

P.L. 108-446
Individuals with Disabilities Education
Improvement Act of 2004
Compared to IDEA '97
(Part A, including Findings &
Purposes, and Sections 602-609)
20 U.S.C. §§ 1400-1409

DRAFT

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Additions are marked with underlining and italics.
Deletions are marked with striking through.

COPAA
IDEA 2004 Compared to IDEA '97

20 U.S.C. §1400

SECTION 1. SHORT TITLE.

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

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I--AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

TITLE II--NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

TITLE III--MISCELLANEOUS PROVISIONS

TITLE I--AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

PART A--GENERAL PROVISIONS

SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

(a) **SHORT TITLE.**--This title may be cited as the `Individuals with Disabilities Education Act'.

(b) **TABLE OF CONTENTS.**--The table of contents for this title is as follows:

Part A--General Provisions Sec..601..Short title; table of contents; findings; purposes.Sec..602..Definitions.Sec..603..Office of Special Education Programs.Sec..604..Abrogation of State sovereign immunity.Sec..605..Acquisition of equipment; construction or alteration of facilities.Sec..606..Employment of individuals with disabilities.Sec..607..Requirements for prescribing regulations.Sec..608..State administration.Sec..609..Paperwork reduction.Sec..610..Freely associated states.

Part B--Assistance for Education of All Children With Disabilities Sec..611..Authorization; allotment; use of funds; authorization of appropriations.Sec..612..State eligibility.Sec..613..Local educational agency eligibility.Sec..614..Evaluations, eligibility determinations, individualized education programs, and educational placements.Sec..615..Procedural safeguards.Sec..616..Monitoring, technical assistance, and enforcement.Sec..617..Administration.Sec..618..Program information.Sec..619..Preschool grants.

Part C--Infants and Toddlers With Disabilities Sec..631..Findings and policy.Sec..632..Definitions.Sec..633..General authority.Sec..634..Eligibility.Sec..635..Requirements for statewide system.Sec..636..Individualized family service plan.Sec..637..State application and assurances.Sec..638..Uses of funds.Sec..639..Procedural safeguards.Sec..640..Payor of last resort.Sec..641..State interagency coordinating council.Sec..642..Federal administration.Sec..643..Allocation of funds.Sec..644..Authorization of appropriations.

Part D--National Activities To Improve Education of Children With Disabilities Sec..650..Findings.

SUBPART 1--STATE PERSONNEL DEVELOPMENT GRANTS Sec..651..Purpose; definition of personnel; program authority.Sec..652..Eligibility and collaborative process.Sec..653..Applications.Sec..654..Use of funds.Sec..655..Authorization of appropriations.

SUBPART 2--PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION Sec..661..Purpose; definition of eligible entity.Sec..662..Personnel development to improve services and results for children with disabilities.Sec..663..Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.Sec..664..Studies and evaluations.Sec..665..Interim alternative educational settings, behavioral supports, and systemic school interventions.Sec..667..Authorization of appropriations.

SUBPART 3--SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES Sec..670..Purposes.Sec..671..Parent training and information centers.Sec..672..Community parent resource centers.Sec..673..Technical assistance for parent training and information centers.Sec..674..Technology development, demonstration, and utilization; and media services.Sec..675..Authorization of appropriations.

SUBPART 4--GENERAL PROVISIONS Sec..681..Comprehensive plan for subparts 2 and 3.Sec..682..Administrative provisions.

(c) FINDINGS.--Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the special educational needs *of millions* of children with disabilities were not being fully met *because--*

(A) the children did not receive appropriate educational services;

(B) more than one half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

(B) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process from being educated with their peers; ~~*(D) there were many children with disabilities throughout the United States participating in regular school programs whose*~~

(C) undiagnosed disabilities prevented such the children from having a successful educational experience or because their disabilities were undetected; and (E) because of the

(D) a lack of adequate services resources within the public school system forced families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense .

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act *title* has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this Act *title* has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) ~~Over 20~~ *Almost 30* years of research and experience has demonstrated that the education of children with disabilities can be made more effective by --

(A) having high expectations for such children and ensuring their access ~~in the general curriculum~~ *to the general education curriculum in the regular classroom, to the maximum extent possible, in order to--*

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role *and responsibility* of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this ~~Act~~ title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where ~~they~~ such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all-personnel who work with ~~such~~ children with disabilities in order to ensure that ~~they~~ such personnel have the skills and knowledge necessary to ~~enable them~~—

- (i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and
- (ii) to be prepared to lead productive, independent, adult lives improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches and ~~pre-referral intervention~~, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the ~~ir~~ learning and behavioral needs of such children; ~~and~~

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

~~(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society.~~ A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's racial ethnic profile is rapidly changing. ~~Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of~~

increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African Americans, and 107.8 percent for Asians.

~~(C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African American, Hispanic, Asian American, or American Indian.~~

~~(D) Taken together as a group, minority In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.~~

~~(C) Minority children are comprising comprise an ever larger increasing percentage of public school students. Large city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.~~

~~(E) Reeruitment~~

~~(D) With such changing demographics, recruitment efforts within for special education must personnel should focus on bringing larger numbers increasing the participation of minorities in to the teaching profession in order to provide appropriate practitioner knowledge, role models, and with sufficient manpower knowledge to address the clearly changing demography of special education needs of these students.~~

~~(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nations 2 largest school districts, limited English proficient students make up almost half of all students initially entering school at the kindergarten level.~~

~~(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupils academic needs. These trends pose~~

~~(C) Such discrepancies pose a special challenge-s for special education in the referral of, assessment of, and provision of services for, our Nation 's students from non- English language backgrounds.~~

~~(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.~~

~~(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population. Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation and emotional disturbance at rates greater than their White counterpart.~~

~~(D) Although African Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.~~

~~(E) The drop out rate is 68 percent higher for minorities than for whites.~~

~~(F) More than 50 percent of minority students in large cities drop out of school.~~

~~(9)(A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of~~

professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority counterparts.

~~(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.~~

~~(B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.~~

~~(C) Students from minority groups comprise more than 50 percent of K-12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.~~

~~(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.~~

~~(13)(A) As the number of African-American and Hispanic minority students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.~~

~~(E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.~~

~~(F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this title, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities. and related services personnel training under this Act.~~

~~(G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.~~

~~(H) In 1986-87, of the degrees conferred in education at the B.A., M.A., and Ph.D. levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.~~

~~(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.~~ (d) PURPOSES. The

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) PURPOSES.--The purposes of this title are –

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected;-and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting ~~systemic change~~ system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

IDEA 2004 compared to IDEA '97

[COPAA Note: Changes in the definition section include the exclusion of surgically-implanted devices from assistive technology devices, the new definitions of Highly Qualified Teacher, homeless child, and universal design, and ward of the state, and changes to the definition of parent, related services, and transition services.]

20 U.S.C. §1401 (Sec. 602) **DEFINITIONS.**

Except as otherwise provided, ~~as used in this Act~~ *as used in this title*:

(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 of 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 (~~hereinafter~~ 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.

(56) 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.

(67) 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.

(78) 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 ~~of this title~~;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; ~~or and~~

(iii) under parts A and B of title ~~VHIII~~ of that Act; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(8) FREE APPROPRIATE PUBLIC EDUCATION.--The term '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 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.--The term ~~Indian~~ 'Indian' means an individual who is a member of an Indian tribe.

(10~~3~~) INDIAN TRIBE.--The term ~~Indian~~ '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.)).

(11~~4~~) INDIVIDUALIZED EDUCATION PROGRAM; IEP.--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).

(125) INDIVIDUALIZED FAMILY SERVICE PLAN.--The term 'individualized family service plan' has the meaning given ~~such~~the term in section 636.

(136) INFANT OR TODDLER WITH A DISABILITY.--The term 'infant or toddler with a disability' has the meaning given ~~such~~the term in section 632.

(147) INSTITUTION OF HIGHER EDUCATION.--The term 'institution of higher education'--

(A) has the meaning given ~~that~~e term in section ~~1201(a)~~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 ~~Community~~-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.

(159) LOCAL EDUCATIONAL AGENCY.--

(A) ~~The~~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) ~~The~~EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES.--The term includes--

(i) an educational service agency, ~~as defined in paragraph (4);~~ and

(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) ~~The~~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 ~~Act~~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.

(4620) NATIVE LANGUAGE.--The term 'native language', when used with ~~reference~~respect to an individual ~~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.

(4721) NONPROFIT.--The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by ~~one~~one

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.

~~(1822)~~ OUTLYING AREA.--The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

~~(1923)~~ PARENT.--The term ~~parent~~ ~~(A) includes a legal guardian; and (B) '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), ~~includes~~ an individual assigned under either of those sections to be a surrogate parent.

~~(204)~~ PARENT ORGANIZATION.--The term 'parent organization' has the meaning given ~~that~~ that term in section ~~68271~~(g).

~~(215)~~ PARENT TRAINING AND INFORMATION CENTER.--The term 'parent training and information center' means a center assisted under section ~~68271~~ or ~~68372~~.

~~(226)~~ 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.

~~(237)~~ 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.

~~(248)~~ SECRETARY.--The term 'Secretary' means the Secretary of Education.

~~(259)~~ 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.

(2630) SPECIFIC LEARNING DISABILITY.--

(A) IN GENERAL.--The term 'specific learning disability' means a disorder in ~~one~~ 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.

(2731) 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.

(2832) 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.

(2933) 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).

(304) TRANSITION SERVICES.--The term 'transition services' means a coordinated set of activities for a ~~student~~child with a disability that--

(A) is designed to be within an ~~outcome-oriented~~ results-oriented process, ~~which promotes~~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 ~~training~~education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based ~~upon~~on the individual ~~students~~child's needs, taking into account the ~~students~~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).

20 U.S.C. §1402 (SEC. 603)

OFFICE OF SPECIAL EDUCATION PROGRAMS.

(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 ~~such~~the Department for administering and carrying out this ~~Act~~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 ~~Act~~title.

20 U.S.C. §1403 (SEC. 604)

ABROGATION OF STATE SOVEREIGN IMMUNITY

(a) IN GENERAL.--A State shall not be immune under the ~~eleventh~~11th amendment to the Constitution of the United States from suit in Federal court for a violation of this ~~Act~~title.

(b) REMEDIES.--In a suit against a State for a violation of this ~~Act~~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 the date of ~~the~~ enactment of the Education of the Handicapped Act Amendments of 1990.

20 U.S.C. §1404 (SEC. 605)

ACQUISITION OF EQUIPMENT;

CONSTRUCTION OR ALTERATION OF FACILITIES

(a) IN GENERAL.--If the Secretary determines that a program authorized under this ~~Act~~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'~~Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

(2) appendix A of ~~part~~subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the ~~Uniform~~Uniform Federal Accessibility Standards').

20 U.S.C. §1405 (SEC. 606)

EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

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

[COPAA Note: Section 607 lays out the requirements for Department of Education regulations. The public will have 75 days to comment on draft regulation.]

20 U.S.C. §1406 (SEC. 607)

REQUIREMENTS FOR PRESCRIBING RULES AND REGULATIONS.

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

[COPAA note: Section 607 was Section 617(b) in IDEA '97.]

(b) PROTECTIONS PROVIDED TO CHILDREN.--The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this ~~Act~~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 ~~Act~~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 the Congress in legislation.

(~~a~~c) PUBLIC COMMENT PERIOD.--The Secretary shall provide a public comment period of ~~at least 90~~not less than 75 days on any regulation proposed under part B or part C of this ~~Act~~ 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~~) ISSUES OF NATIONAL SIGNIFICANCE.--If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall--

- ~~(1) include a statement to that effect in any written response;~~
- ~~(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and~~
- ~~(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.~~

~~(f)~~ EXPLANATION AND ASSURANCES.--Any written response by the Secretary under subsection ~~(e)~~ regarding a policy, question, or interpretation under part B of this Act shall include an explanation ~~that~~in the written response--~~response that--~~

- ~~(1) such response is provided as informal guidance and is not legally binding; and~~
- ~~(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.~~

~~(d)~~ CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART/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 Act/title or the regulations implemented pursuant to this Act/title.

(2) ADDITIONAL INFORMATION.--For each item of correspondence published in a list under paragraph (1), the Secretary ~~shall~~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.

[COPAA note: Section 608, State Administration, and Section 609, Paperwork Reduction are new. Paperwork Reduction is a pilot program for 15 states.]

20 U.S.C. §1407 (SEC. 608)
STATE ADMINISTRATION.

(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.

(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.

SEC. 609. PAPERWORK REDUCTION.

(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 615.

(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 616(d)(2)(A)(ii) and that the waiver has contributed to or caused such need for assistance;

(B) needs intervention under section 616(d)(2)(A)(iii) or needs substantial intervention under section 616(d)(2)(A)(iv); 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 426 of the Department of Education Organization Act 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. §1408 (SEC. 609)

SEC. 609. STATE ADMINISTRATION.

(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.

(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. §1409 (SEC. 610)

SEC. 610. 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.