

MINUTES OF THE MEETING
SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES
MARCH 20, 1981

The Senate Committee on Education and Cultural Resources met Friday, March 20, 1981, in Room 402 of the Capitol Building. Senator Bob Brown, Chairman, called the meeting to order at 1:07 p.m.

ROLL CALL

Committee members present were Senators Brown, Smith, Mazurek, McCallum, Severson, Haffey, and Hammond. Senator Blaylock was excused and Senator Thomas was excused at 1:42 p.m.

EXECUTIVE SESSION

CONSIDERATION OF HOUSE BILL 587

Senators Mazurek and McCallum have come to an agreement but would like the opportunity to discuss their findings with Chairman Brown. He said the committee would act on House Bill 587 Monday, March 23rd.

CONSIDERATION OF SENATE BILL 469

The committee agreed to leave Senate Bill 469 in committee and take no further action on it.

ACTION ON HOUSE BILL 662

As requested, Andrea Merrill, Legislative Council Researcher, called three different states - North Dakota, Wyoming, and South Dakota. Her report was discussed and attached to these minutes (attachment #1).

Senator McCallum moved House Bill 662 be tabled. After discussion, he withdrew his motion.

Senator Severson moved House Bill 662 Be Concurred In. After discussion, the motion was withdrawn.

Senator Severson moved to amend the bill by deleting lines 20 and 21 on page 3. After discussion, the motion was withdrawn.

Senator Severson moved to amend page 3, line 21, by striking the word "daily" and inserting "per trip". The motion carried.

Senator Severson moved HB 662 Be Concurred In As Amended. A roll call vote was taken and the motion passed with 5 senators voting yes and 4 senators voting no (roll call vote attached #2).

Senator Brown had to leave the meeting and turned the gavel over to Vice Chairman Smith.

Senator Severson moved the statement of intent Be Concurred In. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 675

Senator Mazurek moved HB 675 Be Concurred In. The fiscal note was distributed and briefly discussed. Senator Thomas left the meeting and Senator Mazurek withdrew his motion as he had to leave the meeting also.

CONSIDERATION OF HOUSE BILL 333

Andrea Merrill, Legislative Council Researcher, presented her report (attachment #3) on the federal law. She said the sponsor of HB 333 has chosen to keep the language in HB 333 the same as used in the federal definition. She also said the term "related aids and services" may mean a lot of money to the state and the schools if Medicaid won't pay for such items as hearing aids and eye glasses.

There being no further business, the meeting adjourned to reconvene Monday, March 23, 1981, at 1:00 p.m.



Senator Bob Brown, Chairman

ROLL CALL

SENATE EDUCATION COMMITTEE

47th LEGISLATIVE SESSION - - 19'81

Date 3/20/81

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith	✓		
Senator George McCallum	✓		
Senator Elmer Severson	✓		
Senator Swede Hammond	✓		
Senator Chet Blaylock			✓
Senator Bill Thomas	1:15	✓	
Senator Joseph Mazurek	✓		
Senator Jack Haffey	✓		
Senator Bob Brown, Chairman	✓		

Each day attach to minutes.

NOTES ON THE USE OF FOUR-WHEEL DRIVE VEHICLES FOR SCHOOL
TRANSPORTATION IN NEIGHBORING STATES

CONVERSATIONS WITH TRANSPORTATION SUPERVISORS

North Dakota - contacted Roland Kirk:

- North Dakota allows four-wheel drive vehicles or even station wagons to be used;
- No state standards or regulations governing school transportation methods and means; federal standards are recognized for regular buses;
- Local school boards are encouraged but not mandated to make sure the alternative vehicles are safe and drivers qualified (anyone over 18);
- Of 2000 "school buses", 57 are alternative vehicles;
- As many as 65 accidents a year, but only 10 involving an injury last year - this rate isn't linked to the use of alternative vehicles.

Wyoming - contacted Gary Love:

- The state does allow the use of and reimburses for four-wheel drive vehicles; nearly all of the 49 districts in Wyoming have at least one route where such a vehicle is used;
- No minimum bus specifications at present, because a legislative review board claimed that proposed 1973 regulations went beyond the powers of the Board of Education;
- A district may even be reimbursed for 2/3 of the cost of purchasing an alternative vehicle or bus.

South Dakota - contacted Edwin Schmidt:

- Two years ago legislation was passed to allow a school district to purchase and use a vehicle designed to have under 10 passengers; bus contractors can't contract to use such a vehicle, however;
- School districts are reimbursed for 50% of transportation costs, regardless of type of vehicle;
- No increase in accident rate has been evident.

Idaho - The contact person was gone from the office until next week.

SENATE COMMITTEE EDUCATION

Date 3-20-81 House Bill No. 662 Time 1:40

NAME	YES	NO
Senator Ed Smith	✓	
Senator George McCallum		✓
Senator Elmer Severson	✓	
Senator Swede Hammond	✓	
Senator Chet Blaylock		✓
Senator Bill Thomas		✓
Senator Joseph Mazurek	✓	
Senator Jack Haffey		✓
Senator Bob Brown, Chairman	✓	

Secretary _____

Chairman _____

Motion: HB 662, as amended, be concurred in.

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

MARCH 20

19 21

MR. PRESIDENT

We, your committee on EDUCATION AND CULTURAL RESOURCES

having had under consideration HOUSE

Bill No. 662

BURNETT (HAMMOND)

Respectfully report as follows: That HOUSE Bill No. 662

third reading copy, be amended as follows:

1. Page 3, line 21.

Strike: "daily"

Insert: "per trip"

AND, AS SO AMENDED, BE CONCURRED IN.

AND THE STATEMENT OF INTENT BE CONCURRED IN.

DO-265X

SUBPART D

PRESCHOOL, ELEMENTARY, SECONDARY, AND ADULT EDUCATION

FREE APPROPRIATE PUBLIC EDUCATION

Regulation

"A recipient that operates a public elementary or secondary education program shall provide...to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap,...(regular or special education and related aids and services that are designed to meet the individual needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.") [Sections 84.33(a) and 84.33(b)(1)(i)]

Federal
law

Intent

To establish the right of each handicapped individual to receive educational services that meet individual educational needs, and that are commensurate to the services provided to meet the educational needs of nonhandicapped individuals. The quality and range of courses and activities available to handicapped individuals must equal the quality and range available to nonhandicapped individuals. Related aids and services necessary to meet handicapped individuals' educational needs are to be provided.

Practices

1. A variety of placement options are available to meet the handicapped individual's educational needs. Placement options could include instruction in the following:

- . Regular classroom.
- . Regular classroom with consultation.
- . Regular classroom plus resource room.
- . Part-time special class.
- . Full-time special class.

Special day school.

see next page

- . Special residential school.
 - . Home.
 - . Hospital school.
 - . Institution.
2. The following developmental, corrective, and other supportive services could be provided:
- . Psychological (testing and evaluation) services.
 - . Counseling.
 - . Medical services for diagnostic or evaluation purposes.
 - . Physical therapy.
 - . Occupational therapy.
 - . Speech pathology.
 - . Audiology.
 - . Interpreter services.
 - . Orientation and mobility instruction.
 - . Transportation.
3. Specialized instructional media and materials, as well as aids and adapted equipment, could be provided, such as:
- . Multimedia, manipulative, criterion-referenced, and high interest-low vocabulary materials for children with learning problems.
 - . Instructional materials provided in a format comprehensible to and usable by the student, such as Braille or large print, three dimensional models, and captioned films.
 - . Equipment and aids such as visual enlarger, large print typewriter, and tools and laboratory equipment with Braille markers for students with manual impairments; laboratory and vocational class equipment adapted to emit a visual signal for hearing impaired students; and stabilizing equipment (e.g., bolsters and stand-up equipment) for students with muscular weakness or severe coordination problem.

Subpart D—Preschool, Elementary, and Secondary Education

§ 81.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from federal financial assistance and to recipients that operate, or that receive or benefit from federal financial assistance for the operation of, such programs or activities.

§ 81.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 81.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 84.34, 84.35, and 84.36.

(2) Implementation of an individualized education program developed in accordance with the Education of All Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education.*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any pub-

lic or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available, in conformance with the requirements of this section and § 84.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 84.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

§ 81.34 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the

proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 84.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 81.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such

staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirements.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with § 84.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The Secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but § 84.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See § 84.4(c)(2)(iv), prohibiting unnecessarily separate treatment; § 84.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new § 84.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 84.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 84.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words "if construction has commenced" will be considered to mean "if groundbreaking has taken place." Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried

out, the alteration must be made in that manner. Thus, if a doorway or wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable, because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase "to the maximum extent feasible" has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

As proposed, § 84.23(c) required compliance with the American National Standards Institute (ANSI) standard on building accessibility as the minimum necessary for compliance with the accessibility requirement of §§ 84.23 (a) and (b). The reference to the ANSI standard created some ambiguity, since the standard itself provides for waivers where other methods are equally effective in providing accessibility to the facility. Moreover, the Secretary does not wish to discourage innovation in barrier-free construction by requiring absolute adherence to a rigid design standard. Accordingly, § 84.23 (c) has been revised to permit departures from particular requirements of the ANSI standard where the recipient can demonstrate that equivalent access to the facility is provided.

Section 84.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for non-discrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term "adult education" refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§ 84.32 and 84.33 apply only to public programs and § 84.39 applies only to private programs; §§ 84.35 and 84.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills v. Board of Education of the District of Columbia*, 318 F. Supp. 666 (D.D.C. 1972), *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 277 (E.D. Pa. 1972), and *Lebanks v. Spears*, 60 F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Public Law 94-142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education,

(2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 84.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Former §§ 84.34 ("Free education") and 84.36(a) ("Suitable education") have been consolidated and revised in new § 84.33. Under § 84.34(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another person's or entity's failure to assume financial responsibility.

Section 84.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of non-handicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of § 84.34 and be suited to his or her educational needs.