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CHAPTER 33

Special Education for Handicapped Children

**SECTION 59‑33‑10.** Legislative findings; declaration of purpose.

The General Assembly finds that it is necessary and proper to provide an appropriate education for all handicapped children and youth enrolled in public schools or eligible for enrollment therein. It further finds that this purpose can best be accomplished through implementation of an intensive five‑year plan to expand and improve existing programs for exceptional children in the public schools. The purpose of this chapter is to provide for the mandatory establishment of educational and training services and facilities for handicapped children in the public schools, between the ages designated in Section 59‑63‑20, who cannot be trained adequately without special educational facilities and services.

HISTORY: 1962 Code Section 21‑295.10; 1972 (57) 2130.

**SECTION 59‑33‑20.** Definitions.

As used in this chapter:

(a) “Handicapped children” shall mean those who deviate from the normal either psychologically or physiologically to such an extent that special classes, special facilities, or special services are needed for their maximum development, including educable mentally handicapped, trainable mentally handicapped, emotionally handicapped, hearing handicapped, visually handicapped, orthopedically handicapped, speech handicapped, and those handicapped by learning disabilities as defined in item (1), Section 59‑21‑510.

(b) “Professional workers” shall mean personnel certified and approved by the Department of Education and shall include, but not be limited to, speech and hearing specialists, mobility instructors, special education interns, special education administrators, supervisors or coordinators devoting full time to special education, and teachers of any class or program defined in this chapter who meet the requirements of the chapter.

(c) “Special education services” shall mean, but not be limited to, special classes, special housing, homebound instruction, special rental facilities, braillists and typists for visually handicapped children, transportation, maintenance, instructional materials, therapy, professional consultant services, psychological services, itinerant services and resource services.

HISTORY: 1962 Code Section 21‑295.12; 1972 (57) 2130.

**SECTION 59‑33‑30.** Establishment by State Board of Education of program of specialized education for handicapped children; rules and regulations.

The State Board of Education shall establish a program of specialized education for all handicapped children in this State utilizing the personnel and facilities of, and administered by, the State Department of Education under the direction of the State Superintendent of Education and shall further prescribe standards and approve the procedures under which the facilities are furnished and services provided. The Board shall establish screening, evaluating and placement procedures for handicapped students who will participate in the programs established under this chapter and shall determine certification requirements for teachers, minimum room size standards and standards for other equipment and materials used in such programs. To carry out the provisions of this chapter the Board may promulgate such rules and regulations, not inconsistent with law as it shall deem necessary and proper.

HISTORY: 1962 Code Section 21‑295.11; 1972 (57) 2130.

**SECTION 59‑33‑40.** Surveys and educational plans of school districts; annual reports

Each school district individually or in combination with other school districts shall conduct a survey of the educational needs of all handicapped children within its jurisdiction and, with the assistance of the State Department of Education, devise an educational plan for the children concerned. This plan shall provide instruction through the use of resource rooms, crisis teachers, itinerant teachers, diagnostic/prescriptive teachers, self‑contained classes, or other models approved by the State Department of Education. The plan shall be presented to the Department for approval within one year after February 14, 1972. An annual report shall be made by each district to the Department to indicate the extent to which the plan has been implemented and to report additional planning.

HISTORY: 1962 Code Section 21‑295.13; 1972 (57) 2130.

**SECTION 59‑33‑50.** Establishment and operation of programs by school districts; contracts between districts; special arrangements for multiple‑handicapped children.

The board of trustees of each school district shall, upon approval of its district’s plan by the State Department of Education, establish and operate a program which will insure an appropriate education for each handicapped child resident within the district and shall maintain adequate records of the training and services provided and the children participating in the program. When a school district cannot satisfy the requirements of this section by providing for the education of its resident handicapped children because of insufficient numbers, the district may contract with other districts within the State or school systems or public or private institutions or agencies within or without the State which maintain approved special educational facilities; provided, that such institutions or agencies shall accept applicable children into the program regardless of color, race, sex, or religion. The sending district must document this lack of numbers and receive prior approval from the State Department of Education. The sending district may contract and pay the receiving district or institution the per capita cost of instruction, special equipment and special services not reimbursed to the receiving district by State, Federal and other moneys plus the cost of transportation and of maintenance if the nonresident children must reside away from their homes. The district which enters into such nonresident contract arrangements, which are approved by the State Department of Education, shall be reimbursed by the department for tuition, fees, transportation and books, not to exceed the per pupil cost of educating a handicapped child of identical age in the public schools. Special arrangements for multiple‑handicapped children for whom special appropriations are provided because of the severity of their handicaps may be made with the Department.

HISTORY: 1962 Code Section 21‑295.14; 1972 (57) 2130; 1973 (58) 1862.

**SECTION 59‑33‑60.** Cooperation with other agencies; acceptance of donations.

District and State educational agencies are required to cooperate with other agencies within the State, both public and private, interested in working toward the education, training and alleviation of the handicaps of handicapped children, and all such agencies are authorized to accept gifts or donations from such private agencies.

HISTORY: 1962 Code Section 21‑295.15; 1972 (57) 2130.

**SECTION 59‑33‑70.** Funding; chapter is supplementary.

The General Assembly shall appropriate funds to implement the provisions of this chapter with initial funding for planning and organizing to begin with the fiscal year 1972‑1973. Costs for all programs for handicapped children shall be shared with the school districts on the same basis that education costs are currently provided for such children attending the public schools. The provisions of this chapter are supplementary to all existing programs for the education of handicapped children.

HISTORY: 1962 Code Section 21‑295.16; 1972 (57) 2130.

**SECTION 59‑33‑80.** Legislative declaration of policy as to residential and nonresidential programs.

The General Assembly declares that the public policy of this State is to provide, when feasible, the resources, assistance, coordination, and support necessary to enable the handicapped person to receive an education within the context of his home and community. Where individuals have previously been placed in residential treatment centers it is recognized that the services and programs to be provided under this chapter will offer new resources for the care and training of such individuals at home. The governing agencies of such residential programs are encouraged to investigate the resources to be provided by this chapter and, where appropriate, work closely with the family, guardian, or other responsible agent to effect the meaningful return of institutionalized persons to the more normal environment of their homes and communities. At the same time, the General Assembly directs responsible agencies administering residential programs not to view this chapter as reason for the indiscriminate return home of current institutional residents.

In no instance shall the governing agency of such residential center return a person to his home without the advance, written consent of his parent, guardian, or other responsible party.

However, where the parent, guardian, or other responsible party shall oppose the recommendation of the agency administering the residential program to return the individual to his home, the agency, based upon professional judgment, may place the individual in other nonresidential programs such as foster homes, community residences, halfway residences, or other similar services designed to promote the growth and development of the handicapped individual.

HISTORY: 1962 Code Section 21‑295.17; 1972 (57) 2130.

**SECTION 59‑33‑90.** Subpoena power of hearing officers; placement of handicapped children in alternative programs.

Notwithstanding any other provision of law:

Duly appointed hearing officers of local school districts and other state operated programs shall have the power of subpoena consistent with the requirements and regulations of Public Law 94‑142.

Regarding handicapped children placed in alternative programs for non‑educational reasons:

(1) No agency of the State shall place handicapped children of lawful school age in residential, institutional or foster home settings without insuring that such children shall have available to them a free and appropriate public education in conformance with the provisions of Public Law 94‑142.

(2) In placing children determined to be handicapped by State Board of Education regulations, state agencies must procure, except in emergency situations, advance approval by the State Department of Education. The Department shall insure that an appropriate Individual Education Plan shall be developed by the pupil’s home school district and that the proposed educational placement meets all the provisions of Public Law 94‑142.

Regarding handicapped children placed in other programs for educational reasons, when local school districts must place handicapped children of lawful school age in programs external to the child’s home district for educational reasons, the district making the placement shall insure that such placement shall be at no cost to parent or child including room, board, education and related services and non‑medical care.

HISTORY: 1980 Act No. 482, Section 2B‑D.

**SECTION 59‑33‑100.** Special education for emotionally handicapped pupils.

In addition to those services currently provided to “emotionally handicapped pupils” as those pupils are defined in subsection (4) of Section 59‑21‑510, the State Department of Education shall contract with the Continuum of Care Policy Council to provide services approved by the State Board of Education to enable “emotionally handicapped pupils” to benefit from special education.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision A, SubPart 6, Section 1.

**SECTION 59‑33‑110.** Mediation as part of due process provision.

The State Board of Education shall establish a mediation process as a part of the “due process” provision required in accordance with Public Law 94‑142. If all parties agree, mediation will be used before any due process hearings required by Public Law 94‑142 or at any time during the due process procedures. During discussions of the mediation process with parents, it must be clearly stated that the right of the parents or the school district to due process is in no way compromised by agreeing to mediation and that neither parents nor the school district are bound by the outcomes of mediation. The mediation process must be developed by July 1, 1994, and implemented during the 1994‑95 school year.

HISTORY: 1993 Act No. 86, Section 2.