

PATTERNS OF PRESCHOOL
HANDICAPPED EDUCATION IN
NEW YORK STATE: INTERACTIONS
OF FEDERAL, STATE AND
LOCAL GOVERNMENTS

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ABSTRACT This paper discusses the current provision of preschool handicapped education in New York State and possible ways the state may change this provision in order to conform to both existing and to new federal legislation. It will examine the potential impact of the new policies on the spatial equity and the economic efficiency of preschool handicapped education.

New York State has been providing education to some preschool handicapped children under Public Law 94-142, the Education of All Handicapped Act of 1975, mostly through private programs being funded by public tax dollars. The education is provided not by local school districts, but by private organizations using state and federal funds. This program is jointly financed by county governments and the state, and administered through the family court system. The U.S. Department of Education has determined that New York State's system is not in compliance with the requirements of P.L. 94-142. If New York State does not comply by July 1, 1989, then it will lose its federal funding for all handicapped education, and not only that preschool ages--over \$100 million!

The current system, which is to be changed by July 1, 1989, has been operating for twelve years, and uses geographical divisions as its basis of operation. Despite the statewide availability of Directional Centers to aid parents as well as regional monitoring agencies, the family court system, according to reports by the Legislative Commission on Expenditure Review, results in spatial inequities and economic inefficiencies.

The state is now devising a law to conform to existing federal and new federal legislation: Public Law 99-457, aimed specifically at handicapped preschool-age children. The federal government has determined that the funding of handicapped education cannot be managed on a local scale and has enacted into law specific techniques to spread this education to as many children as possible. The federal government will provide state governments with large subsidies if they use the local school systems to provide preschool handicapped education. Following the mandates of P.L. 99-457, New York State is calling for the provision of preschool handicapped education through public school districts instead of continuing to provide this service through the family court system.

Under the existing plan, the school district has no control over where the preschool-age child will receive the education. With the new plan, there will be a great shift in control over these children's education, from the parent to the school district. The school district would choose the school the handicapped preschooler would attend, placing the child under the same auspices as school-age handicapped children. A presumed benefit to the parent, to outweigh the loss of choice of school, is that the parent would now gain the legal right to sue in court (the right of due process) to challenge district decisions with respect to the child's educational program.

The new federal legislation and the resulting state legislation have the potential for making great changes in the spatial distribution of financing, administration, and the actual

provision of preschool handicapped education. It will be interesting to see whether the new proposed state legislation accomplishes all that it appears designed to do--provide a free, appropriate education to young handicapped children to minimize their handicaps and to enable them to become contributing and valuable members of society.

The provision of universal public education in the United States has traditionally been the responsibility of local school districts. Until 1975 some children had been excluded from this public education system; these children were labeled handicapped, physically impaired, crippled, and now are called children with special needs. They had often been ignored and allowed to pass the time in school classrooms or hallways with minimal attention until they were old enough to graduate; severely handicapped children were often institutionalized.

Starting in the 1960s, as an outgrowth of the War on Poverty (U.S. Congress, Subcommittee on Education, 1987), the federal government has gradually increased its influence on handicapped education to try to correct the generally unsatisfactory state and local administration and funding as well as overall curriculum (though there had been some exceptions). This federal influence culminated in 1975, when the United States Congress through P.L. 94-142, the Education of the Handicapped Act, established the legal right of all handicapped children to a free and appropriate education in the least restrictive environment (U.S. Congress, 1975)--a recognition that despite the tradition of local governments being responsible for providing public education, education of handicapped children is different and could not be achieved on a local scale.

In so doing, the federal government incorporated some geographic concepts and processes, such as scale, boundary, spatial diffusion of public money, and the interactions of different levels of government. The new legislation meant that instead of ignoring these children, school districts were required to provide education for handicapped children regardless of their condition in order for the state to receive federal funds. Each school district is required to establish a committee on special education to serve these children, their parents, and the school district. Since each child has individual needs, the education is different for each child. An individualized educational program (IEP) is devised by teachers, administrators, specialists, and the parents. If the parents do not approve the program, then they have the legal right of due process to have their objections mediated by an impartial hearing officer.

In 1986, the federal government expanded handicapped education to preschool-age children through P.L. 99-457 (U.S. Congress, 1986), the Amendments to the Handicapped Act, to take effect in 1991. The federal government had recognized that early intervention, or education of handicapped children before school age, despite its initial high cost, is valuable. In the long run, the overall costs to society should be lessened as early intervention tends to diminish the severity of handicapping conditions, thus reducing the amount of special education needed later in life and permitting the child to become a more productive member of society (see, for example, Helmich, 1985; Smith and Strain, 1984; U.S. Congress Hearings, 1986; Lazaar, 1979; and Schrag, 1986). The federal government is using this new law to provide state governments with large subsidies if they use the local school systems to provide preschool handicapped education, thereby making this early intervention available to more children than had the previous systems. Although the original handicapped law had helped to finance preschool handicapped education programs, many of these programs were limited in their availability, as they were run by private organizations. The goal of this legislation is to provide universal preschool

education to handicapped children. But, ironically, a very small proportion of the public and of the population to be served is adequately informed about the existence of this legislation, much less the nature of the appropriate programs.

This paper will concentrate on New York State's approach to conforming to federal laws in its provision of handicapped education to preschool children, aged three to five years. (Handicapped children aged from birth to two years eleven months are covered under the Department of Health and are not discussed in this paper.) New York State is a particularly interesting choice for several reasons: (1) it views itself as a fairly liberal and progressive state in educational matters as reflected in its high per capita expenditures on education; (2) it has in operation now a well-established network of handicapped preschool programs whose existence may cause problems in implementing the new federal legislation requiring preschool education through the local school districts; (3) its population and economic structure are diverse, ranging from large cities with rich and poor neighborhoods and ethnically diverse backgrounds to suburban areas to rural farming regions; and (4) since it had not been in compliance with federal regulations of the 1975 Education of the Handicapped Act (Donovan, 1989), it has very recently (June 30, 1989) passed conforming legislation (New York State Legislature, 1989).

The paper will discuss how New York State had provided preschool education to the handicapped in the state over the past twelve years. It will discuss the new state policies and legislation designed to conform both to the current federal legislation and also the new legislation and funding to take effect fully by 1991. It will examine the potential impact of the new policies on the spatial equity and the economic efficiency of preschool handicapped education. It will also raise the issue of the potential inequity of providing preschool education for *only* handicapped children, and not for the public at large.

PROVISION OF PRESCHOOL HANDICAPPED EDUCATION: INTERACTIONS OF FEDERAL, STATE, AND LOCAL CONTROL AND FINANCING

Past Provision

For the past twelve years, New York State has been using geographical divisions as its basis of operation to provide handicapped preschool education. The county level has been the primary division, and the state has also established fourteen childhood direction centers (see Fig. 1), which are administered by the State Education Department and are to help parents or guardians in providing for the educational, psychological, and social needs of handicapped children and their families (University of the State of New York, 1987). Other sources of assistance include local agencies geared to providing handicapped education, hospitals, pediatricians, and social welfare agencies. The direction centers provide parents with a list of schools (many of which also evaluate the child); the schools listed by a particular Direction Center do not have to limit their service only to children who reside in the county or counties served by that Direction Center. In other words, the boundaries of service have been quite flexible. Once the child had been evaluated and been deemed to need handicapped education, the parents petitioned the County family court for free education for the child, using medical and psychological evaluations as evidence (New York State Senate, State Research Service, 1988).

This process of evaluation left open the question of objectivity in the evaluation, and according to reports conducted by the Legislative Commission on Expenditure Review,

resulted in spatial inequities and economic inefficiencies as well (although these terms are not mentioned). These included: (1) a great variation in the petition process and distribution of State funding from "county to county, representing unequal access to education...as well as inconsistencies in the interpretation and implementation of current laws"; (2) "Family Court judges...admitting that they lack the appropriate expertise to properly evaluate and act on petitions"; and (3) county representatives stating that the provision of this education is the responsibility of the state education department and the local school districts (and not the current 50 percent county and 50 percent state) (Ibid).

To compound the matter, over its twelve years of operation, what started as a modest program has grown tremendously in size. In 1977-78 the state spent \$5,500,000 on family court-ordered handicapped children's programs; in 1987-88 \$125,000,000, while the county governments spent an additional \$125,000,000 bringing the total to \$250,000,000! (Table 1 and Figure 2).

Table 1

State Costs for Family Court-Ordered Handicapped
Children's Program

<u>Fiscal Year</u>	<u>Appropriations</u>
1977-78	\$ 5,500,000
1978-79	6,220,000
1979-80	7,639,000
1980-81	24,928,580
1981-82	32,238,004
1982-83	46,000,000
1983-84	65,900,000
1984-85	69,000,000
1985-86	90,000,000
1986-87	103,000,000
1987-88	124,100,000

Source: Legislative Commission on Expenditure Review. *Program Audit*. March, 1984, and New York State Legislature. *Report of the Fiscal Committee on the Executive Budget, 1984-1987*.

The increase results from high and continually increasing tuition fees, combined with increased enrollment in preschool handicapped programs. Individual student tuitions range from \$12,000 to around \$20,000; and bus transportation adds additional thousands of dollars to the cost. The main reason for this high cost is that preschool handicapped education differs significantly from nonhandicapped education. The many specialists--movement therapists--for both gross and fine motor skills, speech pathologists, and the social and psychological services for the child and the parents all add to the cost of the education. And as more parents have become aware of these programs, more children are being served. Between 1977-78 and 1981-82, enrollment in New York City and nine counties (Cayuga, Dutchess, Greene, Herkimer, Jefferson, Monroe, Niagara, Suffolk, and Tioga) grew from 1,629 to 8,285, and for the whole state, from 14,767 in 1980-81 to 18,617 in 1982-83, according to the State Research Service, referring to a 1984 program audit of

the Family Court order system conducted by the Legislative Commission on Expenditure Review (Ibid). *Newsday*, the newspaper serving Long Island, a suburban area of New York City, states that the number of children in special education preschools statewide grew from 7647 in 1984-85 to 15,793 in 1988-89, also referring to the state education department! (D'Antonio, 1989).

Legislation Changing the Provision of Preschool Handicapped Education

On June 30, 1989, New York State legislature changed the provision of preschool handicapped education for several reasons: (1) to comply with the federal regulations of P.L. 94-142 and thereby prevent the loss of federal funding (amounting to over \$100 million, as lack of compliance would have deprived the state of aid for all handicapped education and not only that for preschool); (2) to adjust its system to the new federal requirements based on the new bill, P.L. 99-457; (3) to improve the economic efficiency of the system by incorporating these compliances; and (4) to balance the spatial distribution of preschool handicapped education over the whole state.

Instead of continuing to provide handicapped preschool education through the family court system, the state through this new legislation, following federal mandates, is calling for the provision of preschool handicapped education through public school districts. The county governments will at first still pay one-half of the fees, thus not overly burdening individual school districts financially, while at the same time allowing the districts much more control over the type and location of handicapped education provided to their preschool residents. The idea is that school districts are better able to evaluate and service handicapped preschoolers than can family court judges. In addition, since P.L. 99-457 calls for significant increments of aid for each *additional* child served by preschool handicapped education, the school districts are more likely to try to attract as many children as possible. This increase in accessibility is, of course, one of the main goals of the federal legislation.

Each school district or board of education will establish a committee on preschool special education (another layer of bureaucracy), paralleling the committee on special education that each board has for school age children. A parent may have a child evaluated at a qualified evaluation center. The board of the school district in which the child resides uses that evaluation and the recommendation of the Committee on Preschool Special Education to decide where the child will go to school. The available choices include: (1) the district's own school, if a preschool handicapped program exists; (2) a neighboring district; (3) a cooperative enterprise of several districts; (4) or a private program (such programs now serve over 60 percent of the preschool handicapped population). The school district would contract with the provider; the fees would be set under state regulation and would be paid by the county. The county would be subsidized for 50 percent of the costs as under the current policy, but eventually the state will pay 75 percent (New York State Legislature, 1989).

Under the old plan, the school district had no control over where the preschool-age child would receive the education. The parent had complete control, as long as the chosen school had room for and accepted the child. With the new plan, there will be a great shift in control over these children's education, from the parent to the school district. The preschool handicapped child will be under the same auspices as school-age handicapped children. A presumed benefit to the parent to outweigh the loss of choice of school is that the parent will now gain the legal right of due process, to challenge district decisions with respect to the child's educational program before a state-trained impartial hearing officer.

However, since the school district chooses the hearing officer, some parents have questioned the objectivity of such appeals.

Although one objective of the new legislation is to cut costs, some fear that the costs might rise to be even higher than they are now. School districts often pool their resources and operate such programs as Board of Cooperation Education Services (BOCES). The tuition for some of these programs is reportedly currently higher than that of private schools. On the other hand, Henry V. Collelo, assistant superintendent of special education for Nassau County's cooperative services board, said that the new program "encourages parents to take advantage of the situation by getting their children a free private-school education." The new plan may threaten "the cooperative services board which has most of these students" (Kellerman, 1989).

WHAT DOES THE FUTURE HOLD?

In order to assess the impact of this new legislation, the directors of the fourteen direction centers were written letters asking for a list of the schools and addresses within their region providing this education and also their assessment of whether such education was adequately provided. It should be noted that the State Education Department, itself, has no comprehensive list of schools and locations (University of State of New York, May 1989), nor does it know whether coverage is adequate. In other words, it appears that the provision and everyday operation of this education is rather decentralized, despite its centralized state administration.

Only seven direction centers replied. Only one director of a direction center felt service was adequate, several did not answer that question, and three thought it was not. One pointed out that one must be careful in assessing coverage, as this is a very special and individualized education--that not all handicaps can be treated in the same way (Levine, 1989). In other words, although special schools may appear to be distributed in a rational way across a region, say, generally following the distribution of population, one cannot be sure that the handicapped population is being served well. Each handicapped child has special needs that can be met only with the "right" specialists (see, for example, Rubinstein, 1987, and Bloch, 1987). And if the school district administrators do not recognize these differences and cater to the children's specific needs, then the children will not be served and the goals of the federal law will not be achieved.

It should be kept in mind that federal Public Law 99-457 was passed to use federal funds to provide education for handicapped children, to meet the special needs of certain children which were beyond the scope of the normal responsibilities of local school districts and even state governments. This legislation and the resulting state legislation have the potential to make great changes in the spatial distribution of financing and monitoring as well as the actual provision of preschool handicapped education. The federal government will be distributing money both through the state and directly to local education agencies (local school districts). In New York State the actual responsibility for the provision of this education will pass from the state and county (through the Family Court system) to the localities, with monitoring by the parents and to some extent by the state and federal government. Thus there will be a spatial broadening of financial responsibility, but more parochial administration.

Individual county approaches to this new legislation appear to vary as well. For example, while school districts in Nassau and Suffolk counties, suburban areas of New York City, appear ready to take over the preschool handicapped education from the private

schools, New York City is not. Therefore, in New York City, little change is expected in the provision of this education.

With the new legislation, as some school districts start to establish handicapped programs for preschoolers, this kind of education as a whole should become more accessible to families of handicapped children. However, the handicapped children may not be served as well as they could be because their *specific* needs are not being met. By making the location of the handicapped programs more ubiquitous (within each school district), the uniqueness of the programs may disappear. Presumably one of the functions of the State Education Department and of the Direction Centers is to ensure that each child's special needs are still met, perhaps through careful integration of some of the already existing private programs.

An additional complication is that local school districts are providing this education to a select population. As communities see their local school and county budgets growing even more to pay for these programs, they may question the equity of providing preschool education *only* to this select population. Despite federal statements, supported by substantial independent research, that early intervention is valuable for handicapped children, parents of nonhandicapped children as well as community members in general may see this special education as prejudicial against the general population of preschool-age children. In turn, the federal government may be beseeched with demands to expand financing to this general population of youngsters on a basis of equity of the supply of federal services. It should be kept in mind that any such demands are far off in the future, as public awareness of the original handicapped bill, passed in 1976, appears low, as does awareness of the law to take effect in 1991.

This paper has discussed the way in which New York State is responding to the new federal legislation mandating, in return for funds, the provision of preschool education for handicapped children through local school districts. Although the state government had used regional agencies to administer the existing and largely publicly funded but privately operated system of schools, the new legislation appears to allow for a more equitable provision of this education. However, this might be a case where the very technique of making the education provision more equitable may be defeating its *raison d'être*--to provide individualized education. The financing, largely through the federal government, appears more economically efficient and rational. But whether actual costs will decline remains to be seen. It will be interesting to see whether the new state and federal legislation accomplishes all that it appears designed to do--provide a free, appropriate education to young handicapped children to minimize their handicaps and to enable them to become contributing and valuable members of society.

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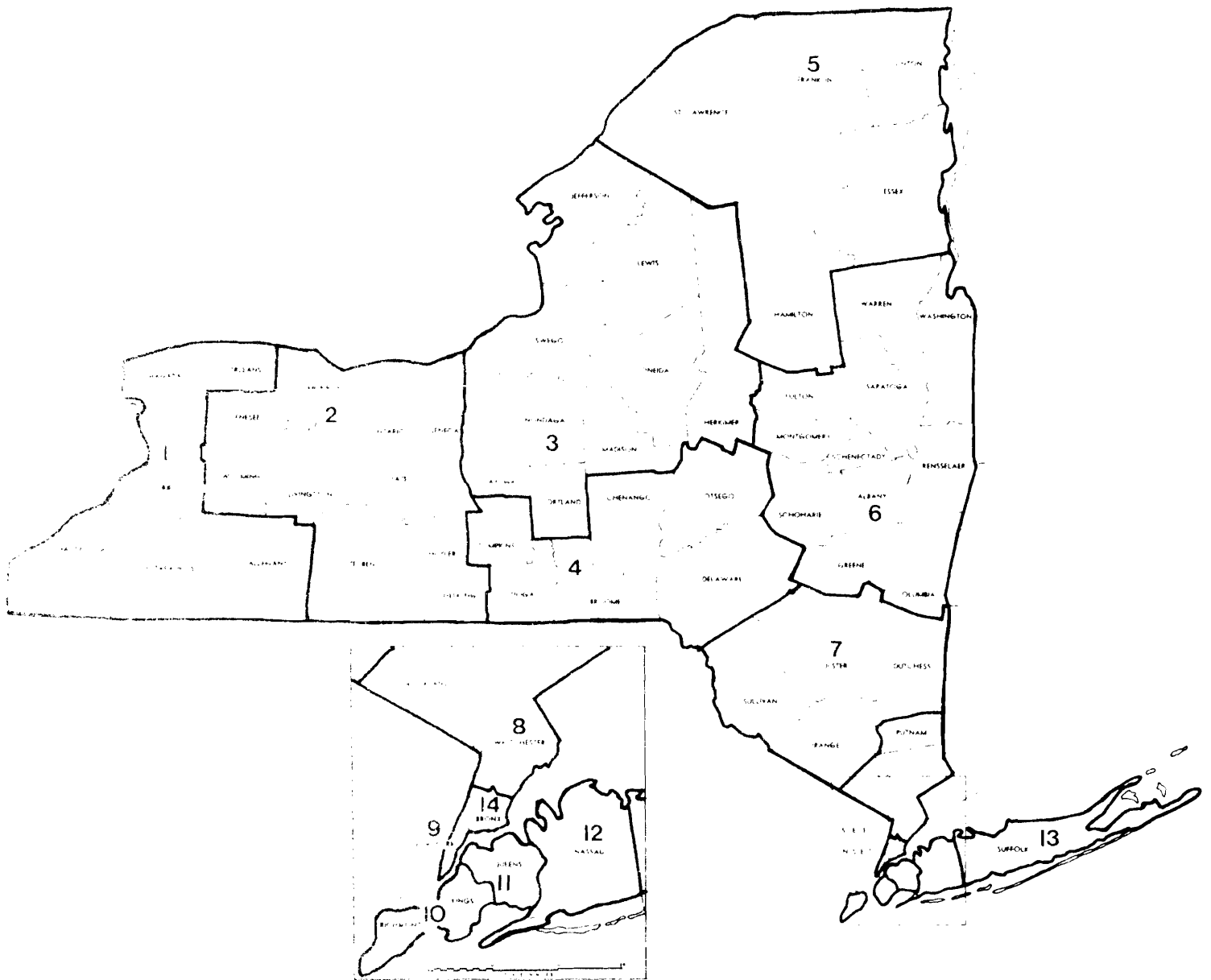
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New York State
Early Childhood Direction Center Network

14 Centers

Source: New York State Education Department, 1987.

State Costs for Family Court-ordered Handicapped Children's Programs

