

§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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.