

“(2) compel States to change terminology in State laws for individuals covered by a provision amended by this Act.”

TRANSITION

Pub. L. 108-446, title III, §303, Dec. 3, 2004, 118 Stat. 2803, provided that:

“(a) ORDERLY TRANSITION.—

“(1) IN GENERAL.—The Secretary of Education (in this section referred to as ‘the Secretary’) shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act [this chapter], as such Act was in effect on the day preceding the date of enactment of this Act [Dec. 3, 2004], to the Individuals with Disabilities Education Act [this chapter] and part E of the Education Sciences Reform Act of 2002 [20 U.S.C. 9567 et seq.], as amended by this Act.

“(2) LIMITATION.—The Secretary’s authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

“(b) MULTI-YEAR AWARDS.—Notwithstanding any other provision of law, the Secretary may use funds appropriated under part D of the Individuals with Disabilities Education Act [subchapter IV of this chapter] to make continuation awards for projects that were funded under section 618 [20 U.S.C. 1418], and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

“(c) RESEARCH.—Notwithstanding section 302(b) [set out as a note above] or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 [Pub. L. 108-447, div. F, title III, 118 Stat. 3142, see Tables for classification] for special education research under either of the headings ‘SPECIAL EDUCATION’ or ‘INSTITUTE OF EDUCATION SCIENCES’ in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act [20 U.S.C. 1472, 1474], as such sections were in effect on October 1, 2004.”

REFERENCES TO EDUCATION OF THE HANDICAPPED ACT

Pub. L. 101-476, title IX, §901(a)(3), Oct. 30, 1990, 104 Stat. 1142, provided that: “Any other Act and any regulation which refers to the Education of the Handicapped Act shall be considered to refer to the Individuals with Disabilities Education Act.”

DEFINITIONS

Pub. L. 111-256, §2(k), Oct. 5, 2010, 124 Stat. 2644, provided that: “For purposes of each provision amended by this section [amending this section, sections 1140, 1401, and 7512 of this title, sections 705, 764, and 791 of Title 29, Labor, and sections 217a-1, 247b-4, 285g, 285g-2, 291k, 294c, and 300d-52 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 280f, 285g, 300b-1, and 2000ff of Title 42]—

“(1) a reference to ‘an intellectual disability’ shall mean a condition previously referred to as ‘mental retardation’, or a variation of this term, and shall have the same meaning with respect to programs, or qualifications for programs, for individuals with such a condition; and

“(2) a reference to individuals with intellectual disabilities shall mean individuals who were previously referred to as individuals who are ‘individuals with mental retardation’ or ‘the mentally retarded’, or variations of those terms.”

§ 1401. Definitions

Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commer-

cially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(2) Assistive technology service

The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term “child with a disability” means a child—

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Repealed. Pub. L. 114-95, title IX, § 9215(ss)(1)(A), Dec. 10, 2015, 129 Stat. 2181

(5) Educational service agency

The term “educational service agency”—

(A) means a regional public multiservice agency—

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term “elementary school” means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term “equipment” includes—

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term “excess costs” means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; and

(iii) under part A of title III of that Act [20 U.S.C. 6811 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term “free appropriate public education” means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Repealed. Pub. L. 114-95, title IX, § 9214(d)(1), Dec. 10, 2015, 129 Stat. 2164

(11) Homeless children

The term “homeless children” has the meaning given the term “homeless children and youths” in section 11434a of title 42.

(12) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term “individualized family service plan” has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term “infant or toddler with a disability” has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term “institution of higher education”—

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any college or university receiving funding from the Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801 et seq.].

(18) Limited English proficient

The term “limited English proficient” has the meaning given the term “English learner” in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

(19) Local educational agency

(A) In general

The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a

State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes—

- (i) an educational service agency; and
- (ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term “native language”, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

(21) Nonprofit

The term “nonprofit”, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(23) Parent

The term “parent” means—

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- (B) a guardian (but not the State if the child is a ward of the State);
- (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term “parent organization” has the meaning given the term in section 1471(g) of this title.

(25) Parent training and information center

The term “parent training and information center” means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term “secondary school” means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term “Secretary” means the Secretary of Education.

(29) Special education

The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

(30) Specific learning disability

(A) In general

The term “specific learning disability” means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal

brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term “State educational agency” means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term “transition services” means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term “universal design” has the meaning given the term in section 3002 of title 29.

(36) Ward of the State

(A) In general

The term “ward of the State” means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

(Pub. L. 91-230, title VI, §602, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2652; amended Pub. L. 110-315, title IX, §941(k)(2)(C), Aug. 14, 2008, 122 Stat. 3466; Pub. L. 111-256, §2(b)(2), Oct. 5, 2010, 124 Stat. 2643; Pub. L. 114-95, title IX, §§9214(d)(1), 9215(ss)(1), Dec. 10, 2015, 129 Stat. 2164, 2181.)

Editorial Notes

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in par. (8)(A)(ii), (iii), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. Part A of title III of the Act is classified generally to part A (§6811 et seq.) of subchapter III of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (13), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in par. (17)(B), is Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§1801 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1401, Pub. L. 91-230, title VI, §602, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 42; amended Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828, related to definitions of terms used in this chapter, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1401, Pub. L. 91-230, title VI, §602, Apr. 13, 1970, 84 Stat. 175; Pub. L. 94-142, §4(a), Nov. 29, 1975, 89 Stat. 775; Pub. L. 98-199, §2, 3(b), Dec. 2, 1983, 97 Stat. 1357, 1358; Pub. L. 99-457, title IV, §402, Oct. 8, 1986, 100 Stat. 1172; Pub. L. 100-630, title I, §101(a), Nov. 7, 1988, 102 Stat. 3289; Pub. L. 101-476, title I, §101, title IX, §901(b)(10)-(20), Oct. 30, 1990, 104 Stat. 1103, 1142, 1143; Pub. L. 102-73, title VIII, §802(d)(1), July 25, 1991, 105 Stat. 361; Pub. L. 102-119, §3, 25(a)(1), (b), Oct. 7, 1991, 105 Stat. 587, 605, 607; Pub. L. 103-382, title III, §391(f)(1), Oct. 20, 1994, 108 Stat. 4023, related to definitions of terms used in this chapter, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

AMENDMENTS

2015—Par. (4). Pub. L. 114-95, §9215(ss)(1)(A), struck out par. (4). Text read as follows: “The term ‘core academic subjects’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.”

Par. (8)(A)(iii). Pub. L. 114-95, §9215(ss)(1)(B), which directed substitution of “under part A of title III of that Act” for “under parts A and B of title III of that Act” in “paragraph (8)(a)(3)”, was executed to par. (8)(A)(iii) to reflect the probable intent of Congress.

Par. (10). Pub. L. 114-95, §9214(d)(1), struck out par. (10) which related to definition of highly qualified.

Par. (18). Pub. L. 114-95, §9215(ss)(1)(C), added par. (18) and struck out former par. (18). Prior to amendment, text read as follows: “The term ‘limited English pro-

ficient' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965."

2010—Par. (3)(A)(i). Pub. L. 111-256, §2(b)(2)(A), substituted "with intellectual disabilities" for "with mental retardation".

Par. (30)(C). Pub. L. 111-256, §2(b)(2)(B), substituted "of intellectual disabilities" for "of mental retardation".

2008—Par. (17)(B). Pub. L. 110-315 substituted "college or university" for "community college" and "the Tribally Controlled Colleges and Universities Assistance Act of 1978" for "the Tribally Controlled College or University Assistance Act of 1978".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

EFFECTIVE DATE

Section effective July 1, 2005, see section 302(a) of Pub. L. 108-446, set out as a note under section 1400 of this title.

DEFINITIONS

For meaning of references to an intellectual disability and to individuals with intellectual disabilities in provisions amended by section 2 of Pub. L. 111-256, see section 2(k) of Pub. L. 111-256, set out as a note under section 1400 of this title.

§ 1402. Office of Special Education Programs

(a) Establishment

There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this chapter and other programs and activities concerning the education of children with disabilities.

(b) Director

The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

(c) Voluntary and uncompensated services

Notwithstanding section 1342 of title 31, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this chapter.

(Pub. L. 91-230, title VI, §603, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2659.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1402, Pub. L. 91-230, title VI, §603, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 46, related to the Office of Special Education Programs, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1402, Pub. L. 91-230, title VI, §603, Apr. 13, 1970, 84 Stat. 177; Pub. L. 93-380, title VI, §612(a), Aug. 21, 1974, 88 Stat. 579; Pub. L. 98-199, §3(a), Dec. 2, 1983, 97 Stat. 1357; Pub. L. 101-476, title IX, §901(b)(21), Oct. 30, 1990, 104 Stat. 1143; Pub. L. 102-119,

§25(b), Oct. 7, 1991, 105 Stat. 607, related to the Office of Special Education Programs, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1403. Abrogation of State sovereign immunity

(a) In general

A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter.

(b) Remedies

In a suit against a State for a violation of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

(c) Effective date

Subsections (a) and (b) apply with respect to violations that occur in whole or part after October 30, 1990.

(Pub. L. 91-230, title VI, §604, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2659.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1403, Pub. L. 91-230, title VI, §604, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 47, related to abrogation of State sovereign immunity, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1403, Pub. L. 91-230, title VI, §604, as added Pub. L. 101-476, title I, §103, Oct. 30, 1990, 104 Stat. 1106, related to abrogation of State sovereign immunity, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

Another prior section 1403, Pub. L. 91-230, title VI, §604, Apr. 13, 1970, 84 Stat. 177; Pub. L. 93-380, title VI, §613, Aug. 21, 1974, 88 Stat. 580; Pub. L. 94-273, §§3(14), 13(2), Apr. 21, 1976, 90 Stat. 376, 378; Pub. L. 98-199, §4, Dec. 2, 1983, 97 Stat. 1358, established the National Advisory Committee on the Education of Handicapped Children and Youth, prior to repeal by Pub. L. 99-457, title IV, §407, Oct. 8, 1986, 100 Stat. 1177.

§ 1404. Acquisition of equipment; construction or alteration of facilities

(a) In general

If the Secretary determines that a program authorized under this chapter will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

(b) Compliance with certain regulations

Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities"); or

(2) appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

(Pub. L. 91-230, title VI, §605, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2659.)