

TITLE I AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This Act may be cited as the Individuals with Disabilities
Education Improvement Act of 2004.

PART D NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

Sec. 602. Definitions.

For a PDF of full regulatory language, please click [statute](#).

Definitions

(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 mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title 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.

(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 nonprofit 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 part B;(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and (iii) under parts A and B of title III of that Act; 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 614(d).

(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 States 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 bachelors 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

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

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 614(d).

(15) INDIVIDUALIZED FAMILY, SERVICE PLAN

The term individualized family service plan has the meaning given the term in section 636.

(16) INFANT OR TODDLER WITH A DISABILITY

The term infant or toddler with a disability has the meaning given the term in section 632.

(17) GRANTEE

The term grantee (A) has the meaning given the term in section 101 of the Higher Education Act of 1965; and (B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

(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

(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 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

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 615(b)(2) and 639(a)(5), 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 671(g).

(25) PARENT TRAINING AND INFORMATION CENTER

The term parent training and information center means a center assisted under section 671 or 672.

(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 nonprofit 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 parents, 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 mental retardation, 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 612(a)(5).

(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 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).