

**(34) Transition Services.** The term ‘**transition services**’<sup>49</sup> 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.<sup>50</sup>

**(35) Universal Design.** The term ‘**universal design**’ has the meaning given the term in Section 3002 in title 29.<sup>51</sup>

**(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.<sup>52</sup>

**(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).

## 20 U. S. C. § 1402. Office of Special Education Programs

**WRIGHTSLAW OVERVIEW:** This section authorizes the Office of Special Education Programs as the principal agency to administer the IDEA. The Secretary selects the Director who reports directly to the Assistant Secretary for Special Education and Rehabilitative Services.

**(a) Establishment.** There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this title and other programs and activities concerning the education of children with disabilities.

**(b) Director.** The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

**(c) Voluntary and Uncompensated Services.** Notwithstanding Section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.

49 Remember the language in the “Purposes” about preparing disabled children for “further education.” See also the new language about IEPs in Sections 1414(d)(1)(A)(i)(VIII)(aa) and (bb) about “measurable postsecondary goals” and “courses of study” to reach those goals and Section 1400(c)(14) that describes “effective transition services to promote successful post-school ... education.”

50 The definition of transition services was changed to a “results-oriented process” that improves “the academic and functional achievement of the child with a disability” and facilitates the child’s transition from school to employment and further education. Transition services are based on the individual child’s needs and strengths.

51 The key concept in Universal Design, often called Universal Design for Learning, is that new curricular materials and learning technologies will be designed to be flexible to accommodate the unique learning styles of a wide range of individuals, including children with disabilities. Examples include accessible websites, electronic versions of textbooks and other materials; captioned and/or narrated videos; word processors with word prediction; and voice recognition. See [www.nectac.org/topics/atech/udl.asp](http://www.nectac.org/topics/atech/udl.asp) The definition of universal design is in the Assistive Technology Act at 29 U. S. C. § 3002(19).

52 “Ward of the State” is new in IDEA 2004. See also Section 1401(23) for the expanded definition of “parent” and Section 1414(a)(1)(D)(iii) about parental consent for children who are wards of the state.

**20 U. S. C. § 1403. Abrogation of State Sovereign Immunity**

**WRIGHTSLAW OVERVIEW:** States are not immune from suit in Federal court if they violate the IDEA.

(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 title.

(b) **Remedies.** In a suit against a State for a violation of this title, 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.

**20 U. S. C. § 1404. Acquisition of Equipment; Construction or Alteration of Facilities**

**WRIGHTSLAW OVERVIEW:** The U.S. Department of Education may authorize funds to acquire equipment, construct new facilities, or alter existing facilities.

(a) **In General.** If the Secretary determines that a program authorized under this title 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’).

**20 U. S. C. § 1405. Employment of Individuals with Disabilities**

**WRIGHTSLAW OVERVIEW:** Recipients of funds must make positive efforts to employ individuals with disabilities.

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

**20 U. S. C. § 1406. Requirements for Prescribing Regulations**

**WRIGHTSLAW OVERVIEW:** The U.S. Department of Education is responsible for developing the federal special education regulations. After the Department publishes proposed regulations, there is a public comment period. Comments may be made in writing or at public meetings. After reviewing the comments, the Department publishes the Final Regulations. The federal special education regulations are published in the Federal Register (FR) and the Code of Federal Regulations (CFR) beginning at 34 CFR Part 300. New regulations may not lessen the protections in effect on July 20, 1983.

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

(b) **Protections Provided to Children.** The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that—

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

(2) procedurally or substantively lessens the protections provided to children with disabilities under this title, 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.<sup>53</sup>

(c) **Public Comment Period.** The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under part B or part C 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 title; or
- (2) establish a rule that is required for compliance with, and eligibility under, this title without following the requirements of Section 553 of title 5, United States Code.

(e) **Explanation and Assurances.** Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B 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, United States Code; 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.

(f) **Correspondence From Department of Education Describing Interpretations of This Title.**

(1) **In General.** The Secretary shall, on a **quarterly basis**, publish in the Federal Register, and **widely disseminate** to interested entities through various additional forms of communication, a **list of correspondence** from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this title or the regulations implemented pursuant to this title.

(2) **Additional Information.** For each item of correspondence published in a list under paragraph (1), the Secretary shall—

- (A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and
- (B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of Section 553 of title 5, United States Code.

## 20 U. S. C. § 1407. State Administration

WRIGHTSLAW OVERVIEW: States must ensure that their rules, regulations, and policies conform to IDEA 2004.

(a) **Rulemaking.** Each State that receives funds under this title shall—

- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
- (2) identify in writing to local educational agencies located in the State and the Secretary **any such rule, regulation, or policy** as a State-imposed requirement that is **not required** by this title and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

<sup>53</sup> The Department of Education may not publish regulations that lessen the protections provided in the 1983 regulations, unless this reflects the clear and unequivocal intent of Congress.

**(b) Support and Facilitation.** State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

## 20 U. S. C. § 1408. Paperwork Reduction

**WRIGHTSLAW OVERVIEW:** This section about Paperwork Reduction is new in IDEA 2004. States may create pilot programs to reduce paperwork and other non-instructional burdens. The U. S. Department of Education may grant waivers to 15 States but may not waive procedural requirements under 20 U.S.C § 1415. Two years after IDEA is enacted, the Secretary must report to Congress on the effectiveness of these waivers.

### (a) Pilot Program.

**(1) Purpose.** The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

### (2) Authorization.

**(A) In General.** In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, part B for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

**(B) Exception.** The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

**(C) Rule of Construction.** Nothing in this section shall be construed to—

- (i) affect the right of a child with a disability to receive a free appropriate public education under part B; and
- (ii) permit a State or local educational agency to waive procedural safeguards under Section 1415 of this title.

### (3) Proposal.

**(A) In General.** A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

**(B) Content.** The proposal shall include—

- (i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State desires the Secretary to waive, in whole or in part; and
- (ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

**(4) Termination of Waiver.** The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State—

- (A) needs assistance under Section 1416(d)(2)(A)(ii) of this title and that the waiver has contributed to or caused such need for assistance;
- (B) needs intervention under Section 1416(d)(2)(A)(iii) of this title or needs substantial intervention under Section 1416(d)(2)(A)(iv) of this title; or
- (C) failed to appropriately implement its waiver.

**(b) Report.** Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to Section 3486 of this title information related to the effectiveness of waivers granted under subsection (a), including

any specific recommendations for broader implementation of such waivers, in—

- (1) reducing –
  - (A) the paperwork burden on teachers, principals, administrators, and related service providers; and
  - (B) noninstructional time spent by teachers in complying with part B;
- (2) enhancing longer-term educational planning;
- (3) improving positive outcomes for children with disabilities;
- (4) promoting collaboration between IEP Team members; and
- (5) ensuring satisfaction of family members.

**20 U. S. C. § 1409. Freely Associated States**

**WRIGHTSLAW OVERVIEW:** Grants are available to the “Freely Associated States.”

The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this title to the extent that such grants continue to be available to States and local educational agencies under this title.

**End of Part A**

## Part B – Assistance for Education of All Children with Disabilities

**WRIGHTSLAW OVERVIEW:** Part B, Assistance for Education of All Children with Disabilities, governs special education for children between the ages of 3 and 21 and includes Sections 1411 through Section 1419 of Title 20 of the United States Code (U. S. C.).

- 20 U. S. C. § 1411. Authorization; allotment; use of funds; authorization of appropriations
- 20 U. S. C. § 1412. State eligibility
- 20 U. S. C. § 1413. Local educational agency eligibility
- 20 U. S. C. § 1414. Evaluations, eligibility determinations, IEPs, and educational placements
- 20 U. S. C. § 1415. Procedural safeguards
- 20 U. S. C. § 1416. Monitoring, technical assistance, and enforcement
- 20 U. S. C. § 1417. Administration
- 20 U. S. C. § 1418. Program information
- 20 U. S. C. § 1419. Preschool grants

For most readers, the key sections are Section 1412, Section 1414, and Section 1415. Section 1412 includes child find, least restrictive environment, unilateral placements, reimbursement, and state and district assessments. Section 1414 describes requirements for evaluations, reevaluations, consent, eligibility, IEPs, and placements. Section 1415 describes the rules of procedure designed to protect the rights of children with disabilities and their parents. These safeguards include the right to examine educational records and obtain an independent educational evaluation, and the legal requirements for prior written notice, procedural safeguards notice, due process complaint notice, due process hearings, resolution sessions, mediation, attorney's fees, and discipline.

### **20 U. S. C. § 1411. Authorization; Allotment; Use of Funds; Authorization of Appropriations.**

**WRIGHTSLAW OVERVIEW:** Section 1411 provides funding formulas, ratios, definitions, and requirements. New in IDEA 2004 is the optional Local Educational Agency (LEA) Risk Pool in Section 1411(e)(3) that allows states to reserve up to 10% of funds for "risk pools" to address the "high need children" with disabilities. Funds in the risk pool may not be used for litigation expenses. The Regulations for Section 1411 begin at 300.700 through 300.717.

#### **(a) Grants to States.**

**(1) Purpose of Grants.** The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

**(2) Maximum amount.** The **maximum amount** of the grant a State may receive under this section—

(A) for fiscal years 2005 and 2006 is—

(i) **the number of children with disabilities** in the State who are receiving special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under Section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is—

(i) the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under Section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by