

Laws Governing Early Intervention and Special Education of Young Children with Disabilities (0-5) with an Emphasis on Assistive Technology

LAWS CONCERNING INDIVIDUALS WITH DISABILITIES

Rehabilitation Act (P.L. 93-112), 1973

This legislation was the first federal civil rights law to protect the rights of individuals with disabilities. Section 504 protects qualified individuals from discrimination based on their disability: *“No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”*

For the first time, publicly funded programs had to ensure that people with disabilities could access the programs with “reasonable accommodations.” This may include access to the early childcare program in the building, curriculum modifications such as adapted play materials and simple AT supports, providing auditory and visual instruction, and behavioral supports. Section 504 does not require the program/school to provide an Individual Family Service Plan/Individualized Education Program (IFSP/IEP).

Americans with Disabilities Act (ADA) (P.L. 101-336), 1990

This law extends full civil rights to all people with disabilities and affords them the right to fully access public and particular private sector facilities and services. It extends Section 504 by prohibiting discrimination in employment, public accommodation, transportation, state and local government services, and telecommunications. For children with disabilities, the ADA prohibits discrimination and extends the right of access to *all* educational programs and services, whether or not the school/program receives federal funding. All public and private early childhood programs must provide reasonable access for young children with disabilities. Program accommodations can include such strategies as setting up a quiet area, implementing a behavior-management plan, providing a variety of drawing tools, or using a signal to cue a child’s behavior. Children with disabilities, even those who are not eligible for special education under IDEA, may also be entitled to the provision of assistive technology under Section 504 of the Rehabilitation Act or under the Americans with Disabilities Act (ADA).

LAWS CONCERNING THE EDUCATION OF CHILDREN WITH DISABILITIES

The Education for the Handicapped Act (EHA) (P.L. 94-142), 1975

Before 1975, children with disabilities were mostly denied an education solely on the basis of their disabilities. The EHA requires all school districts to educate students with disabilities. This was the first law to guarantee a free and appropriate public education (FAPE) to children with disabilities (then

referred to as “handicapped”) in grades K–12. Funding to states and school districts is authorized to assist them in providing special education and related services. Federal regulations provide rules to which school districts must adhere when providing an education to students with disabilities. The educational setting for children with disabilities is the “least restrictive environment” (LRE). This means that school districts are required to educate students with disabilities in the schools they would attend if they were not disabled. To identify children with disabilities and support their education, school districts must, in partnership with families, develop a written Individualized Education Program (IEP). The IEP identifies educational goals, objectives, and intervention plans for each child with a disability. The goals are identified and agreed to by a team of individuals and include the child’s parents as well as public school administrators, evaluators, teachers, and therapists. The special services and learning supports the child needs to achieve the goals and objectives are also specified in his or her IEP. They must be free, provided by the public school at no cost to the child’s family.

Education of the Handicapped Act Amendments (P.L. 99-457), 1986

These amendments, which are also known as the Early Intervention Amendments to the Education of the Handicapped Act, are the first to extend the right to a free and appropriate public education (FAPE) to all children ages 3–5 (Part B, Section 619). Part B regulates the education of children 3–21. Part C of the amended law creates the Early Intervention Program for infants and toddlers with disabilities (birth to age 3) and their families. The law requires the development of an Individual Family Service Plan (IFSP) for each child and family served. The law creates a system that is family centered, where supports and services are provided in the family’s natural environments.

Education of the Handicapped Act Amendments (P.L. 101-476), 1990

These amendments rename the special education law as the **Individuals with Disabilities Education Act (IDEA)**. They replace the phrase *handicapped child* with *child with a disability*. Evidence exists that individualized education programs may have been overemphasized and may have limited the benefits that children with disabilities gain within an inclusive curriculum. The amendments strengthen the law’s commitment to greater inclusion in community schools by defining *least restrictive environment* as the same setting in which children without disabilities participate. They also expand the services for children with disabilities, ages 3–21, extend eligibility to children with autism and traumatic brain injury, and designate *assistive technology* as a related service in a child’s Individualized Education Program (IEP). It also requires that, by age 16, each student have a plan for transition to employment or postsecondary education explicitly written in his or her IEP.

The law defined assistive technology device as:

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 the functional capabilities of a child with a disability.”

An assistive technology *service* is defined by IDEA 1997 as:

"any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device." The term includes:

1. the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. training or technical assistance for such child, or, where appropriate, the family of such child; and
6. 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.

Amendments to Individuals with Disabilities Education Act (P.L. 105-17), 1997

These IDEA amendments state that the education of students with disabilities can be made more effective by having high expectations for such children and ensuring their access, participation, and progress in the general curriculum to the maximum extent possible. This includes the general education curriculum, extracurricular activities, or any other program that nondisabled peers would be able to access. Schools must educate students with disabilities to meet the same state standards and pass the same state mandated assessments designed for students without disabilities. Specifically, students with disabilities are to be included in general state and district-wide assessments, with appropriate accommodations including Assistive Technology devices and services. The law now supports the idea of appropriate instruction for diverse learners in mainstream settings. IDEA includes principles for parent-professional collaboration, thereby strengthening family involvement and participation.

This law strengthened the use of assistive technology devices and services by stating that the IEP team must consider whether the child requires AT to meet IEP goals.

Individuals with Disabilities Education Improvement Act (IDEA) (P.L. 108-446), 2004

This law amends the special education law and builds on each child's right to access, participate, and progress in the general curriculum. It emphasizes the supports and services children need to participate in the general curriculum. Children with disabilities are provided with the supplementary aids and services necessary for them to achieve educational goals in a setting with nondisabled peers. The general curriculum for young children includes the activities, interactions, and learning opportunities provided during daily activities and routines. The same curriculum developed for children without disabilities must be provided to children with disabilities. It also allows schools to support students who have academic and behavioral problems in regular education programs but who are not disabled. These

intervention services will be delivered to children earlier and prevent future problems. The law makes some changes to the Individualized Education Program (IEP) that identifies the supports and services needed to enable the child to be successful and to benefit from the general curriculum. It requires the regular education teacher to be on the IEP team and given access to the IEP. To meet the standard of “highly qualified teacher,” all special education teachers must be fully certified. Because No Child Left Behind mandates that all children are expected to take part in all state assessments, the IEP must include necessary modifications for state assessments (or a state may develop an alternate assessment.). These modifications vary from state to state but may include extended test time, a separate testing area, a reader, typing the answers, etc.

In 2004, the Assistive Technology definition was changed to:

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 the functional capabilities of a child with a disability. *The term does not include a medical device that is surgically implanted, or the replacement of such device*”.

The law also regulates

- where and how AT should be included on the child’s IFSP/IEP: special education, related services or supplementary aids and services
- the use of AT in the home: On a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP Team determines that the child needs access to those devices in order to receive FAPE
- the IEP team considers whether the child needs assistive technology devices and services.

Assistive technology, which includes devices and services, is one of the services required under Part C of the Individuals with Disabilities Education Act (IDEA) of 2004.

- all children who are eligible to receive special education or early intervention services are also eligible to receive assistive technology, if it is included as part of their IEP/IFSP

LAWS CONCERNING THE EDUCATION OF ALL CHILDREN

No Child Left Behind (P.L. 107-110), 2001

This law is the current version of the Elementary and Secondary Education Act (ESEA). It is the federal law that funds basic public school programs. Its purpose is to promote equal opportunity for all children to receive a high-quality education and attain proficiency (at a minimum) on challenging state achievement standards and state assessments. All children, including those with disabilities, are expected to meet the same standards and be assessed the same way. The law supports use of the same general curriculum for all children (K–12). It is the first law to mandate that the same assessment instruments be used for children with and without disabilities and that all results be reported. It also defines requirements for highly qualified teachers of core academic areas.

All preschool aged children do not yet have a federal right to public education. However the majority of states offer state-funded, -controlled, and -supported preschool programs designed for children without disabilities but that can include young children with disabilities.

LEGAL RIGHTS AND PROTECTIONS OF PRESCHOOL CHILDREN WITH DISABILITIES AND THEIR FAMILIES

Children ages 3-5 with disabilities have the right to

- a free and appropriate public education (FAPE) with the supports each child needs to learn
- an Individualized Education Program (IEP) that includes goals, objectives, and intervention plans for the child to ensure the child's participation and enable him or her to progress in appropriate daily activities
- services without having a specific condition labeled. Eligibility is determined by IDEA criteria, but states are not required to report children with disabilities by disability category (*Developmental delay* is a broad category descriptor.)
- a statement of how the disability affects their involvement and participation in daily activities
- an education in least restrictive environment (LRE) with their nondisabled peers in the programs they would attend if they were not disabled
- a coordinated approach to service delivery in the least restrictive environment
- appropriate aids and supports to support their participation in appropriate daily activities
- the consideration of assistive technology devices and services to support positive outcomes

Parents or legal guardians of children with disabilities have the right to

- all of the information necessary to make informed decisions about their child's education
- participate in the development of and approve all educational decisions about their child (Parents or guardians must agree with and sign the IEP.)
- an independent evaluation and a due process hearing if they contest the school's actions
- written notification in their native language of evaluations and IEP meetings
- confidentiality of their child's records and conversations about their child
- a copy of the procedural safeguards that ensure and protect the basic rights of children receiving special education and related services

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