

CHAPTER 301

GENERAL PROVISIONS

§7001. Definitions

As used in this subpart, unless the context otherwise indicates, the following terms have the following meanings. [PL 1981, c. 693, §§5, 8 (NEW).]

1. Agency. "Agency" means a public, quasi-governmental or private agency, school, organization, facility or institution.

[PL 2023, c. 643, Pt. W, §1 (AMD).]

1-A. Child Development Services System. "Child Development Services System" means the state intermediate educational unit under section 7209, subsection 3 to ensure the provision of child find activities, early intervention services and, when designated by the commissioner, free, appropriate public education services to eligible children.

[PL 2023, c. 643, Pt. W, §2 (AMD).]

1-B. Child with a disability. "Child with a disability" means:

A. For children from birth to under 3 years of age:

(1) A child who needs early intervention services because the child has a significant developmental delay, as measured by both diagnostically appropriate instruments and procedures, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development; or

(2) A child with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay, with the condition being such that the child needs early intervention services; or [PL 2005, c. 662, Pt. A, §15 (NEW).]

B. For children at least 3 years of age and under 22 years of age evaluated in accordance with the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1414, subsections (a) to (c) as measured by both standardized, norm-referenced diagnostic instruments and appropriate procedures with delays or impairments such that the children need special education:

(1) A child at least 3 years of age and under 6 years of age with a significant developmental delay, at the discretion of the intermediate educational unit or school administrative unit, as defined in rules adopted by the department, in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; adaptive development; or

(2) A child with at least one of the following:

- (a) Intellectual disability;
- (b) Deafness, including hearing loss;
- (c) Speech or language impairment;
- (d) Visual impairment, including blindness;
- (e) Emotional disability;
- (f) Orthopedic impairment;

- (g) Autism;
- (h) Traumatic brain injury;
- (i) Other health impairment;
- (j) Specific learning disabilities;
- (k) Deaf-blindness; and
- (l) Multiple disabilities. [PL 2023, c. 450, §1 (AMD).]

[PL 2023, c. 450, §1 (AMD).]

1-C. Early intervention services. "Early intervention services" means developmental services that are provided under public supervision; are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees; are designed to meet the developmental needs of a child with a disability, as identified by the individualized family service plan team, in one or more areas including physical development, cognitive development, communication development, social or emotional development and adaptive development; meet the standards of the State; are provided by qualified personnel; to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and are provided in conformity with an individualized family service plan.

[PL 2005, c. 662, Pt. A, §15 (NEW).]

1-D. Child eligible under Part B, Section 619. "Child eligible under Part B, Section 619" means a child who is at least 3 years of age and under 6 years of age who has not entered kindergarten and who requires special education and related services in order to access a free, appropriate public education in the least restrictive environment.

[PL 2023, c. 643, Pt. W, §3 (NEW).]

2. Exceptional student.

[PL 2005, c. 662, Pt. A, §15 (RP).]

2-A. Free, appropriate public education. "Free, appropriate public education" means special education and related services that are provided at public expense, under public supervision and direction and without charge; meet the standards of the department; include an appropriate preschool, elementary school or secondary school education in the State; and are provided in conformity with the individualized family service plan or individualized education program. The Child Development Services System shall provide free, appropriate public education to a preschool child with disabilities who reaches 5 years of age between July 1st and October 15th if that child is already receiving free, appropriate public education through the Child Development Services System and the child's individualized education program team determines, in accordance with rules adopted by the commissioner, that it is in the best interest of the child not to enroll that child in kindergarten until the start of the following school year.

[PL 2011, c. 477, Pt. F, §1 (AMD).]

2-B. Intermediate educational unit. "Intermediate educational unit" means an entity that meets the definition of intermediate educational unit in the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1402, (23) as in effect prior to June 4, 1997 and that is a public authority, other than a local educational agency, under the general supervision of the department, that is established for the purpose of providing free public education on a regional basis and that provides special education and related services to children with disabilities within the State. An intermediate educational unit is considered a local educational agency under federal law. In this State, a local educational agency is a school administrative unit. For purposes of this chapter all references to school administrative units include intermediate educational units.

[PL 2011, c. 655, Pt. OO, §2 (AMD).]

2-C. Individualized education program team. "Individualized education program team" means the group of individuals composed in accordance with Part B of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1414(d)(1)(B) to determine the individualized education program for a child with a disability.

[PL 2011, c. 678, Pt. I, §1 (AMD).]

2-D. Individualized family service plan. "Individualized family service plan" means a plan to provide early intervention services in accordance with Part C to an infant or toddler with a disability or to the infant's or toddler's family in the natural setting.

[PL 2023, c. 643, Pt. W, §4 (NEW).]

2-E. Natural setting. "Natural setting" means the home, child care or other community setting of the infant or toddler with a disability. "Natural setting" does not include a preschool setting.

[PL 2023, c. 643, Pt. W, §5 (NEW).]

3. Mentally retarded.

[PL 1999, c. 424, Pt. A, §3 (RP).]

3-A. Part B, Section 619. "Part B, Section 619" means Part B, Section 619 of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq.

[PL 2023, c. 643, Pt. W, §6 (NEW).]

3-B. Part C. "Part C" means Part C of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq. under which early intervention services are provided in the natural setting for infants and toddlers with disabilities.

[PL 2023, c. 643, Pt. W, §7 (NEW).]

3-C. Extended Part C option. "Extended Part C option" means the option under Part C that allows the family of a child eligible under Part B, Section 619 to continue early intervention programming on or after the child's 3rd birthday by remaining in the natural setting and continuing to receive services through an individualized family service plan.

[PL 2023, c. 643, Pt. W, §8 (NEW).]

4. Preschool handicapped child.

[PL 2005, c. 662, Pt. A, §15 (RP).]

4-A. Regional site.

[PL 2011, c. 655, Pt. OO, §3 (RP).]

4-B. Related services. "Related services" means special education transportation and such developmental, corrective and other related services, as defined by the commissioner, as are required to assist children with disabilities to benefit from their special education programs.

[PL 2005, c. 662, Pt. A, §15 (NEW).]

4-C. Regional support and service hub. "Regional support and service hub" means a support and service hub established by the Child Development Services System in accordance with section 7211.

[PL 2023, c. 643, Pt. W, §9 (NEW).]

5. Special education. "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of children with disabilities, as defined by the commissioner, including:

A. Instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and [PL 2005, c. 662, Pt. A, §15 (NEW).]

B. Instruction in physical education. [PL 2005, c. 662, Pt. A, §15 (NEW).]

[PL 2005, c. 662, Pt. A, §15 (AMD).]

6. Special education facility. "Special education facility" means a public or private school, or portion of a public or private school, intended for use in meeting the educational and related needs of children with disabilities.

[PL 2005, c. 662, Pt. A, §15 (AMD).]

6-A. State intermediate educational unit. "State intermediate educational unit" means the Child Development Services System under subsection 1-A.

[PL 2023, c. 643, Pt. W, §10 (NEW).]

7. State licensed agency. "State licensed agency" means an institution or facility licensed by the State to provide education, emotional or mental health services, alcohol or drug rehabilitation, boarding care or other child care services to a person between the ages of 5 and 20 years. It includes:

A. Facilities under Title 22, chapter 1661; and [PL 2005, c. 662, Pt. A, §15 (AMD).]

B. Community mental health services under Title 34-B, chapter 3, subchapter 3. [PL 2005, c. 662, Pt. A, §15 (AMD).]

C. [PL 2005, c. 662, Pt. A, §15 (RP).]

D. [PL 2005, c. 662, Pt. A, §15 (RP).]

[PL 2005, c. 662, Pt. A, §15 (AMD).]

8. Children's residential care facility. "Children's residential care facility" is a facility defined in Title 22, section 8101, subsection 4.

[PL 2013, c. 179, §4 (AMD).]

9. Special education program. A "special education program" is a full-time or part-time educational program designed to provide an equal educational opportunity to children with disabilities through the delivery of special education services by qualified individuals.

[PL 2005, c. 662, Pt. A, §15 (AMD).]

10. Special education services. "Special education services" are educational services provided by qualified individuals as defined by the commissioner. Special education services must be provided by qualified individuals employed or contracted by the school administrative unit.

[PL 2005, c. 662, Pt. A, §15 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 624, §1 (AMD). PL 1987, c. 395, §A71 (AMD). PL 1999, c. 424, §§A2-4 (AMD). PL 1999, c. 721, §4 (AFF). PL 1999, c. 721, §§1,2 (AMD). PL 2003, c. 477, §6 (AMD). PL 2003, c. 676, §§1,2 (AMD). PL 2005, c. 662, §A15 (AMD). PL 2007, c. 430, §1 (AMD). PL 2011, c. 348, §3 (AMD). PL 2011, c. 477, Pt. F, §1 (AMD). PL 2011, c. 542, Pt. A, §21 (AMD). PL 2011, c. 655, Pt. OO, §§1-3 (AMD). PL 2011, c. 678, Pt. I, §1 (AMD). PL 2013, c. 179, §4 (AMD). PL 2023, c. 450, §1 (AMD). PL 2023, c. 643, Pt. W, §§1-10 (AMD).

§7002. Cooperation with federal programs

(REPEALED)

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 2005, c. 662, §A16 (RP).

§7003. Rules

(REPEALED)

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 2005, c. 662, §A17 (RP).

§7004. Cost-benefit analysis**(REPEALED)**

SECTION HISTORY

RR 1997, c. 1, §20 (RAL). PL 1997, c. 308, §1 (NEW). PL 1997, c. 338, §1 (NEW). PL 2005, c. 662, §A18 (RP).

§7005. Special education**(REALLOCATED FROM TITLE 20-A, SECTION 7004)**

1. Rulemaking. The commissioner is authorized to adopt rules necessary for the administration of this chapter and chapters 303 and 305. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal statute or regulation, if an applicable federal statute or regulation exists.

During the consideration of any proposed rule, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the corresponding federal statute or regulation, if such a federal statute or regulation exists, and explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal statute or regulation.

[PL 2005, c. 662, Pt. A, §19 (AMD).]

SECTION HISTORY

RR 1997, c. 1, §20 (RAL). PL 2005, c. 662, §A19 (AMD).

§7006. Responsibility

The Department of Education is designated as the state education agency responsible for carrying out the State's obligations under the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1400 et seq., as amended. The department and every school administrative unit, intermediate educational unit, public school or other public agency that receives federal or state funds to provide early intervention or free, appropriate public education services to children with disabilities shall comply with the federal Individuals with Disabilities Education Act, as amended, and all federal regulations adopted under the Act. [PL 2005, c. 662, Pt. A, §20 (NEW).]

1. Responsibility for Part C. The commissioner shall designate responsibility for ensuring child find activities and early intervention services under Part C for children from birth until 3 years of age, or until the start of the school year in which the child is 4 years of age if the extended Part C option is selected by the family of the child, to the Child Development Services System.

[PL 2023, c. 643, Pt. W, §11 (NEW).]

2. Responsibility for Part B, Section 619. Until June 30, 2028, the commissioner shall designate responsibility for child find activities and for ensuring a free, appropriate public education for children eligible under Part B, Section 619 to the Child Development Services System or to school administrative units in accordance with the transition schedule and supports under section 7209-A. Beginning July 1, 2028, the commissioner shall designate responsibility for child find activities and for ensuring a free, appropriate public education for children eligible under Part B, Section 619 to school administrative units.

[PL 2023, c. 643, Pt. W, §11 (NEW).]

3. Service provision. A school administrative unit that has been designated to have responsibility for child find activities and for ensuring a free, appropriate public education for children eligible under Part B, Section 619 pursuant to subsection 2 may directly provide special education and related services

to children eligible under Part B, Section 619 and may contract with public and private providers to provide special education and related services. A school administrative unit may also access the school administrative unit's regional support and service hub to provide certain services as delineated in a memorandum of understanding between the department and the school administrative unit.

[PL 2023, c. 643, Pt. W, §11 (NEW).]

4. Exception. Notwithstanding subsection 2, if the commissioner determines that a school administrative unit is unable to assume responsibility for child find activities and for ensuring a free, appropriate public education for children eligible under Part B, Section 619 pursuant to subsection 2, the commissioner may establish a modified plan for that school administrative unit in managing those children.

[PL 2023, c. 643, Pt. W, §11 (NEW).]

5. Annual report. The department shall report annually by March 1st to the joint standing committee of the Legislature having jurisdiction over education matters. The report must include, for school administrative units, each of the components required of the Child Development Services System pursuant to section 7209, subsection 4, paragraph E. The joint standing committee of the Legislature having jurisdiction over education matters may report out a bill related to the report to the session of the Legislature in which the report is received.

[PL 2023, c. 643, Pt. W, §11 (NEW).]

SECTION HISTORY

PL 2005, c. 662, §A20 (NEW). PL 2023, c. 643, Pt. W, §11 (AMD).

§7007. Related services

Related services must be provided by qualified individuals employed or contracted by the school administrative unit, intermediate educational unit, public school or other public agency that receives federal or state funds to provide early intervention or free, appropriate public education services to children with disabilities in accordance with rules adopted by the department pursuant to section 7005.

[PL 2023, c. 449, §3 (AMD).]

SECTION HISTORY

PL 2011, c. 19, §1 (NEW). PL 2023, c. 449, §3 (AMD).

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