

Office of the General Counsel

B-282276

March 25, 1999

The Honorable James M. Jeffords
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable William F. Goodling
Chairman
The Honorable William L. Clay
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: Department of Education, Office of Special Education and Rehabilitative Services: Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Education (Department), Office of Special Education and Rehabilitative Services, entitled "Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities" (RIN: 1820-AB40). We received the rule on March 12, 1999. It was published in the Federal Register as a final rule on March 12, 1999. 64 Fed. Reg. 12406.

The final rule implements changes made to the Individuals with Disabilities Education Act (Part B) and the Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Act) by the 1997 amendments to the Act. It also revises the requirements on state complaint procedures under the Parts B and C programs.

Enclosed is our assessment of the Department's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the

rule. Our review indicates that the Department of Education complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Education, Office of Special Education and Rehabilitative Services, is Cindy Fagnoni, Director, Education, Workforce, and Income Security Issues. Ms. Fagnoni can be reached at (202) 512-7215.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Steven N. Schatken
Assistant General Counsel for Regulations
Department of Education

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF EDUCATION,
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
ENTITLED
"ASSISTANCE TO STATES FOR THE EDUCATION OF
CHILDREN WITH DISABILITIES AND THE EARLY INTERVENTION
PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES"
(RIN: 1820-AB40)

(i) Cost-benefit analysis

The Department has conducted a cost and benefit analysis of the final rule. The analysis examines the extent to which changes made by the 1997 amendments added to or reduced the costs for school districts and others in relation to the costs of implementing the law prior to the amendments. Utilizing this methodology, the Secretary of Education has concluded that the statutory changes included in the final rule will not, on net, impose significant costs in any one year and may result in savings to state and local educational agencies.

One of the benefits listed in the analysis is the amount of time saved by special education personnel for maintaining the records on how their time is allocated in regular classrooms among children with and without disabilities.

The analysis discusses, section by section, whether the burden and cost of complying with each provision is increased or decreased by the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Secretary has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not impose an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in a year under the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. § 553. On October 22, 1997, the Department published a Notice of Proposed Rulemaking in the Federal Register. 62 Fed. Reg. 55026. In response to the Notice, the Department received over 6,000 comments. An attachment to the final rule's preamble contains an analysis by the Department of Education of the comments received and a description of the changes made to the proposed rule based on the responses.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The collections include complaint procedures, lists of hearing officers and mediators, and an annual report of children served. The preamble to the final rule contains the information required by the Act, including the reasons for the collections and an estimate of the annual burden hours imposed.

The collections have been submitted to OMB for approval and assignment of a control number. Compliance with the collections is not required until such approval is obtained and when it has been obtained, the Department will publish a notice in the Federal Register.

Statutory authorization for the rule

The final rule was issued under the authority of 20 U.S.C. §§ 1411-1420.

Executive Order No. 12866

The final rule was determined to be an "economically significant" regulatory action under the order. It was reviewed by the Office of Management and Budget and approved as meeting the requirements of the order on February 18, 1999.