

### **6-41-201. Title.**

This subchapter shall be known as the "Children With Disabilities Act of 1973".

**HISTORY:** Acts 1973, No. 102, § 1; A.S.A. 1947, § 80-2115; Acts 1993, No. 294, § 14.

### **6-41-202. Purposes and applicability.**

**(a) (1)** It is the policy of this state to provide and to require school districts to provide, as an integral part of the public schools, a free appropriate public education for students with disabilities.

**(2)** The State Board of Education is expressly authorized to assign responsibility for providing free appropriate public education of any child with a disability to an appropriate school district.

**(b)** The provisions of this section shall apply to all political subdivisions of the state that are involved in the education of children with disabilities, including without limitation the state educational agency, local educational agencies, educational service agencies, public charter schools that are not otherwise included as local educational agencies or educational service agencies and are not a school of a local educational agency or educational service agency, other state agencies and schools, including without limitation the Division of Behavioral Health Services of the Department of Human Services and state schools for children with deafness or children with blindness, and state and local juvenile and adult correction facilities.

**(c)** The provisions of this section shall be binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

**(d)** Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., are given to children with disabilities referred to or placed in private schools and facilities by that public agency or placed in private schools by their parents under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

**(e)** The state educational agency is responsible for ensuring that the requirements of this section are carried out and that each educational program for children with disabilities administered within the state, including without limitation each program administered by any other state or local agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the state educational agency and meets the educational standards of the state educational agency, including without limitation the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

**HISTORY:** Acts 1973, No. 102, §§ 2, 17; 1979, No. 1055, § 1; A.S.A. 1947, §§ 80-2116, 80-2131; Acts 1989, No. 703, § 1; 1993, No. 294, § 14; 2005, No. 2151, § 27; 2007, No. 1573, § 34.

### **6-41-203. Definitions.**

As used in this subchapter:

**(1)** "A child with a disability" means a person between three (3) and twenty-one (21) years of age evaluated in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as having mental retardation, a

hearing impairment including without limitation deafness, a speech or language impairment, a visual impairment including without limitation blindness, a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services;

**(2)** "Board" means the State Board of Education; and

**(3) (A)** "Special education" means specially designed instruction at no cost to the parents to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, in other settings, and instruction in physical education.

**(B)** Special education includes each of the following, if the services otherwise meet the requirements of this definition:

**(i)** Speech-language pathology services or any other related service if the service is considered special education rather than a related service under state standards;

**(ii)** Travel training; and

**(iii)** Vocational education.

**HISTORY:** Acts 1973, No. 102, §§ 2, 10, 11; 1975, No. 641, § 4; 1979, No. 1055, § 1; A.S.A. 1947, §§ 80-2116, 80-2124, 80-2125; Acts 1989, No. 943, § 1; 1991, No. 204, § 1; 1991, No. 823, § 1; 1993, No. 294, § 14; 1999, No. 391, §§ 23, 24; 2007, No. 1573, § 35.

**6-41-204. Least restrictive environment.**

**(a)** Each public agency shall ensure that:

**(1)** To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, is educated with children who are nondisabled; and

**(2)** Special classes, separate schooling, or other removal of a child with a disability from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**(b)** The state funding mechanism shall not:

**(1)** Result in placements that violate the requirements of subsection (a) of this section; or

**(2)** Distribute funds on the basis of the type of setting in which a child is served in a manner that results in the failure to provide a child with a disability free appropriate public education according to the unique needs of the child with a disability, as described in the child's individualized education program.

**HISTORY:** Acts 1973, No. 102, § 4; A.S.A. 1947, § 80-2118; Acts 1993, No. 294, § 14; 2007, No. 1573, § 36.

#### **6-41-205. Provision for education.**

The State Board of Education shall provide or cause to be provided by school districts, or in some cases by other departments of state government, by institutions, or by private facilities, all regular and special education, corrective, and supporting services required by children with disabilities to the end that they shall receive the benefits of a free and appropriate public education.

**HISTORY:** Acts 1973, No. 102, § 3; A.S.A. 1947, § 80-2117; Acts 1993, No. 294, § 14; 1999, No. 391, § 25.

#### **6-41-206. Responsibilities of state and school districts.**

**(a) (1)** The responsibility of school districts and the state to provide free public education for children with disabilities is not diminished by the availability of private schools and services.

**(2)** Whenever private schools and services are utilized, it continues to be the responsibility of the appropriate local school district and the State Board of Education to assure an appropriate quantity and quality of instructional and related services, to assure the protection of all other rights, and to ascertain that all children with disabilities receive the educational and related services and rights to which the law of this state entitles them.

**(b)** It shall be the responsibility of the local school district and the state to provide a free and appropriate public education based upon the individualized education program developed for the child.

**HISTORY:** Acts 1973, No. 102, § 9; 1975, No. 641, § 3; A.S.A. 1947, § 80-2123; Acts 1989, No. 703, §§ 2, 3; 1993, No. 294, § 14; 1999, No. 391, § 26; 2007, No. 1573, § 37.

#### **6-41-207. Duties of the State Board of Education.**

**(a)** The State Board of Education is empowered to initiate, inspect, approve, and supervise a program of education for children with disabilities as defined in this subchapter.

**(b)** It is also designated as the agency for cooperation with the state and federal governments, the approved treatment centers, the institutions, and the local schools in carrying out the provisions of this subchapter.

**(c)** The board shall make the necessary rules and regulations in keeping with the provisions of this subchapter and shall employ the necessary personnel for the proper administration of this subchapter if funds are made available for this purpose.

**(d)** The board shall have authority to require such reports as it deems advisable so long as the requirements are in keeping with this subchapter.

**(e)** The board, in keeping with federal requirements, is designated as the agency having general educational supervision over public agencies which provide educational services to children with disabilities as defined in this subchapter to ensure that each public agency complies with state and federal regulations pursuant to the education of children with disabilities.

**(f) (1)** The board, in compliance with federal enforcement requirements, is authorized to disallow the generation of all state aid to children with disabilities to any local school district or education service cooperative that fails to comply with state and federal regulations, as determined by independent hearing officers, agency hearing decisions, agency complaint investigation decisions, agency compliance monitoring reports, or agency jurisdictional decisions.

**(2)** The board is authorized to set aside funds disallowed under this subsection (b) and to utilize such funds for the provision of a free and appropriate public education to appropriate children with disabilities.

**HISTORY:** Acts 1973, No. 102, §§ 14, 24; A.S.A. 1947, §§ 80-2128, 80-2138; Acts 1989, No. 703, § 4; 1993, No. 294, § 14.

**6-41-208. Contracts for services.**

**(a)** The State Board of Education is granted authorization to contract primarily for appraisal and support services with the Department of Human Services, physicians, or other individuals or organizations that, in the opinion of the board, possess the necessary expertise to warrant a contract.

**(b)** In the event of contract, fees paid by the board may not exceed the amounts that would be paid by a private individual for those services.

**HISTORY:** Acts 1973, No. 102, § 6; 1975, No. 641, § 10; A.S.A. 1947, § 80-2120.

**6-41-209. Cooperation among state agencies.**

The State Board of Education is granted authority to and is directed to cooperate with the Department of Human Services and with available treatment institutions and qualified individuals in order to provide diagnostic services to children with disabilities in need of such services.

**HISTORY:** Acts 1973, No. 102, § 13; 1975, No. 641, § 5; A.S.A. 1947, § 80-2127; Acts 1993, No. 294, § 14.

**6-41-210. Special Education Section for children with disabilities.**

**(a)** There is established in the Department of Education a Special Education Section.

**(b)** The section shall be headed by an associate director, who shall be qualified by education, training, and experience to take responsibility for, and give direction to, the programs of the department relating to children with disabilities.

**(c)** Implementation of this section shall be dependent upon funds being made available to the department for this purpose.

**HISTORY:** Acts 1973, No. 102, § 12; A.S.A. 1947, § 80-2126; Acts 1993, No. 294, § 14.

**6-41-211. Advisory Council for the Education of Children with Disabilities.**

**(a) (1)** There shall be an Advisory Council for the Education of Children with Disabilities, which shall advise and consult with the Commissioner of Education and the Associate Director of the Special Education Section of the Department of Education and which shall engage in such other activities as are set forth in this section.

**(2)** The advisory council shall be advisory only and shall have no administrative responsibility or authority.

**(b) (1)** The advisory council shall be composed of individuals involved in, or concerned with, the education of children with disabilities, including:

**(A)** Parents of persons from birth to twenty-six (26) years of age with disabilities;

**(B)** Individuals with disabilities;

**(C)** Teachers;

**(D)** Representatives of institutions of higher education that prepare special education and related services personnel;

**(E)** State and local education officials, including officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq.;

**(F)** Administrators of programs for children with disabilities;

**(G)** Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

**(H)** Representatives of private schools and public charter schools;

**(I)** Not fewer than one (1) representative of a vocational, community, or business organization concerned with the provision of transitional services to children with disabilities;

**(J)** Representatives from the state juvenile and adult corrections agencies; and

**(K)** A representative from the Arkansas child welfare agency responsible for foster care.

**(2)** A majority of the members of the panel shall be individuals with disabilities or parents of persons from birth to twenty-six (26) years of age with disabilities.

**(c) (1)** The commissioner shall appoint the members of the advisory council for three-year terms.

**(2)** Appointees may be eligible for reappointment for one (1) term.

**(d)** Vacancies which leave unexpired terms shall be filled in the regular manner for the unexpired period of time, and vacancies as a result of expiration of terms shall be filled in the regular manner for three-year periods.

**(e)** The advisory council shall elect annually its own chair and vice chair.

**(f)** The associate director shall meet with and act as secretary to the advisory council and, subject to the availability of personnel, facilities, and appropriations, shall furnish meeting facilities and staff services for the advisory council.

**(g)** The advisory council shall:

**(1)** Advise the Department of Education of unmet needs within the state in the education of children with disabilities;

**(2)** Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;

**(3)** Advise the department in developing evaluations and reporting on data to the Secretary of Education under 20 U.S.C. § 1418;

**(4)** Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Title 20, Chapter 33, Subchapter II of the United States Code; and

**(5)** Advise the department in developing and implementing policies relating to the coordination of services for children with disabilities.

**HISTORY:** Acts 1973, No. 102, § 15; 1975, No. 641, § 6; A.S.A. 1947, § 80-2129; Acts 1993, No. 294, § 14; 1995, No. 1296, § 30; 1999, No. 391, §§ 27, 28; 2005, No. 2151, § 28; 2009, No. 376, § 49.

**6-41-212. Facilities.**

**(a)** Physical aspects and specifications for buildings, classrooms, and other facilities for, or likely to be used by, children with disabilities shall be approved by the Division of Public School Academic Facilities and Transportation or a designee.

**(b)** The division or a designee of the division is required to review plans for public school construction or remodeling that are designed for children with disabilities to ensure accessibility and usefulness for that purpose.

**HISTORY:** Acts 1973, No. 102, § 7; A.S.A. 1947, § 80-2121; Acts 1993, No. 294, § 14; 1999, No. 391, § 29; 2005, No. 1426, § 5.

**6-41-213. [Repealed.]**

**6-41-214. Eligibility.**

Specific eligibility requirements for admission to these special services shall be the responsibility of the State Board of Education.

**HISTORY:** Acts 1973, No. 102, § 5; 1975, No. 641, § 1; A.S.A. 1947, § 80-2119; Acts 2007, No. 1573, § 38.

**6-41-215. Tests and examinations -- Evaluation of child.**

**(a)** Every school district shall test and examine, or cause to be tested and examined, each child it believes has disabilities.

**(b)** The tests and examinations shall be administered in accordance with rules and regulations of the State Board of Education.

**(c)** The evaluation shall be made by a multidisciplinary team or group of persons, including at least one (1) teacher or other specialist with knowledge in the area of suspected disability.

**(d)** The child shall be assessed in all areas related to the suspected disability, including, when appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

**(e)** No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child.

**HISTORY:** Acts 1973, No. 102, § 19; 1975, No. 641, § 7; 1979, No. 1055, § 2; 1981, No. 829, § 1; 1983, No. 762, § 1; A.S.A. 1947, § 80-2133; Acts 1993, No. 294, § 14.

**6-41-216. Tests and evaluations -- Change of child's status -- Hearings.**

**(a)** All decisions pertaining to change in the educational status of a child shall follow due process procedures established by the State Board of Education.

**(b)** Due process shall include:

**(1)** Providing for prior notification to parents of testing and provision of special education services;

**(2)** The right to request educational evaluation and special education services; and

**(3)** The right to hearing and appeal of educational decisions.

**(c) (1)** The board shall prescribe rules and regulations governing hearings and appeals.

**(2)** Hearings shall be conducted by individuals referred to as "hearing officers" under this section.

**(3) (A)** The Special Education Section in the Department of Education shall establish standards and qualifications for individuals to serve as hearing officers.

**(B)** Neither an employee of the Department of Education nor an employee of the local school district involved in a particular hearing may serve as a hearing officer.

**(C)** Professional service contracts with individuals made for the purpose of compensating them for services rendered in connection with hearings shall not constitute employment.

**(d)** An individual serving as a qualified hearing officer at an assigned hearing shall be immune from civil suit brought by either party for the consequences of actions required of a hearing officer.

**(e) (1)** An individual serving as a qualified hearing officer under this section shall have the power to issue subpoenas and to bring before him or her as a witness any person in this state.

**(2)** The hearing officer shall issue a subpoena upon the request of any party to a pending proceeding.

**(3)** The writ shall be directed to the sheriff of the county where the witness resides or may be found.

**(4)** The writ may require the witness to bring with him or her any book, writing, or other thing under the witness's

control that he or she is bound by law to produce in evidence.

**(5)** Service of the writ shall be in the manner as provided by law for the service of subpoenas in civil cases.

**(f) (1)** A witness who has been served by subpoena in the manner provided by law and who shall have been paid or tendered the legal fees for travel and attendance as provided by law shall be obligated to attend for examination of the trial of the cause pending before the state board.

**(2)** In the event that a witness has been served with subpoenas as provided under this section and fails to attend the hearing in obedience to the subpoena, the hearing officer may apply to the circuit court of the county in which the hearing officer is having the hearing for an order causing the arrest of the witness and directing that the witness be brought before the court.

**(3)** The court shall have the power to punish the disobedient witness for contempt as provided by law in the trial of civil cases.

**(4)** The disobedient witness shall be liable in damages for nonattendance to the trial or hearing as provided by law.

**(g)** Any party aggrieved by the findings and final decision made by the hearing officer shall have ninety (90) days from the date of the decision of the hearing officer to bring a civil action with respect to the complaint presented in either federal district court or a state court of competent jurisdiction pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as amended, without regard to the amount, if any, in controversy.

**HISTORY:** Acts 1973, No. 102, § 19; 1975, No. 641, § 7; 1979, No. 1055, § 2; 1981, No. 829, § 1; 1983, No. 762, § 1; A.S.A. 1947, § 80-2133; Acts 1995, No. 203, § 1; 1997, No. 369, § 1; 1997, No. 1182, § 1; 2003, No. 1365, § 1; 2005, No. 2151, § 29.

**6-41-217. Individualized education program.**

**(a)** Before any action is taken with respect to the initial placement of a child with disabilities in a special education program, a full and individual evaluation of the child's educational needs must be conducted.

**(b) (1)** Prior to placement in special education services, each child must have an individualized education program.

**(2)** The term "individualized education program" or "IEP" means a written statement for each child with disabilities that is developed, reviewed, and revised in accordance with the requirements of the Individuals with Disabilities Education Act.

**(3)** The individualized education program shall include:

**(A)** A statement of the child's present levels of academic achievement and functional performance, including:

**(i)** How the child's disability affects the child's involvement and progress in the general education curriculum;

**(ii)** For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

**(iii)** For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

**(B)** A statement of measurable annual goals, including academic and functional goals, designed to:

**(i)** Meet the child's needs that result from the child's disability in order to enable the child to be involved in and to make progress in the general education curriculum; and

**(ii)** Meet each of the child's other educational needs that result from the child's disability;

**(C)** A description of how the child's progress toward meeting the annual goals described in subdivision (b)(3)(B) of this section will be measured and when periodic reports will be provided on the progress the child is making toward meeting the annual goals, including, but not limited to, the use of quarterly or other periodic reports, concurrent with the issuance of report cards;

**(D)** A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

**(i)** To advance appropriately toward attaining the annual goals;

**(ii)** To be involved in and to make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and

**(iii)** To be educated and to participate with other children with disabilities and nondisabled children in the activities described in this section;

**(E)** An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in this section;

**(F) (i)** A statement of any individual-appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on statewide and districtwide assessments consistent with the Individuals with Disabilities Education Act, regarding participation in assessments of students with disabilities in all general statewide and districtwide assessment programs.

**(ii)** If the individualized education program team determines that the child shall take an alternative assessment on a particular statewide or districtwide assessment of student achievement, a statement of why:

**(a)** The child cannot participate in the regular assessment; and

**(b)** The particular alternate assessment selected is appropriate for the child;

**(G)** The projected date for the beginning of the services and modifications described in this section, and the anticipated frequency, location, and duration of those services and modifications; and

**(H) (i) (a)** Beginning not later than the first individualized education plan to be in effect when the child is sixteen (16)

years of age and updated annually thereafter, appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and when appropriate, independent living skills.

**(b)** The individualized education program shall also include the transition services, including courses of study, needed to assist the child in reaching those goals.

**(ii)** Beginning no later than one (1) year before the child reaches the age of majority under state law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under the Individuals with Disabilities Education Act.

**(c)** Nothing in this section shall be construed to require the individualized education program team to include information under one (1) component of a child's individualized education program that is already contained under another component of such individualized education program.

**HISTORY:** Acts 1973, No. 102, § 19; 1983, No. 762, § 1; A.S.A. 1947, § 80-2133; Acts 1993, No. 294, § 14; 1999, No. 391, § 31; 2005, No. 2151, § 30; 2009, No. 376, § 50.

**6-41-218. Tests and evaluations -- Records.**

**(a)** Every public school district shall make and keep current a list of all children with disabilities tested and examined.

**(b)** The results of tests and examinations shall be confidential except that the parent or guardian and the child age eighteen (18) or over shall have access to the results, and physicians and other specialists may be given the results with the permission of the parent or guardian or child age eighteen (18) or over.

**HISTORY:** Acts 1973, No. 102, § 21; 1975, No. 641, § 8; A.S.A. 1947, § 80-2135; Acts 1993, No. 294, § 14.

**6-41-219. Tests and evaluations -- Children in private schools.**

The requirements of §§ 6-41-215 -- 6-41-217 shall not apply to children attending private schools on a mandatory basis but may apply on a voluntary basis.

**HISTORY:** Acts 1973, No. 102, § 20; A.S.A. 1947, § 80-2134.

**6-41-220. Equality in expenditure.**

**(a) (1)** It is the responsibility of school districts to expend effort on behalf of the education of each child with disabilities equal to the effort expended on account of the education of each child who does not have a disability.

**(2)** Any additional effort necessary to provide supplemental aids and services shall be the ultimate responsibility of the state but shall, to the maximum extent practicable, be the responsibility of the local school districts.

**(b) (1)** Two (2) or more school districts may join together to establish special classes for children with disabilities.

**(2)** In such event, one (1) school district shall be designated as the controlling agent, and all reimbursement for the education of children with disabilities from the State Board of Education shall be made to this school district.

**(3)** Local revenues or tuition from other districts participating in the cooperative will be paid to the controlling school district on an accepted prorated formula per child.

**HISTORY:** Acts 1973, No. 102, §§ 8, 18; 1975, No. 641, § 2; 1979, No. 1055, § 3; A.S.A. 1947, §§ 80-2122, 80-2132; Acts 1993, No. 294, § 14; 2007, No. 1573, § 39.

**6-41-221. Receipt and disbursement of federal funds.**

**(a) (1)** The State Board of Education is designated as the state agency to receive and disburse federal funds designed to improve educational opportunities provided for children with disabilities as defined in this subchapter.

**(2)** The funds shall not include moneys appropriated by the United States Congress that are designated specifically for use by other agencies, institutions, or treatment facilities for children with disabilities.

**(b)** The specific intention of this section is to provide that the board is designated as the state agency to receive and disburse federal and state funds made available to this state for education of children with disabilities, except as specifically provided for otherwise by the United States Congress or the General Assembly, and no other interpretation shall be given to it.

**(c) (1)** It is declared to be the intent of the General Assembly that, of the state funds allocated and appropriated to the board for children with disabilities, the board is authorized to spend no more than two percent (2%) of the funds or appropriations, or both, for program costs necessary at the state level to implement the intent of this subchapter.

**(2)** The costs may include, but are not necessarily limited to, the programs or services benefitting children with disabilities such as consultative services, workshop expenses, institutional materials, council expenses, in-service programs, scholarships for teachers of children with disabilities, and testing programs.

**(d)** The board shall develop such plans and procedures as may be required in order to receive and disburse federal funds for children with disabilities.

**HISTORY:** Acts 1973, No. 102, §§ 16, 22; 1975, No. 641, § 9; A.S.A. 1947, §§ 80-2130, 80-2136; Acts 1993, No. 294, § 14.

**6-41-222. [Repealed.]**

**6-41-223. Reports.**

Each school district shall report annually to the State Board of Education at a prescribed due date the extent to which it is at that time providing for the special education for children with disabilities, as necessary to implement the policy of this subchapter.

**HISTORY:** Acts 1973, No. 102, § 17; A.S.A. 1947, § 80-2131; Acts 1993, No. 294, § 14.

