integrate academics with technical content.
- ✓ Strengthen community service programs.
- ✓ Provide accountability report on various performance measures annually to the Legislature and Governor.

The annual increases in enrollment called for in the compact show no obvious link to the Master Plan's eligibility targets. They appear neither to address the mismatch between the Master Plan eligibility targets and current practice nor to mesh with projected growth in the college-age population over the next few years. Instead, the compact would provide UC and CSU identical fixed levels of annual enrollment growth for the term of the

agreement. In contrast, we believe the Legislature should make enrollment funding decisions annually to provide the segments with the resources necessary to meet their Master Plan eligibility targets.

No Link Between Master Plan and Compact's Base Increases. The state's public universities, like other institutions, experience increases in their program costs due to inflation. In order to maintain the Master Plan's commitment to support quality academic programs, therefore, the Legislature periodically increases the segments' base budgets. To maintain the same purchasing power, these base increases would generally track an inflationary index such as the state and local deflator. The Governor's agreement with the segments, however, prescribes specific base increases through 2010-11, irrespective of the rates of inflation the segments will actually experience. Under the Governor's agreement with UC and CSU, the proposed base increases might match, exceed, or fall behind the annual rate of inflation.

We believe the Legislature should consider increasing the public universities' base budgets to adjust for the effects of inflation during annual budget hearings. Such consideration should weigh providing these increases against competing budget priorities. In this way, the Legislature maintains flexibility in the allocation of budget resources.

Compact's Fee Targets Are Arbitrary. The State Constitution confers on the Board of Regents the power to set student fee levels for UC, and the Legislature statutorily confers on the Board of Trustees the power to set fee levels for CSU. Both universities in recent years have determined fee levels as a response to the state's fiscal situation. For example, in the late 1990s, the public universities reduced fees—despite a strong economy and burgeoning financial aid opportunities—because state General Fund revenue was available to substitute for some fee revenue. Over the last couple of years, UC and CSU have raised student fees significantly to compensate for General Fund reductions. The Governor's agreement with the segments prescribes annual fee increases through 2010-11. Specifically, the compact proposes 8 percent fee increases in undergraduate fees in 2005-06 and 2006-07, with subsequent increases based on the change in per capita personal income. Graduate fees would increase by at least 10 percent in 2005-06 and 2006-07, with the segments committing to "make progress" in subsequent years toward the goal of raising graduate fees to 150 percent of undergraduate fees. This policy would ensure that fee increases are relatively moderate and predictable, but it does not provide an underlying policy rationale for the actual fee levels.

We believe the Legislature should instead adopt a long-term fee policy that results in students paying a fixed percentage of their total education costs each year. The size of the students' share would be a policy choice for the Legislature to make. This policy would provide an underlying ratio-

nale for fee levels, ensure moderate and gradual fee increases, and reflect underlying costs.

Compact Would Place Higher Education Funding on "Autopilot"

Compact Seeks Routine Increases. Rather than allowing for an annual review to reassess budget assumptions, the Governor's compact seeks automatic spending increases for UC and CSU. By prescribing specific targets for enrollment growth and base budget increases, the compact attempts to lock into place specific funding levels, thereby putting higher education on autopilot. As shown in Figure 3, by the final year of the compact, UC and CSU's General Fund support is projected to increase by about $2 billion from the 2004-05 level. When combined with student fee revenue, total resources for UC and CSU would increase by more than more $3.2 billion. In contrast, our projections of population growth and inflation suggest that UC and CSU would require an additional $1.8 billion in 2010-11, or about 60 percent of the increase called for by the compact. (Note: These figures do not include other increases that would be provided under the compact—such as funding for annuitant health benefits and capital outlay-related expenses.)

Figure 3

Funding Expectations Under Governor's Compact[a]

Additional Funding Above 2004-05 Level (In Millions)

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Additional General Fund support	$208	$439	$739	$1,119	$1,551	$2,013
Additional student fee revenue	251	504	658	829	1,005	1,205
Totals	**$459**	**$943**	**$1,397**	**$1,948**	**$2,556**	**$3,218**

[a] Base increases, fee increases, and enrollment growth only. The compact calls for undefined levels of additional General Fund support to cover other cost increases.

Budget Process Should Be Followed. The Legislature makes budget decisions within a context of changing fiscal, economic, and policy conditions. Unanticipated challenges, including natural disasters and economic downturns, require annual reassessments of funding needs as part of the budget process. To better accommodate these unexpected situations, as well as any policy changes the Legislature may want to implement, we

believe the Legislature should reject the compact's autopilot approach and continue to use the annual budgetary process to allocate resources to the segments.

Compact's Accountability Provisions Are Inadequate

While we agree that accountability is an important issue directly connected with budgeting, we believe the accountability provisions referenced in the Governor's compact are inadequate for several reasons.

Compact's Accountability Lacks Explicit Goals and Measures. The Governor's agreement with the public universities includes performance measures as a means to monitor UC and CSU's progress toward meeting certain goals. Program goals and performance measures are important components of any successful accountability system. However, to be effective, goals should describe the desired outcomes or impact. Similarly, measures should directly relate to a specific goal, be quantifiable, and focus on results.

Although the compact makes an effort to measure various activities and outputs, it does not provide enough detail in the goals it hopes to achieve or in the measures it suggests to determine performance. For example, the compact lists a goal of "utilization of systemwide resources." Proposed measures of this goal include "faculty honors and awards," "information on technology transfer," and "instructional activities per faculty member." Using the criteria mentioned above, the proposed goal of utilization of systemwide services does not provide enough clarity about expected results. The lack of clarity, in turn, precludes the development of measures that accurately gauge progress toward the goal.

Compact's Accountability Not Focused on Outcomes. The Governor's agreement with the public universities includes *output* measures, which are concerned with the number of goods produced, rather than *outcome* measures, which focus on program results and impact on society. For example, the segments are expected to report the number of degrees awarded and instructional activities per faculty member. Although *outputs* are important, ultimately it is *outcomes* that provide insight into how well a program meets its mission.

Conclusion

The *Master Plan for Higher Education* serves as the state's framework for higher education. Since 1960, the Legislature, Governor, and public education segments have looked to the Master Plan for guidance on the operation and support of the state's public institutions of higher education. The Governor's budget proposal is based on an agreement he made with UC and CSU. The funding targets of this compact have no explicit link to the

objectives outlined in the Master Plan. We recommend the Legislature continue to use the annual budget process as a mechanism to fund its priorities and to hold the segments accountable for fulfilling the mission assigned to them by the *Master Plan for Higher Education*.

INTERSEGMENTAL: HIGHER EDUCATION ENROLLMENT GROWTH AND FUNDING

The Governor's budget proposes $88.7 million to fund 2.5 percent enrollment growth at the University of California (UC) and the California State University (CSU). This amount would provide $7,588 in General Fund support for each additional student at UC and $6,270 for each additional student at CSU. The proposed budget also provides $142 million for a 3 percent increase of enrollment at California Community Colleges. In this section, we (1) review current-year enrollment levels at UC and CSU, (2) analyze the Governor's proposed enrollment growth and funding rates for 2005-06, and (3) recommend alternatives to those funding rates.

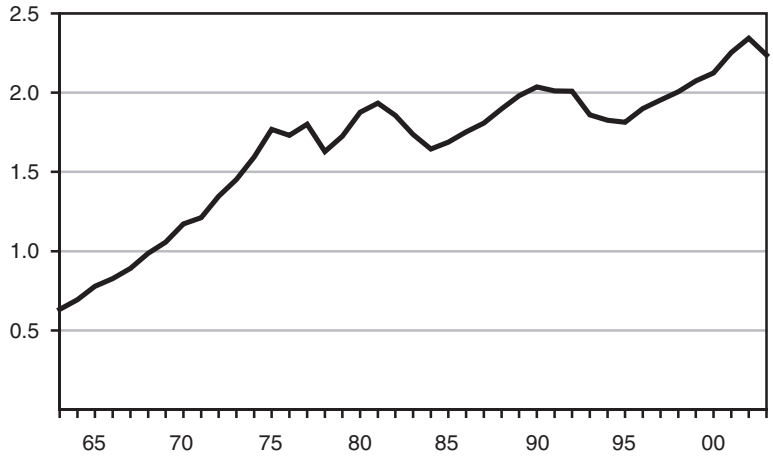
HIGHER EDUCATION ENROLLMENT TRENDS

In 2003, approximately 2.2 million students (headcount) were enrolled either full-time or part-time at the University of California (UC), the California State University (CSU), and California Community Colleges (CCC). This is equal to roughly 1.7 million full-time equivalent (FTE) students. (We describe the differences between *headcount* and *FTE* in the accompanying text box.) Figure 1 (see next page) displays actual headcount enrollment for the state's public colleges and universities for the past 40 years. The figure shows that enrollment grew rapidly through 1975 and then fluctuated over the next two decades. Since 1995, enrollment grew steadily until a slight decline in 2003. As we discuss in the "California Community Colleges" section of this chapter, this decline was largely made up of part-time community college students who were taking relatively few courses. Despite this drop in *headcount*, there was a much smaller decline in community college *FTE* enrollment from 2002 to 2003.

Figure 1

California Public Higher Education Enrollment[a]

Headcount (In Millions)



[a] Includes the University of California, the California State University, and the California Community Colleges.

Full-Time Equivalent (FTE) Versus Headcount Enrollment

In this analysis, we generally refer to FTE students, rather than headcount enrollment. Headcount refers to the number of individual students attending college, whether they attend on a part-time or full-time basis. In contrast, the FTE measure converts part-time student attendance into the equivalent full-time basis. For example, two half-time students would be represented as one FTE student. In 2003-04, on average, one headcount enrollment equaled 0.88 FTE at the University of California, 0.75 FTE at the California State University, and 0.68 FTE at California Community Colleges.

Headcount measures are typically used to reflect the number of individuals participating in higher education. On the other hand, FTE measures better reflect the costs of serving students (that is, the number of course units taken) and is the preferred measure for state budgeting purposes.

Enrollment Down in 2004-05, But Master Plan Intact

As a reference point to guide legislative and executive decisions, the *Master Plan for Higher Education* (adopted by the Legislature in 1960 and periodically reassessed) established admission guidelines that remain the state's official policy today. Each year, UC and CSU typically accommodate all eligible freshman applicants. In enacting the 2004-05 budget, the Legislature rejected the Governor's proposal *not* to admit some eligible freshmen, and instead required that UC and CSU accommodate all eligible students as called for in the Master Plan. (See accompanying box for further information about this proposal.)

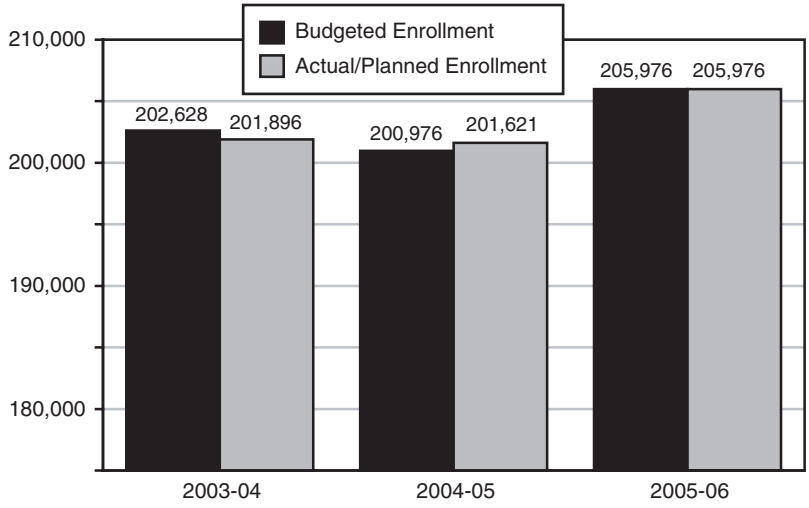
The *2004-05 Budget Act* nevertheless included reductions to budgeted enrollment levels at both UC and CSU.

- For UC, the budget established a total enrollment target of 200,976 FTE students. However, as indicated in Figure 2, this amount is about 900 students *fewer* than the number of students actually served in the prior year.

Figure 2

UC Enrollment Trends

Full-Time Equivalent Students



Redirection of UC Freshmen to Community Colleges

In his January budget proposal for 2004-05, the Governor proposed to reduce new freshman enrollment at the University of California (UC) and the California State University (CSU) in order to achieve General Fund savings. Under this proposal, these freshmen would have been redirected to the lower-cost community colleges, with those students being promised eventual admission to a UC or CSU campus after completing a transfer program. In recognition of the Governor's proposal, UC redirected about 5,700 eligible freshman applicants to the community colleges in the spring of 2004. In contrast to UC, CSU did not at any time redirect eligible freshman applicants to the community colleges.

In enacting the 2004-05 budget, the Legislature rejected the Governor's proposal to require the redirection of freshman enrollment, insisting instead that UC and CSU accommodate all eligible students. Accordingly, UC subsequently offered freshman admission to the 5,700 (formerly) redirected students. Students were admitted to one of UC's campuses (which might not be a campus to which a student had applied). All these students were still provided the option to first attend a community college as part of a *voluntary* redirection program established by Chapter 213, Statutes of 2004 (SB 1108, Committee on Budget and Fiscal Review). Of the 5,700 redirected students, about 1,500 decided to enroll at UC as freshmen, and about 500 students chose to participate in the voluntary redirection program. All students participating in the program in 2004-05 will have their fees waived during their first two years at a community college. After 2004-05, only financially needy students will have their community college fees waived.

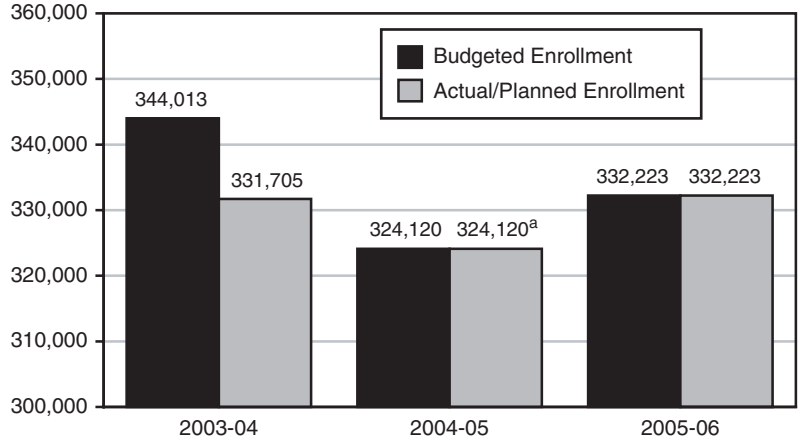
- For CSU, the budget established a total enrollment target of 324,120 FTE students. However, as indicated in Figure 3, this amount is about 7,600 FTE students *fewer* than the number of students actually served in the prior year.

Despite the above reductions to budgeted enrollment levels at UC and CSU, the state has been able to maintain the Master Plan's commitment to college access. Specifically, the segments indicate that no eligible applicants were denied admission to the universities as a whole in 2004-05. (We recognize, however, that some eligible applicants were not admitted to their preferred campus as happens every year.)

Figure 3

CSU Enrollment Trends

2003-04 Through 2005-06
Full-Time Equivalent Students



[a]This represents the number of students CSU plans to enroll in the current year. Unlike UC, CSU could not provide an estimate on the number of students actually enrolled at this point in time.

Disconnect Between Enrollment Funding and Actual Enrollment

The budgeted enrollment levels funded in each year's budget are targets for which funding is provided. Because the number of eligible students enrolling at the segments cannot be predicted with complete accuracy, in any given year UC and CSU typically serve slightly more or less FTE students than budgeted. Recently, however, actual enrollment has deviated more significantly from funded levels. As we discussed in our *Analysis of the 2004-05 Budget Bill* (page E-182), for example, CSU enrolled significantly *fewer* students than it was funded for in 2003-04. This was because the university redirected a significant amount of enrollment funding to essentially "backfill" budget reductions in other program areas. Although not in the same magnitude, UC also redirected some enrollment funding to other purposes in 2003-04.

In recognition of the above disconnect between the number of students funded at each segment and the number of students actually enrolled, the Legislature adopted provisional language as part of the *2004-05 Budget Act* to ensure that UC and CSU use enrollment funding for enrollment. Specifically, the 2004-05 budget required that UC and CSU report to the Legislature by March 15, 2005, on whether they met their current-year enrollment targets (200,976 FTE students for UC and 324,120 FTE student for CSU). If

the segments do not meet these goals, the Director of the Department of Finance (DOF) is to revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

At the time of this writing, UC is projected to exceed its budgeted enrollment target by roughly 600 FTE students, for a total of 201,621 FTE students. The CSU was unable to provide an estimate of the actual number of students currently enrolled at the university. However, the university tells us it expects to meet its current-year enrollment target.

GOVERNOR'S BUDGET PROPOSAL

The budget requests a total of $225.4 million in General Fund support to increase enrollment at UC , CSU, and CCC. The $225.4 million total consists of:

- $37.9 million to UC for 2.5 percent enrollment growth (or 5,000 FTE students) above current-year budgeted enrollment, which is based on a marginal General Fund cost of $7,588 per additional student. (This amount includes funding for 1,000 new FTE students at the Merced campus, which will open in fall 2005.)
- $50.8 million to CSU for 2.5 percent enrollment growth (or 8,103 FTE students) above current-year budgeted enrollment, which is based on a marginal General Fund cost of $6,270 per additional student.
- $142 million (Proposition 98) to CCC for 3 percent enrollment growth (or 34,000 FTE students) above current-year budgeted enrollment, which is considerably higher than the statutory growth rate of 1.89 percent. (We further discuss enrollment at CCC in the "California Community Colleges" section of this chapter.)

DETERMINING ENROLLMENT GROWTH FUNDING FOR 2005-06

One of the principal factors influencing the state's higher education costs is the number of students enrolled at the three public higher education segments. Typically, the Legislature and Governor provide funding in the annual budget act to support a specific level of enrollment growth at the state's public higher education segments. The total amount of enrollment growth funding provided each year is based upon a per-student funding rate multiplied by the number of additional FTE students. For example, the Governor's budget proposes a per-student funding rate of $6,270 for 8,103 additional students at CSU, for a total of $50.8 million.

As earlier noted, the proposed budget includes a total of $88.7 million for 2.5 percent enrollment growth at UC and CSU. In reviewing the Governor's enrollment growth funding proposal, the Legislature must determine the following:

- How much enrollment growth (or additional students) to fund at UC and CSU for 2005-06?
- How much General Fund support to provide the segments for each additional student (commonly known as the "marginal cost")?

Below, we examine each of these issues and make recommendations concerning the Governor's enrollment funding proposals.

HOW MUCH ENROLLMENT GROWTH SHOULD BE FUNDED?

Determining the amount of additional enrollment to fund each year can be difficult. Unlike enrollment in compulsory programs such as elementary and secondary school, which corresponds almost exclusively with changes in the school-age population, enrollment in higher education responds to a variety of factors. Some of these factors, such as population growth, are beyond the control of the state. Others, such as higher education funding levels and fees, stem directly from state policy choices. Although the Master Plan sets eligibility targets, it is often difficult to accurately predict factors that affect the level of demand for higher education. As a result, most enrollment projections have had limited success as predictors of actual enrollment demand.

In general, there are two main factors influencing enrollment growth in higher education:

- ***Population Growth.*** Other things being equal, an increase in the state's college-age population causes a proportionate increase in those who are eligible to attend each segment. Population growth, therefore, is a major factor driving increases in college enrollment. Most enrollment projections begin with estimates of growth in the student "pool," which for the rest of this decade is expected to range from a little more than 1 percent to about 2.5 percent annually.
- ***Participation Rates.*** For any subgroup of the general population, the percentage of individuals who enroll in college is that subgroup's college participate rate. California's participation rates are among the highest in the nation. Specifically, California currently ranks fourth (tied with four other states) in college enrollment among 18- to 24-year-olds, and first among 25- to 49-year-olds. However, predicting future changes to participation rates is

difficult because students' interest in attending college is influenced by a number factors (including student fee levels, availability of financial aid, and the availability and attractiveness of other postsecondary options).

Provide 2 Percent Enrollment Growth

Based on our demographic projections, we recommend the Legislature reduce the Governor's proposal for budgeted enrollment growth for the University of California and the California State University from 2.5 percent to 2 percent. Our proposal should easily allow the segments to accommodate enrollment growth next year due to increases in population, as well as modest increases in college participation.

If college participation rates remain constant for all categories of students next year, we project that enrollment at UC and CSU will grow roughly 1.5 percent from 2004-05 to 2005-06. (See accompanying text box for a description of the demographics-based methodology we developed to estimate future higher education enrollment levels.) Since this projection is driven solely by projected population growth, it should serve as a starting point for considering how much enrollment to fund in 2005-06. In other words, the Legislature can evaluate how various related budget and policy choices could change enrollment compared to this baseline. We note that over the years the Legislature has taken deliberate policy actions (such as funding student outreach programs and expanding the availability of financial aid) to increase college participation rates. Consistent with these actions, the state has provided funding for enrollment growth in some of those years that significantly exceeded changes in the college-age population.

In view of the Legislature's interest in increasing college participation, we recommend funding 2 percent enrollment growth at UC and CSU for the budget year. This is about one-third higher than our estimate of population-driven enrollment growth, and therefore should easily allow the segments to accommodate enrollment growth next year due to increases in population, as well as modest increases in college participation. More importantly, our recommended 2 percent growth rate helps preserve the Legislature's priority that UC and CSU accommodate all eligible students (as called for in the Master Plan).

Accordingly, we recommend that the Legislature reduce the Governor's proposed enrollment growth for UC and CSU from 2.5 percent to 2 percent. (In the next section on per-student funding rates, we discuss the General Fund savings associated with reducing the Governor's proposed growth rate.)

LAO Higher Education Enrollment Projections

In our demographically driven model, we calculate the ethnic, gender, and age makeup of each segment's student population, and then project separate growth rates for each group based on statewide demographic data. For example, we estimated a distinct growth rate for Asian females between 18 and 24 years of age, and calculated the resulting additional higher education enrollment this group would contribute assuming constant participation rates. When all student groups' projected growth rates are aggregated together, we project that demographically driven enrollment at the University of California and the California State University will grow annually between 1.4 percent and 2 percent from 2005-06 through 2009-10. In terms of the budget year (2005-06), we project enrollment growth of roughly 1.5 percent at the two university segments.

In addition to underlying demographics, enrollment growth is affected by participation rates—that is, the proportion of eligible students who *actually* attend the segments. Participation rates are difficult to project because they can be affected by a variety of factors—state enrollment policies, the job market, and changes in students and their families' financial situations. We have assumed that California's participation rates will remain constant. This is because the state's rates have been relatively flat over recent years, and we are not aware of any evidence supporting alternative assumptions. We do acknowledge that participation rates could change to the extent that the Legislature makes various policy choices affecting higher education. Our projections merely provide a baseline reflecting underlying population trends. We believe that our enrollment projections are valuable not as a prediction of what will happen, but as a starting point for considering higher education funding.

Ensuring That Enrollment Targets Are Met

We recommend the Legislature adopt budget bill language specifying enrollment targets for both the University of California and the California State University, in order to protect its priority to increase higher education enrollment.

Although the Governor's budget would increase funded enrollment by 2.5 percent at UC and CSU, the total number of students the segments in fact would serve in 2005-06 is not clear. This is because the proposed budget bill departs from recent practice and does not hold the segments accountable for meeting a specific budgeted enrollment target.

We believe that the Legislature, the Governor, and the public should have a clear understanding of how many students are funded at UC and CSU in the annual budget act. Additionally, the segments should be expected to use enrollment funding provided by the state for that purpose and be held accountable for meeting their annual enrollment targets as adopted by the Legislature. If UC or CSU does not meet its goal, the amount of enrollment funding associated with the enrollment shortfall should return to the state's General Fund. However, under the Governor's proposal, the segments would have the flexibility to reduce enrollments at their discretion regardless of the Legislature's priority to increase enrollment. As previously discussed, there has been a disconnect in recent years between funded and actual enrollment. This is because the segments have redirected enrollment funding away from serving additional students essentially to maintain services in other program areas.

For the above reasons, we recommend the Legislature establish specific enrollment targets (based on our recommended 2 percent enrollment growth) and accountability provisions for UC and CSU. We propose language for 2005-06 that is similar to what was adopted in 2004-05. First, we propose the Legislature add the following provision to Item 6440-001-0001:

> The amount appropriated in Schedule (1) includes funding for the University of California to enroll 204,996 full-time equivalent (FTE) students. The Legislature expects the university to enroll this number of FTE students during the 2005-06 academic year. The university shall report to the Legislature by March 15, 2006, on whether it has met the 2005-06 enrollment goal. If the university does not meet this goal, the Director of the Department of Finance shall revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

Similarly, we also recommend adding the following provision to Item 6610-001-0001:

> The amount appropriated in Schedule (1) includes funding for the California State University to enroll 330,602 full-time equivalent (FTE) students. The Legislature expects the university to enroll this number of FTE students during the 2005-06 academic year. The university shall report to the Legislature by March 15, 2006, on whether it has met the 2005-06 enrollment goal. If the university does not meet this goal, the Director of the Department of Finance shall revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

HOW MUCH GENERAL FUND SUPPORT SHOULD BE PROVIDED FOR EACH ADDITIONAL STUDENT?

In addition to deciding the number of additional FTE students to fund in 2005-06, the Legislature must also determine the *amount* of funding to provide for each additional FTE student at UC and CSU. Given recent practice, this funding level would be based on the marginal cost imposed by each additional student for additional faculty, teaching assistants (TAs), equipment, and various support services. The marginal cost is less than the average cost because it reflects what are called "economies of scale"—that is, certain fixed costs (such as for central administration) which may change very little as new students are added to an existing campus. The marginal costs of a UC and CSU education are funded from the state General Fund and student fee revenue. (A similar, but distinct, approach is used for funding enrollment growth at community colleges.)

The current practice has been for the state to provide a separate funding rate for each higher education segment. In other words, the state uses a model of differential funding—providing separate funding rates for distinct categories of students—based on which higher education segment the student attends. (As we discuss below, the state in the past has provided separate funding rates based on education level and type of instruction.) As discussed above, the Governor's budget for 2005-06 proposes to provide $7,588 in General Fund support for each additional student at UC and $6,270 for each additional student at CSU.

Background on the Development of the Marginal Cost Methodology

For many years, the state has funded enrollment growth at UC and CSU based on the marginal cost of instruction. However, the formula used to calculate the marginal cost has evolved over the years. In general, the state has sought to simplify the way it funds enrollment growth. As we discuss below, the state has moved from utilizing a large number of complex funding formulas for each segment to a more simplified approach for calculating enrollment funding that is more consistent across the two university systems.

UC and CSU Used Different Methodologies Before 1992

From 1960 through 1992, CSU's enrollment growth funding was determined by using a separate marginal cost rate for each type of enrollment category (for example, lower division lecture courses). In other words, the

different marginal cost formulas took into account education levels—lower division, upper division, and graduate school—and "instructional modes" (including lecture, seminar, laboratories, and independent study). Each year, CSU determined the number of additional academic-related positions needed in the budget year (based on specific student-faculty ratios) to meet its enrollment target. These data were used to derive the separate marginal cost rates. Unlike the current methodology, the marginal cost formulas before 1992 did not account for costs related to student services and institutional support. The state made funding adjustments to these budget areas independent of enrollment funding decisions.

Similar to CSU, annual enrollment growth funding provided to UC before 1992 was based on the particular mix of new students, with different groups of students funded at different rates. However, UC's methodology for determining the marginal cost of each student was much less complex than CSU's methodology and did not require different rates based on modes of instruction. The university only calculated separate funding rates for undergraduate students, graduate students, and for each program in the health sciences based on an associated student-faculty ratio. For example, the marginal cost of hiring faculty for new undergraduate students was estimated by dividing the average faculty salary and benefits by 17.48 FTE students (the undergraduate student-faculty ratio at the time). Each marginal cost formula also estimated the increased costs of library support due to enrolling additional students. As was the practice for CSU, however, UC's marginal cost formulas did not account for costs related to student services and institutional support.

Legislature Called for New Methodology in 1990s

Beginning in 1992-93, the Legislature and Governor suspended the above marginal cost funding practices for UC and CSU. While the state did provide base budget increases to the universities, it did not provide funding specifically for enrollment growth during that time. In the *Supplemental Report of the 1994 Budget Act*, the Legislature stated its intent that, beginning in the 1996-97 budget, the state would return to the use of marginal cost as the basis for funding enrollment. Specifically, the language required representatives from UC, CSU, DOF, and our office to review the 1991-92 marginal cost formulas and propose improvements that could be used in developing the 1996-97 budget. The working group had two primary goals: (1) updating the calculations to more accurately reflect actual costs and (2) establishing more consistency between segments in the methods used to fund enrollment growth. This work coincided with CSU's efforts to simplify the university's budget development process, streamline budget formulas, and increase the system's budget discretion.

After a series of negotiations in 1995, the four agencies developed a new methodology for estimating the amount of funding needed to support each additional FTE student. The new methodology was first implemented in 1996-97 and has generally been used to calculate enrollment funding ever since. Some of the key features of this methodology include:

- ***Single Marginal Cost Formula for Each Segment.*** Enrollment growth funding is no longer based on differential funding formulas by education level and academic program. Instead, each university segment uses one formula to calculate a single marginal cost that reflects the costs of all the system's education levels and academic programs. For instance, a fixed student-faculty ratio (as adopted in the budget act) helps determine the faculty costs associated with each additional student (regardless of education level). Thus, the state currently provides a different per-student funding rate depending only on which higher education segment that student attends. (See nearby text box for a review of the different types of differential funding and their potential benefits and drawbacks.)

- ***Marginal Cost for Additional Program Areas.*** The working group concluded that the marginal cost formula should include additional cost components beyond salaries for faculty, teaching assistants, and other academic support personnel. As a result, the current formula takes into account the marginal costs for eight program areas—faculty salary, faculty benefits, TAs, academic support, instructional support, student services, institutional support, and instructional equipment. These program costs are based on current-year funding and enrollment levels, and then discounted to adjust for fixed costs that typically are not affected by year-to-year changes in enrollment.

- ***Student Fee Revenue Adjustments.*** In addition, the working group suggested that both the General Fund and student fee revenue should contribute toward the total marginal cost. This is because fee revenue is unrestricted, and is thus used for general purposes the same as General Fund revenue. It also reflects the state's policy that students and the state should share in the cost of education. Therefore, under the methodology, a portion of the student fee revenue that UC and CSU anticipate from the additional students is subtracted from the total marginal cost in order to determine how much General Fund support is needed from the state for each additional FTE student.

Instituting a More Differential Funding System

Our office recently examined various options to modify California's existing higher education funding practices in a way that differentiates funding in other ways than just by segment. (Currently, the state also provides different funding rates for credit and noncredit courses at the community colleges.) The most common factors other states use to differentiate among enrollments are as follows:

- ***Differential Funding by Education Level.*** The most common practice among states is to provide a different funding rate for lower division students, upper division students, and graduate students. Funding rates generally increase as students advance to higher education levels, reflecting the higher costs typically incurred at those levels.

- ***Differential Funding by Academic Program.*** Another common method is to distinguish funding based upon a program's cost. This means providing higher funding rates for more costly programs (such as nursing).

- ***Differential Funding by Mode of Instructional Delivery.*** Some states provide different funding rates for lecture and laboratory courses. Because they often require expensive equipment and materials, as well as a lower student-faculty ratio, laboratory courses typically are much more costly than lecture courses and therefore are associated with higher funding rates.

The different forms of differential funding are not mutually exclusive. That is, California could redesign its enrollment funding system around any combination of the above factors. For example, it might retain its existing distinctions and incorporate new funding rates for undergraduate and graduate students enrolled in lecture and laboratory courses. A myriad of other combinations are possible.

Potential Advantages and Disadvantages. Differentiated funding systems more accurately account for specific differences in education costs. They can also increase transparency, strengthen accountability, and ensure comparable funding for comparable services. Despite these benefits, more differentiated funding systems can also have potential drawbacks. Depending upon how they are designed, some systems may create more complexity without improving the budget process. In particular, too many enrollment categories can limit flexibility and increase administrative burden.

Recent Departure From the 1995 Marginal Cost Methodology

After the above marginal cost methodology was developed in 1995, UC and CSU used it every fall to estimate the amount of funding they would require for each additional FTE student enrolled in the coming year. (If necessary, the estimate is later updated to reflect revised current-year expenditures.) From 1996-97 through 2003-04, these amounts were in turn used in the annual budget act to fund enrollment growth at UC and CSU. However, the budgets adopted for the current year (2004-05) and proposed for the budget year (2005-06) depart from this practice and rely on a slightly different methodology used by DOF.

Different Methodology Used for CSU in 2004-05 Budget. The *2004-05 Budget Act* included new enrollment funding for CSU based on DOF's calculation of a marginal General Fund cost of $5,662 per additional FTE student. According to CSU, however, the 1995 methodology would have called for $5,773 in General Fund support per student. (This is the rate approved by the CSU Board of Trustees as part of its budget request to the Governor.) The DOF's calculation departs from the 1995 methodology in that it is based on funding and enrollment levels proposed for 2004-05, rather than as budgeted in 2003-04.

Unexplainable Methodology Proposed for UC in Governor's 2005-06 Budget. For 2005-06, the Governor proposes to provide $7,588 in General Fund support for each additional student at UC. However, it is unclear how the administration calculated this per-student funding rate. At the time of this analysis, DOF staff could neither substantiate nor explain the methodology it used to derive the $7,588 proposed marginal cost. In a departure from past practices, DOF staff declined to provide the specific formulas and data supporting its proposal. Thus, we are unable to conclude whether the administration is proposing an entirely new methodology for UC in the budget year. As we discuss below, UC calculated a different marginal cost rate as part of its 2005-06 budget request.

LAO Recommendations Based on 1995 Methodology

Using our marginal cost estimates for enrollment growth based on the agreed-upon 1995 methodology and our proposed 2 percent enrollment growth, we recommend deleting $21.3 million from the combined $88.7 million requested in the budget for enrollment growth. Our proposal would leave sufficient funding to provide $7,180 for each additional University of California student and $5,999 for each additional California State University student. (Reduce Item 6440-001-0001 by $9.4 million and Item 6610-001-0001 by $11.9 million.)

Until the Legislature approves a new marginal cost methodology, we believe that it should fund enrollment growth at UC and CSU in the 2005-06 budget that is aligned with the 1995 methodology. Using our marginal cost estimates for enrollment growth based on the agreed-upon 1995 methodology, we recommend alternatives to the Governor's proposed funding rates.

Provide $7,108 in General Fund Support for Each Additional UC Student. As discussed above, it is unclear how the administration calculated its proposed marginal General Fund cost of $7,588 for each additional student at UC. More importantly, as we discuss below, this rate is considerably different from our estimate of what would be called for under the marginal cost methodology developed in 1995. As part of its 2005-06 budget request to the Governor this past fall, the UC Board of Regents approved a marginal General Fund cost of $7,528 per FTE student that is based on the 1995 marginal cost methodology (see Figure 4).

Figure 4

University of California (UC) 2005-06 Marginal Cost Calculation

(As Requested by UC[a])

Basic Cost Components (Based on Initial 2004-05 Costs)	Average Cost Per FTE[b]	Discount Factor	Marginal Cost Per FTE[b]
Faculty salary	$2,876[c]	—	$2,876
Faculty benefits	619	—	619
Teaching assistants salary	653	—	653
Instructional equipment	266	—	266
Instructional support	3,903	10%	3,512
Academic support	1,102	35	716
Student services	1,079	20	863
Institutional support	1,896	50	948
Totals	**$9,425**	—	**$10,454**
Less student fee revenue	—	—	-$2,926[d]
State Funding Per Student	—	—	**$7,528**

a The Governor's budget proposes a different marginal General Fund cost for UC ($7,588). At the time of this analysis, the administration was unable to explain its cost calculations.

b Full-time equivalent.

c Based on an annual salary of $53,780 (Assistant Professor, Step 3) and a student-faculty ratio of 18.7:1.

d Based on a percentage of the total marginal cost per FTE student that equals the percentage of UC's operating budget that is funded from student fee revenue.

However, since UC calculated this rate several months ago, it does not reflect current legislative policies and expenditure data. For example, as part of the 2004-05 budget package, the Legislature approved the Governor's proposal to increase the student-faculty ratio at UC from 19.7:1 to 20.7:1 in order to achieve ongoing General Fund savings. As noted in Figure 4, however, the faculty salary and benefits included in the university's own marginal cost calculation is based on a student-faculty ratio of 18.7:1. In addition, the average cost per FTE student for instructional support, academic support, and institutional support reflect initial planning estimates for the current year. (The Governor's budget for 2005-06 displays revised funding data for 2004-05.) After making the above adjustments, we calculate a marginal General Fund cost at UC of $7,108 based on the 1995 methodology.

Provide $5,999 in General Fund Support for Each Additional CSU Student. Figure 5 displays a simplified version of the marginal cost calculations used by CSU to estimate the $6,270 per FTE student funding rate proposed in the Governor's budget for 2005-06. As noted in the figure, the

Figure 5

California State University (CSU)
2005-06 Marginal Cost Calculation

(As Requested by CSU and Funded in Governor's Budget)

Basic Cost Components (Based on 2004-05 Costs)	Average Cost Per FTE[a]	Discount Factor	Marginal Cost Per FTE[a]
Faculty salary	$3,079[b]	—	$3,079
Faculty benefits	1,114	—	1,114
Teaching assistants salary	358	—	358
Instructional equipment	142	—	142
Instructional support	799	10%	719
Academic support	1,360	15	1,156
Student services	1,066	20	853
Institutional support	1,507	35	980
Totals	**$9,425**	—	**$8,401**
Less student fee revenue	—	—	-$2,131[c]
State Funding Per Student	—	—	**$6,270**

a Full-time equivalent.

b Based on an annual salary of $58,196 (Associate Professor, between Steps 7 and 8) and a student-faculty ratio of 18.9:1.

c Based on a percentage of the total marginal cost per FTE student that equals the percentage of CSU's operating budget that is funded from student fee revenue.

identified costs associated with faculty salary and benefits assume a student-faculty ratio of 18.9:1. However, as was done for UC, the Legislature in the last two budget acts increased the student-faculty ratio at CSU as a cost-cutting measure. Specifically, the *2004-05 Budget Act* assumed $53.5 million in General Fund savings from increasing the student-faculty ratio by 5 percent (from 19.9:1 to 20.9:1). In effect, this higher ratio means that fewer new faculty positions are necessary to teach a cohort of additional students than otherwise would be needed with a lower ratio. Thus, an increase in the student-faculty ratio effectively reduces the marginal cost per additional FTE student. We estimate that a student-faculty ratio of 20.9:1 results in a marginal General Fund cost of $5,999 for CSU.

In view of the above technical adjustments, we recommend the Legislature provide $7,180 in General Fund support for each additional student at UC and $5,999 for each additional student at CSU. (See Figure 6 for a detailed description of our marginal cost calculations.) Given our earlier proposal to fund enrollment growth at a rate of 2 percent at both UC and CSU,

Figure 6

LAO Marginal Cost Recommendations

(Based on 1995 Marginal Cost Methodology)

	Marginal Cost Per FTE[a]	
Basic Cost Components	**UC**	**CSU**
Faculty salary[b]	$2,598	$2,784
Faculty benefits[b]	559	1,008
Teaching assistants salary	653	358
Instructional equipment	266	142
Instructional support	3,578	719
Academic support	596	1,156
Student services	863	853
Institutional support	758	980
Totals	**$9,871**	**$7,999**
Less student fee revenue	-$2,763	-$2,000
State Funding Per Student	**$7,108**	**$5,999**

a Full-time equivalent.

b Based on a student-faculty ratio of 20.7:1 at the University of California (UC) and 20.9:1 at the California State University (CSU). Also based on costs for an Assistant Professor (Step 3) at UC and an Associate Professor (between Steps 7 and 8) at CSU, as called for in the 1995 methodology.

we therefore recommend reducing the proposed General Fund augmentation for enrollment growth by a total of $21.3 million, including $9.4 million from UC and $11.9 million from CSU. Under our proposal, the segments would still receive sufficient funding to cover the estimated costs of enrollment growth due to increases in population and college participation.

Legislative Review of Marginal Cost Methodology Needed

We believe the Legislature should revisit and reassess the marginal cost methodology. Specifically, we recommend the Legislature direct our office, in consultation with representatives from the Department of Finance, the University of California, and the California State University, to review the current system of funding new enrollment and propose modifications for use in the development of future budgets.

The Legislature's most recent review of the Master Plan (in 2002) called for an assessment of the existing marginal cost formula. According to the 2002 Joint Committee to Develop a Master Plan for Education, "The State should analyze the appropriateness of modifying the current marginal cost approach for funding all additional enrollments in public colleges and universities, to account for contemporary costs of operations, differing missions and functions, and differential student characteristics that affect costs in each sector." Such a review is particularly important at this time because the Governor in his budget proposal is already deviating from the 1995 marginal cost methodology for UC. We also note that the segments themselves have expressed concern in the past about the adequacy of the existing marginal cost methodology.

Obviously, there are many ways to calculate the marginal General Fund cost for each additional student at UC and CSU. Based on our assessment of the current marginal cost methodology (as developed in 1995), we have developed a series of principles to guide the Legislature in determining how to more effectively fund the increased costs associated with enrollment growth. Figure 7 (see next page) outlines the principles, which we discuss in further detail below.

Comparable Formulas for UC and CSU. We recognize that there are instances where it is reasonable to have different formulas for the segments, particularly in recognition of their differing missions and costs. However, under the current methodology, there is an unexplainable difference between the segments regarding the formulas used to adjust for fixed costs in two program areas (academic support and institutional support). For example, CSU's methodology includes a higher percentage of institutional support costs. (Institutional support primarily includes funding for the central administration offices of university presidents and chancel-

lors.) Based on our conversations with the segments, we find no analytic reason why cost increases for institutional support would be different at the two segments.

Include Only Program Costs Linked to Enrollment Growth. The marginal cost formula should include only program costs that tie directly to enrollment growth. For example, the marginal cost should include funding to purchase instructional equipment for the additional students, but not to replace or upgrade existing equipment for use by existing students. Legislative decisions regarding funding for such nonenrollment-growth-related costs should be made independent of marginal cost funding. Moreover, there also may be some costs not included in the current marginal cost formula which increase when a university enrolls an additional student. Such costs (for instance, related to operation and maintenance services) might appropriately be added to the marginal cost methodology.

Figure 7

Guiding Principles for Marginal Cost Funding

- ✓ ***Comparable Formulas for the University of California (UC) and the California State University (CSU).*** To the extent possible, the calculation of the different variable costs (such as for institutional support) should be consistent across the two university systems.
- ✓ ***Include Only Program Costs Linked to Enrollment Growth.*** Since marginal cost funding is intended to support the various costs that UC and CSU will incur in enrolling one additional full-time equivalent (FTE) student, the marginal cost formula should include only program costs that increase with enrollment growth.
- ✓ ***Input Data Should Reflect Actual Costs.*** In order to appropriately budget for enrollment growth, the expenditure and enrollment data used to calculate the marginal cost for UC and CSU should reflect actual costs.
- ✓ ***Accurately Account for Available Student Fee Revenue.*** In order to determine how much General Fund support is needed from the state for each additional FTE student, the marginal cost formula should "back out" the fee revenue that UC and CSU anticipate collecting from each student.

Input Data Should Reflect Actual Costs. The expenditure and enrollment data used to calculate the marginal cost at UC and CSU should appropriately reflect actual costs. For example, the costs for additional faculty and TAs should be determined based on current data regarding the salaries and benefits of existing personnel. We note that a key component of the current marginal cost methodology is an underlying assumption

that the annual salary of a TA at CSU is roughly 50 percent of an entering faculty member's annual salary. For 2005-06, this translates to an estimated annual TA salary of about $38,000. According to the CSU Chancellor's Office, however, the average annual salary for a TA is currently only $7,180 (about 12 percent of an entering faculty member's salary). This means that the state is currently overbudgeting the marginal cost of hiring additional TAs. Conversely, there may be certain program costs that are not fully funded under the existing marginal cost formula.

Accurately Account for Available Student Fee Revenue. In order to determine how much General Fund support is needed from the state for each additional FTE student at UC and CSU, the marginal cost formula must "back out" the fee revenue that the segments anticipate collecting from each student. Under the current methodology, this is based on the percentage of the university's entire operating budget that is supported by student fee revenue. For example, if fee revenue makes up 40 percent of UC's budget for 2004-05, then fee revenue would be deemed to support 40 percent of the total marginal cost for 2005-06. The remaining 60 percent would be funded by the state's General Fund. A different approach could simply be to adjust the marginal cost based on the fee revenue collected for each FTE student (regardless of education level).

Moreover, the total amount of fee revenue collected by the segments is not always accounted for in the current methodology. For example, UC does not include the revenue collected from nonresident tuition when adjusting for fee revenues. Since the different program costs are based on expenditures from all fund sources (including nonresident tuition), then the marginal cost formula should include the supplemental fee paid by nonresident students in order to accurately determine the state's share of the total marginal cost. (An alternative approach would be to exclude nonresident tuition altogether from the marginal cost calculations.)

In conclusion, we recommend the Legislature direct our office, in consultation with DOF, UC, and CSU to review the current process of determining the amount of funding to provide for each additional FTE student and propose any modifications for use in the development of future budgets.

INTERSEGMENTAL: STUDENT FEES

Currently, the state has no student fee policy. Instead of making fee decisions based upon an explicit agreement as to share of cost or an assessment of other specified factors (such as fee levels at similar institutions), the state has made fee decisions based almost entirely on the state's fiscal situation—raising fees in bad fiscal times and lowering them in good fiscal times. Given the recent volatility in fee levels and disparity in cost burden among student groups over time, both the Governor and Legislature worked in 2004-05 to develop a state fee policy. Despite these efforts, fee legislation was not enacted. We continue to recommend the state adopt a fee policy that designates explicit share-of-cost targets. This policy then could be used to guide annual fee decisions.

Below, we describe the Governor's fee agreements with the University of California (UC) and the California State University (CSU), identify our concerns with them, and list the Governor's specific budget-year fee proposals. We then describe a share-of-cost fee policy and illustrate how the Legislature could use this policy to make its budget-year fee decisions. Next, we discuss the Governor's treatment of new fee revenue—treatment that is inconsistent with general budgeting standards—and highlight a technical budgeting error related to excess-unit fee revenue. We conclude with a discussion of community college fees.

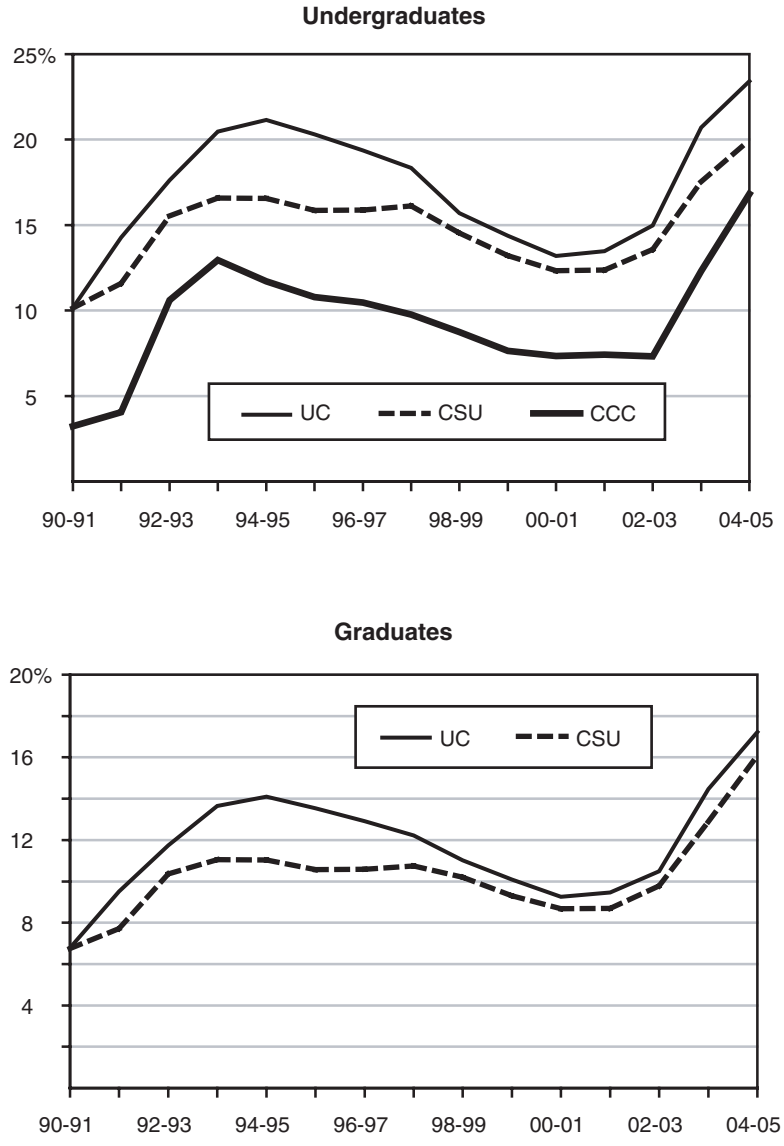
Lack of Fee Policy Has Resulted in Volatility and Disparity

Figure 1 shows, in inflation-adjusted dollars, student fees as a share of total education support costs. During the early 1990s recession, students' average share of cost increased notably—peaking between 1993 and 1995. Undergraduates at UC, for example, were paying 21 percent of their total education costs in 1994-95 compared to 10 percent in 1990-91. Similarly, California Community College (CCC) students were paying 13 percent of their total education costs in 1993-94 compared to 3 percent three years earlier.

Figure 1

Lack of Fee Policy Has Resulted in Volatility and Disparity

2004-05 Inflation-Adjusted Dollars



Students' average share of cost declined for the next six to seven years. For example, CSU undergraduates' share of cost fell from 17 percent in 1994-95 to 12 percent in 2001-02. Students' share of cost, as well as fee levels themselves, declined despite increases in education costs, burgeoning financial aid opportunities, a strong economy, and a nationwide trend toward higher fees. Fees declined despite California's public institutions charging much less than similar public institutions. At the same time, California was the only state in the country that was not maximizing its receipt of federal Pell Grant monies and one of few states not maximizing federal tax credit benefits.

Since 2001-02, students' share of cost for both undergraduates and graduate students has increased at all three segments. Despite these increases, students' share of cost remains small, fee levels still are low compared to similar institutions, and California continues not to maximize its receipt of federal financial aid funding.

Partly because of this recent volatility in fees, the Legislature passed a major fee bill in 2004 (AB 2710, Liu). Though the bill was vetoed, it represented a significant step toward developing a state fee policy. (Please see the nearby gray box for a summary of the bill.)

Governor Makes Agreement With UC and CSU on Student Fees

The Governor's compact with UC and CSU, which is not binding on the Legislature but which he nonetheless uses for budgeting purposes, contains the following components.

- ***Undergraduate Fees to Increase on Annual Basis.*** After increasing 14 percent in the current year, undergraduate fees would increase by 8 percent in 2005-06 and 8 percent in 2006-07. Annually thereafter, undergraduate fees would increase consistent with the change in California per capita income. Use of this index, however, could be suspended during difficult fiscal times and fees allowed to increase by as much as 10 percent.
- ***Graduate and Professional School Fees to Increase Annually Based Upon Multiple Factors.*** Graduate fee decisions would be determined annually after considering the average fee charged at comparison institutions, students' share of cost, the total cost of attendance, the need to preserve or enhance the quality of certain graduate programs, and the state's need for additional workers in particular occupations. Overlaying these factors is a target that graduate academic fees be 50 percent more than undergraduate fees. This differential, developed with the segments' input, is to account for the higher costs of providing graduate education.

- ***Segments to Determine Institutional Aid Set Aside.*** For undergraduates, the budget would assume between 20 percent and 33 percent of new fee revenue is set aside for financial aid. For graduate students, the segments apparently would have complete discretion to set aside for financial aid any amount of their choosing.
- ***New Fee Revenue Not Accounted for in Budget.*** New fee revenue essentially would be unbudgeted. That is, the segments would be allowed full discretion in deciding how to spend additional fee revenue. They would not be required to use any new fee monies for state-identified priorities.

Legislature Tried to Enact Fee Policy During Last Session

In the 2004 session, the Legislature passed a fee policy, AB 2710 (Liu), which the Governor vetoed. Assembly Bill 2710 included three primary policy guidelines, which, in many respects, echoed former state fee policies.

- ***Cost to Be Shared.*** The bill declared that the total cost of education should be a shared responsibility of students and the state, with the state bearing the preponderance of the cost.
- ***Changes to Be Gradual, Moderate, and Predictable.*** The bill emphasized that fee increases should take place gradually, be moderate in magnitude, and clearly anticipated, with students given sufficient advance notice.
- ***Fee Levels to Be Based on Share of Cost and Related Factors.*** The bill also specified that the total cost of education, students' share of cost, and families' ability to pay should be considered when setting fee levels.

Assembly Bill 2710 was distinct from earlier state fee policies in that it suggested share-of-cost targets. Undergraduate fees were not to exceed 40 percent of overall education costs at the University of California (UC) and 30 percent of overall costs at the California State University (CSU). To this end, students' share of cost was to be calculated annually and presumably incorporated into fee-setting discussions. The Governor vetoed the bill because he felt it was "inconsistent" with the provisions of his compact with UC and CSU.

Governor's Agreement Has Serious Shortcomings

We have three major concerns with the Governors' fee agreements with UC and CSU.

No Rational Basis for Determining UC and CSU Undergraduate Fees. The Governor's agreement assumes the 2003-04 fee was the "right" fee for UC and CSU and hereafter merely needs to be adjusted annually consistent with families' ability to pay. Given UC and CSU's 2003-04 undergraduate fee levels were (1) the lowest of all their public comparison institutions, (2) substantially beneath the comparison-institution average (20 percent lower at UC and 51 percent lower at CSU), and (3) represented a small share of total education cost (26 percent of total education costs at UC and 21 percent at CSU), it is unclear why the state would want to essentially lock them in place.

No Rational Institutional Aid Policy. The Governor's agreement allows the segments broad discretion to budget for institutional aid without any associated expectation that they justify their decisions. That is, the Governor's agreement does not require the segments to document their need and identify the amount required to cover it—seemingly disregarding even the most basic budgeting standards. Moreover, the segments are effectively granted authority to augment their institutional aid programs without the typical state-level discussion of competing priorities (whether it be the Cal Grant program, other higher education priorities, or other state priorities). Please see the nearby box for a more detailed discussion of our concerns with the segments' institutional aid set aside.

Treatment of New Fee Revenue Translates Into Autopilot Budgeting. Perhaps the most significant problem with the Governor's compact is its treatment of new fee revenue. In contrast to past practice, the Governor's budget proposal does not consider new fee revenue as available to meet needs identified in the state budget. Instead, the Governor's compact would fund all identified budgetary needs entirely with General Fund support, allowing the segments to use all their new fee revenue for whatever additional purposes they deemed worthwhile. This approach allows the segments routinely to receive significantly more total revenue than is needed to cover the normal cost increases resulting from enrollment growth and inflation.

Fee Agreement Used to Justify All Budget-Year Fee Proposals

The Governor's budget contains several fee proposals. The justification given for these proposals is that they are consistent with his compact with UC and CSU. The major fee proposals are to increase:

- Resident undergraduate fees at UC and CSU by 8 percent.

- Resident graduate fees at UC and CSU by 10 percent.
- Resident professional schools at UC and Hastings College of the Law from 5 percent to 9 percent, depending on the program. Addi-

Institutional Aid Decisions Need Better Justification

As we have discussed in previous years, we do not think the state (or the segments) should budget for institutional financial aid by setting aside an arbitrary percentage of new fee revenue. This set-aside approach has no rational policy basis and has resulted in funding levels that are disconnected from identified needs. For example, between 2002-03 and 2003-04, the state augmented the Cal Grant Entitlement program by $88 million (or 37 percent) to cover enrollment growth and undergraduate fee increases at the University of California (UC) and the California State University (CSU). Despite providing financial aid increases sufficient to offset costs through the Cal Grant program, UC and CSU's own undergraduate institutional aid budgets increased $130 million (or 54 percent) due to set asides from fee increases. It is unclear what financial aid purposes were served by the set-aside funds that were not explicitly addressed by the Legislature through its Cal Grant funding decisions.

The fee set-aside approach also disregards basic budgeting standards for accountability and hinders legislative oversight. For example, when asked for information about the institutional aid set aside, the segments could estimate neither the number of need-based institutional aid recipients nor the average institutional aid award for the prior, current, or budget years. In lieu of this approach, we continue to recommend the elimination of fixed percentage fee set asides. Instead, the segments should be required to provide the Legislature with evidence of their student aid needs and justification for any requested augmentation. In the absence of better information or more sophisticated forecasting tools, we recommend the Legislature address any shortfalls in undergraduate financial aid by augmenting the Cal Grant program (sufficient to cover enrollment growth and fee increases, as is longstanding practice). Since the Cal Grant program does not address *graduate* financial need, it would be appropriate for the Legislature to consider providing additional resources to the segments in this area, given growth in graduate students and proposed graduate fee increases. (For additional detail about the segments' institutional aid programs and the set-aside approach, please see "The Institutional Aid Set Aside," *2004-05 Analysis of the Budget Bill*, pages E-228 to E-233.)

tionally, three programs—Public Health, Public Policy, and International Relations and Pacific Studies—would begin charging supplemental professional school fees for the first time, resulting in much higher year-to-year percent increases (61 percent) for these programs.

Total nonresident charges at UC and CSU would increase due to these proposed increases in resident fees, which essentially represent base charges for nonresident students. In addition, for UC undergraduates, the budget assumes nonresident tuition (which essentially represents a supplemental charge) would increase by 5 percent. Figure 2 compares 2004-05 undergraduate and graduate fee levels with the proposed 2005-06 levels, and Figure 3 (see page E-186) provides comparable information for professional school fees.

Adopt Share-of-Cost Fee Policy

We recommend the state adopt a fee policy for the University of California, California State University, and California Community Colleges that sets certain targets for the share of education cost to be paid by students.

To address the problems with the state's existing fee-setting practices and the Governor's fee agreements with the segments, we recommend the state adopt a share-of-cost fee policy. Most importantly, a share-of-cost fee policy would provide both an underlying rationale for fee levels and a mechanism for annually assessing these levels. In doing so, it would promote clear expectations about fee levels and consistent treatment of student cohorts over time. It also would create incentives for students to hold the segments accountable for keeping costs low and quality high, and it would formally recognize the private as well as public benefits of higher education.

Promotes Clear Expectations and Consistent Treatment. A share-of-cost fee policy would make explicit the share of total education costs that nonfinancially needy students would be expected to bear. (Financially needy students meeting certain academic and age criteria would continue to receive aid sufficient to cover education fees.) Once the share-of-cost target was achieved, it would be maintained over time. For example, if nonneedy UC undergraduates were expected to pay 40 percent of their total education costs, fees would be adjusted annually such that students continued to pay 40 percent of total costs (without the need to rely upon any specific inflationary index). The central advantages of this approach are that nonneedy students would have clear expectations about the share of cost they would be expected to bear and student cohorts would be treated consistently over time.

Figure 2

Summary of Governor's Undergraduate and Graduate Fee Proposals

(Systemwide Charges for Full-Time Students[a])

	2004-05 Actual	2005-06 Proposed	Change	
			Amount	Percent
University of California				
Resident Charge				
Undergraduates	$5,684	$6,141	$457	8%
Graduates	6,269	6,897	628	10
Nonresident Charge				
Undergraduates	$22,640	$23,961	$1,321	6%
Graduates	21,208	21,858	650	3
California State University				
Resident Charge				
Undergraduates	$2,334	$2,520	$186	8%
Teacher education students	2,706	2,922	216	8
Graduates	2,820	3,102	282	10
Nonresident Charge				
Undergraduates	$12,504	$12,690	$186	1%
Graduates	12,990	13,272	282	2
California Community Colleges				
Resident charge[b]	$780	$780	—	—
Nonresident charge[c]	4,470	4,530	$60	1%

a Reflects only systemwide charges. Does not include campus-based fees.

b Reflects $26 per unit charge.

c Nonresident students are charged on a per-unit basis (as are resident students). In 2004-05, the nonresident per-unit rate was $149. This rate is projected to increase to $151 in 2005-06.

Strengthens Accountability. A share-of-cost fee policy would link fee levels to total education costs. As costs increased, fees would increase along with them. In other words, a portion of any increase in the cost of education would be automatically passed on to nonneedy students in the form of higher fees. Students and their families, therefore, would have a much greater incentive to hold their campuses accountable for keeping costs low and quality high.

Figure 3

Summary of Governor's Professional School Fee Proposals

(Systemwide Charges for Full-Time Students[a])

	2004-05 Budget Act	2005-06 Proposed	Change	
			Amount	Percent
University of California				
Resident Charge				
Business/management	$19,324	$20,368	$1,044	5%
Law	19,113	20,150	1,037	5
Medicine	18,513	19,532	1,019	6
Dentistry	18,024	19,029	1,005	6
Veterinary medicine	16,029	16,974	945	6
Optometry	14,139	15,027	888	6
Pharmacy	14,139	15,027	888	6
Theater, film, and television	11,249	12,051	802	7
Nursing	8,389	9,105	716	9
Public health	6,269	10,092	3,823	61
New programs[b]	6,269	10,092	3,823	61
Nonresident Charge				
Business/management	$31,569	$32,613	$1,044	3%
Law	31,358	32,395	1,037	3
Medicine	30,758	31,777	1,019	3
Dentistry	30,269	31,274	1,005	3
Veterinary medicine	28,274	29,219	945	3
Optometry	26,384	27,272	888	3
Pharmacy	26,384	27,272	888	3
Theater, film, and television	23,494	24,296	802	3
Public health	20,963	22,337	1,374	7
New programs[b]	20,963	22,337	1,374	7
Nursing	20,634	21,350	716	3
Hastings College of the Law				
Resident charge	$18,750	$19,725	$975	5%
Nonresident charge	30,950	30,950	—	—

[a] Reflects only systemwide charges. Does not include campus-based fees. In 2004-05, average campus-based fees ranged from $1,199 in public health programs to $4,101 in the veterinary medicine program.

[b] Public health, public policy, and international relations and pacific studies.

Formally Recognizes That Higher Education Is Shared Responsibility With Shared Benefits. The fee policies the state adopted in 1985 and 1990 both indicated that higher education should be a shared responsibility among students and the state. A share-of-cost fee policy explicitly recognizes the private returns of higher education by asking nonneedy students to contribute some portion toward their education costs. Clearly, individuals receive significant private benefits from higher education. Although establishing causality is difficult, a high correlation exists between level of education and personal earnings. For example, compared to those with only a high school education, the median earnings for adults with an associate degree is 22 percent higher. The median earnings for adults with a baccalaureate degree is 62 percent higher, and the median earnings of professional degree-holders is more than 200 percent greater. Unsurprisingly, higher education institutions across the country commonly use potential earnings (one key measure of private benefits) to determine appropriate cost-sharing arrangements.

Other Factors Might Be Considered to Provide Fuller Context. Although we think an explicit share-of-cost target would be the simplest, most consistent, and most defensible factor to use in setting and adjusting fees, the Legislature might want periodically to consider fee levels in the context of other factors—including fees at comparison institutions, the quality of specific education programs, the need for additional workers in particular occupations, and federal financial aid policies. This periodic review would help the Legislature better assess how well the share-of-cost fee policy was meeting various policy objectives.

Use Share-of-Cost Approach to Assess Budget-Year Fee Levels

We recommend the Legislature assess the Governor's budget-year fee proposals in light of their effect on students' share of cost. In most cases, the proposals would make at least some progress toward the share-of-cost targets specified in AB 2710 (Liu).

Below, we assess each of the Governor's fee proposals.

Increasing Resident Undergraduate Fees by 8 Percent Progresses Toward AB 2710 Share-of-Cost Targets. Figure 4 (see next page) shows resident fees as a percent of total operating costs for each of the three segments. As the figure shows, UC and CSU's proposed fee increases for resident undergraduates would increase students' share of total cost slightly. While the share of cost at UC and CSU would remain below the targets specified in AB 2710, some progress would be made toward eventually reaching them.

Figure 4

Resident Fees as a Share of Total Education Costs At California's Public Colleges and Universities

	2003-04 Actual	2004-05 Budgeted	2005-06 Proposed
Undergraduates			
University of California (UC)			
Cost of education	$19,144	$19,859	$20,087
Resident fees	4,984	5,684	6,141
Fee as a percent of cost	26.0%	29.0%	31.0%
California State University (CSU)			
Cost of education	$9,699	$10,312	$10,601
Resident fees	2,046	2,334	2,520
Fee as a percent of cost	21.0%	23.0%	24.0%
California Community Colleges			
Cost of education	$4,343	$4,698	$4,883
Resident fees	540	780	780
Fee as a percent of cost	12.4%	16.6%	16.0%
Graduates			
UC			
Cost of education	$28,716	$29,788	$30,130
Resident fees	5,219	6,269	6,897
Fee as a percent of cost	18.0%	21.0%	23.0%
CSU			
Cost of education	$14,549	$15,468	$15,902
Resident fees	2,256	2,820	3,102
Fee as a percent of cost	16.0%	18.0%	20.0%

Undergraduate Fees Would Remain Low Relative to Comparison Institutions. The proposed resident undergraduate fee increases likely would not affect UC and CSU's ranking compared to similar institutions. As Figure 5 shows, of UC's four public comparison institutions, only the State University of New York, Buffalo campus had a lower fee level in 2004-05. The UC undergraduate rate was more than $1,000 below the average of its public comparison institutions. Assuming fees at the comparison institutions increase in 2005-06 at the same average rate they increased last year, the UC undergraduate rate would remain more than $1,000 below the comparison-institution average. At CSU, even with the proposed 8 percent fee

increase, its fee would very likely remain the lowest of all its public comparison institutions and only about one-half of the average of these comparison institutions.

Figure 5

UC and CSU's Resident Undergraduate Fees Low Relative to Comparison Institutions

	2004-05 Actual	2005-06 Proposed/ Projected[a]
UC and Its Public Comparison Institutions		
University of Michigan	$8,722	$9,323
University of Illinois	7,944	8,491
Average	*7,341*	*7,846*
University of Virginia	6,790	7,258
UC	**6,312**	**6,769**
State University of New York	5,907	6,314
CSU and Its Public Comparison Institutions		
Rutgers University	$8,869	$9,652
University of Maryland, Baltimore	8,020	8,728
University of Connecticut	7,490	8,151
Cleveland State University	6,618	7,202
State University of New York, Albany	6,383	6,946
University of Wisconsin, Milwaukee	5,835	6,350
Wayne State University	5,819	6,333
Average	*5,656*	*6,155*
Illinois State University	5,588	6,081
George Mason University	5,448	5,929
University of Texas, Arlington	5,093	5,543
North Carolina State University	4,260	4,636
University of Colorado, Denver	4,160	4,527
Georgia State University	4,154	4,521
Arizona State University	4,066	4,425
University of Nevada, Reno	3,034	3,302
CSU	**2,916**	**3,102**

[a] Reflects Governor's budget proposals for UC and CSU. For comparison institutions, adjusts 2004-05 fee levels by the average prior-year growth rate (6.9 percent for UC's comparison institutions and 8.8 percent for CSU's comparison institutions).

Increasing Graduate Fees by 10 Percent Makes Slight Progress Toward Target Differential. As shown in Figure 4, the graduate fee proposal would result in slight increases in graduate students' share of cost. These shares, however, would remain quite low. For example, even with a 10 percent fee increase, nonneedy graduate students at CSU would be bearing only one-fifth of their total support costs. Moreover, graduate students' share of cost would remain below that of undergraduates. It is unclear why the state would ask nonneedy undergraduates to bear a larger share of their education cost than nonneedy graduate students.

Graduate Fees Likely to Remain Lowest of Comparison Institutions. In addition, UC and CSU's graduate fees are even further below their comparison institutions (in both dollar and percentage terms) than undergraduate fees. The CSU 2004-05 rate, for example, is approximately $600 lower than the next lowest comparison institution and $4,300 less than the average of the comparison institutions. As Figure 6 shows, UC and CSU's graduate fees currently are the lowest of all their comparison institutions, and, even with the proposed 2005-06 fee increases, would very likely remain the lowest.

Over Next Several Years, Slightly Larger Graduate Fee Increases Would Help Address Existing Disparities. In short, graduate fees represent an even smaller share of cost than undergraduate fees, and, relative to undergraduate fees, are even further below their comparison institutions. Moreover, graduate fees are not yet 50 percent higher than undergraduate fees, a target agreed upon by the segments. To address these existing disparities, the Legislature may want to institute slightly higher graduate fee increases over the next several years.

Inconsistent Treatment of Nonresident Students. Figure 7 (see page E-192) summarizes the fees paid by nonresident students at the three segments. As the figure shows, nonresident undergraduates at UC and CSU currently are paying substantially more than full cost, and nonresident students at CCC (largely because of statutory requirements) are paying just about full cost. By comparison, nonresident graduate students at UC and CSU are paying considerably less than full cost.

Over Next Several Years, Larger Nonresident Graduate Fee Increases Would Help Align With Full Cost. It is unclear why the state currently is providing a substantial subsidy to nonresident graduate students. A share-of-cost fee policy might have all nonresident students pay full cost. If this were to be the state's policy, then the Legislature would want to increase nonresident graduate tuition more quickly over the next several years while holding nonresident undergraduate tuition steady. Both actions would help align nonresident charges with full cost.

Figure 6

UC and CSU'S Resident Graduate Fees Lowest of Comparison Institutions

	2004-05 Actual	2005-06 Proposed/ Projected[a]
UC and Its Public Comparison Institutions		
University of Michigan	$13,585	$15,204
Average	*10,138*	*11,346*
State University of New York	9,455	10,582
University of Virginia	9,200	10,296
University of Illinois	8,310	9,300
UC	**7,928**	**8,556**
CSU and Its Public Comparison Institutions		
University of Maryland, Baltimore	$13,500	$15,466
Rutgers University	10,846	12,425
Wayne State University	9,978	11,431
Cleveland State University	9,308	10,663
State University of New York, Albany	8,949	10,252
University of Connecticut	8,476	9,710
University of Wisconsin, Milwaukee	8,131	9,315
George Mason University	7,830	8,970
Average	*7,663*	*8,779*
University of Colorado, Denver	6,918	7,925
University of Texas, Arlington	6,740	7,721
Illinois State University	5,646	6,468
Arizona State University	5,310	6,083
Georgia State University	4,830	5,533
North Carolina State University	4,479	5,131
University of Nevada, Reno	4,009	4,593
CSU	**3,402**	**3,684**

[a] Reflects Governor's budget proposals for UC and CSU. For comparison institutions, adjusts 2004-05 fee levels by the average prior-year growth rate (11.9 percent for UC's comparison institutions and 14.6 percent for CSU's comparison institutions).

Figure 7

Nonresident Fees as a Share of Total Education Costs At California's Public Colleges and Universities

	2003-04	2004-05	2005-06
Undergraduates			
University of California (UC)			
Cost of education	$19,144	$19,859	$20,087
Nonresident fees	19,194	22,640	23,961
Fee as a percent of cost	100%	114%	119%
California State University (CSU)			
Cost of education	$9,699	$10,312	$10,601
Nonresident fees	10,506	12,504	12,690
Fee as a percent of cost	108%	121%	120%
California Community Colleges			
Cost of education	$4,343	$4,698	$4,883
Nonresident fees	4,470	4,470	4,530
Fee as a percent of cost	103%	95%	93%
Graduates			
UC			
Cost of education	$28,716	$29,788	$30,130
Nonresident fees	17,708	21,208	21,858
Fee as a percent of cost	62%	71%	73%
CSU			
Cost of education	$14,549	$15,468	$15,902
Nonresident fees	10,716	12,990	13,272
Fee as a percent of cost	74%	84%	83%

Legislature Should Budget New Fee Revenue

We recommend the Legislature reject the Governor's proposal to let the segments decide how to spend fee increase revenues. We recommend instead the Legislature follow standard budget practices and assess the segments' needs, decide what to fund, and then apply the segment's new fee revenue toward the identified costs.

As described earlier, one of the primary problems with the Governor's budget proposal is that it treats new fee revenue as unavailable to meet legislatively determined needs of the segments. Instead, the segments could use new fee revenue for whatever they deemed worthwhile. This

translates into a highly unusual form of budgeting, whereby the segments raise and spend revenue outside of the regular legislative review process. It also is a departure from longstanding policy that fee revenues are an important funding source for the segments' basic instructional programs.

Focus on Needs, Apply Fee Revenue to Them. We recommend the Legislature follow common budgeting practices and begin by identifying the segments' needs and debating the advantages and disadvantages of specific funding requests. For example, the Legislature might choose to fund enrollment growth and a cost-of-living adjustment for each segment. It also might choose to provide the segments additional support for graduate financial aid. Each action obviously would entail related costs. As a result of the Governor's proposed fee increases, UC and CSU have $114 million and $76 million, respectively, in new revenue from the fee increases that can be used to cover all or a portion of these costs. If fee revenue is inadequate to meet all identified needs, then, as is typically the case, the General Fund would be applied toward the remaining costs.

In sum, rather than following the Governor's approach, which would result in inadequate oversight of the segments' budgets, we recommend the Legislature carefully consider each of the segments' requests and determine which ones should be funded. In doing so, the Legislature should consider new fee revenue as available to help meet identified needs.

Score Fee Revenue From Second-Year Phase In Of Excess-Unit Fee Initiative

We recommend the Legislature score $25.5 million in additional fee revenue associated with the second-year phase in of the excess-unit fee policy and capture a like amount of General Fund savings ($1.1 million for the University of California and $24.4 million for the California State University).

Adopted in the current year, the excess-unit fee policy is to charge undergraduate students full cost for units taken in excess of 110 percent of the units needed to obtain their degree. The policy is to be phased in over a five-year period—capturing only one-fifth of the potential excess-unit fee revenue in 2004-05, two-fifths of potential excess-unit fee revenue in 2005-06, and, so forth, until all excess-unit fee revenue is scored in 2008-09. This extended implementation period was designed to give the segments considerable flexibility in implementing the new policy and determining who should be assessed the higher fee.

UC and CSU Have Been Developing Segmental Policies. The UC Board of Regents plans to adopt a detailed policy at its upcoming March meeting. It tentatively has decided to define "full" cost as the full marginal

cost (which is used for the state's enrollment growth funding practices), and it is likely to provide special treatment for students with a double major or high-unit major. The CSU indicates it is making progress on developing its policy, but, at the time of this writing, could provide no detail.

Second-Year Phase In to Yield $25.5 Million in Additional Fee Revenue. Despite being the second-year phase in of the excess-unit fee policy adopted by the Legislature and reflected in the Governor's higher education compact, the 2005-06 budget proposal does not reflect any associated fee revenue. The second-year phase in is to yield $25.5 million in additional fee revenue consistent with the savings scored in 2004-05. We recommend the Legislature score these revenues in 2005-06, resulting in a comparable amount of General Fund savings.

State Lacks CCC Fee Policy

The state currently does not have a policy for setting CCC fees. The Governor's fee agreements do not encompass CCC fees, nor did AB 2710 address CCC fees. Yet, without a fee policy, students have no clear expectation as to what they will need to pay for a CCC education, and the public has no clear understanding of its expected contribution. Currently, the CCC fee is the lowest of any state in the country. In 2004-05, annual community college fees for a full-time student were $780. The national average was about three times this amount ($2,324).

Existing Fee Level Has Unintended Consequence—State Loses Federal Funds, CCC Loses Revenue. Although keeping fees low might seem like a reasonable strategy for maintaining access, it has an unintended effect—the state loses substantial revenue from middle-income and wealthy students—many of whom would receive substantial, if not full, fee refunds from the federal government. California is one of the few states that does not take full advantage of these federal funds (that come back to fee-paying students in the form of tax credits and tax deductions). Moreover, if California's fee waiver program works as intended, a fee increase would have no effect on financially needy students' access to community colleges—as all students with any financial need would receive full fee coverage. Thus, a low fee policy actually works to the disadvantage of the state.

Federal Tax Benefits Result in Fee Refunds for Middle- and Upper Middle-Income Students. Figure 8 provides basic information about the federal Hope tax credit, Lifetime Learning tax credit, and tuition and fee tax deduction. As the figure indicates, the Hope tax credit is designed for middle-income students with family incomes up to $105,000. Through the Hope tax credit, the federal government reimburses these middle-income students for the first $1,000 they pay in education fees. For students with family incomes

between $105,000 and $160,000, the federal government provides a tax deduction on the first $2,000 they pay in education fees.

Almost Every Other State in the Nation Maximizes Federal Aid. Currently, only California and some community colleges in New Mexico charge less than $1,000. Only 16 states charge less than $2,000. California, therefore, is one of few states currently not maximizing Hope tax credits for higher education. Put another way, CCC is not collecting from middle- and upper middle-income students fee revenue that, if collected, would be significantly offset with federal tax credits back to these same students. In effect, the state is paying for costs that the federal government would otherwise pay.

Figure 8

Federal Tax Benefits Applied Toward Higher Education Fees

Hope Credit	Lifetime Learning Credit	Tuition and Fee Deduction
• Directly reduces tax bill.	• Directly reduces tax bill.	• Reduces taxable income.
• Covers 100 percent of first $1,000 in fee payments. Covers 50 percent of second $1,000 (for maximum tax credit of $1,500).	• Covers 20 percent of first $10,000 in fee payments.	• Deducts up to $2,000 in fee payments.
• Designed for middle-income students who are: —In first or second year of college. —Attend at least half time.	• Designed for any middle-income student beyond first two years of college.	• Designed for any upper middle-income student not qualifying for a tax credit.
• Phases out entirely at adjusted income of $52,000 for single filers and $105,000 for married filers.	• Phases out entirely at adjusted income of $52,000 for single filers and $105,000 for married filers.	• Capped at adjusted income of $65,000 for single filers and $160,000 for married filers.

Increasing CCC Fee Shifts Costs to Federal Government Without Hurting Students

We recommend the Legislature increase the per unit fee at California Community Colleges (CCC) from $26 to $33. This higher fee, to be charged only to middle-income and wealthy students, would generate about $100 million in additional revenue for CCC. The federal government, in turn, would fully reimburse those fee-paying students with family incomes up to $105,000 (unless they do not have sufficient tax liability) and partially reimburse those fee-paying students with family incomes up to

$160,000. Financially needy students, on the other hand, are entitled to have their fees entirely waived (through a state aid program) and thus should pay nothing even with fees being increased. Given the Governor's budget continues to provide CCC with $37 million for financial aid outreach and counseling, CCC has resources to ensure that all eligible students receive available aid.

The existing $26 per unit fee, which only nonnneedy students are required to pay, represents 17 percent of total education costs. If raised to $33 per unit, nonneedy students' share of cost would increase to 20 percent. We believe it is reasonable for the state to ask nonneedy students (those who demonstrate no financial need using the standard federal means-tested methodology) to pay one-fifth of their total education costs. Raising the fee also would have substantial benefits—increasing CCC revenue and federal aid without restricting access for financially needy students.

Generates More Than $100 Million in State Revenue. Charging nonneedy students an additional $7 per unit would generate about $100 million in additional fee revenue for the community colleges. Of the nonneedy students paying the higher fee, those with family incomes up to $105,000 would qualify for a full fee refund in the form of a Hope tax credit. (This assumes that the family had a tax liability at least equal to the fee payment, which would usually be the case.) Others with family incomes up to $160,000 would qualify for a partial fee refund in the form of a Lifetime Learning tax credit or tax deduction. Based on data in the 2003 Student Expenses and Resource Survey, more than 90 percent of CCC students having to pay the higher fee would receive some offsetting federal tax benefit. In total, we estimate about one-half of the higher fees paid would be offset by these federal tax benefits.

Raising the fee also might result in a small additional Pell benefit (of several million dollars) to the financially neediest students attending some community colleges. That is, raising the fee to $33 per unit would ensure that the financially neediest students at all community colleges, even those with low average full-time workloads, would be able to obtain the maximum federal Pell Grant.

Fee Waiver Designed to Insulate Financially Needy Students From Effect of Any Fee Increase. The fee increase should not affect financially needy students. This is because the Board of Governors' fee waiver program waives fees for all students who demonstrate financial need. The program, which functions as an entitlement, is a generous needs-based program—requiring students to demonstrate only $1 of need to receive full fee coverage. Moreover, it helps financially needy students of all kinds—young and old; entering college for the first time or returning as an adult; seeking an

associate degree, vocational degree, certificate, or license; seeking to transfer; already possessing a baccalaureate degree; seeking to prepare for a new career or advance in an existing career; and taking any number of classes.

The program also has relatively high income cut-offs. For example, a community college student living at home, with a younger sibling and married parents, could have a family income up to roughly $62,000 and still qualify for a fee waiver. The income cut-off would increase to roughly $75,000 if this same student was living away from home and would increase to $110,000 if two children were attending community college simultaneously. An older, independent student living alone could have an income up to roughly $40,000 and a student with a one child could have an income up to roughly $76,000 and still qualify for fee waivers.

Outreach Funding Helps Educate About Federal Aid Opportunities. In 2003-04 and 2004-05, in conjunction with the enacted CCC fee increases, the state provided CCC with significant new outreach funding to help educate students about federal and state financial aid opportunities. The Governor's 2005-06 budget proposal maintains this outreach funding at its current-year level of $37 million. These funds are to be used explicitly for individual financial aid counseling and a statewide media campaign that focuses on educating students about state and federal financial aid opportunities. This funding is in addition to the approximately $18 million the Student Aid Commission spends annually on financial aid outreach and counseling. (Even if fees are unchanged, the Governor's budget assumes both CCC and the commission will continue these outreach efforts.)

For all these reasons, we recommend raising the CCC fee, which only nonneedy students are required to pay, from $26 to $33 per unit. This would generate about $100 million in additional fee revenue for community colleges. Significantly, the state could realize these revenues without any effect on financially needy students (who are eligible for full fee waivers) and very little impact on middle-income students (whose fees would be offset by comparable increases in federal tax benefits).

UNIVERSITY OF CALIFORNIA (6440)

The University of California (UC) consists of eight general campuses and one health science campus. The university is developing a tenth campus in Merced, which is scheduled to open in fall 2005. The Governor's budget proposal includes about $19.4 billion for UC from all fund sources—including state General Fund, student fee revenue, federal funds, and other funds. This is an increase of $722 million, or 3.9 percent, from the revised current-year amount. The budget proposes General Fund spending of $2.8 billion for the segment in 2005-06. This is an increase of $97.5 million, or 3.6 percent, from the proposed revision of the 2004-05 budget.

For the current year, the Governor proposes a net General Fund reduction of $12.2 million to account for (1) Public Employees' Retirement System rate adjustments and (2) an unexpended balance from lease-revenue bond proceeds. For the budget year, the Governor proposes $128.1 million in General Fund augmentations, $21.1 million in General Fund reductions, and a $9.5 million net decrease for baseline and technical adjustments. Figure 1 summarizes the Governor's proposed General Fund changes for the current year and the budget year.

Proposed Augmentations. The budget provides UC with a 3 percent General Fund base increase of $76.1 million that is not restricted for specific purposes. The UC indicates that it would apply most of these funds towards various salary increases. The Governor's budget also includes a $37.9 million General Fund augmentation for enrollment growth at UC. This would increase the university's budgeted enrollment by 5,000 full-time equivalent (FTE) students, or 2.5 percent, above the current-year level. In addition, the budget proposes a $14 million one-time augmentation for the UC campus in Merced, which is scheduled to open this fall.

Proposed Reductions. While the Governor's budget proposes a total of $128.1 million in General Fund augmentations, it also proposes $21.1 million in General Fund reductions. Specifically, the budget includes a $17.3 million reduction to outreach programs (also known as academic

preparation programs) and enrollment. Proposed budget bill language directs UC to apply this reduction to any combination of outreach programs and student enrollment that it chooses. The Governor's budget also eliminates all General Fund support for the labor research institute, for savings of $3.8 million. Both of the above proposals would reduce specific augmentations approved by the Legislature last year in its adoption of the 2004-05 budget.

Figure 1

University of California (UC)
General Fund Budget Proposal

(Dollars in Millions)

	General Fund
2004-05 Budget Act	**$2,721.0**
Baseline adjustments	-$12.2
2004-05 Revised Budget	**$2,708.8**
Baseline and Technical Adjustments	-$9.5
Proposed Increases	
Base budget increase (3 percent)	$76.1
Enrollment growth (2.5 percent)	37.9
One-time augmentation for UC Merced	14.0
Subtotal	($128.1)
Proposed Reductions	
Reduce funding for enrollment and outreach	-$17.3
Eliminate labor research institute	-3.8
Subtotal	(-$21.1)
2005-06 Proposed Budget	**$2,806.3**
Change From 2004-05 Revised Budget	
Amount	$97.5
Percent	3.6%

Student Fee Increases

The Governor's budget assumes that the university will receive $144.6 million in new student fee revenue—$30.6 million associated with 2.5 percent enrollment growth and $114 million from fee increases recently

approved by the UC Board of Regents for undergraduate, graduate, professional school, and nonresident students. Below, we review the proposed fee levels. (For a detailed discussion about the need for a long-term fee policy and how fees interact with General Fund revenue, please see the "Student Fees" write-up earlier in this chapter.)

Undergraduate and Graduate Systemwide Fees. Figure 2 summarizes the planned increases in undergraduate and graduate systemwide fees. As the figure shows, the budget assumes a planned increase of 8 percent in the systemwide fee for undergraduate students. The budget also assumes a 10 percent increase in the systemwide fee for graduate students. When combined with campus-based fees, the total student fee for a resident full-time student in 2005-06 would be $6,769 for undergraduates and $8,556 for graduates. In addition to paying the systemwide and campus-based fees, professional school students and nonresident students also pay special supplementary fees, as we discuss below.

Figure 2

UC Systemwide Fees[a]
Resident Full-Time Students

			Change From 2004-05	
	2004-05	2005-06	Amount	Percent
Undergraduates	$5,684	$6,141	$457	8%
Graduates	6,269	6,897	628	10

[a] Amounts do not include campus-based fees.

Professional School Fees. The Governor's budget assumes $7.3 million in additional revenue from a planned 3 percent average increase in professional school fees. The budget also proposes extending a supplementary fee to professional programs in public health, public policy, and pacific international affairs. Currently, professional school fees vary by program. For 2005-06, the professional school fee is planned to range from a low of $3,013 for students in nursing programs to a high of $14,276 for business/management school students.

Nonresident Tuition. The proposed budget also assumes a planned 5 percent increase in the tuition surcharge imposed on nonresident students. Specifically, this surcharge would increase from $16,476 to $17,304. The increase in nonresident tuition is expected to provide about $6 million in additional fee revenue in the budget year.

Intersegmental Issues Involving UC

In intersegmental write-ups earlier in this chapter, we address several issues relating to UC. For each of these issues, we offer an alternative to the Governor's proposal. We summarize our main findings and recommendations below.

Evaluate Higher Education Funding Needs Based on Master Plan, Not Governor's "Compact." The General Fund support and student fee increases proposed for 2005-06 are consistent with the compact that the Governor developed with UC and the California State University last spring. This compact specifies targets for the Governor's budget requests through 2010-11. Notwithstanding the Governor's compact, we advise the Legislature to enact a budget for higher education as it normally does, by examining each of the Governor's proposals on its own merits. Specifically, the Legislature should evaluate funding for higher education based on its *Master Plan for Higher Education* and not the Governor's compact.

Fund Enrollment Growth Consistent With Demographic Projections and Agreed-Upon Funding Practices. The Governor's budget provides $37.9 million to fund 2.5 percent enrollment growth at a marginal General Fund cost of $7,588 per additional FTE student. We recommend the Legislature instead provide funding for enrollment growth at a rate of 2 percent, which better matches anticipated need under the Master Plan. We also recommend adopting budget bill language specifying an enrollment target of 204,996 FTE students for UC. Moreover, using our marginal cost estimate based on the agreed-upon 1995 methodology, we recommend reducing the Governor's proposed per student funding rate for UC from $7,588 to $7,108. Accordingly, we recommend a General Fund reduction of $9.4 million for UC. In the "Enrollment Growth and Funding" write-up in this chapter, we also propose that the Legislature revisit and assess how the state determines the amount of funding to provide UC for each additional FTE student in future budget years.

Align Student Fee Increases to Share of Education Costs. The proposed budget assumes an additional $114 million in student fee revenue from various fee increases recently approved by the UC Regents. However, the Governor's budget does not account for this revenue, ceding to UC full discretion in deciding how to spend the additional revenue. We recommend that the Legislature consider this revenue as part of the base support for UC's programs, as it always has. In the "Student Fees" section, we also propose the Legislature adopt a long-term fee policy that sets fees at a fixed percentage of students' total education costs. Moreover, we recommend the Legislature reduce UC's General Fund appropriation to reflect $1.1 million in new revenue and savings associated with the second-year phase-in of the excess-unit fee policy that was adopted as part of the 2004-05 budget.

Impact of LAO Recommendations

Adopting all the above recommendations would result in a much different approach to UC's budget than that taken by the administration. In our view, the Legislature should approach UC's budget as it traditionally has: (1) assessing the cost of funding the programmatic objectives the Legislature has identified and (2) directing available funding—including both General Fund support and student fee revenue—to cover those costs. Figure 3 shows how UC's budget would be affected if the Legislature adopted our recommendations under this approach. Specifically, it shows the additional expenditures and resources above 2004-05 levels.

Figure 3

LAO Alternative 2005-06 Budget Plan for UC

Increases Over 2004-05

	In Millions
Expenditures	
Base budget increase (3 percent)[a]	$122.2
Enrollment growth (2 percent)	28.5
Adjustments for Merced and annuitant health and dental benefits[b]	4.5
Total	**$155.2**
Resources	
Additional revenue from student fee increase[c]	$113.4
Additional revenue from excess course unit charge	1.1
Governor's proposed General Fund increase	97.5
Total	**$212.0**
Freed Up General Fund Resources	**$56.8**

a Based on total state General Fund and student fee revenue.

b As proposed in the Governor's budget.

c Assumes 2 percent enrollment growth.

Expenditures. Figure 3 first shows new spending components:

- ***Base Increase.*** As discussed earlier, the Governor proposes a 3 percent base increase for UC. Given that we project inflation in 2005-06 will roughly match this percentage, we do not take issue with it.

However, the Governor applies the 3 percent increase only to the portion of UC's budget funded from the General Fund. We believe that a base increase should be applied to all of UC's base budget, including that portion which is funded with student fee revenue. As a result, under our approach, a 3 percent base increase would cost $122.2 million.

- ***Enrollment Growth.*** As discussed earlier, we recommend the Legislature fund a 2 percent increase in enrollment for UC. This would cost $28.5 million.
- ***Other Adjustments.*** The Governor proposes a net increase of $4.5 million to accommodate the costs of opening UC Merced in fall 2005 and various health and benefits costs. We have included these costs in Figure 3. We have not, however, included the Governor's proposed $17.3 million reduction to outreach and enrollment funding, which grants to UC the authority to decide where the cuts would be made. We believe the Legislature should specifically designate any areas for reduction so that it knows what it is buying in the budget.

Resources. Figure 3 displays two sources of new revenue:

- ***Fee Revenue.*** We estimate that the planned fee increases for the budget year will provide UC with $114.5 million in new student fee revenue. This amount assumes additional revenue from the university's excess course unit policy and our proposed 2 percent enrollment growth.
- ***General Fund Support.*** As discussed earlier in this analysis, the Governor's budget proposes to increase General Fund support for UC by $97.5 million from the revised 2004-05 budget (see Figure 1). As a starting point, therefore, these funds are available to fund the additional costs identified above.

Uncommitted Resources. As shown in Figure 3, the Legislature could (1) fully fund enrollment growth and a cost-of-living adjustment for UC and (2) reject the Governor's proposed $17.3 million reduction to UC's outreach programs and enrollment funding, all at a lower General Fund cost than proposed by the Governor. In fact, under our proposal the Legislature would free up almost $57 million in General Fund support (from the level in the Governor's budget proposal) to address other priorities.

As discussed earlier, the Legislature may wish to use some of this amount to provide increased financial aid for UC graduate students, given that these students, unlike needy UC undergraduates, are not protected

from fee increases by the Cal Grant entitlement program. Our identified General Fund savings could also be used to fund legislative priorities in other areas, including addressing the state's budget problem.

CALIFORNIA STATE UNIVERSITY (6610)

The California State University (CSU) consists of 23 campuses. The Governor's budget includes about $6 billion for CSU from all fund sources—including General Fund, student fee revenue, federal funds, and other funds. This is an increase of $187 million, or 3.2 percent, from the revised current-year amount. Of that increase, $101 million will be generated from student fees. The budget proposes General Fund spending of $2.6 billion for the system in 2005-06. This is an increase of $111 million, or 4.4 percent, from the revised 2004-05 budget. Figure 1 (see next page) summarizes changes from the enacted 2004-05 budget to the Governor's 2005-06 proposal.

Proposed Augmentations. The proposed budget provides CSU with $122.5 million in General Fund augmentations to fulfill an agreement the Governor made with CSU. Specifically, the budget provides $71.7 million for a 3 percent base budget increase and $50.8 million to accommodate a 2.5 percent enrollment increase (to serve an additional 8,100 full-time equivalent [FTE] students).

Proposed Reductions. The budget also proposes $12 million in General Fund reductions. These changes include a $7 million reduction to enrollment growth and outreach, which would be allocated between the two areas at CSU's discretion.

Student Fee Increases

For 2005-06, the Governor's budget assumes increases in the systemwide fee for undergraduate and graduate students and nonresident tuition. These increases have already been approved by the Board of Trustees. The fee increases are expected to provide an additional $76 million in new student fee revenue. The Governor's proposal assumes the additional student fee revenue will *not* be offset by a reduction in CSU's General Fund support. (For a detailed description about the need for a long-term fee policy and how fees represent another source of funding for the university's operations, please see the "Student Fees" write-up earlier in this chapter.)

Figure 1

California State University General Fund Budget Proposal

(Dollars in Millions)

	General Fund
2004-05 Budget Act	**$2,448.0**
Baseline and Technical Adjustments	
Public Employees' Retirement System rate increase	$44.4
Carryover/reappropriation	4.4
Lease-revenue bond payment adjustment	-0.1
Revised 2004-05 Budget	**$2,496.7**
Proposed Increases	
Base increase (3 percent)	$71.7
Enrollment growth (2.5 percent)	50.8
Subtotal	($122.5)
Proposed Reductions	
Reduce funding for enrollment or outreach	-$7.0
Technical adjustments	-5.0
Subtotal	(-$12.0)
2005-06 Proposed Budget	**$2,607.2**
Change From 2004-05 Revised Budget	
Amount	$110.5
Percent	4.4%

Undergraduate and Graduate Systemwide Fees. As Figure 2 shows, the Governor's budget assumes an increase from 2004-05 of 8 percent, or $186, in the systemwide fee for undergraduate students. The proposed budget also assumes a 10 percent increase, or $282, in the graduate student systemwide fee.

Nonresident Fees. At CSU, nonresident students also pay a supplementary fee in the form of nonresident tuition. The budget assumes this supplementary fee will remain at the current level of $10,170.

Figure 2

CSU Systemwide Fees[a]
Resident Full-Time Students

	2004-05	2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
Undergraduates	$2,334	$2,520	$186	8%
Graduates	2,820	3,102	282	10

[a] Amounts do not include campus-based fees.

Intersegmental Issues Involving CSU

In intersegmental write-ups earlier in this chapter, we address several issues relating to CSU. For each of these issues, we offer an alternative to the Governor's proposal. We summarize our main findings and recommendations below.

Evaluate Higher Education Funding Needs Based on Master Plan, Not Governor's "Compact." The General Fund support and student fee increases proposed for 2005-06 are consistent with the compact that the Governor developed with CSU and the University of California (UC) last spring. This compact specifies targets for the Governor's budget requests through 2010-11. Notwithstanding the Governor's compact, we advise the Legislature to enact a budget for higher education as it normally does, by examining each of the Governor's proposals on its own merits. Specifically, the Legislature should evaluate funding for higher education based on its *Master Plan for Higher Education* and not the Governor's compact.

Fund Enrollment Growth Consistent With Demographic Projections and Agreed-Upon Funding Practices. The Governor's budget provides $50.8 million to fund 2.5 percent enrollment growth at a marginal General Fund cost of $6,270 per additional FTE student. We recommend the Legislature instead provide funding for enrollment growth at a rate of 2 percent, which better matches anticipated need under the Master Plan. We also recommend adopting budget bill language specifying an enrollment target of 330,602 FTE students for CSU. Moreover, using our marginal cost estimate based on the agreed-upon 1995 methodology, we recommend reducing the Governor's proposed per student funding rate for CSU from $6,270 to $5,999. Accordingly, we recommend a General Fund reduction of $11.9 million for CSU. In the "Enrollment Growth and Funding" write-up of this chapter, we also propose that the Legislature revisit and assess how

the state determines the amount of funding to provide CSU for each additional FTE student in future budget years.

Align Student Fee Increases to Share of Education Costs. The proposed budget assumes an additional $101 million in student fee revenue largely due to various fee increases recently approved by the CSU Board of Trustees. However, the Governor's budget does not account for this revenue, ceding to CSU full discretion in deciding how to spend the additional funds. We recommend that the Legislature consider this revenue as part of the base support for CSU's programs, as it always has. In the "Student Fees" write-up, we also propose the Legislature adopt a long-term fee policy that sets fees at a fixed percentage of students' total education costs. Moreover, we recommend the Legislature reduce CSU's General Fund appropriation to reflect $24.4 million in new revenue and savings associated with the second-year phase in of the excess unit fee policy that was adopted as part of the 2004-05 budget.

Impact of LAO Recommendations

Adopting all the above recommendations would result in a much different approach to CSU's budget than that taken by the administration. In our view, the Legislature should approach CSU's budget as it traditionally has: (1) assessing the cost of funding the programmatic objectives the Legislature has identified and (2) directing available funding—including both General Fund support and student fee revenue—to cover those costs. Figure 3 shows how CSU's budget would be affected if the Legislature adopted our recommendations under this approach. Specifically, it shows the additional expenditures and resources above 2004-05 levels.

Expenditures. Figure 3 first shows new spending components:

- ***Base Increase.*** As discussed earlier, the Governor proposes a 3 percent base increase for CSU. Given that we project inflation in 2005-06 will roughly match this percentage, we do not take issue with it. However, the Governor applies the 3 percent increase only to the portion of CSU's budget funded from the General Fund. We believe that a base increase should be applied to all of CSU's base budget, including that portion which is funded with student fee revenue. As a result, under our approach, a 3 percent base increase would cost $105 million.
- ***Enrollment Growth.*** As discussed earlier, we recommend the Legislature fund a 2 percent increase in enrollment for CSU. This would cost $38.9 million.

Figure 3

LAO Alternative Budget Plan for CSU

Increases Over 2004-05

	In Millions
Expenditures	
Base budget increase (3 percent)[a]	$105.0
Enrollment growth (2 percent)	38.9
Technical adjustments[b]	-5.0
Total	**$138.9**
Resources	
Governor's proposed General Fund increase	$110.5
Additional revenue from student fee increases[c]	75.5
Additional revenue from excess course unit charge	24.4
Total	**$210.4**
Freed Up General Fund Resources	**$71.5**

a Based on total state General Fund and student fee revenue.

b As proposed by Governor.

c Assumes 2 percent enrollment growth.

- ***Other Adjustments.*** The Governor's budget includes a net $5 million reduction to CSU's base budget. This includes accounting for the one-time effect of a carryover appropriation and other technical adjustments.

Resources. Figure 3 displays two sources of new revenue:

- ***Fee Revenue.*** We estimate that the planned fee increases for the budget year will provide CSU with $75.5 million in new student fee revenue. This amount assumes additional revenue from the university's excess course unit policy and our proposed 2 percent enrollment growth.
- ***General Fund Support.*** As discussed earlier in this analysis, the Governor's budget proposes to increase General Fund support for CSU by $110.5 million from the revised 2004-05 budget (see Figure 1). As a starting point, therefore, these funds are available to fund the additional costs identified above.

Uncommitted Resources. As shown in Figure 3, the Legislature could (1) fully fund enrollment growth and a cost-of-living adjustment for CSU and (2) reject the Governor's proposed $7 million reduction to CSU's outreach programs and enrollment funding, all at a lower General Fund cost than proposed by the Governor. In fact, under our proposal the Legislature would free up over $71 million in General Fund support (from the level in the Governor's budget proposal) to address other priorities.

As discussed earlier, the Legislature may wish to use some of this amount to provide increased financial aid for CSU graduate students, given that these students, unlike needy UC undergraduates, are not protected from fee increases by the Cal Grant entitlement program. Our identified General Fund savings could also be used to fund legislative priorities in other areas, including addressing the state's budget problem.

CALIFORNIA COMMUNITY COLLEGES (6870)

California Community Colleges (CCC) provide instruction to about 1.6 million students at 109 campuses operated by 72 locally governed districts throughout the state. The system offers academic, occupational, and recreational programs at the lower division (freshman and sophomore) level. Based on agreements with local school districts, some college districts offer a variety of adult education programs. In addition, pursuant to state law, many colleges have established programs intended to promote regional economic development.

Funding Increases Proposed. The Governor's budget includes significant funding increases for CCC. As shown in Figure 1 (see next page), the Governor's proposal would increase total Proposition 98 funding for CCC by $361 million, or 7.5 percent. This increase funds a cost-of-living adjustment (COLA) of 3.93 percent, and enrollment growth of 3 percent. When all fund sources—including student fee revenue and federal and local funds—are considered, CCC's budget would total almost $8 billion.

CCC's Share of Proposition 98 Funding. As shown in Figure 1, the Governor's budget includes $5.1 billion in Proposition 98 funding for CCC in 2005-06. This is about two-thirds of total community college funding. Overall, Proposition 98 provides funding of approximately $50 billion in support of K-12 education, CCC, and several other state agencies. As proposed by the Governor, CCC would receive about 10.3 percent of total Proposition 98 funding.

State law calls for CCC to receive approximately 10.9 percent of total Proposition 98 appropriations. However, in recent years, this provision has been suspended in the annual budget act and CCC's share of Proposition 98 funding has been lower than 10.9 percent. The Governor's budget proposal would again suspend this provision.

Figure 1

Community College Budget Summary

(Dollars in Millions)

	Actual 2003-04	Estimated 2004-05	Proposed 2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
Community College Proposition 98					
General Fund	$2,272.5	$3,036.3	$3,320.9	$284.6	9.4%
Local property tax	2,102.1	1,750.4	1,827.0	76.7	4.4
Subtotals, Proposition 98	($4,374.6)	($4,786.7)	($5,147.9)	($361.3)	(7.5%)
Other Funds					
General Fund	($132.4)	($247.7)	($259.9)	($12.2)	(4.9%)
Proposition 98 Reversion Account	0.1	5.4	20.0	14.6	271.5
State operations	8.6	8.9	8.8	-0.1	-1.2
Teachers' retirement	40.3	98.3	79.8	-18.5	-18.8
Bond payments	83.3	135.1	151.3	16.2	12.0
State lottery funds	120.8	143.3	139.9	-3.4	-2.4
Other state funds	8.6	8.8	9.1	0.3	2.9
Student fees	243.3	357.5	368.2	10.7	3.0
Federal funds	249.2	277.1	277.1	—	—
Other local funds	1,563.8	1,738.9	1,738.8	-0.1	—
Subtotals, other funds	($2,318.1)	($2,773.4)	($2,793.1)	($19.7)	(0.7%)
Grand Totals	**$6,692.7**	**$7,560.1**	**$7,941.0**	**$380.9**	**5.0%**

Major Budget Changes

Figure 2 shows the changes proposed for community college Proposition 98 spending in the current and budget years. Major base increases include $142 million for enrollment growth of 3 percent and $196 million for a COLA of 3.93 percent. (This is based on an estimate of inflation that will not be finalized until April.) The Governor also "sets aside" $31.4 million for a potential restoration of funding he vetoed in 2004-05. (We describe this set-aside later in this piece.) In addition to the new Proposition 98 spending shown in Figure 2, the Governor proposes $20 million in one-time Proposition 98 Reversion Account funds for aligning K-12 and CCC vocational curricula. (We discuss this proposal in the "Crosscutting Issues" section of this chapter.)

Figure 2

California Community Colleges Governor's Budget Proposal

Proposition 98 Spending[a] (In Millions)

2004-05 (Enacted)	**$4,808.0**
Local property tax shortfall	-$21.5
Lease-revenue augmentation per Section 4.30	0.1
2004-05 (Estimated)	**$4,786.7**
Property tax base adjustment	$21.5
Proposed Budget-Year Augmentations	
Cost-of-living adjustment of 3.93 percent	$195.5
Enrollment growth of 3 percent	141.9
Set-aside for restoration of 2004-05 vetoed funds	31.4
Lease-revenue payments	4.0
Permanently shift funding for Foster Parent Training Program to Proposition 98	3.0
Subtotal	($375.9)
Proposed Budget-Year Reductions	
Adjustment for increased estimate of fee revenue	-$34.9
Technical adjustments	-1.3
Subtotal	(-$36.1)
2005-06 (Proposed)	**$5,147.9**
Change From 2004-05 (Estimated)	
Amount	$361.3
Percent	7.5%

[a] Numbers may not add due to rounding.

Proposition 98 Spending by Major Program

Figure 3 (see next page) shows Proposition 98 expenditures for various community college programs. As shown in the figure, apportionment funding (available to districts to spend on general purposes) accounts for $4.6 billion in 2005-06, an increase of about $312 million, or 7.3 percent, from the current year. Apportionment funding in the budget year accounts for about 89 percent of CCC's total Proposition 98 expenditures.

Figure 3

Major Community College Programs Funded by Proposition 98

(Dollars in Millions)

	Estimated 2004-05	Proposed 2005-06	Change	
			Amount	Percent
Apportionments				
State General Fund	$2,507.8	$2,742.8	$235.0	9.4%
Local property tax revenue	1,750.4	1,827.0	76.7	4.4
Subtotals	($4,258.1)	(4,569.8)	($311.7)	(7.3%)
Categorical Programs				
Extended Opportunity Programs and Services	$98.8	$104.6	$5.8	5.9%
Disabled students	86.0	91.0	5.1	5.9
Matriculation	62.5	66.2	3.7	5.9
Services for CalWORKs[a] recipients	34.6	34.6	—	—
Part-time faculty compensation	50.8	50.8	—	—
Part-time faculty office hours	7.2	7.2	—	—
Part-time faculty health insurance	1.0	1.0	—	—
Physical plant and instructional support	27.3	27.3	—	—
Economic development program[b]	35.8	35.8	—	—
Telecommunications and technology services	23.4	23.4	—	—
Basic skills and apprenticeships	41.7	43.4	1.7	4.1
Financial aid/outreach	47.3	46.2	-1.1	-2.4
Foster Parent Training Program	1.8	4.8	3.0[c]	171.0
Fund for Student Success	6.2	6.2	—	—
Other programs	4.2	4.2	—	—
Subtotals	($528.6)	($546.7)	($18.2)	(3.4%)
Other Appropriations				
Set-aside for possible veto restoration	—	$31.4	—	—
Totals	**$4,786.7**	**$5,147.9**	**$361.3**	**7.5%**

a California Work Opportunity and Responsibility to Kids.

b For 2005-06, the Governor's budget also includes $20 million from the Proposition 98 Reversion Account to align career-technical education curricula between K-12 and California Community Colleges.

c Replaces $3 million previously provided by the Foster Children and Parents Training Fund.

Categorical programs (whose funding is earmarked for specified purposes) are also shown in Figure 3. These programs support a wide range of activities—from services to disabled students to part-time faculty health insurance. The Governor's budget proposes increases of 5.9 percent for the

three largest categorical programs (to fund a COLA and enrollment growth), but for most other programs he proposes no changes. In addition, the Foster Parent Training Program would be funded entirely from Proposition 98 General Fund support, replacing $3 million previously provided by the Foster Children and Parents Training Fund.

Student Fees

The Governor proposes no change to the existing student fee level of $26 per unit. Under the Governor's budget, student fee revenue would account for 4.6 percent of total CCC funding. (In the "Student Fees" intersegmental piece earlier in this chapter, we recommend raising the CCC fee to $33 per unit. This would increase total revenue available to the state, and maximize federal reimbursements for students paying the fee.)

ENROLLMENT GROWTH

Enrollment Changes Over Time

The CCC is the nation's largest system of higher education, enrolling about 1.6 million students in fall 2004. As shown in Figure 4, enrollment has gradually increased over the past two decades by about 420,000 students, although it has fluctuated on a year-to-year basis.

Figure 4

CCC Enrollment

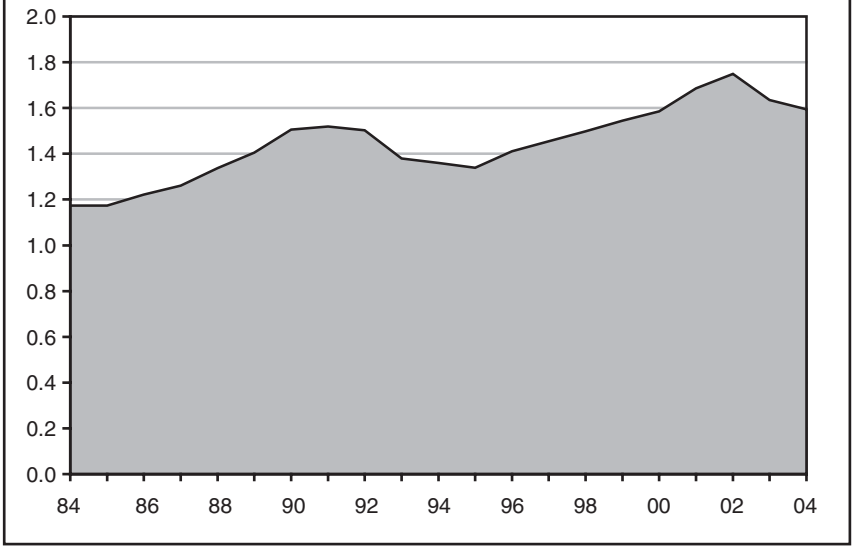


Figure 5 compares the cumulative change in enrollment over the past two decades with the cumulative change in the adult population, as well as the cumulative change in the traditional college-age population (18- to 24-year-olds). As the figure shows, CCC's enrollment has far outpaced the college-age population, and has generally matched growth in the adult population.

Figure 5

CCC Enrollment Versus State Population Growth

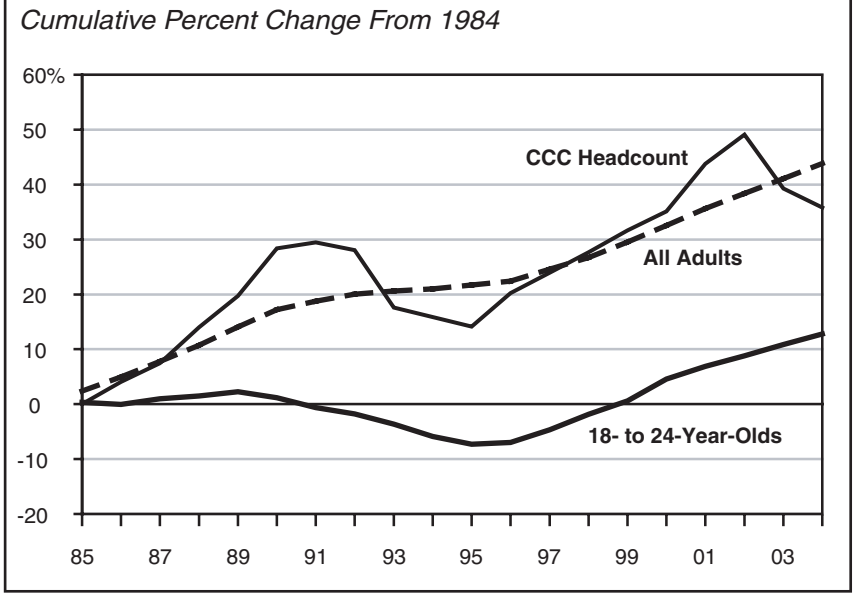


Figure 5 suggests that CCC's adult participation rate has generally remained constant, with temporary ups and downs, over the past two decades. Although participation rates can provide a rough sense of whether "access" to CCC is increasing or decreasing, it does not provide any obvious guidance as to what the participation rate "should" be. Based on comparisons with other states, however, California's college participation levels stand out. For example, the National Center for Public Policy and Higher Education recently found that California has some of the highest participation rates in the nation. Specifically, the National Center determined that California ranks fourth (tied with four other states) in college enrollment among 18- to 24-year olds, and that it ranks first in college enrollment among 25- to 49-year-olds.

Recent Slight Decline in CCC Enrollment—The Story Behind the Numbers

Over time, CCC's enrollment has fluctuated. These fluctuations respond to changes in a variety of factors, including the size and age distribution of the underlying population, cost factors (such as fees and the availability of financial aid), convenience of course schedules, and so on. As observed in Figure 4, CCC's enrollment increased through the late 1980s, declined in the early 1990s, and then rose significantly through the second half of the 1990s until 2003. In that year, CCC's enrollment dropped by about 115,000 students, or about 6.6 percent. What accounts for this enrollment decline?

Some Enrollment Decline Explained by Concurrent Enrollment Change. Some of the decline in enrollment was an intended result of statutory and budget changes to address a problem. Beginning in 2002, the Legislature and Governor both became concerned that a number of districts were inappropriately, and in some cases illegally, claiming state funding for a rapidly increasing number of high school students who were "concurrently enrolled" in CCC. While statute does make provision for some such enrollment, it was generally found that this provision was being abused. In response, the Chancellor called on districts to rein in these practices, and for 2003-04 the Legislature reduced funding for concurrent enrollment by $25 million and tightened related statutory provisions. As a result, high school students concurrently enrolled in community college courses dropped from a peak of about 94,000 in fall 2001 to about 80,000 in fall 2002 and 49,000 in fall 2003. Thus, more than one-quarter of the system's overall headcount drop between fall 2002 and fall 2003 can be explained by the drop in these high school students.

Cause of Remainder of Decline Unclear. The *2003-04 Budget Act* required the Chancellor's Office to report on changes in CCC enrollment for the 2003-04 academic year. Although a final report was due September 1, 2004, at the time this analysis was prepared (early February 2005), CCC could only provide preliminary data and draft reports. Available information suggests two main causes for the remaining enrollment decline (that is, not explained by the tightening of concurrent enrollment regulations):

- ***Reduced Course Offerings.*** The CCC suggests that districts reduced course offerings in spring 2003 in anticipation of possible budget reductions that had been included in the Governor's budget proposal for 2003-04. Although these proposed reductions were largely excluded from the enacted budget, the Chancellor's Office suggests that districts had already prepared for the reductions by hiring fewer part-time faculty and taking other steps to reduce costs. With fewer course offerings, some potential students found there was no space in courses they needed and thus did not enroll.

- ***Increased Fees.*** The Legislature raised student fees at CCC from $11 per unit to $18 per unit starting in fall 2003. Some students likely chose not to enroll at CCC at this higher cost. As noted in the nearby box, available data appear to indicate that the fee increase had no disproportionate impact on student racial and gender groups between fall 2002 and fall 2003.

Little Enrollment Decline Using Full-Time Equivalent (FTE) Measure. While headcount is a useful indicator of "access" in that it measures the number of individuals receiving instruction, it does not accurately reflect the amount of instruction being provided. This is because headcount measures do not distinguish between a full-time student taking 30 units per year and a part-time student taking, say, 6 units per year. For instance, although student headcount dropped about 6.6 percent between fall 2002

Fee Increase Had No Disproportionate Impact on Students

Budget bill language in the 2003-04 and 2004-05 budget acts requires the Chancellor's Office to provide data and analysis on the effect of recent fee increases upon student enrollment. The Chancellor's Office had only been able to provide preliminary information at the time this analysis was prepared. Based on this information, we offer the following conclusions about the changes to the makeup of the student population.

No Disproportionate Effect on Racial and Gender Groups. As shown in the figure, based on available information the recent small decline in enrollment in 2003-04 had no disproportionate effect on racial groups over the one-year period. Similarly, there was no change in the proportion of female and male students.

Small Effects on Age and Income Groups. The only significant change in the makeup of the student population in 2003-04 compared to the prior year relates to age. As shown in the figure, the percentage of CCC students under 18-years-old declined by more than one-quarter (largely reflecting the intended decline in concurrently enrolled students). Students between ages 18 and 29 somewhat increased their share of the student population, while those age 30 and above declined slightly.

The CCC's data show no evidence of disproportionate impact on income groups *as a result of the fee increase*. This likely reflects the fact that needy students are not required to pay fees. (The CCC's preliminary information does suggest there was a "modest" correlation between students' income and their likelihood to be affected by the reduction in course sections in spring 2003.)

(Continued)

and fall 2003, the number of total course "slots" that were taught declined by less than 2 percent. This suggests that, on average, the individual students making up the 6.6 percent headcount decline had been part-time students taking fewer than the average number of units. Indeed, anecdotal evidence suggests that many of these students were taking only one or two courses per semester.

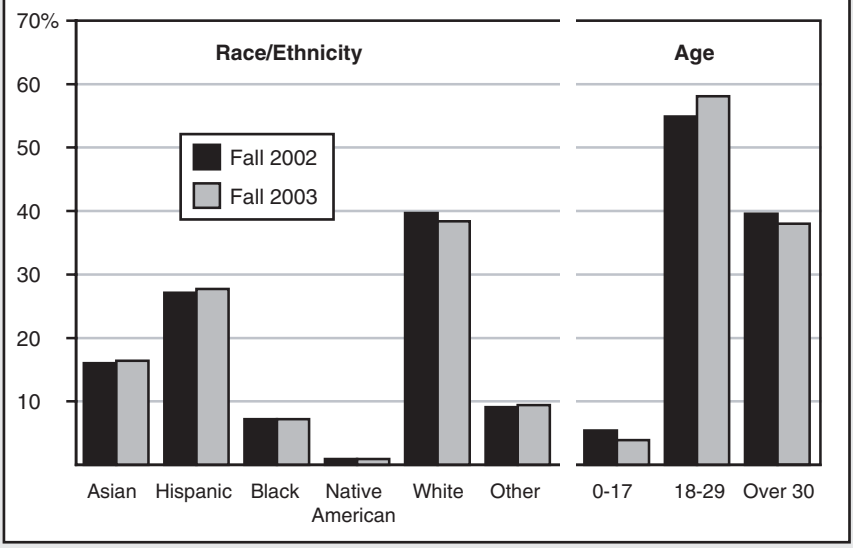
Enrollment Funding

The Governor's budget proposes an augmentation of $141.9 million to fund 3 percent enrollment growth at California Community Colleges. This is about one and one-half times the projected amount of enrollment growth due to underlying population increases. We recommend the Legislature fund this projected level of enrollment (1.9 percent), and redirect the remaining proposed growth funding to other K-14 priorities.

Report Overdue on Student Enrollment in 2004-05. For 2004-05, student fees increased again, from $18 per unit to $26 per unit. The *2004-05 Budget Act* required CCC to provide a report assessing the effect of this fee increase on enrollment by November 15, 2004. As of mid-February 2005, CCC had not yet provided that report.

Student Demographic Change

Percent of Total Headcount Enrollment



State law calls for CCC's annual budget request to include funding for enrollment growth that is at least the rate of increase in the adult population, as determined by the Department of Finance (DOF). For 2005-06, DOF projects that California's adult population will increase by 1.9 percent. This growth rate would translate into about 22,000 additional (FTE) students, at a cost of $91.3 million. The Governor's budget proposes to fund enrollment of about one and one-half times this amount: a 3 percent increase in FTE enrollment, which would fund 34,000 additional students at a cost of $141.9 million.

Recommend 1.9 Percent Enrollment Growth Funding. For 2005-06, we recommend the Legislature provide funding for 1.9 percent enrollment growth. The Master Plan calls on CCC to be open to all adults who can benefit from instruction, and DOF estimates that this eligibility pool will grow by 1.9 percent. Other things being equal, an increase in the eligibility pool should translate into a proportionate increase in enrollment. (We independently estimated the increase in CCC's enrollment based on various demographic factors, and arrived at a similar growth projection of 1.8 percent.)

As noted earlier, enrollment growth at the community colleges has been slowing in recent years, and California's college participation rates are among the highest in the country. In fact, preliminary data and anecdotal evidence suggest that many community college districts will serve fewer FTE students than they are funded to serve in 2004-05. For these reasons, we believe aligning enrollment growth funding with population growth for 2005-06 is a reasonable approach.

Funding Growth at 1.9 Percent Would Free Up Proposition 98 Resources for Other Priorities. The Governor's budget for CCC dedicates new Proposition 98 funding for two main purposes: enrollment growth and a COLA. If the amount of funding for growth were reduced to our recommended level of $91.3 million (to fund an enrollment increase of 1.9 percent), $50.6 million would be freed up for other K-14 priorities.

Reduce Enrollment Funding by $50.6 Million. We therefore recommend the Legislature reduce enrollment funding by $50.6 million, leaving $91.3 million to fund enrollment growth of 1.9 percent. We believe that this amount would be sufficient to fund increased enrollment demand at the community colleges.

STATE'S EFFORT TO EQUALIZE DISTRICT FUNDING SHOULD REMAIN A HIGH PRIORITY

We recommend the Legislature continue to support equalization of community college funding. The Legislature and Governor have already

established that this is an important goal, towards which they committed about one-third of necessary funding in the current year.

As a result of tax base differences that predate Proposition 13 in 1978, coupled with somewhat complex district allocation formulas, community college districts receive different amounts of funding for their students. In 2003-04, average funding per FTE student ranged from about $3,500 to about $8,200, although most districts have levels within a few hundred dollars of the state median of about $4,000. Small funding differences may be acceptable or even desirable (if they reflect real cost differences encountered by different districts). However, the funding differences currently experienced by community college districts have little correlation to underlying costs.

Numerous reports and hearings in recent years have recognized this disparity and have called for efforts to "equalize" funding among districts. In general, equalization can foster:

- ***Increased Fairness.*** Providing all districts with similar levels of funding per FTE student helps to ensure that students in different parts of the state have access to similar levels of educational support, which can translate into similar levels of educational quality and student services.

- ***Accountability.*** The *Master Plan for Higher Education* and state law assign to community colleges a number of educational missions. The state has also called on the community colleges to meet performance expectations in a number of areas, including preparing students to transfer to a four-year institution, awarding degrees and certificates, and improving course completion rates. It is difficult to hold all districts accountable for these standards when the amount of funding provided per student varies from district to district.

2004-05 Budget Act *Initiated Multiyear Equalization Effort.* The *2004-05 Budget Act* included $80 million toward the goal of equalizing community college district funding over three years. The Legislature also enacted Chapter 216, Statutes of 2004 (AB 1108, Committee on Budget and Fiscal Review), which describes the goal of having at least 90 percent of statewide CCC enrollment eventually receive the same level of funding per FTE student, and specifies how the $80 million should be allocated toward that goal. We estimate that the $80 million moves the state about one-third of the way towards its equalization goal.

The Governor proposed the 90th percentile goal for equalization in his budget proposal last year, and called equalizing CCC and K-12 funding "foremost" among various education provisions enacted with the 2004-05 budget. He does not, however, propose that the state continue to move

forward on its CCC equalization goal as part of the 2005-06 budget. We believe it is important to continue the state's commitment toward equalizing community college funding for the reasons mentioned above. It is especially important in light of the state's concern with CCC accountability. (We discuss recently enacted legislation concerning CCC accountability below.)

Consider Additional Funds for Equalization. We recommend, therefore, the Legislature consider allocating additional Proposition 98 funding to equalization, to be allocated in a manner consistent with Chapter 216. While we advise first funding workload increases (such as enrollment growth and cost-of-living increases), we recommend the next priority for additional ongoing Proposition 98 funding go to equalization. We think a target of $80 million—matching the current-year commitment—would make sense, to the extent that funding is available.

GREATER ACCOUNTABILITY NEEDED

With over a million and a half students spread across 109 campuses, the CCC system is large and decentralized. It also has a budget of almost $8 billion in public funds. For these reasons, oversight and accountability measures are critical for ensuring that public resources are being effectively used toward the various missions assigned to CCC by the Master Plan and by statute. The Chancellor's Office is generally charged with some oversight responsibilities. At the same time, the Legislature and Governor also have sought more formalized oversight and accountability provisions in statute. In recent years, evidence of fiscal mismanagement, inappropriately claimed reimbursements for nonexistent courses, and other improprieties by some districts have heightened the state's concern with CCC accountability.

"Partnership for Excellence" Has Expired

In 1998, the Legislature and Governor established the Partnership for Excellence (PFE) program through Chapter 330 (SB 1564, Schiff). In general, the PFE provided additional funding to community colleges in exchange for the commitment to improve their performance in five specified areas, such as the percentage of students who complete courses. A key accountability provision of the PFE called for district- and system-level performance in these specified areas to be reported annually. This information would be available to inform state-level budgeting, and could be used (if the CCC's Board of Governors [BOG] so chose) to influence the allocation of funding among districts. The BOG chose not to pursue this linking of funding to performance. The system made some very modest gains in some of the specified areas, such as workforce development, although to-

wards the end of the program, performance again declined and most of those gains were lost. With the PFE sunsetting in December 2004, the Legislature moved the program's funding ($225 million) into districts' base apportionments. This funding thus remains in district budgets beyond the expiration of the program. (The Governor vetoed $31.4 million of this funding when he signed the *2004-05 Budget Act*, although as we explain below, he has set aside this amount for a possible restoration in the 2005-06 budget.)

District-Level Accountability to Be Developed

CCC Required to Develop New Accountability Measures. The PFE sunsetted on January 1, 2005. As imperfect as the PFE was as an accountability mechanism, the state now has no comprehensive mechanism for monitoring CCC's performance in various critical areas. Recognizing this, the Legislature and Governor enacted Chapter 581 (AB 1417, Pacheco) as part of the 2004-05 budget package. Among other things, Chapter 581 requires the BOG to develop "a workable structure for the annual evaluation of district-level performance in meeting statewide educational outcome priorities," including transfer, basic skills, and vocational education. The BOG is to provide its recommended evaluation structure to the Legislature and Governor by March 25, 2005.

Consistent with Chapter 581, the BOG has consulted with our office, DOF, and various other higher education experts and interested parties as it has been developing its district-level accountability structure. We will advise the Legislature on the BOG's final proposal once it is completed and made public. In general, the Legislature should determine if the accountability mechanism:

- Uses meaningful indicators which measure both CCC's success in meeting minimum standards, and the degree of improvement achieved (or "value added") when students take CCC courses.
- Measures how well both the overall CCC system, and the individual districts, are fulfilling the missions assigned to them by the state.
- Recognizes the differing local needs that are encountered by districts.
- Is useful to the Chancellor's Office for the purpose of ensuring adequate district performance, and to the state for the purpose of monitoring the system's fulfillment of the mission assigned to it by the Master Plan.

Governor's Budget Proposal Makes Restoration of Vetoed Funds Contingent on CCC's Accountability Mechanism. The Governor vetoed $31.4 million of CCC's apportionment funding when he signed the *2004-05 Budget Act*. In his veto message, the Governor indicated that he was willing

to restore this funding, which originally had been used to fund PFE-related improvements, if "district-level goals and performance evaluations are incorporated into the accountability structure" called for in the *2004-05 Budget Act* and Chapter 581. Accordingly, in his budget proposal for 2005-06, the Governor sets aside $31.4 million in new Proposition 98 support for possible appropriation through separate legislation "pending the outcome" of the BOG's proposed accountability mechanism.

We think it is reasonable to link a portion of the funding originally provided for one accountability-related program (the PFE) to a successor accountability program (the district-level accountability system called for in Chapter 581). However, we are concerned that provisional language in the Governor's proposal purports to express the *Legislature's* intent that DOF solely judge the adequacy CCC's proposed accountability program and, by extension, decide whether to restore the $31.4 million. We recommend this language be deleted, as outlined below:

> 4. As a condition of receiving funds appropriated in Schedule (1), the Board of Governors shall continue to assess and report to the Legislature, on or before April 15, data measures required by the current Partnership for Excellence program, scheduled to sunset January 1, 2005. It is the intent of the Legislature that these measures be replaced for reporting and assessment purposes, by district-specific outcome measures being developed by an accountability workgroup established by Chapter 581, Statutes of 2004. ~~It is also the intent of the Legislature that the final accountability measures produced by the workgroup, as approved by Department of Finance, result in the restoration of $31,409,000 to community college apportionments.~~

We plan to advise the Legislature on the bulk of the $31.4 million potential restoration once the BOG provides its proposal. Later in this section we recommend a small amount (about $1.25 million) of this funding set-aside be appropriated for expanding a performance-measurement data-sharing system that promises to be useful in helping districts make improvements in the areas of state concern expressed by Chapter 581.

Local Autonomy in Course Offerings Should Be Balanced With State Oversight

Course Offerings Should Emphasize State Priorities. Community college districts (which are governed by locally elected boards of trustees) have considerable autonomy in choosing which courses to offer in any given term. In fact, state regulations empower local districts to undertake any activity or initiate any program that is not in conflict with other laws and not inconsistent with CCC's broad mission. For example, a district could emphasize courses that are transferable to public universities and offer relatively few remedial courses. Another district could offer a much

larger share of its courses in vocational fields and offer relatively few physical education courses.

At the same time, the Legislature has established various priorities for community colleges. Recognizing that existing statutes and regulations do not clearly prioritize the various components of CCC's mission, the Legislature and Governor in recent years have emphasized three state priority areas for CCC course offerings: student transfer to four-year colleges and universities, basic skills, and vocational/workforce training. Toward that end, the 2003-04 and 2004-05 budget acts have included provisions to help ensure that CCC districts in fact observe these priorities.

Criteria for Allocating Apportionment Funding. The *2003-04 Budget Act* included a provision requiring the BOG to adopt criteria for allocating apportionment funding to ensure that courses related to the three state priorities "are provided to the maximum extent possible within budgeted funds." In response, the Chancellor's Office developed a "cap" of 2 percent on the amount of funded credit FTE students that a district could provide outside of the three priority areas. Under the policy, the Chancellor's Office would monitor compliance and work with districts that exceeded the cap to either (1) identify an acceptable reason for exceeding the cap or (2) develop a plan to redirect the district's activity into compliance.

Methodology for Identifying Priority Courses. Concerns were expressed during budget hearings in 2004-05 about how CCC's policy defined and measured (and thus promoted) priority courses. For example, if the criteria for defining a course as meeting the state's priorities were vague or overbroad, the 2 percent cap could become meaningless. To address this concern, the *2004-05 Budget Act* included a provision requiring the BOG to adopt a clear methodology for determining which courses address any of the three priority areas. In response, the BOG defined as meeting state priorities all credit courses that are classified into any of five categories:

- "Transferable" to the University of California and/or the California State University.
- "Basic skills."
- "Occupational."
- Applicable towards any degree.
- English as a Second Language.

While the names of some of these categories appear to correspond to state priority areas, we remain concerned that, as a classification scheme, they are very broadly drawn. Indeed, it is unclear which types of credit courses, if any, are *not* included somewhere in these five categories.

Of greater concern, CCC's methodology excludes all noncredit courses, which make up about 9 percent of funded FTE students. Regulations require only that noncredit courses "meet the needs of" the students who take them. With such vague standards, the Legislature can have no assurance that noncredit courses focus on the state's stated priorities.

Recommend Clearer, More Inclusive Methodology. The CCC's limit on nonpriority courses provides little assurance that transfer, basic skills, and vocational education will in fact be accorded highest priority by districts. This is because the methodology for classifying courses as meeting the state's priorities is so expansive. We believe that the methodology should be refined to better identify courses that reasonably can be considered to address the state's three priority areas. At a minimum, noncredit courses as well as credit courses should be evaluated in determining the extent to which districts are advancing state priorities. We therefore recommend the Legislature amend budget bill language concerning these priorities so as to direct CCC to make these improvements.

> Item 6870-101-0001, Provision 9. Notwithstanding any other provision of law, funds appropriated in Schedule (3) of this item shall only be allocated for growth in full-time equivalent students (FTES) , on a district-by-district basis, as determined by the Chancellor of the California Community Colleges. The chancellor shall not include any FTES from concurrent enrollment in physical education, dance, recreation, study skills, and personal development courses and other courses in conflict with existing law for the purpose of calculating a district's three-year overcap adjustment. The board of governors shall implement ~~the~~ criteria required by provision 5(a) of the Budget Act of 2003 for the allocation of funds appropriated in Schedules (1) and (3), so as to assure that courses related to student needs for transfer, basic skills and vocational/workforce training are accorded the highest priority and are provided to the maximum extent possible within budgeted funds. These criteria shall apply to both credit and noncredit courses. The Chancellor shall report to the Governor and Legislature by December 1, 2005, on the implementation of this provision.

Cal-PASS Helps Districts to Improve Outcomes, Fosters Accountability

We recommend the Legislature allocate to the California Partnership for Achieving Student Success $1 million of the $31.4 million that is set aside for potential restoration. This funding would permit California Community Colleges to continue and expand a program that has been proven to promote better student outcomes and accountability.

In February 2003, the California Partnership for Achieving Student Success (Cal-PASS) was launched by Grossmont-Cuyamaca community

college district using a grant from the Chancellor's Office. The Cal-PASS is a data-sharing system aimed at improving the movement of students from high schools to community colleges to universities.

Student transitions are critical to the success of the educational system. For community colleges they are especially critical. The success of students at community colleges depends in part on how well the K-12 curriculum is aligned with community college courses. In addition, the success of community college students wishing to eventually earn a four-year degree depends to a large extent on how well CCC's curriculum is aligned with that of the universities and colleges to which students transfer. The Cal-PASS collects information on students throughout the state regarding their performance and movement through these various segments. These data are used by faculty consortia, institutions, and researchers to identify potential obstacles to the successful and efficient movement of students between segments. For example, high remediation rates of students who take English at a particular high school and enroll at a particular college could point to a need to better align the English curriculum or standards between these two institutions. Similarly, data concerning course standards and content can help reduce the incidence of students taking unnecessary or inappropriate courses for transfer.

Participation in Cal-PASS by individual institutions is voluntary. Since its inception, the Cal-PASS network has grown from several colleges, universities, and high schools in the San Diego area to more than 700 institutions statewide. Our review has found numerous examples of improved outcomes, increased efficiencies, and cost savings as a result of the Cal-PASS program. Moreover, in 2003 Cal-PASS was endorsed by the Assembly higher education committee, the Senate subcommittee on higher education, and the Joint Committee to Develop an Education Master Plan.

Cal-PASS Can Help Address State's Accountability Concerns. We believe Cal-PASS promotes district-level and system accountability in two ways.

- ***Identifies Problems.*** The Cal-PASS helps districts identify problems in areas of particular concern to the state, including transfer and remediation. Identifying these problems is a first step toward improving performance. The Cal-PASS already has shown its value in this regard in community college districts across the state and across disciplines.

- ***Monitors Progress.*** The Cal-PASS can measure changes in performance over time, thereby providing policymakers with information on how well districts and the system as a whole are responding to state concerns. We note that some of the data elements available through Cal-PASS are directly related to elements in CCC's draft district accountability measures.

Recommend $1.5 Million Base Funding for Cal-PASS. Although Cal-PASS has expanded far beyond its original inception as a pilot program, its grant funding (from the state Chancellor's Office) has not increased and in fact will expire at the end of 2005-06. Based on our review of equipment, staffing, and other costs, we believe that a base budget of $1.5 million per year would ensure the continuation and further expansion of Cal-PASS.

Given that Cal-PASS still has access to about $500,000 in grant funds for 2005-06, we recommend an additional $1 million be directed to Cal-PASS. We recommend this funding be redirected from the $31.4 million that the Governor's budget has set aside pending CCC's response to the accountability requirements of Chapter 581. This would leave almost $30.4 million of the set-aside funds potentially to be restored to district base budgets. In effect, redirecting the $1 million to Cal-PASS would spread the cost of running the Cal-PASS system across all districts at an average cost of less than $1 per FTE student. We believe this is a reasonable cost for the benefits of Cal-PASS.

STUDENT AID COMMISSION
(7980)

The Student Aid Commission provides financial aid to students through a variety of grant and loan programs. The proposed 2005-06 budget for the commission includes state and federal funds totaling $1.4 billion. Of this amount, $746 million is General Fund support—all of which is used for direct student aid for higher education. A special fund covers the commission's operating costs.

Below, we first summarize the Governor's budget proposals for the Cal Grant program and the Assumption Program of Loans for Education (APLE). We have concerns with three of these proposals—the reduction to the private university Cal Grant, the "set aside" for the National Guard APLE program, and the size of EdFund's operating surplus (which partly supports the Cal Grant program). We discuss these issues later in this section.

Major Budget Proposals

Figure 1 (see next page) compares the commission's revised 2004-05 budget with the proposed 2005-06 budget. As the figure shows, financial aid expenditures would increase $44.6 million, or 6 percent, from the current year. Virtually all of this increase is due to additional Cal Grant costs ($37.3 million) and APLE costs ($6.9 million). As the figure also shows, in the budget year, General Fund support would increase considerably, in part to backfill a major reduction in support from the Student Loan Operating Fund (SLOF). Whereas $146.5 million in SLOF monies were used to support the Cal Grant program in 2004-05, the Governor's budget proposes to use $35 million in SLOF monies in 2005-06.

Cal Grant Program. Figure 2 (see page E-231) provides a more detailed breakdown of the four major budget proposals relating to the Cal Grant program. The Governor's budget assumes the commission will issue 3,345 additional Cal Grant awards. This represents a 1.3 percent increase from the current year in the total number of Cal Grant awards issued. The

Governor's budget also proposes to increase the value of Cal Grants for University of California (UC) and California State University (CSU) students (to compensate for the proposed undergraduate fee increases), but it would decrease Cal Grants for financially needy students attending private institutions by $873, or 10 percent. (Please see below for a more detailed discussion of the private university Cal Grant issue.)

Figure 1

Student Aid Commission Budget Summary[a]

(Dollars in Millions)

	2004-05 Revised	2005-06 Proposed	Change	
			Amount	Percent
Expenditures				
Cal Grant programs				
Entitlement	$551.0	$608.9	$57.9	11%
Competitive	116.2	124.9	8.7	7
Pre-Entitlement	37.2	7.4	-29.8	-80
Cal Grant C	9.7	10.3	0.6	6
Subtotals—Cal Grant[b]	($714.1)	($751.4)	($37.3)	(5%)
APLE[c]	$34.0	$40.9	$6.9	20%
Graduate APLE	0.2	0.4	0.2	75
National Guard APLE	—	0.2	0.2	—
Law enforcement scholarships	0.1	0.1	—	1
Totals	**$748.5**	**$793.1**	**$44.6**	**6%**
Funding Sources				
General Fund	$589.4	$745.5	$156.1	26%
Student Loan Operating Fund[d]	146.5	35.0	-111.5	-76
Federal Trust Fund[d]	12.6	12.6	—	—
Totals	**$748.5**	**$793.1**	**$44.6**	**6%**

a In addition to the programs listed, the commission administers the Byrd Scholarship and Child Development Teacher and Supervisor programs—both of which are supported entirely with federal funds. It also administers the Student Opportunity and Access program, an outreach program supported entirely with Student Loan Operating Fund monies.

b Includes $46,000 for the Cal Grant T program in 2004-05. The program has been phased out as of 2005-06.

c Assumption Program of Loans for Education.

d These monies pay for Cal Grant costs as well as support and administrative costs.

Figure 2

Major Cal Grant Budget Proposals

Governor's Budget Proposal	Cost (In Millions)
Increase in number of Cal Grant awards (3,345)	$21.6
Increase University of California Cal Grant by 8 percent (raising maximum award from $5,684 to $6,141)	15.3
Increase California State University Cal Grant by 8 percent (raising maximum award from $2,334 to $2,520)	7.9
Decrease private university Cal Grant by 10 percent (lowering maximum award from $8,322 to $7,449)	-7.5
Total	**$37.3**

Figure 3 (see next page) shows growth in the number of Cal Grant awards from 2003-04 (actual) to 2005-06 (projected). The budget assumes the commission will issue almost 260,000 Cal Grants in 2005-06. It assumes a modest increase (2.3 percent) in the number of new High School Entitlement awards, and no increase in the number of new Transfer Entitlement awards (though the commission indicates it currently is analyzing transfer patterns and might revise this estimate in the spring). Per statute, the budget assumes the commission will award 22,500 new Competitive Cal Grant awards and 7,761 new Cal Grant C awards. (The Competitive Cal Grant program is designed for older students whereas the Cal Grant C program is designed for students enrolled in short-term vocational programs.) The commission is in the midst of studying renewal patterns in the competitive program to determine if its associated budget-year projections need to be revised. The budget assumes only 1,660 pre-entitlement renewal awards—indicating that almost all pre-entitlement recipients already have completed college. In a couple of years, the program will be entirely phased out.

APLE Program. The Governor's budget includes a $6.9 million General Fund augmentation to cover loan-forgiveness costs associated with APLE warrants issued in previous years. The Governor's budget proposes to issue 7,700 new APLE warrants—the same level as in the current year. The Governor's budget also includes $200,000 to fund a maximum of 100 new National Guard APLE warrants. (Please see below for a more detailed discussion of this proposal.)

Figure 3

Growth in Cal Grant Participation

	2003-04 Actual	2004-05 Revised	2005-06 Projected	Change From 2004-05	
				Number	Percent
High School Entitlement					
New awards	60,359	63,000	64,449	1,449	2.3%
Renewal awards	82,486	106,960	114,371	7,411	6.9
Subtotals	(142,845)	(169,960)	(178,820)	(8,860)	(5.2%)
Transfer Entitlement					
New awards	2,270	4,300	4,300	—	—
Renewal awards	209	1,075	2,895	1,820	169.3%
Subtotals	(2,479)	(5,375)	(7,195)	(1,820)	(33.9%)
Competitive					
New awards	22,391	22,902	22,500	-402	-1.8%
Renewal awards	28,717	35,193	33,670	-1,523	-4.3
Subtotals	(51,108)	(58,095)	(56,170)	(-1,925)	(-3.3%)
Pre-Entitlement Renewal Awards	28,010	8,135	1,660	-6,475	-79.6%
Cal Grant C					
New awards	7,580	7,761	7,761	—	—
Renewal awards	6,500	6,884	7,964	1,080	15.7%
Subtotals	(14,080)	(14,645)	(15,725)	(1,080)	(7.4%)
Cal Grant T Renewal Awards	255	15	—	-15	-100.0%
Totals	**238,777**	**256,225**	**259,570**	**3,345**	**1.3%**

Private University Cal Grant

The Governor's budget proposes to reduce the maximum Cal Grant for students attending private colleges and universities by $873, or 10 percent—lowering the award from its current-year level of $8,322 to $7,449. This would be the second consecutive reduction. Between 2003-04 and 2004-05, the award was reduced by $1,386, or 14 percent. Approximately 12,100 financially needy students attending private universities likely would be affected by the proposal, which would be imposed only on new Cal Grant recipients. Of these students, approximately 8,500 would expe-

rience the reduction in the budget year whereas approximately 3,600 others would experience the reduction in 2006-07. (This delayed impact is due to a state policy that does not provide fee assistance to most first-year Cal Grant B recipients, even though they represent the financially neediest students served by the Cal Grant program.) Continuing students would retain the higher award rates they are receiving in the current year. The Governor's budget assumes the proposal would generate $7.5 million in General Fund savings. Below, we discuss our concerns with this proposal.

Create Parity for Financially Needy Students Attending Public and Private Universities

We recommend the Legislature establish in statute a policy and an associated award formula that would link the Cal Grant for financially needy students attending private universities to the General Fund subsidy the state provides for financially needy students attending public universities. Under our recommended formula, the private university Cal Grant would be $10,568 in 2005-06. Providing this higher award amount to new 2005-06 recipients would cost $26.6 million relative to the Governor's budget. We recommend the Legislature use additional Student Loan Operating Fund surplus monies to cover this cost (please see final write-up of this section).

Since 2001-02, the state has had neither an explicit nor an implicit policy for determining the private university Cal Grant. Without a policy, Cal Grant decisions can appear arbitrary, the program can become disconnected from its primary objective, and the program can be more difficult to oversee and evaluate. For these reasons, we recommend the Legislature establish a statutory private university Cal Grant policy that is linked with an associated award formula that can be used for budgeting purposes. We recommend a policy and related formula that would provide a simple means by which the state could ensure that it contributes about the same amount of support for all financially needy students.

Since 2000, State Has Not Had Private University Cal Grant Policy. When Chapter 403, Statutes of 2000 (SB 1644, Ortiz), created the new Cal Grant Entitlement program, the state's existing private university award policy was replaced with a new provision that linked the private university Cal Grant to whatever amount was specified in the annual budget act. For the next three consecutive years, the private university award was maintained at its 2000 level before being reduced in the current year.

Without a Policy, Funding Decisions Can Appear Arbitrary. Without an award policy, private university Cal Grant decisions can appear arbitrary. For example, in the current year, college costs (including fees and tuition)

increased for public and private students alike. However, the Cal Grant award increased for public university students while the private university Cal Grant declined.

Without a Policy, Program Can Become Disconnected From Its Purpose. Without a policy to guide annual private university award decisions, the Cal Grant program can quickly become disconnected from its primary purpose. Although maintaining access and choice for all financially needy students is the primary goal of the Cal Grant program, the state's current-year action appeared to promote access to public institutions while dampening the potential for some financially needy students to attend private institutions. This is of particular concern because some private institutions are very specialized and essentially have no public university equivalent, yet they may best meet a financially needy student's educational objective. Access also is of particular concern because a significant proportion of financially needy, baccalaureate-seeking students attend *local* four-year private universities—living at home to substantially reduce overall college costs. For example, more than one-third of the financially neediest students (with family incomes less than $30,000) attending private four-year colleges live at home. Moreover, of the 25 private schools that enroll the greatest number of Cal Grant recipients (please see nearby box), all but a handful are relatively small regional universities with relatively small endowments. These institutions would not be as likely to backfill the proposed reduction in the state's award.

Without a Policy, Program Is Difficult to Evaluate. One of the primary benefits of any statutory policy is that it can clarify the objective of a program, thereby allowing the Legislature to monitor and track its performance. Without a policy, the Legislature cannot determine whether the private university award is fulfilling its objective. A statutory policy could establish criteria upon which to evaluate the private university award's success in promoting access, choice, and persistence among financially needy students as well as its success in expanding general higher education enrollment capacity.

State's Former Statutory Policy Sought Parity. Prior to 2000, the state had a longstanding statutory policy that guided private university Cal Grant decisions. Statute then specified, "The maximum award for students attending nonpublic institutions shall be set and maintained at the estimated average General Fund cost of educating a student at the public four-year institutions of higher education." Toward this end, statute included a formula that set the private university Cal Grant at 75 percent of the average General Fund cost per student at CSU plus the average of UC and CSU's student fees (both systemwide and campus-based).

Our Modified Formula Promotes Greater Parity. Our recommendation is consistent with the intent of the state's former statutory policy to provide comparable General Fund support for financially needy students attending public and private schools. We recommend modifying the previous formula to better meet this intent. The earlier formula was somewhat arbitrary in linking the award to "75 percent of the average General Fund cost per student at CSU." Our modified formula is based on the enrollment-weighted General Fund subsidy provided for students attending UC and CSU. We think this is a more accurate reflection of how much the state provides for an additional public university student. Second, our modified formula is based on the marginal cost rather than the average cost, as this too is a better reflection of the amount the state pays for each additional (rather than existing) student. Third, the earlier formula accounted for both systemwide and campus-based fees to reflect former Cal Grant policies. Our modified formula reflects current Cal Grant policies, which link awards only to systemwide fees. All three modifications establish a simple, ongoing means for equalizing what the state provides for financially needy students at public and private universities.

Figure 4 compares the support the state provides for different groups of financially needy students. As reflected in the figure, the Governor's proposed private university Cal Grant award would be 15 percent less

Figure 4

Comparing State Support for Financially Needy Students

	2005-06
University of California	
General subsidy	$7,588
Cal Grant	6,141
Total subsidy	$13,729
California State University	
General subsidy	$6,270
Cal Grant	2,520
Total subsidy	$8,790
Private University Cal Grant	
Proposed rate	$7,449
LAO-formula rate	10,568
Former statutory rate	10,694

than the level of General Fund support provided for financially needy students at CSU and 46 percent less than the level of General Fund support provided for financially needy students at UC. Also reflected in the figure, the budget-year private university rate generated by our recommended formula would be just slightly less than what the award would have been using the state's former statutory formula.

Fiscal Implication of New Parity Policy. Increasing the private university Cal Grant to $10,568 for new 2005-06 recipients would cost $26.6 million relative to the Governor's budget. (By comparison, the Governor's budget proposal includes a $23 million augmentation for UC and CSU Cal Grants in the budget year.) We recommend the Legislature use surplus SLOF monies to cover this budget-year cost. In 2006-07, the cost of the higher private university grant would increase by approximately $8.3 million as second-year Cal Grant B recipients began receiving a fee award (rather than only a subsistence award). The Legislature also may want to consider increasing the award for new Cal Grant recipients in the current year, who were subject to the 14 percent award reduction. We estimate providing the higher award of $10,568 for these students would cost an additional $25.5 million in 2005-06.

In sum, we recommend the Legislature adopt a policy that would seek parity between state support provided for financially needy students attending public and private universities. This policy could help guide annual private university Cal Grant decisions, thereby making them seem less arbitrary. It also would support the primary objective of the Cal Grant program—to promote access and choice for all financially needy students. Finally, having an explicit policy could enhance the Legislature's ability, on an ongoing basis, to assess the public benefit of the private university Cal Grant.

NATIONAL GUARD APLE PROGRAM

As established in 2003 and amended in 2004, the National Guard APLE program offers loan forgiveness as an incentive for more individuals to enlist or re-enlist in the National Guard, State Military Reserve, and Naval Militia. Specifically, qualifying members have a portion of their education loans forgiven after each year of military service—$2,000 after their first year of service and $3,000 after their second, third, and fourth years of service—for total loan forgiveness of $11,000. The annual budget act has not yet authorized the commission to issue any National Guard warrants.

Private University Cal Grant Helps Financially Needy Students Attending Diverse Set of Institutions

To help answer some private university Cal Grant questions that often arise, we list below the 25 private schools that enrolled the greatest number of Cal Grant recipients in 2004-05. Of the 25 schools, 23 are four-year institutions whereas 2 are two-year institutions. Seventeen are nonprofit institutions whereas eight are for-profit institutions. Two schools (Stanford and the University of Southern California) have endowments that exceed $1 billion, six schools have endowments that exceed $100 million, and the remaining nonprofit schools have relatively small endowments. These 25 schools enroll just about one-half of all private university Cal Grant recipients. In total, new Cal Grant recipients in 2004-05 are enrolled at 191 private institutions.

Private Institutions Enrolling the Greatest Number of Cal Grant Recipients

(2004-05)

Private Institution	Cal Grant Recipients	Private Institution	Cal Grant Recipients
University of Southern California	838	University of San Diego	231
University of Phoenix[a]	572	Saint Mary's College of California	215
Devry University, Pomona[a]	488	Westwood College of Technology[a]	199
Loyola Marymount University	392	University of Redlands	194
University of the Pacific	348	California Baptist University	194
Fashion Institute of Design[a,b]	334	The Art Institute of California, Los Angeles[a]	192
University of Laverne	306	Universal Technical Institute[a,b]	178
Azusa Pacific University	299	American Intercontinental University[a]	175
University of San Francisco	278	Santa Clara University	172
Mount St. Mary's College	264	La Sierra University	158
Stanford University	253	The Art Institute of California, San Francisco[a]	153
Chapman University	236	Fresno Pacific University	151
Biola University	232		

[a] For-profit institutions.

[b] Two-year institution.

New Warrants Have No Budget-Year Cost

Because no National Guard warrants have been issued to date, and individuals must complete one year of military service prior to receiving loan forgiveness, the commission will incur no associated program costs in 2005-06. Thus, the Governor's budget prematurely funds the program. We therefore recommend the Legislature capture the associated $200,000 as General Fund savings.

The Governor's budget proposes to authorize up to 100 new National Guard APLE warrants. It also includes $200,000 for the program, with accompanying budget bill language that "these funds shall remain available through 2006-07." Because warrant-holders must complete one year of military service before receiving loan forgiveness, the state would not begin incurring a cost for a new National Guard APLE warrant (as is the case with all APLE warrants) until at least one year after it is originally issued. Thus, no funding would be needed in the budget year. Moreover, the Governor's proposal to set aside 2005-06 monies that will not be needed until 2006-07 is inconsistent with existing APLE funding practices. Specifically, the state has a long history of funding APLE warrants only as payment on them becomes due. This helps ensure funds are provided when needed. We recommend the Legislature continue to adhere to its existing budget practice and pay for any new warrants when payment becomes due. Thus, we recommend the Legislature capture the unneeded $200,000 as General Fund savings.

EDFUND OPERATING SURPLUS

Chapter 961, Statutes of 1996 (AB 3133, Firestone), gave the commission the authority to establish an auxiliary organization for purposes of administrating the Federal Family Education Loan (FFEL) program. Toward this end, the commission created EdFund, which, consistent with statute, functions as a nonprofit public benefit corporation. Colleges and universities that are interested in participating in the FFEL program may choose to work with EdFund or one of several other independent guaranty agencies. Alternatively, colleges and universities may participate in the Federal Direct Student Loan program, in which case their student loans are guaranteed and administered directly by the federal government.

After Six Years of Increasingly Large Annual Surpluses, EdFund Had $267 Million Cumulative Surplus. From federal fiscal year (FFY) 1997-98 through FFY 2002-03, EdFund experienced increasingly large annual operating surpluses. In 2002-03, EdFund's annual surplus reached $108 million. EdFund's annual operating expenses that year were $118 million, so it was generating about twice as much revenue as it needed to cover its

operating costs. By the close of 2002-03, EdFund was carrying a cumulative surplus of $267 million. EdFund attributes these surpluses to three primary factors—an increase in its loan volume as well as its success in default prevention and loan collections.

Current-Year "Swap" Works as Intended. In 2004-05, the state decided to use $146.5 million in SLOF monies to cover a portion of Cal Grant costs. The swap worked as intended—helping to maintain existing Cal Grant benefits for most students, reducing EdFund's surplus without threatening the viability of the agency, and relieving the General Fund. Even after accounting for this swap, EdFund has a cumulative surplus of $160 million (as of September 2004).

Use Larger Budget-Year Swap to Restore Cal Grant Benefits

We recommend the Legislature use an additional $26.6 million in Student Loan Operating Fund surplus monies to restore Cal Grant benefits for financially needy students attending private universities (thereby reducing the cumulative surplus to a more moderate level).

The Governor's budget proposes to use $35 million in SLOF surplus monies to support the Cal Grant program. In essence, it swaps $35 million in SLOF surplus monies for General Fund monies. We recommend the Legislature increase the swap by $26.6 million—for a total of $61.6 million—to restore the current-year and proposed reductions to the private university Cal Grant. If EdFund generated no additional operating surplus in FFY 2004-05, our recommendation would reduce EdFund's cumulative surplus from $160 million to $98 million. This equates to roughly a nine-month reserve. We think, for a nonprofit public agency, this is still a substantial reserve level—one that would not reduce EdFund's viability as a guaranty agency.

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E-97 ■ **Strengthen Language on Offsetting Revenues.** Recommend the Legislature add budget bill and trailer bill language to ensure that districts use available funds to pay for local costs of the new Comprehensive School Safety Plan mandate.

After School Programs and Proposition 49

E-99 ■ **21st Century Community Learning Centers Not Spending Federal Funds.** Recommend the Legislature pass legislation creating a new group of grantees to begin in late summer 2005. In addition, recommend the Legislature increase reimbursement rates, annual grant caps, and start-up funding for the elementary and middle school programs in their first year.

E-103 ■ **Repeal Proposition 49.** Recommend the Legislature enact legislation placing before the voters a repeal of Proposition 49 because (1) it triggers an autopilot augmentation even though the state is facing a structural budget gap of billions of dollars, (2) the additional spending on after school programs is a lower budget priority than protecting districts' base education program, and (3) existing state and federal after school funds are going unused.

Child Care

E-110 ■ **Shifting California Work Opportunity and Responsibility to Kids (CalWORKs) Families to General Child Care.** Recommend delaying the shift of the Stage 3 program to Alternative Payment child care until counties have created centralized waiting lists. Further recommend placing current CalWORKs child care on the waiting lists based upon the date that they first had earned income in the program.

E-119 ■ **Proposal to Create Incentives for Quality Makes Sense.** Recommend the Legislature consider the Governor's tiered reimbursement proposal in two parts. First, the Legislature should determine if a tiered reimbursement rate structure that provides incentives for quality makes sense. Then the Legislature should determine the appropriate rates for the tiers. We recommend the Legislature revise reimbursement rates to promote quality and child development and preserve family choice.

E-127 ■ **State Department of Education (SDE) Contracted Transition Providers Reimbursement to Mirror Voucher Programs.** Recommend the Legislature transition reimbursement rates for SDE contracted providers to be based on the rate provided to voucher providers.

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Higher Education Enrollment Growth and Funding

E-164 ■ **Reduce Budgeted Enrollment Growth for the University of California (UC) and the California State University (CSU).** Based on our demographic projections, we recommend the Legislature reduce the budgeted enrollment growth rate proposed by the Governor for UC and CSU from 2.5 percent to 2 percent.

E-165 ■ **Adopt Enrollment Targets in Budget Bill.** Recommend the Legislature adopt budget bill language specifying enrollment targets for both UC and CSU, in order to protect its priority to increase higher education enrollment.

E-171 ■ **Reduce Marginal Cost Funding Rates for UC and CSU. Reduce Item 6440-001-0001 by $9.4 Million and Item 6610-001-0001 by $11.9 Million.** Using our marginal cost estimates for enrollment growth based on the agreed-upon 1995 methodology, we recommend the Legislature reduce the Governor's proposed funding rates for each additional student at UC (from $7,588 to $7,108) and CSU (from $6,270 to $5,999).

E-175 ■ **Review Marginal Cost Methodology.** Recommend the Legislature revisit and reassess the marginal cost methodology. Further recommend the Legislature direct our office, in consultation with the Department of Finance, UC, and CSU, to review the current system of funding new enrollment and propose modifications for use in the development of future budgets.

Student Fees

E-184 ■ **Adopt Share-of-Cost Fee Policy.** A share-of-cost fee policy would help the Legislature annually assess fee levels and make fee decisions, and it would provide both students and the public with clear expectations about fee levels. It also would treat student cohorts consistently over time, and, as a portion of any cost increase is passed on automatically to nonneedy students, it would create incentives for students to hold the segments accountable for keeping costs low and quality high.

E-192 ■ **Treat $114 Million in New University of California (UC) Fee Revenue and $76 Million in New California State University (CSU) Fee Revenue as Available to Meet Identified Needs.** Recommend the Legislature reject the Governor's proposal to let the segments spend new fee revenue for whatever they deem worthwhile. Instead, recommend Legislature adhere to standard budget practices and apply fee-increase revenue toward segments' identified needs.

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E-193 ■ **Score $25.5 Million in Fee Revenue From Second-Year Phase In of Excess-Unit Fee Initiative ($1.1 Million for UC and $24.4 Million for CSU).** The excess-unit fee policy, initiated in the current year and being phased in over a five-year period, requires students (with certain exceptions) to pay full cost for excess units (more than 110 percent of that needed to obtain their degree). Despite being the second-year phase in of the excess-unit fee policy, the 2005-06 budget proposal does not reflect any associated increase in fee revenue. We recommend the Legislature score the revenue that is to be generated from the surcharge policy in the budget year ($25.5 million).

E-195 ■ **Increase California Community Colleges (CCC) Fee to $33 Per Unit. Score $101 Million in Additional CCC Fee Revenue**. This higher fee, to be charged only to middle-income and wealthy students, would generate about $100 million in additional revenue for CCC. The federal government, in turn, would fully reimburse those fee-paying students with family incomes up to $105,000 (if they had sufficient tax liability). It would partially reimburse those fee-paying students with family incomes up to $160,000. In total, these middle- and upper middle-income students would receive approximately $50 million in federal aid. Financially needy students, on the other hand, are entitled to have their fees waived (through a state aid program) and thus should pay nothing even with fees being increased.

University of California (UC)

E-202 ■ **Alternative Budget Proposal for UC.** Based on our review of the UC's funding needs for 2005-06, we recommend an alternative to the Governor's budget for the university. Our alternative would increase funding in the budget year to maintain the Master Plan's commitment to student access, while avoiding the programmatic reductions proposed by the Governor. At the same time, our proposal would free up $57 million in General Fund support to address other priorities.

California State University (CSU)

E-208 ■ **Adopt the Legislative Analyst's Office Alternative Budget for CSU.** Based on our review of CSU's funding needs for 2005-06, we recommend an alternative to the Governor's budget for the university. Our alternative would increase funding in the budget year to maintain the Master Plan's commitment to student access, while avoiding the programmatic reductions proposed by the Governor. At the same time, our proposal would free up $71.5 million in the General Fund to address other priorities.

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California Community Colleges (CCC)

E-219 ■ **Fund Enrollment Growth of 1.9 Percent.** The Governor proposes to fund enrollment growth of 3 percent. We recommend funding enrollment growth of 1.9 percent, which is the same rate as adult population is projected to grow. We recommend the associated savings ($50.6 million) be redirected to other K-14 priorities.

E-220 ■ **Continue to Advance Equalization Effort.** Recommend the Legislature continue the effort, begun in the current year, to equalize per-student funding among community college districts. We recommend equalization be made a funding priority for new Proposition 98 funding that is not needed to fund workload increases.

E-222 ■ **Clarify Accountability Expectations.** We recommend two changes to provisional language in the Governor's budget proposal in order to clarify the state's expectations about CCC's recent accountability efforts.

E-226 ■ **Fund the California Partnership for Achieving Student Success. Increase Item 6870-101-0001 by $1 Million.** Recommend the Legislature fund the continuation and expansion of an important and proven program that improves district performance and can assist in accountability efforts.

Student Aid Commission

E-233 ■ **Create Parity for Financially Needy Students Attending Public and Private Universities. Increase Item 7980-101-0001 by $26.6 Million.** Recommend the Legislature provide the same amount of support for financially needy students at public and private universities. This would help ensure that the Cal Grant program continued to promote access and choice for all financially needy students.

E-238 ■ **New National Guard Assumption Program of Loans for Education Warrants Have No Budget-Year Cost. Reduce Item 7980-101-001 by $200,000.** Given no National Guard warrants have been issued to date, and individuals must complete one year of military service prior to receiving state benefits, the state would incur no associated program cost until at least 2006-07. Rather than setting aside funds even though they would not be needed, recommend the Legislature capture $200,000 as General Fund savings.

E-239 ■ **Use Larger Budget-Year Swap to Restore Cal Grant Benefits. Increase Reimbursements to Item 7980-101-0001 by $26.6 Million.** Recommend the Legislature designate $61.6 million (or $26.6 million more than proposed in the Governor's budget) in Student Loan Operating Fund surplus monies to restore Cal Grant benefits for all financially needy students. This larger swap would reduce EdFund's cumulative surplus from $160 million to about $98 million. This equates to roughly a nine-month operating reserve—still a healthy reserve for the agency.