

20 U.S.C. § 1401 DEFINITIONS

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 include cross-references to **Wrightslaw: Special Education Law** and **Wrightslaw: From Emotions to Advocacy** (FETA) in a different font.

Cross-Reference: Definitions are pages 24 to page 31 in **Wrightslaw: Special Education Law**. Key Definitions are pages 125 to 127 in **Wrightslaw: From Emotions to Advocacy** (FETA).

20 U.S.C. § 1401 Definitions

Except as otherwise provided, in this title:

(1) ASSISTIVE TECHNOLOGY DEVICE -

Comment: Definition unchanged, but moved to subsection (A) and a new subsection (B) was added.

(A) IN GENERAL –

(B) *EXCEPTION - The term does not include a medical device that is surgically implanted, or the replacement of such device.*

(2) ASSISTIVE TECHNOLOGY SERVICE -

Subsections (A) through (F) were unchanged except the end of subsection (C) where the word “of” was deleted: or replacing of assistive technology devices;

(3) CHILD WITH A DISABILITY

(A) unchanged

(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) and (ii) unchanged

(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.

Comment: All definitions are in alphabetical order. The term “core academic subjects” is a new in IDEA and tracks the language of No Child Left Behind, i.e., the Elementary and Secondary Education Act of 1965 (ESEA). For more information about No Child Left Behind, see **Wrightslaw: No Child Left Behind (NCLB)**.

(5) EDUCATIONAL SERVICE AGENCY - unchanged, but moved from subsection (4) to subsection (5).

(6) ELEMENTARY SCHOOL - unchanged, but moved from subsection (5) to (6).

(7) EQUIPMENT - unchanged, but moved from subsection (6) to subsection (7).

(8) EXCESS COSTS - one reference to ESEA was changed to coincide with NCLB, otherwise unchanged, but moved from subsection (7) to subsection (8).

(9) FREE APPROPRIATE PUBLIC EDUCATION - unchanged, but moved from subsection (8) to (9).

Comment: The definitions of “highly qualified teachers” and “homeless children” are new and track the language of the No Child Left Behind Act of 2001.

(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, 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, 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 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 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 part, nothing in this section or part 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.

(11) HOMELESS CHILDREN - The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

(12) INDIAN unchanged, but moved from subsection (9) to (12).

(13) INDIAN TRIBE - unchanged, but moved from subsection (10) to (13) and added a statutory reference at the end.

(14) - INDIVIDUALIZED EDUCATION PROGRAM - unchanged, but moved from subsection (11) to (14).

(15) INDIVIDUALIZED FAMILY SERVICE PLAN - unchanged, but moved from subsection (12) to (15).

(16) INFANT OR TODDLER WITH A DISABILITY - unchanged, but moved from subsection (13) to (16).

(17) INSTITUTION OF HIGHER EDUCATION - except for a statutory cross-reference, is unchanged, but moved from subsection (14) to (17).

Comment: The definition of "Limited English Proficient" in subsection 18 is new and tracks the language of the No Child Left Behind Act.

(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.

(19) LOCAL EDUCATIONAL AGENCY -

(moved from subsection (15) to (19))

(A) unchanged

(B) unchanged

(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 title 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 - (moved from subsection (16) to (20))

The term 'native language', when used with ~~reference~~ *respect* to an individual ~~or~~ *of 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 - unchanged, but moved from subsection (17) to (21).

(22) OUTLYING AREA - unchanged, but moved from subsection (18) to (22).

(23) PARENT - significant changes, moved from subsection (19) to (23). The term 'parent' *means*

~~(A) includes a legal guardian; and~~

~~(B) except as used in sections 1415(b)(2) and 1439(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.~~

(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 615(b)(2) (see 1415(b)(2)) and 639(a)(5) (see 1439(a)(5)), an individual assigned under either of those sections to be a surrogate parent.

(24) PARENT ORGANIZATION - unchanged, but moved from subsection (20) to (24).

(25) PARENT TRAINING AND INFORMATION CENTER - unchanged, but moved from subsection (21) to (25).

(26) RELATED SERVICES -

Comment: In IDEA 97, the definition of related services was a single paragraph. Now, it is broken into two subparts, (A) and (B). Subpart (A) includes new language about interpreting services and school nurse services. Subpart (B) creates an exception about surgically implanted devices, such as cochlear implants. Subsection 22 is now subsection 26.

(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 - unchanged, but moved from subsection (23) to (27).

(28) SECRETARY - unchanged, but moved from subsection (24) to (28).

(29) SPECIAL EDUCATION - unchanged, but moved from subsection (25) to (29).

(30) SPECIFIC LEARNING DISABILITY - unchanged, but moved from (26) to (30).

Comment: The definition of “specific learning disability” is unchanged. However, Section 1414 (b)(6) IDEA 2004 states that schools “shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.”

(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.*

Comment: This is new.

(32) STATE EDUCATIONAL AGENCY - unchanged, but moved from subsection (28) to (32).

(33) SUPPLEMENTARY AIDS AND SERVICES - unchanged, but moved from subsection (29) to (33).

(34) TRANSITION SERVICES - The term `transition services' means a coordinated set of activities for a child with a disability that--

(A) ~~are~~ ~~is~~ ~~designed~~ ~~within~~ ~~an~~ ~~outcome-oriented~~ ~~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) ~~are~~ ~~based~~ ~~upon~~ ~~the~~ ~~individual~~ ~~students's~~ ~~needs,~~ ~~is~~ ~~based~~ ~~on~~ ~~the~~ ~~individual~~ ~~child's~~ ~~needs~~ ~~taking~~ ~~into~~ ~~account~~ ~~the~~ ~~child's~~ ~~strengths,~~ ~~preferences,~~ ~~and~~ ~~interests;~~ ~~and~~

(C) unchanged

Comment: The definitions of “Universal Design” and “Ward of the State are new in IDEA 2004.

(35) UNIVERSAL DESIGN - *The term `universal design' has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).*

(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).*

END OF 20 U.S.C. § 1401