

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 commercially 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) Core academic subjects

The term “core academic subjects” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

(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 parts A and B of title III of that Act [20 U.S.C. 6811 et seq., 6891 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) Highly qualified

(A) In general

For any special education teacher, the term “highly qualified” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801], except that such term also—

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special

education teacher teaching in a State, such term means that—

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor’s degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either—

(i) meet the applicable requirements of section 9101 of such Act [20 U.S.C. 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either—

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(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 in section 9101 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 non-profit 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 par-

ents, 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.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in pars. (8)(A)(ii), (iii) and (10)(F), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§6301 et seq.) of this title. 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. Parts A and B of title III of the Act are classified generally to parts A (§6811 et seq.) and B (§6891 et seq.), respectively, 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

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”.

EFFECTIVE DATE

Section effective July 1, 2005, except that subparagraphs (C) through (F) of par. (10) of this section are effective Dec. 3, 2004, for purposes of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), 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.)

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