

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.)

##### **PRIOR PROVISIONS**

A prior section 1404, Pub. L. 91-230, title VI, § 605, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 47, related to the acquisition of equipment and construction or alteration of facilities, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1404, Pub. L. 91-230, title VI, § 605, Apr. 13, 1970, 84 Stat. 177; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub. L. 100-630, title I, § 101(b), Nov. 7, 1988, 102 Stat. 3290; Pub. L. 102-119, § 25(a)(2), Oct. 7, 1991, 105 Stat. 605, related to acquisition of equipment and construction of necessary facilities, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

#### **§ 1405. Employment of individuals with disabilities**

The Secretary shall ensure that each recipient of assistance under this chapter makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this chapter.

(Pub. L. 91-230, title VI, § 606, as added Pub. L. 108-446, title I, § 101, Dec. 3, 2004, 118 Stat. 2659.)

##### **PRIOR PROVISIONS**

A prior section 1405, Pub. L. 91-230, title VI, § 606, as added Pub. L. 105-17, title I, § 101, June 4, 1997, 111 Stat. 47, related to employment of individuals with disabilities

by recipients of assistance under this chapter, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another prior section 1405, Pub. L. 91-230, title VI, § 606, as added Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795; amended Pub. L. 101-476, title IX, § 901(b)(22), (23), Oct. 30, 1990, 104 Stat. 1143; Pub. L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607, related to employment of individuals with disabilities by recipients of assistance under this chapter, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

#### **§ 1406. Requirements for prescribing regulations**

##### **(a) In general**

In carrying out the provisions of this chapter, the Secretary shall issue regulations under this chapter only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this chapter.

##### **(b) Protections provided to children**

The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter that—

(1) violates or contradicts any provision of this chapter; or

(2) procedurally or substantively lessens the protections provided to children with disabilities under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

##### **(c) Public comment period**

The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under subchapter II or subchapter III on which an opportunity for public comment is otherwise required by law.

##### **(d) Policy letters and statements**

The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

(1) violate or contradict any provision of this chapter; or

(2) establish a rule that is required for compliance with, and eligibility under, this chapter without following the requirements of section 553 of title 5.

##### **(e) Explanation and assurances**

Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under subchapter II shall include an explanation in the written response that—

(1) such response is provided as informal guidance and is not legally binding;

(2) when required, such response is issued in compliance with the requirements of section 553 of title 5; and

(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.