

## Comparison of IDEA '97 to IDEA '04

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<p>PART A GENERAL PROVISIONS</p> <p>SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.</p> <p>(a) Short Title. This Act may be cited as the “Individuals with Disabilities Education Act’.</p> <p>(b) Table of Contents. The table of contents for this Act is as follows:</p> <p>Part A General Provisions</p> <p>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.</p>	<p><b>Public Law 108-446</b>  <b>108th Congress</b></p> <p><b>An Act</b></p> <p><b>To reauthorize the Individuals with Disabilities Education Act, and for other purposes.</b></p> <p><b>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</b></p> <p><b>SECTION 1. SHORT TITLE.</b>  <b>This Act may be cited as the “Individuals with Disabilities Education Improvement Act of 2004”.</b></p> <p><b>SEC. 2. ORGANIZATION OF THE ACT.</b>  <b>This Act is organized into the following titles:</b></p> <p><b>Title I—Amendments to the Individuals With Disabilities Education Act.</b>  <b>Title II—National Center for Special Education Research.</b>  <b>Title III—Miscellaneous Provisions.</b></p> <p><b>TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT</b></p> <p><b>SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.</b></p> <p><b>Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:</b></p> <p>PART A--GENERAL PROVISIONS</p> <p>SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.</p> <p>(a) SHORT TITLE.--This title may be cited as the ‘Individuals with Disabilities Education Act’.</p> <p>(b) TABLE OF CONTENTS.--The table of contents for this title is as follows:</p> <p>Part A--General Provisions</p> <p>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.</p>

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<p>Part B Assistance for Education of All Children with Disabilities</p> <p>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. Withholding and judicial review.  Sec. 617. Administration.  Sec. 618. Program information.  Sec. 619. Preschool grants.</p> <p>Part C Infants and Toddlers with Disabilities</p> <p>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. Federal Interagency Coordinating Council.  Sec. 645. Authorization of appropriations.</p> <p>Part D National Activities to Improve Education of Children with Disabilities</p> <p>Subpart 1 State Program Improvement Grants for Children with Disabilities</p> <p>Sec. 651. Findings and purpose.  Sec. 652. Eligibility and collaborative process.  Sec. 653. Applications.  Sec. 654. Use of funds.  Sec. 655. Minimum State grant amounts.  Sec. 656. Authorization of appropriations.</p> <p>Subpart 2 Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information</p>	<p><b>Sec. 608. State administration.</b>  <b>Sec. 609. Paperwork reduction.</b>  <b>Sec. 610. Freely associated states.</b></p> <p>Part B--Assistance for Education of All Children With Disabilities</p> <p>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. <b>Monitoring, technical assistance, and enforcement.</b>  Sec. 617. Administration.  Sec. 618. Program information.  Sec. 619. Preschool grants.</p> <p>Part C--Infants and Toddlers With Disabilities</p> <p>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.</p> <p>Part D--National Activities To Improve Education of Children With Disabilities</p> <p>Sec. 650. Findings.</p> <p>SUBPART 1--STATE PERSONNEL DEVELOPMENT GRANTS</p> <p>Sec. 651. Purpose; <b>definition of personnel</b>; program authority.  Sec. 652. Eligibility and collaborative process.  Sec. 653. Applications.  Sec. 654. Use of funds.  Sec. 655. Authorization of appropriations.</p> <p>SUBPART 2--PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, <b>MODEL DEMONSTRATION PROJECTS</b>, AND DISSEMINATION OF INFORMATION</p>

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Sec. 661. Administrative provisions.

Chapter 1 Improving early intervention, educational, and transitional services and results for children with disabilities through coordinated research and personnel preparation

Sec. 671. Findings and purpose.

Sec. 672. Research and innovation to improve services and results for children with disabilities.

Sec. 673. Personnel preparation to improve services and results for children with disabilities.

Sec. 674. Studies and evaluations.

Chapter 2 Improving early intervention, educational, and transitional services and results for children with disabilities through coordinated technical assistance, support, and dissemination of information

Sec. 681. Findings and purposes.

Sec. 682. Parent training and information centers.

Sec. 683. Community parent resource centers.

Sec. 684. Technical assistance for parent training and information centers.

Sec. 685. Coordinated technical assistance and dissemination.

Sec. 686. Authorization of appropriations.

Sec. 687. Technology development, demonstration, and utilization, and media services.

(c) Findings. The 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)

(A) the special educational needs of children with disabilities were not being fully met;

(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;

(C) 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 with their peers;

(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such

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

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

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

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children from having a successful educational experience because their disabilities were undetected; and

(E) because of the lack of adequate services within the public school system, 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 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 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 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 maximum extent possible;

(B) strengthening the role 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 with other local, educational service agency, State, and Federal school improvement efforts 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 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 professional development for all personnel who work with such children in order to ensure that they 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, to the maximum extent possible;

(F) providing incentives for whole-school approaches

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(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this 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 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) **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 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 **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 **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 children **with disabilities** in order to ensure that such personnel have the skills and knowledge **necessary to 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,

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and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and

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

(6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a 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.

(B) America's racial 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 children are comprising an ever larger 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.

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**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 learning **and behavioral** needs of such children; (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 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 **ethnic** profile is rapidly changing. 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 comprise an increasing percentage of public school students.

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(E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

(F) 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 Nation's 2 largest school districts, limited English proficient students make up almost half of all students initially entering school at the kindergarten level. 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 pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

(8)(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.

(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation 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 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, pre-kindergarten 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

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(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the 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.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge 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.

(C) African-American children are identified as having mental retardation **and emotional disturbance** at rates greater than their White 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.

(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 minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(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.

(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.

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seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

(D) As the number of African-American and Hispanic 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 special education 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 pre-service 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 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 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;

- (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;

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- (3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change 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.

**SEC. 602. DEFINITIONS.**

Except as otherwise provided, as used in this Act:

(1) Assistive technology device. 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.

(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 as emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning

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- (3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting 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.

**SEC. 602. DEFINITIONS.**

Except as otherwise provided, 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 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;

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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 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 one 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) Educational service agency. The term 'educational service agency'—

(A) means a regional public multi-service 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 and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(5) Elementary school. The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

(6) 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.

(7) 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 or secondary school student, as may be appropriate, and which shall be computed after deducting

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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

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- (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
  - (iii) under part A of title VII 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 '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, or secondary school education in the State involved; and
  - (D) are provided in conformity with the individualized education program required under section 614(d).

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- 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 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.**