

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 159
SENATE BILL 1177

AN ACT

AMENDING SECTION 15-761, ARIZONA REVISED STATUTES; RELATING TO SPECIAL
EDUCATION FOR EXCEPTIONAL CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-761, Arizona Revised Statutes, is amended to
3 read:

4 15-761. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Autism" means a developmental disability that significantly
7 affects verbal and nonverbal communication and social interaction and that
8 adversely affects educational performance. Characteristics include
9 irregularities and impairments in communication, engagement in repetitive
10 activities and stereotyped movements, resistance to environmental change
11 or change in daily routines and unusual responses to sensory experiences.
12 Autism does not include children with characteristics of emotional
13 disability as defined in this section.

14 2. "Child with a disability":

15 (a) Means a child who is at least three years but ~~less than~~ UNDER
16 twenty-two years of age, who has been evaluated pursuant to section 15-766
17 and found to have at least one of the following disabilities and who,
18 because of the disability, needs special education and related services:

- 19 (i) Autism.
- 20 (ii) Developmental delay.
- 21 (iii) Emotional disability.
- 22 (iv) Hearing impairment.
- 23 (v) Other health impairments.
- 24 (vi) Specific learning disability.
- 25 (vii) Mild, moderate or severe intellectual disability.
- 26 (viii) Multiple disabilities.
- 27 (ix) Multiple disabilities with severe sensory impairment.
- 28 (x) Orthopedic impairment.
- 29 (xi) Preschool severe delay.
- 30 (xii) Speech/language impairment.
- 31 (xiii) Traumatic brain injury.
- 32 (xiv) Visual impairment.

33 (b) Does not include a child ~~if~~ FOR WHOM the determinant factor for
34 the classification is one or more of the following:

- 35 (i) A lack of appropriate instruction in reading, including
36 essential components of reading instruction.
- 37 (ii) A lack of appropriate instruction in mathematics.
- 38 (iii) Difficulty in writing, speaking or understanding the English
39 language due to an environmental background in which a language other than
40 English is primarily or exclusively used.

41 3. "Developmental delay" means performance by a child who is at
42 least three years of age but under ten years of age on a norm-referenced
43 test that measures at least one and one-half, but not more than three,
44 standard deviations below the mean for children of the same chronological
45 age in two or more of the following areas:

- 1 (a) Cognitive development.
- 2 (b) Physical development.
- 3 (c) Communication development.
- 4 (d) Social or emotional development.
- 5 (e) Adaptive development.

6 The results of the norm-referenced measure must be corroborated by
7 information from a comprehensive development assessment and from parental
8 input, if available, as measured by a judgment based assessment or survey.
9 If there is a discrepancy between the measures, the evaluation team shall
10 determine eligibility based on a preponderance of the information
11 presented.

12 4. "Due process hearing" means a fair and impartial administrative
13 hearing conducted by the state educational agency by an impartial
14 administrative law judge in accordance with federal and state law.

15 5. "Educational disadvantage" means a condition that has limited a
16 child's opportunity for educational experience resulting in a child
17 achieving less than a normal level of learning development.

18 6. "Eligibility for special education" means the pupil ~~must have~~
19 HAS one of the disabilities ~~contained~~ in paragraph 2 of this section and
20 ~~must also require~~ REQUIRES special education services in order to benefit
21 from an educational program.

22 7. "Emotional disability":-

23 ~~(a)~~ means a condition: ~~whereby~~

24 (a) IN WHICH a child exhibits one or more of the following
25 characteristics over a long period of time and to a marked degree that
26 adversely affects the child's performance in the educational environment:

27 (i) An inability to learn that cannot be explained by intellectual,
28 sensory or health factors.

29 (ii) An inability to build or maintain satisfactory interpersonal
30 relationships with peers and teachers.

31 (iii) Inappropriate types of behavior or feelings under normal
32 circumstances.

33 (iv) A general pervasive mood of unhappiness or depression.

34 (v) A tendency to develop physical symptoms or fears associated
35 with personal or school problems.

36 (b) THAT includes children who are schizophrenic but does not
37 include children who are socially maladjusted unless they are also
38 determined to have an emotional disability as determined by evaluation as
39 provided in section 15-766.

40 8. "Hearing impairment" means a loss of hearing acuity, as
41 determined by evaluation pursuant to section 15-766, that interferes with
42 the child's performance in the educational environment and requires the
43 provision of special education and related services.

44 9. "Home school district" means the school district OR CHARTER
45 SCHOOL THAT THE CHILD LAST ATTENDED OR, IF THE CHILD HAS NOT PREVIOUSLY

1 ATTENDED A PUBLIC SCHOOL IN THIS STATE, THE SCHOOL DISTRICT in which the
2 person resides who has legal custody of the child, as provided in section
3 15-824, subsection B. If the child is a ward of ~~the~~ THIS state and a
4 specific person does not have legal custody of the child or is a ward of
5 this state and the child is enrolled in an accommodation school pursuant
6 to section 15-913, the home school district is the district that the child
7 last attended or, if the child has not previously attended a public school
8 in this state, the school district within which the child currently
9 resides.

10 10. "Impartial administrative law judge" means an administrative
11 law judge of the office of administrative hearings who is knowledgeable in
12 the laws governing special education and administrative hearings.

13 11. "Individualized education program" means a written statement,
14 as defined in 20 United States Code sections 1401 and 1412, for providing
15 special education and related services to a child with a disability.

16 12. "Individualized education program team" means a team whose task
17 is to develop an appropriate educational program for the child and has the
18 same meaning prescribed in 20 United States Code section 1414.

19 13. "Intellectual disability" means a significant impairment of
20 general intellectual functioning that exists concurrently with deficits in
21 adaptive behavior and that adversely affects the child's performance in
22 the educational environment.

23 14. "Mild intellectual disability" means performance on standard
24 measures of intellectual and adaptive behavior between two and three
25 standard deviations below the mean for children of the same age.

26 15. "Moderate intellectual disability" means performance on
27 standard measures of intellectual and adaptive behavior between three and
28 four standard deviations below the mean for children of the same age.

29 16. "Multidisciplinary evaluation team" means a team of persons,
30 including individuals described as the individualized education program
31 team and other qualified professionals, who shall determine whether a
32 child is eligible for special education.

33 17. "Multiple disabilities" means learning and developmental
34 problems resulting from multiple disabilities as determined by evaluation
35 pursuant to section 15-766 that cannot be provided for adequately in a
36 program designed to meet the needs of children with less complex
37 disabilities. Multiple disabilities include any of the following
38 conditions that require the provision of special education and related
39 services:

40 (a) Two or more of the following conditions:

41 (i) Hearing impairment.

42 (ii) Orthopedic impairment.

43 (iii) Moderate intellectual disability.

44 (iv) Visual impairment.

1 (b) A child with a disability listed in subdivision (a) of this
2 paragraph existing concurrently with a condition of mild intellectual
3 disability, emotional disability or specific learning disability.

4 18. "Multiple disabilities with severe sensory impairment" means
5 multiple disabilities that include at least one of the following:

6 (a) Severe visual impairment or severe hearing impairment in
7 combination with another severe disability.

8 (b) Severe visual impairment and severe hearing impairment.

9 19. "Orthopedic impairment" means one or more severe orthopedic
10 impairments and includes those that are caused by congenital anomaly,
11 disease and other causes, such as amputation or cerebral palsy, and that
12 adversely affect a child's performance in the educational environment.

13 20. "Other health impairments" means limited strength, vitality or
14 alertness, including a heightened alertness to environmental stimuli, due
15 to chronic or acute health problems that adversely affect a pupil's
16 educational performance.

17 21. "Out-of-home care" means the placement of a child with a
18 disability outside of the home environment and includes ~~twenty-four hour~~
19 TWENTY-FOUR-HOUR residential care, group care or foster care on either a
20 full-time or part-time basis.

21 22. "Parent" means:

22 (a) Either a natural or adoptive parent of a child.

23 (b) A guardian, but not this state if the child is a ward of this
24 state.

25 (c) A person WHO IS acting in the place of a natural or adoptive
26 parent AND with whom the child lives or a person who is legally
27 responsible for the child's welfare.

28 (d) A surrogate parent.

29 (e) A foster parent to the extent permitted by state law.

30 23. "Preschool child" means a child who is at least three years of
31 age but who has not reached the required age for kindergarten, subject to
32 section 15-771, subsection G.

33 24. "Preschool severe delay" means performance by a preschool child
34 on a norm-referenced test that measures more than three standard
35 deviations below the mean for children of the same chronological age in
36 one or more of the following areas:

37 (a) Cognitive development.

38 (b) Physical development.

39 (c) Communication development.

40 (d) Social or emotional development.

41 (e) Adaptive development.

42 The results of the norm-referenced measure must be corroborated by
43 information from a comprehensive developmental assessment and from
44 parental input, if available, as measured by a judgment based assessment
45 or survey. If there is a discrepancy between the measures, the evaluation

1 team shall determine eligibility based on a preponderance of the
2 information presented.

3 25. "Prior written notice" means written prior notice that a public
4 educational agency is required to send to parents whenever the public
5 educational agency proposes or refuses to initiate or change the
6 identification, evaluation or educational placement of a child with a
7 disability or the provision of a free appropriate public education.

8 26. "Public educational agency" means a school district, a charter
9 school, an accommodation school, a ~~state-supported~~ STATE-SUPPORTED
10 institution or any other political subdivision of this state that is
11 responsible for providing education to children with disabilities.

12 27. "Related services" means those supportive services, as defined
13 in 20 United States Code section 1401, that are required to assist a child
14 with a disability who is eligible to receive special education services in
15 order for the child to benefit from special education.

16 28. "Residential special education placement" means ~~the placement~~
17 ~~of~~ PLACING a child with a disability in a public or private residential
18 program, as provided in section 15-765, subsection G, in order to provide
19 necessary special education and related services as specified in the
20 child's individualized education program.

21 29. "Severe intellectual disability" means performance on standard
22 measures of intellectual and adaptive behavior measures at least four
23 standard deviations below the mean for children of the same age.

24 30. "Special education" means specially designed instruction that
25 meets the unique needs of a child with a disability and that is provided
26 without cost to the parents of the child.

27 31. "Special education referral" means a written request for an
28 evaluation to determine whether a pupil is eligible for special education
29 services that, for referrals not initiated by a parent, includes
30 documentation of appropriate efforts to educate the pupil in the regular
31 education program.

32 32. "Specially designed instruction" means adapting the content,
33 methodology or delivery of instruction to address the unique needs of a
34 child with a disability and to ensure that child's access to the general
35 curriculum as identified in the academic standards adopted by the state
36 board of education.

37 33. "Specific learning disability" has the same meaning as defined
38 in 20 United States Code section 1401.

39 34. "Speech/language impairment":

40 (a) For a preschool child, means performance on a norm-referenced
41 language test that measures at least one and one-half standard deviations
42 below the mean for children of the same chronological age or whose speech,
43 out of context, is unintelligible to a listener who is unfamiliar with the
44 child. Eligibility for a preschool child under this subdivision is
45 appropriate only when a comprehensive developmental assessment and

1 parental input indicate that the preschool child is not eligible for
2 services under another preschool category or under the developmental delay
3 category. If there is a discrepancy between the measures, the evaluation
4 team shall determine eligibility based on a preponderance of the
5 information presented.

6 (b) For a child who has reached the required age for kindergarten,
7 means a speech or language impairment as defined in 34 Code of Federal
8 Regulations section 300.8.

9 35. "State educational agency" means the ~~Arizona~~ department of
10 education.

11 36. "State placing agency" has the same meaning prescribed in
12 section 15-1181.

13 37. "Surrogate parent" means a person who has been appointed by the
14 court or by the department of education pursuant to section 15-763.01 ~~in~~
15 ~~order~~ to represent a child in decisions regarding special education.

16 38. "Traumatic brain injury":

17 (a) Means an acquired injury to the brain that is caused by an
18 external physical force and that results in total or partial functional
19 disability or psychosocial impairment, or both, that adversely affects
20 educational performance.

21 (b) Applies to open or closed head injuries resulting in mild,
22 moderate or severe impairments in one or more areas, including cognition,
23 language, memory, attention, reasoning, abstract thinking, judgment,
24 problem solving, sensory, perceptual and motor abilities, psychosocial
25 behavior, physical functions, information processing and speech.

26 (c) Does not include brain injuries that are congenital or
27 degenerative or brain injuries induced by birth trauma.

28 39. "Visual impairment" has the same meaning prescribed in 34 Code
29 of Federal Regulations section 300.8.

30 40. "Ward of the state" has the same meaning prescribed in 20
31 United States Code section 1401.

APPROVED BY THE GOVERNOR APRIL 30, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2019.