

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1317

AN ACT

AMENDING SECTIONS 15-761 AND 15-763, ARIZONA REVISED STATUTES; RELATING TO
SPECIAL EDUCATION.

(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
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 the determinant factor for the
34 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 one of the disabilities contained in paragraph 2 of this section and must
20 also require special education services in order to benefit from an
21 educational program.

22 7. "Emotional disability":

23 (a) Means a condition whereby a child exhibits one or more of the
24 following characteristics over a long period of time and to a marked
25 degree that adversely affects the child's performance in the educational
26 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) Includes children who are schizophrenic but does not include
37 children who are socially maladjusted unless they are also determined to
38 have an emotional disability as determined by evaluation as provided in
39 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 in which the
45 person resides who has legal custody of the child, as provided in section

1 15-824, subsection B. If the child is a ward of the state and a specific
2 person does not have legal custody of the child or is a ward of this state
3 and the child is enrolled in an accommodation school pursuant to section
4 15-913, the home school district is the district that the child last
5 attended or, if the child has not previously attended a public school in
6 this state, the school district within which the child currently resides.

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

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

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

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

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

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

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

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

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

38 (i) Hearing impairment.

39 (ii) Orthopedic impairment.

40 (iii) Moderate intellectual disability.

41 (iv) Visual impairment.

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

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

3 (a) Severe visual impairment or severe hearing impairment in
4 combination with another severe disability.

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

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

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

14 21. "Out-of-home care" means the placement of a child with a
15 disability outside of the home environment and includes twenty-four hour
16 residential care, group care or foster care on either a full-time or
17 part-time basis.

18 22. "Parent" means:

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

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

22 (c) A person acting in the place of a natural or adoptive parent
23 with whom the child lives or a person who is legally responsible for the
24 child's welfare.

25 (d) A surrogate parent.

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

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

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

34 (a) Cognitive development.

35 (b) Physical development.

36 (c) Communication development.

37 (d) Social or emotional development.

38 (e) Adaptive development.

39 The results of the norm-referenced measure must be corroborated by
40 information from a comprehensive developmental assessment and from
41 parental input, if available, as measured by a judgment based assessment
42 or survey. If there is a discrepancy between the measures, the evaluation
43 team shall determine eligibility based on a preponderance of the
44 information presented.

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

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

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

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

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

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

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

30 32. "Specially designed instruction":

31 (a) Means adapting the content, methodology or delivery of
32 instruction to address the unique needs of a child with a disability and
33 to ensure that child's access to the general curriculum as identified in
34 the academic standards adopted by the state board of education.

35 (b) INCLUDES INSTRUCTION THAT IS DELIVERED BY ANY PERSON WHO IS
36 CERTIFICATED PURSUANT TO SECTION 15-203 AND WHO IS DETERMINED BY A PUPIL'S
37 INDIVIDUALIZED EDUCATION PROGRAM TEAM TO BE AN APPROPRIATE PROVIDER BASED
38 ON THE PUPIL'S INDIVIDUALIZED NEEDS.

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

41 34. "Speech/language impairment":

42 (a) For a preschool child, means performance on a norm-referenced
43 language test that measures at least one and one-half standard deviations
44 below the mean for children of the same chronological age or whose speech,
45 out of context, is unintelligible to a listener who is unfamiliar with the

1 child. Eligibility for a preschool child under this subdivision is
2 appropriate only when a comprehensive developmental assessment and
3 parental input indicate that the preschool child is not eligible for
4 services under another preschool category or under the developmental delay
5 category. If there is a discrepancy between the measures, the evaluation
6 team shall determine eligibility based on a preponderance of the
7 information presented.

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

11 35. "State educational agency" means the Arizona department of
12 education.

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

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

18 38. "Traumatic brain injury":

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

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

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

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

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

34 Sec. 2. Section 15-763, Arizona Revised Statutes, is amended to
35 read:

36 15-763. Plan for providing special education; definition

37 A. All school districts and charter schools shall develop policies
38 and procedures for providing special education to all children with
39 disabilities within the district or charter school. All children with
40 disabilities shall receive special education programming commensurate with
41 their abilities and needs. Each child shall be ensured access to the
42 general curriculum and an opportunity to meet the state's academic
43 standards. **SPECIALLY DESIGNED INSTRUCTION THAT IS IN ACCORDANCE WITH A
44 PUPIL'S INDIVIDUALIZED EDUCATION PROGRAM MAY BE DELIVERED BY GENERAL
45 EDUCATION OR OTHER PERSONNEL CERTIFICATED PURSUANT TO SECTION 15-203 IN**

1 COLLABORATION WITH SPECIAL EDUCATION PERSONNEL CERTIFICATED PURSUANT TO
2 SECTION 15-203. Pupils who receive special education shall not be
3 required to achieve passing scores on the Arizona instrument to measure
4 standards test or the test that is identical to the civics portion of the
5 naturalization test under section 15-701.01 in order to graduate from high
6 school unless the pupil is learning at a level appropriate for the pupil's
7 grade level in a specific academic area and unless a passing score on the
8 Arizona instrument to measure standards test or the test that is identical
9 to the civics portion of the naturalization test under section 15-701.01
10 is specifically required in a specific academic area by the pupil's
11 individualized education program as mutually agreed on by the pupil's
12 parents and the pupil's individualized education program team or the
13 pupil, if the pupil is at least eighteen years of age. The pupil's
14 individualized education program shall include any necessary testing
15 accommodations. Special education services shall be provided at no cost
16 to the parents of children with disabilities.

17 B. The state board of education shall adopt guidelines to define a
18 parent's or guardian's role or a pupil's role, if the pupil is at least
19 eighteen years of age, in the development of a pupil's section 504 plan as
20 defined in section 15-731, including testing and testing accommodations.

21 C. For the purposes of determining the services to pupils served by
22 private schools under existing federal law, the state shall consider the
23 term to include homeschooled pupils.

24 D. If federal monies are provided to a school district or a charter
25 school for special education services to homeschooled or private schooled
26 pupils, the school district or charter school shall provide the services
27 to both the homeschooled pupils and the private schooled pupils in the
28 same manner.

29 E. For the purposes of this section, "special education" has the
30 same meaning prescribed in section 15-1201.

31 Sec. 3. Special education; specially designed instruction;
32 state board of education; rules

33 A. The state board of education shall immediately begin the process
34 of adopting new rules that clarify the administration of specially
35 designed instruction for students who receive special education services
36 to include instruction from general education and other certificated
37 personnel, in collaboration with special education personnel and the
38 individualized education program team, as amended by this act. The state
39 board of education shall also immediately begin the process of
40 comprehensively reviewing and amending state board rules regarding special
41 education to streamline processes, reduce unnecessary administrative
42 burdens on local education agencies and to affirm the central role of the
43 local individualized education program team.

1 B. The state board of education shall adopt the new rules required
2 by subsection A of this section on or before November 15, 2017. Any rules
3 adopted by the state board of education shall be consistent with and may
4 not be more restrictive than the requirements pursuant to the Individuals
5 with Disabilities Education Improvement Act of 2004. Before the adoption
6 of any rules pursuant to this section, the state board of education shall
7 submit drafts of any proposed rules to the governor, the chairperson of
8 the senate education committee and the chairperson of the house of
9 representatives education committee.

10 Sec. 4. Legislative intent

11 It is the legislature's intent that all children with disabilities
12 have access to the most qualified professionals identified by the
13 individualized education program team to meet their unique, individualized
14 needs. The changes in this act will provide parents of children with
15 disabilities with more choices, promote education in the least restrictive
16 environment, enhance collaboration between general education and special
17 education personnel, and improve student achievement. This act is not
18 intended to allow unqualified, unprepared or untrained individuals to
19 provide special education services or unlicensed professionals to perform
20 a scope of services that require licensure.