

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing direction to be followed in the administration of public assistance and care programs]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 82 ADM-36
 [Services]

TO: COMMISSIONERS OF SOCIAL SERVICES

SUBJECT: EDUCATIONAL SERVICES TO CHILDREN IN CHILD CARE INSTITUTIONS AND COMMUNITY BASED FOSTER CARE DATE: July 8, 1982

SUGGESTED DISTRIBUTION: CHILD WELFARE EXECUTIVES AND SUPERVISORY STAFF
 ACCOUNTING STAFF
 * CHILD CARE INSTITUTIONS
 * CHIEF SCHOOL OFFICERS (Special Act School Districts, On-Campus Schools, and Public Schools)
 * RESIDENTIAL TREATMENT FACILITIES
 * STATE COURT ADMINISTRATION
 * FAMILY COURT JUDGES
 * STATE DIVISION OF PROBATION
 * LOCAL DIRECTORS OF PROBATION
 * PROBATION REGIONAL OFFICES AND COUNTY PROBATION ADMINISTRATORS
 * STATE EDUCATION DEPARTMENT
 * OECHC REGIONAL OFFICES
 * STATE DIVISION FOR YOUTH
 * DFY REGIONAL OFFICES AND YOUTH SERVICES TEAMS
 * STATE OFFICE OF MENTAL HEALTH

I. STAFF CONTACT

Any questions concerning this release should be directed as follows: questions of a programmatic nature to Daniel Zeidman, (800) 342-3715, (extension 4-9572), Bureau of Resource Management, State Department of Social Services, or to the Bureau of State Operated and State Supported Schools, State Education Department, (518) 474-1960; questions on claiming to Anthony Funigello, Metropolitan Regional Office, (212) 488-4516 or Richard Radzynski, Upstate Office, (800) 342-3715, (extension 4-7567), Bureau of Local Financial Operations, State Department of Social Services.

II. OUTLINE

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- II. Outline

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FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
77-ADM-115 81-INF-15	77-ADM-70 77-ADM-86 78-ADM-27	18/NYCRR 427, 302 8/NYCRR-200	SSL, Sections 153, 398a SED Law, Articles 81 & 89	DSS Bulletin 200	Family Court Sec. 231-236 255
* Copies of this release are being sent to these agencies as part of the initial distribution of this Directive by the State Department of Social Services.					

DSS-296 (Rev. 5/78)

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III. PURPOSE

The purpose of this Administrative Directive is to advise social services officials of changes in Education and Social Services Law, effective July 1, 1981, brought about through passage of Chapter 563 of the Laws of 1980 (also known as the Institution Schools Act). The major part of Chapter 563 is contained in Article 81 of Education Law in which provisions are outlined for providing appropriate educational services to children placed in child care institutions by a public agency. Chapter 563 was amended by Chapter 947 of the Laws of 1981 to include residential treatment facilities for children and youth within the context of Article 81 placements.

Chapter 563 also amended other sections of law which have programmatic and fiscal implications for the education and maintenance of children placed by local school districts in approved residential schools pursuant to Article 89 of Education Law. Article 89 was enacted as part of Chapter 853 of the Laws of 1976, in which general provisions were outlined for the local school district to provide special education services to children with handicapping conditions, or contract with an approved school for these services whenever necessary. Article 89 defined those "special services or programs" which would constitute a "State Education Department (S.E.D.) approved" school or program.

This Directive outlines procedures which clarify the responsibilities of various agencies in providing appropriate educational services to children placed by a public agency in a child care institution in accordance with Article 81. This Directive also briefly describes the local school district placement of a child in a S.E.D. approved residential school pursuant to Article 89.

In addition, this Directive clarifies the rights of children residing in foster family, agency boarding and group homes, and the responsibilities of child care agencies and schools in regards to the provision of appropriate educational services to these children.

IV. Background

The essential provisions of Chapter 563 of the Laws of 1980 as amended assure that all children who are in care in a child care institution, as defined in Article 81 of Education Law, have the guarantee of free and appropriate education in the least restrictive environment. This new law also assures that children thought to be educationally handicapped, who are placed in a child care institution after June 30, 1981, in accordance with Article 81 of Education Law, are referred to the Committee on the Handicapped of the child's school district of residence for an evaluation and recommendation in regards to appropriate educational services. Such referral should occur prior to placement if possible, to be used in determining the most appropriate placement.

Under existing laws, a child can enter care in a child care institution or S.E.D. approved residential school through one of two primary methods. A child may be placed for educational reasons by a local school district pursuant to Article 89 of Education Law. Or, a child may require placement by a public agency (i.e., family court, DFY, or a social services district) under provisions of the Family Court Act or Social Services Law to provide needed services to the child and family. The provisions of Article 81 of Chapter 563 have clarified these two systems of placement to specify that while children entering care through either system may be

placed in the same facilities, financial and programmatic responsibility for each placement remains with the agency placing the child as specified in law. A description of both the educational and social services systems of placement is included in this Directive for clarity.

In addition, a new category of care, "Residential Treatment Facility for Children and Youth," has been established pursuant to Chapter 947 of the Laws of 1981. "Child Care Institution" has been redefined pursuant to Article 81 of Education Law to include residential treatment facility for children and youth. This new category of care provides that a child may be placed in such a facility based upon the approval of a pre-admission certification committee pursuant to Section 9.5 of the Mental Hygiene Law, whether or not the child is placed by a public agency. While no residential treatment facilities have yet opened, it is expected that some conversion of child care institution beds to residential treatment facility beds will take place in 1982.

NOTE: The provisions of Chapter 563 of the Laws of 1980 as amended affect all children placed by family court, DFY, or a social services district for year-round services in a child care institution or children admitted to a residential treatment facility for children and youth, as defined in Article 81 of Education Law. It also affects all school-age children placed by school districts in a ten-month residential program of special education approved by the Commissioner of Education pursuant to Article 89 of Education Law. The provisions of Chapter 563 do not affect the provision of educational services to handicapped children who are not eligible for such services pursuant to Article 81, 89 or other articles of Education Law, and who may be placed by the family court pursuant to Section 236 of the Family Court Act.

V. Program Implications

Beginning July 1, 1981, upon the request of the placing agency, local school district Committees on the Handicapped are required to evaluate children being considered for placement in a child care institution by the family court, the DFY or local social services district and to make a written evaluation and recommendation regarding the child's educational services. The Committee on the Handicapped must first determine whether the child is handicapped, and second, provide information as to what generally defined educational services are considered appropriate for the child. Local school districts are required to perform this function within 30 days from the date of the request of the placing agency regardless of whether the local school district can directly provide appropriate services for the child. Social services districts or other public agencies are directed to give careful consideration to the Committee's recommendation which gives the placing agency better information regarding the child's educational services providing a fuller picture of the most appropriate type of placement for the child. Local Committees on the Handicapped are also required to evaluate children being considered for placement in a residential treatment facility for children and youth upon the request of a pre-admission certification committee for children not previously placed in a child care institution by a public agency.

Regarding funding, beginning July 1, 1981, a specific mechanism is defined to provide partial reimbursement by the local school district to the local social services district for the educational services provided to educationally handicapped children placed by a public agency in a child care institution or admitted to a residential treatment facility for children and youth after June 30, 1981. Additionally, an amendment to Article 89 of Education Law assigns new payment responsibilities

for the cost of maintenance for children placed in a S.E.D. approved residential school by local school districts.

Regarding rate setting and reimbursement, beginning July 1, 1981, the State Education Department is responsible for setting rates for all educational programs operated by or in conjunction with child care agencies, while the State Department of Social Services is responsible for setting rates for maintenance for all child care institutions and S.E.D. approved residential schools. Regarding residential treatment facilities for children and youth, the Commissioner of Mental Hygiene will have responsibility for setting rates for maintenance of all children cared for in such facilities.

VI. Definitions

It is essential that agencies involved with planning for a child's educational and social services be familiar with the procedures outlined in this Directive. To assist in this endeavor, several definitions are provided which will be useful in understanding these procedures:

Educ.
Law
Sec.
4001 "Child Care Institution" is defined as any facility serving thirteen (13) or more children licensed by the Department of Social Services and operated by an authorized agency as defined in Section 371 of Social Services Law. This includes all facilities designated "group residence" as defined by 18/NYCRR 427.2 (f), or a "residential treatment facility for children and youth" as defined by Section 1.03 of the Mental Hygiene Law, whether or not such residential treatment facility is operated by an authorized agency. The definition of "child care institution" also includes Blythedale Children's Hospital. This definition does not include, however, any facility operated by a State agency or department, other than the Office of Mental Health. It shall not include group homes, or facilities operated by or contracted for by the Division for Youth.

Sec.
4001 "Child with a Handicapping Condition" is defined as a person between the ages of 5 and 21 who has been identified by a Committee on the Handicapped through appropriate evaluation and assessment as having a disability arising from cognitive, emotional or physical factors, or any combination thereof, which interferes with the child's ability to benefit from regular education.

Sec.
4001 "Public Agency" is defined as the family court, the Division for Youth or a local social services district.

"Maintenance" is essentially the child's living cost and includes such items as room and board, residential care and medical care. The legal definitions for maintenance can be found in Article 81 or Article 89 of Education Law.

"Tuition" is the per pupil cost of the child's education program and includes such items as instructional services, supplies, equipment, and the cost of maintaining buildings used for the education program. The legal definitions for tuition can be found in Article 81 or Article 89 of Education Law.

"Special Act School District" is one of the following school districts located on the grounds of a child care institution:

George Junior Republic	UFSD #27	Tompkins County
Berkshire Farm	UFSD # 8	Columbia County
Graham-Windham (Grnbrgh-Graham)	UFSD #10	Westchester County
Children's Village (Greenburgh 11)	UFSD #11	Westchester County
St. Christopher's	UFSD #12	Westchester County
Abbott House	UFSD #13	Westchester County
*St. Peter's	UFSD	Westchester County
JBFCS (Hawthorne Cedar Knolls)	UFSD # 3	Westchester County
JCCA (Mt. Pleasant Cottage)	UFSD # 4	Westchester County
*Wiltwyck	UFSD #11	Westchester County
Randolph Children's Home	CSD #11	Cattaraugus County
St Cabrini (West Park)	UFSD # 2	Ulster County
*Greer-Woodycrest (Hope Farm)	UFSD # 1	Dutchess County
Pius XII (Rhinecliff)	UFSD# 2	Dutchess County
Lakeside School	CSD #14	Rockland County
Hopevale	UFSD # 3	Erie County
Pius XII (Sugar Loaf)	UFSD # 2	Orange County
Little Flower	UFSD # 3	Suffolk County
Blythedale	UFSD # 6	Westchester County

*These school districts are currently not operating.

"On-Campus School" is one of the following private schools operated by a child care institution:

Andrus Children's Home	Yonkers, New York
Astor Home for Children	Rhinebeck, New York
Baker Hall	Lackawanna, New York
Charlton School	Burnt Hills, New York
Children's Home of Kingston	Kingston, New York
Children's Home of Schenectady	Schenectady, New York
Children's Home of Wyoming Conference	Binghamton, New York
Convalescent Hospital for Children	Rochester, New York
Gateway United Methodist Youth Center	Williamsville, New York
Green Chimney's Children's Services	Brewster, New York
Greer-Woodycrest (Five Points)	Pomona, New York
Gustavus Adolphus Children's Home	Jamestown, New York
Harmony Heights	Oyster Bay Cove, New York
Hillside Children's Center	Rochester, New York
House of the Good Shepherd	Utica, New York
LaSalle School	Albany, New York
Leake and Watts Children's Home, Inc.	Yonkers, New York
Lincoln Hall	Lincolndale, New York
Madonna Heights School for Girls	Huntington, L.I., New York
Mission of the Immaculate Virgin	Staten Island, New York
McQuade Foundation	Albany, New York

N.Y. Foundling (J. Coleman)	New York, New York
Our Lady of Victory	Lackawanna, New York
Parsons Child and Family Center	Albany, New York
St. Agatha's (Project School)	Nanuet, New York
St. Anne's Institute	Albany, New York
St. Catherine's Center for Children	Albany, New York
St. Colman's Home	Watervliet, New York
St. Dominic's School	Blauvelt, New York
St. Joseph's Villa of Rochester	Rochester, New York
Summit Children's Residence Center	Upper Nyack, New York
Vanderheyden Hall, Inc.	Wynantskil, New York
Wyndham Lawn Home for Children	Lockport, New York

*Information on the above list of schools is subject to change.

"School District of Origin" is defined for the purposes of this Directive as the public school district in which the child was or is resident at the time of the child's placement in the care and custody of a public agency.

"School District of Residence" is defined for the purposes of this Directive as the public school district in which the child was or is resident with his parents or legal guardians or foster parents at the time of the child's placement into a child care institution.

VII. Required Action

A. Methods of Assuring an Appropriate Educational Plan and Program in a Child Care Institution.

Under current and future practice, there are two major sources of access to educational services for children requiring institutional care: through public agencies in accordance with Article 81 of Education Law and through local school districts pursuant to Article 89 of Education Law. The following describes the method of accessing educational services in both these cases. Reference is also made to the new category of care "Residential Treatment Facilities for Children and Youth" which provides an identical method of accessing educational services in accordance with Article 81 of Education Law.

1. Children Placed in a Child Care Institution After June 30, 1981 in Accordance with Article 81 of the Education Law.

a. Referral - Evaluation - Recommendation

Educ.
Law Sec.
4005 (1)
a,b,c,

When the family court, the DFY or a social services district is considering placement of a child thought to be handicapped in a child care institution, the family court judge or probation department, the DFY, or the social services district, shall request the Committee on the Handicapped (COH) of the child's school district of residence, to evaluate the problems presented by the child, determine whether the child has a handicapping condition and provide information regarding appropriate educational services. (A sample form for use by social services districts in making referral requests is attached - Appendix #1 on page 34 of this Directive. A copy of such referral should be filed in the case record for each child who is referred to a COH for evaluation pursuant to Article 81 of Education Law). Also, pursuant to Article 81, the pre-admission certification committees are required to refer children, who are being considered for placement in a residential treatment facility for children and youth, who are thought to be handicapped and were not previously placed in a child care institution by a public agency.

The appropriate school district to conduct such an evaluation is always the school district in which either the child actually resides with his/her parents or legal guardians or foster parents or is considered to reside at the time of referral ("school district of residence"). For example, if the child being referred is a resident in a foster family, agency boarding or group home in a district other than the school district where the child was a resident at the time of initial placement with a public agency, then such request should be made to the school district where the child resides with the foster family, agency boarding or group home. If the child being considered for initial placement in a residential treatment facility is a patient in a hospital operated or licensed by the Office of Mental Health, then such request should be made to the school district where the child resided at the time he/she entered the hospital.

The role of the COH for referrals made pursuant to Article 81 is to determine whether the child has a handicapping condition, and to provide a written evaluation and recommendation concerning the appropriate educational services. While the scope of these activities should be similar to those undertaken for children referred to Committees on the Handicapped by school district staff or other designated officials pursuant to Article 89, the scope is narrowed to exclude placement responsibilities. Placement remains the responsibility of the public agency responsible for the child.

Educ.
Law Sec.
4005

Any information obtained from a Committee on the Handicapped based on referral and evaluation shall be considered confidential in accordance with the Regulations of the Commissioner of Education and shall be forwarded by the placing agency to the child care institution or other facility in which the child is placed. Also, a copy of the written evaluation and recommendation of the Committee on the Handicapped of the child's school district of residence shall be forwarded to the parents or legal guardian of the child.

Inasmuch as children who are thought to require placement in a child care institution generally manifest educational problems, it is recommended that the agency responsible for placing the child request an evaluation and recommendation from the Committee on the Handicapped for most children being considered for placement in a child care institution.

(NOTE: In some instances the Division for Youth or a social services district may receive custody of a court-placed child where an educational evaluation has not been performed. In these cases, the public agency with custody shall request a COH evaluation, if warranted. A social services district may also request a COH evaluation for children whose admission to Blythedale Children's Hospital or a residential treatment facility is unknown to the social services district until the district is billed for services. If warranted, the social services district should immediately request a COH evaluation as outlined above at the point it becomes aware of its responsibility for such children.)

The COH of the child's school district of residence must obtain consent from the child's parent prior to conducting the evaluation. If such consent is not received within 5 days of request, the school district must initiate an impartial hearing in order to gain permission for the evaluation.

Educ.Law
Sec.
4005
(1a,b,c)

Unless an impartial hearing has been initiated, the written evaluation and recommendation of the Committee on the Handicapped of the child's school district of residence, must be forwarded within 30 days of such referral to the agency requesting the information, and will be used to determine the most appropriate placement.

4005
(1a)

- (i) Where an evaluation and recommendation requested by the family court judge or probation department has not been forwarded to the requesting agency within 30 days, the judge of the family court shall issue an order requiring the school district to provide the information pursuant to Section 255 of the Family Court Act.

- (ii) Where the written evaluation and recommendation requested by the Division for Youth or a social services district or a pre-admission certification committee has not been forwarded to the placing agency within 30 days, the Division for Youth or social services district may appeal to the Commissioner of Education pursuant to Section 310 of the Education Law by sending a written notice of appeal to: Office of Counsel, Room 116-EB, N.Y.S. Education Department, Albany, New York 12234.

Educ. Law
Sec.
4005(2C)

- (iii) Where the social services district, the Division for Youth, or a child care institution (in those instances where a child is already in care in an institution), disagrees with the written evaluation and recommendation that the child is not handicapped, an appeal may be made to the local Board of Education of the child's school district of residence and subsequently to the Commissioner of Education, if necessary. This is important to assure appropriate educational services are provided. Additionally, since the school district of origin is required to make a financial contribution only for children determined handicapped as defined in this Directive, there is also a fiscal advantage (See VII B.2 p.22 of this Directive). Appeals to the Commissioner of Education may be made as specified above in Subparagraph (ii).

NOTE: For children who must be placed in a child care institution on an emergency basis to protect the health or welfare of the child or his family, or for children who require a educational plan and program on an interim basis where the written evaluation and recommendation has not been forwarded within the specified time frames, see Section VII.A.(1c) on page 13 and VII.A. 1.d. (ii) on page 16 respectively for instructions.

b. Placement - Appeals

Social services districts or other placing agencies should consider the following evaluative steps when placing children who are thought to be handicapped in child care institutions, to assure that the placement and planning decisions regarding the educational and social services provided are considered appropriate and justifiable based on the needs of the individual child.

Educ. Law
Section
4005(1)

- (i) Because of the broad and all-inclusive definition of a child with a handicapping condition, it is recommended that all children being considered for placement in a child care institution after June 30, 1981, who are thought to be educationally handicapped, be referred to a Committee on the Handicapped (COH) of their school district of residence for an evaluation and recommendation in order to assure the most appropriate placement.

- (ii) The written evaluation and recommendation by the COH of the child's school district of residence should be carefully considered as a guide in providing appropriate services to the child. This review is especially important when the COH of the child's school district of residence determines the child not to be educationally handicapped. In that situation, the less restrictive setting of a foster family, agency boarding, or group home may be more appropriate than a child care institution.
- (iii) Because final placement of a child rests with the social services district or other public agency, the decision to place the child in an institution is not solely determined by whether the child is educationally handicapped and may be appropriate for other reasons. When a non-handicapped child is placed in an institutional program which provides an education program on the grounds of the institution, the educational plan and program for such child should be examined by the social services district or the DFY to assure the most appropriate and least restrictive educational program. The full spectrum of educational services should be considered for the child, ranging from the public schools to the school program on the grounds of the institution. The examination process should include a review of the educational evaluation and placement decision made by the COH of the institution school as well as the annual report also completed by the COH of the institution school concerning the child's educational progress. (See VII.A.1d(i) on p. 14 of this Directive)

- Sec. 4005(2b)
- (iv) When a social services district, the DFY, the parents or guardians of the child, or the child, after a review of the educational evaluation, educational placement decision, or annual report of the COH of the institution school, disagrees with the results of any such procedures, an appeal may be made to the authorized decision-making body of the institution school (Board of Trustees of a child care institution that operates a private school, Board of Education of a Special Act School District, or the operator of a RTF for children and youth that operates a private school) that an impartial hearing be convened pursuant to Section 4404 of Education Law. (Part 200 of the Regulations of the Commissioner of Education contains specified timelines for making such requests and procedures for conducting the hearing.)

NOTE: During any appeals process, unless the Commissioner of Education or the local school district and the parents or guardian of the child or public agency responsible for the child agree otherwise, the child shall remain in his/her current placement, and in the event the child is initially applying to a public school program, he/she is to be admitted to the public school until the proceeding is completed pursuant to Section 4404 of Education Law.

Sec. 4005 (4)

Also, during any appeals process, the child care institution or special act school district (in those instances where a child is already in an institution) will continue to be paid by the social services district which is financially responsible for the approved costs of educational services provided to the child and any transportation costs incurred while bringing a child to or from the interview as required by the local board of education's Committee on the Handicapped. This also includes any costs incurred for an independent evaluation if determined necessary by such Committee. These additional costs for transportation or an independent evaluation should be charged to the social services district responsible for the placement of the child. Reimbursement for these costs will be available through the State Department of Social Services. (See VII B.2 on p. 22 of this Directive).

c. Placement in a Child Care Institution on an Emergency Basis

Educ. Law
Section
4005 (l)
4005 (lf)

When a child must be placed in a child care institution on an emergency basis to protect the health and welfare of the child or his family (which means a placement which must be made within 30 days of the presentation of the child to the family court or a local social services district) where the written evaluation and recommendation of the child's school district of residence has yet to be received by the placing agency, pursuant to Subdivision (a) of this Section, the written evaluation and recommendation required of the child's school district of residence must be completed no later than 30 days after such placement is made. However, all other procedures remain the same.

d. Duties of Child Care Institutions with Institution Schools: On-Campus Private Schools or Special Act School Districts

Education
Law
Section
4002(3)

Each Board of Education/Board of Trustees in each child care institution which maintains a school, and in each special act school district operated in conjunction with a child care institution, is required to appoint a Committee on the Handicapped (COH), the organization and procedure of which is prescribed by Section 4402 of Education Law and the Regulations of the Commissioner of Education, Subchapter P, Part 200. (Note: Institution schools not having available personnel may share the services of a local committee on the handicapped with another school district or contract with BOCES for such personnel pursuant to Section 4402 of Education Law. Additionally, a residential treatment facility which operates an approved educational program may create its own COH, or share the services of the COH of another institution school.)

(i) Educational Plan and Placement

Sec. 4005 (2)

a) Within 45 days from the time a child is placed in a child care institution, in accordance with Article 81 of Education Law, which has on its grounds an on-campus private school or special act school district, the Committee on the Handicapped (COH) of the institution school shall consider and review the written evaluation and recommendation of the COH of the child's school district of residence and prepare an Individual Education Plan for each educationally handicapped child who is placed in the child care institution.

NOTE: The Individual Education Plan prepared by the COH of the institution school should parallel the Phase I-IEP which is prepared by a local school district pursuant to Article 89 of Education Law. (See VIIA.2.c on p. 19 of this Directive).

b) The COH of the institution school shall recommend the most appropriate and least restrictive educational program. Following the placement, the Committee is responsible for reviewing at least annually, and for preparing a written report concerning the status of each child with a handicapping condition. The report shall include a determination of whether the child's educational program should be continued, modified, or terminated.

NOTE: The COH of the on-campus private school or special act school district, has the educational planning responsibility for all children placed in accordance with Article 81 of Education Law, but is not responsible for any child placed directly by a local school district in which case the COH of such local school district would have continuing responsibility for the child. The institution school COH can, however, provide reliable assistance to its public school counterpart through monitoring of the pupil's progress and making recommendations for program usage.

c) The COH of the institution school must forward a copy of the Individual Education Plan and the annual report to the social services district or the DFY, where these agencies are responsible for the placement of such handicapped child. In turn, the social services district, or the Division for Youth or the operator of a residential treatment facility for children and youth shall send to both the parent or guardian of the child and to the COH of the school district in which the child resided at the time the child was placed with a public agency, or admitted to the residential treatment facility, a copy of the Individualized Education Plan and the annual report.

Educ. Law
Section
4002

d) The COH of the institution school has the responsibility to guarantee that each child between the ages of five and twenty-one who resides in a child care institution and who has not yet graduated from high school receives a free and appropriate education in the least restrictive environment which may be provided by one of the day programs listed below. The needs of the child should determine the program that is offered. Such programs are as follows:

- o The program of the public schools, where such child care institution is located or a neighboring public school program.
- o The program of the board of cooperative educational services (BOCES) are authorized to provide educational services on the same basis as such services are provided to children residing in component districts of such boards.
- o A special act school district or a private school approved by the State Education Department to serve children with handicapping conditions. (Children who receive care in a residential treatment facility for children and youth which is operated by an authorized agency pursuant to Section 371 of social services law may be placed in an approved private school operated by the authorized agency).

(NOTE: Where the COH of an institution school is considering the educational placement of a child who is placed with the child care institution by a public agency, the COH must consider the least restrictive educational alternative. Those children for whom a public school other than a special act school district is the most appropriate placement must attend the public school.)

- o Appointment by the Commissioner of Education to State-supported school in accordance with Article 85, 87, or 88 of Education Law.
- o Contracts with State University at Binghamton for non-residential special services or programs at the children's unit for treatment and evaluation which have been approved by the Commissioner of the State Education Department.

In all cases, related services shall in appropriate cases be provided or assured to children with handicapping conditions and shall include audiology, counseling, occupational therapy, parent counseling and training, school health services, school social work, physical therapy, speech pathology, medical services, psychological services, other appropriate developmental corrective support services, and appropriate access to recreation, as such terms are defined by regulations of the Commissioner of Education and approved by the Director of the Budget.

(ii) Educational Plan and Placement on an Interim Basis

When a child is referred to a Committee on the Handicapped for an evaluation and recommendation pursuant to Article 81 of Education Law, the written evaluation and recommendation of the COH of the child's school district of residence must be sent to the placing agency within 30 days of the referral. Where the written evaluation and recommendation has not been received within 30 days of the referral to a COH (or within 30 days after the placement of a child for emergency reasons pursuant to Subdivision (c) of this Section) and where the child must be placed in a child care institution, the COH of the institution school should develop an interim program for the child. The development of this interim program will be subject to the same appeal procedures as would apply to the "final" program pursuant to Article 81 of Education Law (see VII A, 1.b (iv) of this Directive on page 12.)

NOTE: The interim program developed by the COH of the institution school should parallel the Phase I-IEP which is prepared by a local school district pursuant to Article 89 of Education Law (See VII.A. 2c on p. 19 of this Directive). The institution school COH should notify the child's school district of residence that the interim Individual Education Plan is being prepared by the institution school COH a copy of which is to be forwarded when completed. This information may be used by the school district of residence COH in developing the written evaluation and recommendation required pursuant to Article 81 of Education Law.

This interim program will not create a liability of the child's school district of origin for its basic contribution toward tuition. Such liability is incurred only where the Committee on the Handicapped of the child's school district of residence transmits its written evaluation and recommendation stating that the child has a handicapping condition and the child's school district of origin accepts financial responsibility. (The school district of residence which is responsible for providing the written evaluation and recommendation and the school district of origin which is financially responsible for the child may or may not be the same school district.) Where the child is determined to be handicapped, thereby meeting the conditions for a partial tuition credit, payment of the basic contribution will be retroactive to the date of placement of the child in a child care institution pursuant to Article 81. (See VII A.2(a) on page 22 of this Directive for instructions on obtaining the basic contribution).

(iii) Confidentiality of Educationally Related Materials

Detailed procedures which define educational records, access to educational material and records disposition are contained in the Regulations of the Commissioner of Education.

2. Children Placed in a S.E.D. Approved Residential School for Children with Handicapping Conditions by a Local School District Pursuant to Article 89 of the Education Law (Chapter 853 of the Laws of 1976).

Each public school district must appoint a Committee on the Handicapped (COH). The COH organization and function is prescribed by Article 89 of the Education Law and the Regulations of the Commissioner of Education, Subchapter P, Part 200. (NOTE: School districts not having available personnel may share the services of a local Committee on the Handicapped with another school district or contract with a BOCES for such personnel pursuant to Section 4402 of Education Law.)

The overall purpose of such committee is to evaluate and make recommendations to the Board of Education regarding the most appropriate and least restrictive educational program for any children identified by a Committee on the Handicapped as requiring special services or programs because of a handicapping condition. Some children identified by such committee may require the educational services provided in a S.E.D. approved residential school.

The special education placement process may begin with a written referral to the chairperson of the school district's COH or to the building administrator of the school which the pupil attends or is eligible to attend. When a referral is made to the Committee on the Handicapped of the child's school district of residence, the committee must review the case, obtain all necessary reports and examinations, and recommend an appropriate educational program to the board of education. The board of education must then make a determination as to the appropriate placement or program within 30 days after receipt of the COH recommendation.

The definitions used by the State Education Department, the responsibilities of the board of education and committee on the handicapped, and the procedures which apply are contained in the Part 200 Regulations of the Commissioner of Education. Portions of these regulations have been outlined below for your convenience. Please refer to the regulations noted above for the exact text.

a. Referral

A referral stating the basis for the belief that the pupil may have a handicapping condition, may be made by:

- (i) a pupil's parent or person in parental relationship;
- (ii) a professional staff member of the school district in which the pupil resides or the public or private school the pupil legally attends;

- (iii) a licensed physician;
- (iv) a judge;
- (v) the Commissioner or designee of a public agency with responsibility for welfare, health or education of children;
- (vi) for the purpose of referring one's self, a pupil who is 18 years of age or older, or an emancipated minor who is eligible to attend the public schools of the district.

b. Evaluation

An individual evaluation performed by a Committee on the Handicapped should involve at least a physical examination, in accordance with the provisions of Section 904 of the Education Law, an individual psychological examination, a social history and other suitable examinations and evaluation as may be necessary to ascertain the physical, mental and emotional factors which contribute to the suspected handicapping conditions.

School districts shall ensure that:

- (i) tests and other assessment procedures:
 - are provided and administered in the child's dominant language or other mode of communication, unless it is clearly not feasible to do so;
 - have been validated for the specific purpose for which they are used;
 - are administered by trained personnel in accordance with the instructions provided by the test developer.
- (ii) Tests and other assessment procedures include those tailored to assess specific areas of educational need and not merely those which are designated to provide a general intelligence quotient.
- (iii) Tests are selected and administered to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, except where those skills are factors which the test purports to measure.
- (iv) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

- (v) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.
- (vi) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- (vii) The evaluation should include observation of the pupil in the current educational setting.

c. Recommendation - Individualized Education Program (IEP) Phase I

Within 30 school days from the date of the referral, the Committee on the Handicapped shall provide a recommendation to the Board of Education:

- (i) If the pupil has been determined to be ineligible for special education services, the recommendation shall indicate the reasons the pupil was found ineligible. A copy of appropriate evaluation information is provided to the building administrator and maintained as a part of the educational record.
- (ii) If the pupil has been determined to be eligible for special education services, the recommendation shall:
 - a) indicate classification of the handicapping condition;
 - b) recommend program and placement including the extent to which the pupil will be able to participate in the regular education programs including occupational education when appropriate. When a residential placement is recommended, it must be demonstrated that no appropriate non-residential placement is available;
 - c) report the present levels of educational performance and indicate the individual needs of the pupil according to academic or educational achievement and learning rates, social development, physical development, and management needs in the classroom;
 - d) indicate the class size in which the pupil should be placed pursuant to subdivision (e)(5) and (f)(4) of Section 200-2.6;
 - e) indicate the projected date for initiation of special educational services, the amount of time per day the pupil will receive such services and the projected date of review of the need for such services;
 - f) describe any specialized equipment and adaptive device needed for the pupil to benefit from education;
 - g) list annual goals that are consistent with the pupil's needs and abilities;

- h) list those testing modifications to be used consistently in the recommended educational program.

NOTE: As an adjunct to the authority of the local Committee on the Handicapped to invite the appropriate professionals most familiar with a child's handicap(s) or those most familiar with the available resources for residential treatment, the local Committee on the Handicapped pursuant to Article 89 of Education Law may request a designee of the county to participate in any proceeding of the Committee where residential care is contemplated. The designee(s) will not be considered a member but may participate for the purpose of making recommendations concerning the appropriateness of placement and other available service alternatives. The designee may be a representative of the social services district, mental health board, health department or other county agency, and the names of such designees should be made available to each Committee on the Handicapped in the county.

B. Financial Responsibility and Reimbursement

1. Tuition for Children Placed in a S.E.D. Approved School for Children with Handicapping Conditions by Local School Districts Pursuant to Article 89 of the Education Law (Chapter 853 of the Laws of 1976)

Educ. Law Section 4004(1) Tuition for a handicapped child placed by a local school district for the regular 10-month school year in an approved private school will be paid through a contract between the local school district and the private school pursuant to Section 4402 of Education Law, or between the State Education Department and the private school pursuant to Section 4407 of Education Law.

The tuition charges will be at the rate established by the State Education Department. The amount of state-aid reimbursement to the local school district is determined according to the formula contained in Section 4405 of Education Law.

TRANSPORTATION: The Board of Education of each school district must provide suitable transportation to and from special classes or programs. Part 200 of the Rules and Regulations of the Commissioner of Education specifies the requirements and limits of providing such transportation and receiving reimbursement pursuant to Article 89 of Education Law.

2. Tuition for Children Placed in Child Care Institutions by Public Agencies in Accordance with Article 81 of the Education Law (Chapter 563 of the Laws of 1980)

Educ. Law Section 4004(2) As of July 1, 1981, tuition, for all children placed by a public agency in a child care institution, shall be paid by the social services district financially responsible for the child. Also, tuition for a year round program for all children receiving care in a residential treatment facility for children and youth, shall be paid by the social services district financially responsible for the child. (NOTE: In the case of a child presently residing in a foster family, agency boarding or group home who is being placed in a child care institution by a public agency, the financially responsible social services district will be the district where the child resided when he/she initially entered foster care).

Educ. Law The tuition charges for children placed by a public agency or admitted
Section to Blythedale Children's Hospital or a residential treatment facility will be
4003 at the rate established by the State Education Department for each approved
4405 educational program. The State Department of Social Services will provide
 reimbursement based upon the established tuition rate.

For rates set for the 1982/83 and subsequent school years, the method of determining absences for payment and reimbursement of such tuition charges will be in accordance with the regulations of the State Education Department 8 NYCRR 200-2.9(e)(8). The reason is that since this rate is now established by the State Education Department, it is necessary that payment and reimbursement for tuition be made on the same basis that the tuition rate is calculated.

The method of determining whether payment of tuition for children placed by a public agency will be made to the child care agency or directly to the educational provider (e.g. a local public school or BOCES), will be determined on an individual basis between the social services district and the child care institution.

Reimbursement of tuition costs for children placed by a public agency in a child care institution or a residential treatment facility, will be obtained through the current claiming procedures. That is, tuition costs are considered part of the assistance and care expenditure and shall be paid and claimed under the program for which the child is eligible. (Examples: ADC-FC costs are claimed on Schedule A; ADC/FC/DFY costs are claimed on Scheduled A3 and CW costs are claimed on Schedule C. Pursuant to 77 ADM-99, costs for DFY placed non-ADC/FC eligible children shall be paid from the JD appropriation and claimed on DFY-10.

In the case of a child admitted into Blythedale Children's Hospital, or a child admitted to a residential treatment facility for children and youth, who is not placed by a public agency or local school district, the tuition shall be paid by the social services district where the child resided prior to his/her admittance into the facility. For local social services district budgetary purposes the costs for these children should be tracked separately from your normal foster care expenditures. Tuition costs for such children will not be included in the foster care allocation.

Section Reimbursement of tuition costs for children admitted into Blythedale
153 (11) Children's Hospital or a residential treatment facility for children and youth,
(12) who are not placed by a public agency or local school district, will be claimed
 on Schedule C. The costs for such children in Blythedale will be reimbursed
 50%. The costs for such children in a residential treatment facility will be
 reimbursed 100%.

In addition, the school district in which the child resided at the time the social services district or Division for Youth assumed responsibility for the child who is placed in a child care institution, or the child was admitted to Blythedale Children's Hospital, or the child was admitted to a residential treatment facility pursuant to Section 9.51 of Mental Hygiene Law, shall reimburse the State in the amount of its basic contribution for each child determined to be handicapped pursuant to Article 81 of Education Law. This amount will be credited to the social services district financially responsible

for the child in a manner to be specified by the State Department of Social Services; however, the school district will only contribute for children placed after June 30, 1981. School districts bear no other financial liability for children placed in child care institutions by public agencies.

TRANSPORTATION: For a child placed in a child care institution in accordance with Article 81, suitable transportation to and from special classes or programs will be paid by the social services district responsible for the child. The amount to be charged for such transportation will be included in either the tuition rate established by the State Education Department or the maintenance rate established by the State Department of Social Services, as appropriate.

The additional costs for transportation or an independent evaluation while having a child evaluated in accordance with Article 81 will be paid by the social services district responsible for the child. (See VIIA.1b (iv) on p. 13 of this Directive) Reimbursement for these costs may be claimed as a normal administrative eligibility action (function f-2) on form DSS-923 (non-salaried administrative expenses). These costs will be reimbursed 50%.

a. Notification Procedures for Determining the Financially Responsible School District for Foster Children Determined Educationally Handicapped

Educ. Law
Section
4006

Within 30 days of the placement of a child in a child care institution, a social services official, the DFY Director or the operator of a residential treatment facility which is not operated by an authorized agency, must notify the child's school district of origin and the State Department of Social Services. Such notification procedure establishes which public school district is financially responsible for the child's education and will enable the social services district to be credited the equivalent of the local public school basic contribution to offset the cost of tuition for each foster child determined educationally handicapped. Where the written evaluation and recommendation of the Committee on the Handicapped has not been received by the placing agency within the 30 day period, (or within 30 days after the placement of a child for emergency reasons pursuant to Article 81 of Education Law) the notification of financial responsibility should be made by the placing agency immediately following receipt of such evaluation and recommendation. Notification shall be on form DSS-3424 as described below.

(NOTE: A social services district may have no prior knowledge of certain court-placed children or children admitted to Blythedale Children's Hospital, until the social services district is notified by the service providers of its responsibility to pay tuition costs for certain of these children. When a social services district is notified of its responsibility for such children, it should immediately request the Committee on the Handicapped of the child's school district of residence to make a written evaluation and recommendation as to whether the child is educationally handicapped pursuant to Section 4005 of Education Law. (see VII.A1.a. on page 9 of this Directive). Notification procedures should then follow as appropriate for each child determined educationally handicapped.)

(i) Instructions for Completing DSS-3424 School District Notification of Financial Responsibility for Educationally Handicapped Foster Child Placed in a Child Care Institution

The Division for Youth or a social services district or the operator of a residential treatment facility for children and youth which is not operated by an authorized agency, should send the following information to the child's school district of origin and concurrently to Mr. Peter Mattimore, Principal Accountant, Bureau of Finance Administrative Services, State Department of Social Services, 40 North Pearl Street, Albany, New York 12243:

- (1) Name and Location of School District Child Resided in When Child Entered Foster Care (District of Origin)
- (2) Name and Address of County Department of Social Services Responsible for Child
- (3) Child's Full Name
- (4) Name and Address of Parent(s) or Legal Guardian(s)
- (5) Name and Address of School District Child Attending
- (6) Name of Child Care Institution Where Child is Placed and Date Child was Placed There
- (7) Date of Birth or Apparent Age - the date of birth of such child, if ascertainable, or his/her apparent age.
- (8) Date Child Entered Foster Care - the date when such child was placed in the care and custody of a public agency.
- (9) Address of Child When Child Entered Foster Care
- (10) Name and Address of Committee on the Handicapped which Evaluated Child and Date Child was Determined Handicapped
- (11) Name and Address of Public Official Charged with Care of Child - the name and location of the social services Commissioner or Division for Youth official caring for such child.
- (12) Signature of Completing Official

Inasmuch as the social services district is also financially responsible for the payment of tuition for all children placed by DFY in a child care institution, and for children admitted to a residential treatment facility for children and youth, it is important that a copy of the form DSS-3424 be sent to the social services district by DFY or the pre-admission committees for the residential treatment facilities.

**SCHOOL DISTRICT NOTIFICATION OF FINANCIAL RESPONSIBILITY FOR
EDUCATIONALLY HANDICAPPED FOSTER CHILD PLACED IN A CHILD CARE INSTITUTION**

TO: <i>(School District of Origin)</i>	DATE OF BIRTH OR APPARENT AGE	DATE CHILD ENTERED FOSTER CARE
	ADDRESS OF CHILD WHEN CHILD ENTERED FOSTER CARE	
FROM: <i>(County Department of Social Services)</i>	NAME OF COMMITTEE ON THE HANDICAPPED WHICH EVALUATED CHILD	
Pursuant to the provisions of Section 4006 of the Education Law, I am notifying you of your financial responsibility for the placement of the below named child in a child care institution. For additional information regarding this notification, please contact:		
CONTACT PERSON	TELEPHONE NO.	
CHILD'S FULL NAME	ADDRESS OF THE ABOVE NAMED COMMITTEE	
NAME AND ADDRESS OF PARENT(S) OR LEGAL GUARDIAN	DATE CHILD WAS DETERMINED HANDICAPPED	
NAME AND ADDRESS OF SCHOOL DISTRICT CHILD IS ATTENDING	NAME OF PUBLIC OFFICIAL CHARGED WITH CARE OF CHILD	
NAME OF CHILD CARE INSTITUTION WHERE CHILD IS PLACED	ADDRESS OF PUBLIC OFFICIAL NAMED ABOVE	
DATE CHILD WAS PLACED IN ABOVE NAMED INSTITUTION (The date of placement is the effective date of financial responsibility for the school district of origin)	SIGNATURE OF COMPLETING OFFICIAL	

Complete this form within 30 days of placement of an educationally handicapped foster child into a child care institution. Wherever the written recommendations of the committee on the handicapped have not been received within 30 days of the placement of such child, this form should be completed immediately upon receipt of such recommendations.

WHITE - To social services district

BLUE - To school district child resided in when child entered foster care

PINK - To State Department of Social Services

YELLOW - To State Division for Youth or Residential Treatment Facility for Children and Youth (for use when completed by DFY or RTF operator.)

(ii) Appeals of Notification of Financially Responsible School District for Foster Child Determined Educationally Handicapped

Whenever a school district contends that it is not the child's school district of origin as the result of receiving notification as outlined above in Subparagraph (i), it may refuse to accept financial responsibility by sending a notice of denial within 20 days of the receipt of DSS-3424 - School District Notification of Financial Responsibility for Educationally Handicapped Foster Child Placed in a Child Care Institution, to the placing agency and the Commissioner of Education.

4006 (2)

(NOTE: The child's school district of origin is the school district in which the child resided at the time the child entered foster care or entered care in a hospital operated or licensed by the Office of Mental Health where the child is being considered for initial placement in a residential treatment facility.) When a school district denies it is the child's school district of origin and refuses to accept this responsibility, the agency responsible for the placement of the child may appeal such to the Commissioner of Education by sending a written notice of appeal to:

Office of Counsel
Room 116 EB
New York State Education Department
Albany, New York 12234

If the Commissioner of Education finds that the child was not a resident of the school district which was notified, in accordance with the above guidelines, the agency responsible for placing the child shall be requested to ascertain the correct school district and again make notification as stated above. (NOTE: The Commissioner of Education may determine that the child has no legal residence in this State and that there is, therefore, no school district contribution for such child). Copies of the above noted written notice of denial or appeal and the final resolution of any appeal made to the Commissioner of Education should be forwarded by the placing agency to:

4006 (3)

Mr. Peter Mattimore, Principal Accountant
Bureau of Finance Administrative Services
State Department of Social Services
40 North Pearl Street
Albany, New York 12243

b. Tuition Payment Arrearages

Educ. Law
Section
4004 (3)

Article 81 of the Education Law requires that the State Department of Social Services make direct payment to a child care institution or special act school district when a social services district fails to make payment of tuition for a child pursuant to Section 4004 of Article 81. When this occurs, State reimbursement to the responsible social services district will be withheld in the amount of the unpaid bill for tuition and the State Department of Social Services will directly pay that amount to the child care institution or special act school district in accordance with the procedures specified below.

The determination of whether there has been failure to make payment for tuition will be based by the Department upon whatever payment arrangements have been made by the social services district and child care institution or special act school district, as specified in the written purchase of service contract.

The Department's guidelines for determining whether a bill for payment by a social services district is in arrears are as follows:

- (i) Department Regulations 18/NYCRR 405.3g6 requires the social services district to include in its purchase of service contract with a provider the "method and source of payment to the provider, including collection and disposition of fees." In other words, each social services district should make arrangements for paying the child care institution or special act school district for the cost of tuition for children placed by a public agency. These arrangements should be specified in the written purchase of service contract including rates of payment and any time limitations.
- (ii) Where the purchase of service contract does not specify any time periods for payment, the local social services district's responsibility pursuant to 18/NYCRR 302.1, regarding payment to service providers is to "(a) require that bills be submitted to it promptly; (b) arrange to pay the bills promptly; and (c) process payments so that in no event shall more than 12 months elapse between the month of the latest services or supplies furnished to an individual and the month of payment for those services or supplies."

When the social services district fails to make payment for educational services purchased in accordance with the written purchase of services contract, the child care institution or special act school district, whichever is providing the education, may submit a demand to have the State Department of Social Services directly pay the unpaid tuition amount to the provider of educational services.

The written demand made by the institution school that direct payment be made by the State Department of Social Services should contain the following information:

- 1) The name of the school district.
- 2) The Federal Identification Number (the IRS Number).
- 3) A copy of the bill and statement of the dollar amount involved (this is necessary in the event a partial payment may have been made by the districts.)
- (4) A copy of the purchase of service contract.
- (5) The address to which the payment should be made.

Upon receipt of the above documentation and written demand that direct payment be made to the educational provider, the Accounting Operations Section will verify the claim to substantiate failure of the

social services district to pay tuition in accordance with the guidelines outlined above, and process payment to the child care institution or special act school district. Prior to payment, however, the Department of Social Services will notify the delinquent social services district that payment of the unpaid tuition is being accomplished by the State, and that the next State Share Claims Settlement will be reduced by an equivalent amount. When a local social services district is notified that the tuition payment is being made by the State, it should make sure no payment for the delinquent unpaid tuition is being made by the district, thereby creating a double payment situation.

(NOTE: Social services districts are obligated to pay tuition for children who they place in child care institutions in accordance with the guidelines outlined above in Subparagraphs (i) and (ii). This provision for the State to directly pay tuition as stated, should not be construed as a payment option for social services districts. The intent of this provision of law was to provide direct payment by the State under exceptional circumstances, not as payment in the course of doing business as usual. Social services districts which violate Department regulations regarding the prompt payment of bills for purchased services may be subject to sanctions pursuant to Section 20 and 34 of Social Services Law).

3. Maintenance for Children Placed in Child Care Institutions or S.E.D. Approved Residential Schools

As of July 1, 1981, maintenance for a child placed by a public agency in a child care institution in accordance with Article 81 of Education Law, or for a child placed by a local school district for the regular 10-month school program in a S.E.D. approved residential school pursuant to Article 89 of Education Law, must be paid by the social services district in which the child resides at the time of placement according to the methodologies outlined below. (In the case of a child presently residing in a foster family, agency boarding or group home who is being placed in a child care institution by a public agency or a child being considered for initial placement in a residential treatment facility, who is presently a patient in a hospital operated or licensed by the Office of Mental Health, the financially responsible social services district will be the district where the child resided when he/she initially entered care).

a) Children Placed in Accordance with Article 81 of Education Law:

As in the past, the amount to be charged for maintenance for children placed by a public agency in a child care institution, will be determined by contract between the social services district and the provider; however, the amount of State reimbursement to the social services district for these children shall not exceed the maximum state aid rate for maintenance established by the State Department of Social Services for each child care institution, or shall be at the rate established by the Office of Mental Health for children in residential treatment facilities.

Also, as in the past, maintenance and care costs for children placed by a public agency will be claimed under the program for which the child is eligible. ADC-FC costs are claimed on Schedule A; ADC/FC/DFY costs are claimed on Schedule A-3 and CW costs are claimed on Schedule

C. Pursuant to 77-ADM-99, costs for DFY placed non-ADC/FC eligible children should be paid from the juvenile delinquent (JD appropriation) and claimed on the DFY-10.

b) Children Placed Pursuant to Article 89 of Education Law:

The amount to be charged for maintenance for children placed in a S.E.D. approved residential school by a local school district for the regular 10-month school program will be at the rate established by the State Department of Social Services for each S.E.D. approved residential school.

The form used by the State Education Department to approve the residential cost for this type of placement is PHC-3 Notification of Approval of Maintenance Expenses. The PHC-3 will serve as a basis for the social services district to authorize payment of bills charged to the social services district by the educational provider in accordance with the rates established by the State Department of Social Services. Some of the PHC-3 forms issued for the 1981/82 school year have had rate amounts which differed from the rates published by the State Department of Social Services and transmitted on November 20, 1981. Social services districts are directed to consider the PHC-3 as programmatic approval only for the residential placement of a child, and make payment for maintenance based on the state aid rates established and published by the State Department of Social Services. The PHC-3 has been modified for the remainder of the 1981/82 school year to no longer indicate rate information. Payment for maintenance should continue to be made based on the state aid rates established by the State Department of Social Services for the 1981/82 school year. (A copy of the PHC-3 is provided in the Appendix on page 37).

Beginning with the 1982/83 school year, the State Education Department will transmit a revised PHC-3 to social services districts which will be PHC-3 Notification of Residential Placement. (A copy of the revised PHC-3 is provided in Appendix on page 38).

The revised PHC-3 will then serve as the basis for authorizing payment for maintenance for handicapped children whose residential placement has been approved. The State Department of Social Services will continue to establish and publish state aid rates which will be promulgated based upon final approval of the Division of Budget.

For rates set for the 1983/84 and subsequent school years, the method of determining absences for payment and reimbursement of maintenance for children placed in a S.E.D. approved school will be in accordance with the regulations of the Department of Social Services 18 NYCRR 605.2 (c) (4). The reason is that since this rate is now established by the State Department of Social Services, it is necessary that payment and reimbursement for maintenance be made on the same basis that the maintenance rate is calculated.

Maintenance and care costs for children placed by a local school district as outlined above should be treated as all other assistance and care expenditures for claiming purposes. That is, expenditures for this

program should be claimed on the Schedule C line 2.b.2. Any amounts claimed on the Schedule C for maintenance of children placed by local school districts should be footnoted on the bottom of the form and designated as such. In the past, such maintenance costs for children placed by local school districts were a charge to the county which paid 50% and the State Education Department which paid the remaining 50%. Pursuant to Article 89 of Education Law as amended, these costs are now to be paid by the social services districts. Such costs will be reimbursed at the level of 50% by the State Department of Social Services pursuant to Section 153 of Social Services Law. The restrictions on reimbursement of maintenance pursuant to Section 153 (d) and (e) of Social Services Law do not apply for these children.

For local social services district budgetary purposes, the costs for these children should be tracked separately from your normal foster care expenditures. The costs for these children will not be included in the foster care allocation.

- c) At the present time, maintenance for children placed by local school districts will not require a WMS authorization and should be handled manually. Social services districts have no programmatic responsibilities for these children. For example, case management requirements pursuant to ADM-100, IV-D requirements for parental support, categorical eligibility for federal reimbursement, uniform case record or other requirements of the Child Welfare Reform Act do not apply to these children.
- d) The method of providing educational services to children pursuant to Section 236 of the Family Court Act has not been affected or changed by the Institution Schools Act. Such educational services provided to certain handicapped children for the summer months, or pre-school children at any time, will continue to be authorized by the Family Court and charged to the County. Such costs will be reimbursed at the level of 50% by the State Education Department.

4. State Aid Rates for Tuition and Maintenance

Article 81 and 89 of Education Law set forth responsibilities for rate setting and reimbursement for the cost of tuition and maintenance for children residing in child care institutions or S.E.D. approved residential schools.

The State Education Department now has full responsibility for developing reimbursement methodologies for the cost of tuition for all children residing in child care institutions and S.E.D. approved residential schools. This will include the establishment of tuition rates for all on-campus schools or special act districts associated with child care institutions. The State Education Department will annually determine a state aid rate for each approved school program. These methodologies will be based upon appropriate educational standards established by the State Education Department pursuant to Section 4405 of Education Law.

The State Department of Social Services now has full responsibility for developing reimbursement methodologies for the cost of maintenance for all children cared for in child care institutions and S.E.D. approved residential

schools. The State Department of Social Services will annually determine a state aid rate for maintenance for each authorized agency and S.E.D. approved residential schools pursuant to Section 398a of Social Services Law. Regarding residential treatment facilities, the Commissioner of Mental Health will have responsibility for developing reimbursement methodologies for the cost of maintenance for all children cared for in such facilities.

Educ. Law Section 4003 (3) 4005 (3) (d)(ii) Final approval by the State Division of the Budget will be required for all reimbursement methodologies established by the State Education Department, the State Department of Social Services, and when appropriate, by the State Office of Mental Health.

(NOTE: Special State operating aid previously granted to special act school districts and certain institutions which are orphan asylums, has been consolidated into a new form of aid and the cost covered by the old aid is reflected in a single tuition rate established by the State Education Department effective July 1, 1981).

C. Educational Issues Pertaining to Children Placed in Community Based Foster Care Programs

Article 81 of the Education Law does not address educational planning for children in community based programs such as foster family, agency boarding and group home programs. These children, however, also must be assured of the provision of appropriate educational services in the least restrictive environment pursuant to Article 89 of the Education Law.

In accordance with Section 3202.4 of the State Education Law and the court decision McMahon vs. Amityville Union Free School District, 48A.D.2d106, it has been determined that children placed by public agencies in foster family, agency boarding or group homes must be admitted to the public school district in which the family, agency boarding, or group home is located. The educational costs are charged back to the school district where the child resided prior to placement. The 1975 decision McMahon vs. Amityville Union Free School District, determined that group homes should be considered to be family homes within the context of Section 3202 and, therefore, that children located in such homes are entitled to be admitted to the public schools serving these homes with the same chargeback for educational costs specified for family homes.

The following guidelines should, therefore, be considered as regards educational services to children in foster family, agency boarding, and group homes:

- (i) No receiving public school district can refuse admittance to a foster child including agency boarding and group home residents for financial reasons.
- (ii) Social services districts are responsible for all tuition costs for children in foster family, agency boarding, or group homes if they had assumed responsibility for such costs prior to January 1, 1974. Where there has been no such assumption or any subsequent placement, the school district in which such child resided at the time of placement with a public agency is responsible for the tuition costs.

- (iii) Appropriate tuition costs for foster children which are to be billed to the school district of origin are determined pursuant to a formula established by the Commissioner of Education.
- (iv) Consistent with these various laws and rulings mentioned above, when a foster child residing in a foster family, agency boarding or group home cannot be appropriately educated in a regular local public school program, the child should be referred to the Committee on the Handicapped of the school district in which the foster family, agency boarding or group home is located for an evaluation and recommendation regarding his/her need for special educational services. If special educational services are found to be required, and the local school district cannot provide these services either in their district, a neighboring district, or BOCES, then services may be recommended by the COH for a day program of a special act school district or a S.E.D. approved program pursuant to Article 89 of the Education Law, (see VII.A.2 on page 17 of this Directive). Where the parent(s) or other representatives for the child agree with the placement decision, the PHC-2 form requesting private excess cost aid, should be filed by the school district where the foster family, agency boarding or group home is located. Any costs incurred as a result of district differences in local shares, should be settled between the school districts directly.
- (v) Accordingly, children who are placed in a community based foster care program either initially or as the result of being deinstitutionalized should be educated in the local public schools, and should not be automatically replaced by the child care agency or social services district in the educational system on the grounds of the institution. Instead, the Committee on the Handicapped of the school district in which the child's foster family home or group home or agency boarding home is located should make such a decision and subsequent replacement, if needed.

a. Notification Procedures for Determining the Financially Responsible School District for Children in Foster Family Care, Agency Boarding or Group Homes

School District Notification of Foster Child (DSS-2999) is the form currently used to notify the child's school district of origin and the school district in which the child is admitted of the need for chargeback for educational costs, when the child is being educated outside his/her district of origin pursuant to Section 445.1 of NYCRR/18. Changes in the regulations are being filed to provide that such school notifications and chargebacks for educational costs may be facilitated for foster children residing in foster family, agency boarding or group homes and form DSS-2999 has been amended as follows:

- (i) Instructions for Completing DSS-2999 School District Notification of Foster Child Placed in a Foster Family, Agency Boarding or Group Home

This form is designed to notify the child's school district of origin of its financial responsibility for each non-resident foster child placed in foster family, agency boarding or group home.

The social services district or any voluntary authorized agency acting on behalf of the social services commissioner should send the following information to the school district in which the non-resident foster child is admitted and to the child's school district of origin within ten (10) days of admission:

- 1) Name and Address of School District Child Attending
- 2) County Department of Social Services Responsible for Child
- 3) Name and Location of School District Last Attended (If Different than Above)
- 4) Child's Full Name
- 5) Foster Father's Name
- 6) Foster Mother's Name
- 7) Address of Foster Parent(s) or Name and Address of Agency Boarding/Group Home - the location of foster parents or the name of the child care agency and location of the home in which the child is a resident.
- 8) Date of Birth or Apparent Age - the date of birth of such child, if ascertainable, or his/her apparent age
- 9) Date Child Entered Foster Care - the date when such child was placed in the care and custody of a public agency.
- 10) Address of Child When Child Entered Foster Care
- 11) Name and Location of School District Child Resided in When Child Entered Foster Care (District of Origin)
- 12) Name and Address of Social Services Commissioner Charged with Care of a Child
- 13) Name and Address of Authorizing Agency Acting for Commissioner - the name and address of any voluntary authorized agency acting on behalf of a public official charged with care of such child.
- 14) Signature of Completing Official