

## 20 U.S.C. § 1412 STATE ELIGIBILITY

### Introduction

On November 17, 2004, a House-Senate Conference Committee agreed on changes to reauthorize the Individuals with Disabilities Education Act (IDEA). On Friday, November 19, 2004, the full House and Senate voted to reauthorize the Individuals with Disabilities Education Act of 2004. The bill will be submitted to the President who is expected to sign it. Once signed, it becomes law.

In our books and training programs, we focus on five key statutes that you should know and understand:

- Section 1400 - Finding and Purposes
- Section 1401 - Definitions
- Section 1412 - State Responsibilities (the “Catch All” statute)
- Section 1414 - Evaluations and IEPs
- Section 1415 - Procedural Safeguards (Rules of Procedure)

Each of these statutes has some important subsections (i.e., subsection (a), (b), (c)) and other subsections that have little significance.

In this series of five articles, we discuss substantive changes to these five statutes by section and subsection. Text deleted from the IDEA has been ~~struck through~~. Text that was added to the IDEA is *in italics*. In some cases, we describe or summarize changes to the law.

**Comment:** Summaries are in a different font.

**Wrightslaw: Special Education Law** includes the full text of the Individuals with Disabilities Education Act of 1997. **Wrightslaw: From Emotions to Advocacy** (FETA) includes the five key statutes. These articles includes cross-references to **Wrightslaw: Special Education Law** and **Wrightslaw: From Emotions to Advocacy** (FETA) in a different font.

**Cross-Reference:** The State Eligibility / Catch All statute is in pages 44-58 in **Wrightslaw: Special Education Law** and pages 131-133 in **Wrightslaw: From Emotions to Advocacy** (FETA).

### 20 U.S.C. § 1412 State Eligibility

**Comments:** Section 1412 is about State Eligibility. In Wrightslaw training programs, we often refer to Section 1412 as the “Catchall” statute. In IDEA 97, Section 1412 included subparts (a) through (f). Subsection (a) had 22 subparts, numbered 1 through 22. In the reauthorized IDEA, subsection (a) has 25 subparts.

Subsections 17 through 23 relate to public participation and state public hearings, state funding rule of construction, maintenance of the State Advisory Panel, state records of suspension and expulsion rates and instructional materials, and are not included in this article. Subsections (b) through (f) of Section 1412 relate to funding matters and are not included in this article. The full text of Section 1412 of the Individuals with Disabilities Education Act of 2004 will be included in the second edition of **Wrightslaw: Special Education Law** and is also available online at [www.wrightslaw.com](http://www.wrightslaw.com)

(a) IN GENERAL - A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions: *submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:*

(1) FREE APPROPRIATE PUBLIC EDUCATION

(A) IN GENERAL - unchanged

(B) LIMITATION - unchanged

(C) *STATE FLEXIBILITY* - A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, (see 1419) is not required to provide such child with a free appropriate public education.

**Comment:** This is new.

(2) FULL EDUCATIONAL OPPORTUNITY GOAL - unchanged

(3) CHILD FIND

(A) IN GENERAL - All children with disabilities residing in the State, including children with disabilities *who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*

(B) CONSTRUCTION - unchanged

(4) INDIVIDUALIZED EDUCATION PROGRAM - unchanged

(5) LEAST RESTRICTIVE ENVIRONMENT -

(A) IN GENERAL unchanged

(B) ADDITIONAL REQUIREMENT -

~~(i) IN GENERAL - If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).~~

*(i) IN GENERAL - A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.*

(ii) ASSURANCE - unchanged

(6) PROCEDURAL SAFEGUARDS -

(A) IN GENERAL - unchanged

(B) ADDITIONAL PROCEDURAL SAFEGUARDS - Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities *for services* under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) EVALUATION - unchanged

(8) CONFIDENTIALITY - unchanged

(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS - unchanged

(10) CHILDREN IN PRIVATE SCHOOLS -

**Comment:** Subsection (10) relating to unilateral private school placements by parents who seek reimbursement from school districts has been revised. The full text of this subsection is reproduced below.

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS -

(i) IN GENERAL - To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools *in the school district served by a local educational agency*, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (*including direct services to parentally placed private school children*) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) *In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.*

(III) *Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.*

**Comment:** Subsection III (above) is new. The word "religious" schools replaced "parochial" schools. The following subsections are new.

(IV) *State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.*

*(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.*

(ii) CHILD FIND REQUIREMENT -

*(I) IN GENERAL - The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.*

*(II) EQUITABLE PARTICIPATION - The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.*

*(III) ACTIVITIES - In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.*

*(IV) COST - The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).*

*(V) COMPLETION PERIOD - Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.*

**Comment:** The language about (iii) Consultation with private school representatives (below) is new and brings IDEA into conformity with the language in NCLB. See **Wrightslaw: No Child Left Behind**.

*(iii) CONSULTATION - To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--*

*(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;*

*(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;*

*(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;*

*(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and*

*(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.*

*(iv) WRITTEN AFFIRMATION - When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.*

*(v) COMPLIANCE -*

*(I) IN GENERAL - A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.*

*(II) PROCEDURE - If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.*

*(vi) PROVISION OF EQUITABLE SERVICES -*

*(I) DIRECTLY OR THROUGH CONTRACTS - The provision of services pursuant to this subparagraph shall be provided--*

*(aa) by employees of a public agency; or*

*(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.*

*(II) SECULAR, NEUTRAL, NONIDEOLOGICAL - Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.*

*(vii) PUBLIC CONTROL OF FUNDS - The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.*

**(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES -**

(i) **IN GENERAL** - Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) **STANDARDS** - In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

**(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY -**

(i) **IN GENERAL** - Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) **REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT** - If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary *school* or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) **LIMITATION ON REIMBURSEMENT** - The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), (see 1415(b)(3)) of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) EXCEPTION - Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

(I) ~~may~~ shall not be reduced or denied for failure to provide such notice if--

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 615, (see 1415) of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION -

(A) IN GENERAL - The State educational agency is responsible for ensuring that -

(i) unchanged

(ii) unchanged

(iii) *in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.*

(B) LIMITATION - unchanged

(C) EXCEPTION - unchanged

(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES - unchanged except for minor housekeeping in last line of Section 1412(a)(12)(B)(i) adding as follows: “. . . through contract or other arrangement *pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).*”

(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY - unchanged

~~(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT—The State has in effect, consistent with the purposes of this Act and with section 1435(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 1453.~~

**Comment:** The language in (14) Personnel Qualifications (below) is new and brings IDEA into conformity with the language in NCLB. See **Wrightslaw: No Child Left Behind**.

*(14) PERSONNEL QUALIFICATIONS -*

*(A) IN GENERAL - The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.*

*(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS - The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--*

*(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;*

*(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and*

*(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.*

*(C) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS - The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.*

**Comment:** After this bill was published, the above subsection (C) was inserted as a technical amendment. This further brings IDEA into conformity with the language in NCLB. See **Wrightslaw: No Child Left Behind**.

*(D) POLICY - In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.*

*(E) RULE OF CONSTRUCTION - Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to*

*create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.*

~~(15) PERSONNEL STANDARDS~~— Deleted. Replaced in part by the preceding section.

**Comment:** Subsection (15) about Performance Goals and Indicators (below) replaced subsection (16) in IDEA 97. Some language is the same; other portions changed. The full text of subsection (15) is reproduced below.

*(15) PERFORMANCE GOALS AND INDICATORS - The State--*

*(A) has established goals for the performance of children with disabilities in the State that--*

*(i) promote the purposes of this title, as stated in section 601(d);*

*(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;*

*(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and*

*(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;*

*(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and*

*(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.*

**Comment:** Subsection (16) about Participation in Assessments (below) replaces subsection (17) in IDEA 97. Some language is the same; other portions have changed. The full text of subsection (16) is reproduced below.

*(16) PARTICIPATION IN ASSESSMENTS -*

*(A) IN GENERAL - All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.*

*(B) ACCOMMODATION GUIDELINES - The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.*

(C) ALTERNATE ASSESSMENTS -

(i) *IN GENERAL* - The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) *REQUIREMENTS FOR ALTERNATE ASSESSMENTS* - The guidelines under clause (i) shall provide for alternate assessments that--

(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

(iii) *CONDUCT OF ALTERNATE ASSESSMENTS* - The State conducts the alternate assessments described in this subparagraph.

(D) *REPORTS* - The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) *UNIVERSAL DESIGN* - The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

**Comment:** Subsections 17-23 relate to funding, public participation and state public hearings, state funding rule of construction, maintenance of the State Advisory Panel, record keeping of suspension and expulsion rates and instructional materials and are not included in this

document. Subsections (b) through (f) of Section 1412 that relate to funding matters are not included in this article. The full text of Section 1412 and the Individuals with Disabilities Education Act of 2004 will be included in the second edition of ***Wrightslaw: Special Education Law*** and are available online at www.wrightslaw.com.

Section 1412 of IDEA 2004 includes two new subsections that will be of interest to parents and teachers. Subsection (24) about Overidentification and Disproportionality focuses on preventing schools from overidentifying children with disabilities by race and ethnicity. Subsection (25) prohibits school district personnel from requiring children from taking medication as a condition of attending school, being evaluated, or receiving special education services.

*(24) OVERIDENTIFICATION AND DISPROPORTIONALITY - The State has in effect, consistent with the purposes of this title and with section 618(d), (see 1418(d)) policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.*

*(25) PROHIBITION ON MANDATORY MEDICATION -*

*(A) IN GENERAL - The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, (see 1414(a)(c)) or receiving services under this title.*

*(B) RULE OF CONSTRUCTION - Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).*

**END OF 20 U.S.C. § 1412 State Eligibility**