

Conference Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 256

HOUSE BILL 2558

AN ACT

AMENDING SECTION 15-761, 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 or
11 change in daily routines and unusual responses to sensory
12 experiences. Autism does not include children with characteristics of
13 emotional disability as defined in this section.

14 2. "Child with a disability" means a child who is at least three years
15 but less than twenty-two years of age, who has been evaluated pursuant to
16 section 15-766 and found to have at least one of the following disabilities
17 and who, because of the disability, needs special education and related
18 services:

- 19 (a) Autism.
- 20 (b) Emotional disability.
- 21 (c) Hearing impairment.
- 22 (d) Other health impairments.
- 23 (e) Specific learning disability.
- 24 (f) Mild, moderate or severe mental retardation.
- 25 (g) Multiple disabilities.
- 26 (h) Multiple disabilities with severe sensory impairment.
- 27 (i) Orthopedic impairment.
- 28 (j) Preschool moderate delay.
- 29 (k) Preschool severe delay.
- 30 (l) Preschool speech/language delay.
- 31 (m) Speech/language impairment.
- 32 (n) Traumatic brain injury.
- 33 (o) Visual impairment.

34 3. "Educational disadvantage" means a condition which has limited a
35 child's opportunity for educational experience resulting in a child achieving
36 less than a normal level of learning development.

37 4. "Eligibility for special education" means the pupil must have one
38 of the disabilities contained in paragraph 2 of this section and must also
39 require special education services in order to benefit from an educational
40 program.

41 5. "Emotional disability":

42 (a) Means a condition whereby a child exhibits one or more of the
43 following characteristics over a long period of time and to a marked degree
44 that adversely affects the child's performance in the educational
45 environment:

1 (i) An inability to learn which cannot be explained by intellectual,
2 sensory or health factors.

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

5 (iii) Inappropriate types of behavior or feelings under normal
6 circumstances.

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

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

10 (b) Includes children who are schizophrenic but does not include
11 children who are socially maladjusted unless they are also determined to have
12 an emotional disability as determined by evaluation as provided in section
13 15-766.

14 6. "Exceptional child" means a gifted child or a child with a
15 disability.

16 7. "Foster parent" means a person who may HAS BEEN DESIGNATED BY A
17 COURT OF COMPETENT JURISDICTION TO serve as the parent of a child with
18 ~~disabilities~~ A DISABILITY if that person has an ongoing, long-term parental
19 relationship with the child, is willing to make educational decisions for the
20 child and has no personal interest that would conflict with the interests of
21 the child.

22 8. "Gifted child" means a child who is of lawful school age, who due
23 to superior intellect or advanced learning ability, or both, is not afforded
24 an opportunity for otherwise attainable progress and development in regular
25 classroom instruction and who needs special instruction or special ancillary
26 services, or both, to achieve at levels commensurate with the child's
27 intellect and ability.

28 9. "Hearing impairment" means a loss of hearing acuity, as determined
29 by evaluation pursuant to section 15-766, which interferes with the child's
30 performance in the educational environment and requires the provision of
31 special education and related services.

32 10. "Home school district" means the school district in which the
33 person resides who has legal custody of the child, as provided in section
34 15-824, subsection B. If the child is a ward of the state and a specific
35 person does not have legal custody of the child, the home school district is
36 the district that the child last attended or, if the child has not previously
37 attended a public school in this state, the school district within which the
38 child currently resides.

39 11. "Individualized education program" means a written statement, as
40 defined in 20 United States Code sections 1401 and 1412, for providing
41 special education services to a child with a disability that includes the
42 pupil's present levels of educational performance, the measurable annual
43 goals and short-term objectives or benchmarks for evaluating progress toward
44 those goals and the specific special education and related services to be
45 provided.

1 12. "Individualized education program team" means a team whose task is
2 to develop an appropriate educational program for the child and that
3 includes:

4 (a) The parent.

5 (b) At least one of the child's regular education teachers.

6 (c) One of the child's special education teachers.

7 (d) A representative of the public agency that is qualified to provide
8 or supervise the provision of instruction that is designed specifically for
9 children with disabilities who is knowledgeable about general curriculum and
10 the availability of resources.

11 (e) A person who can interpret the instructional implications of
12 evaluation results.

13 (f) The child, if appropriate.

14 (g) At the discretion of the parent or the public agency, other
15 persons with knowledge or special expertise about the child.

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

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

23 15. "Moderate mental retardation" means performance on standard
24 measures of intellectual and adaptive behavior between three and four
25 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 team
28 and other qualified professionals who shall determine whether a child is
29 eligible for special education.

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

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

37 (i) Hearing impairment.

38 (ii) Orthopedic impairment.

39 (iii) Moderate mental retardation.

40 (iv) Visual impairment.

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

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

1 (a) Severe visual impairment or severe hearing impairment in
2 combination with another severe disability.

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

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

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

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

15 22. "Parent" means the natural or adoptive parent of a child, the legal
16 guardian of a child, a relative with whom a child resides and who is acting
17 as the parent of that child, a surrogate parent who has been appointed for
18 a child pursuant to section 15-763.01 or a foster parent as defined in this
19 section.

20 23. "Preschool child" means a child who is at least three years of age
21 but who has not reached the required age for kindergarten, subject to section
22 15-771, subsection F-G.

23 24. "Preschool moderate delay" means performance by a preschool child
24 on a norm-referenced test that measures at least one and one-half, but not
25 more than three, standard deviations below the mean for children of the same
26 chronological age in two or more of the following areas:

27 (a) Cognitive development.

28 (b) Physical development.

29 (c) Communication development.

30 (d) Social or emotional development.

31 (e) Adaptive development.

32 The results of the norm-referenced measure must be corroborated by
33 information from a comprehensive developmental assessment and from parental
34 input, if available, as measured by a judgment based assessment or
35 survey. If there is a discrepancy between the measures, the evaluation team
36 shall determine eligibility based on a preponderance of the information
37 presented.

38 25. "Preschool severe delay" means performance by a preschool child on
39 a norm-referenced test that measures more than three standard deviations
40 below the mean for children of the same chronological age in one or more of
41 the following areas:

42 (a) Cognitive development.

43 (b) Physical development.

44 (c) Communication development.

45 (d) Social or emotional development.

1 (e) Adaptive development.

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

8 26. "Preschool speech/language delay" means performance by a preschool
9 child on a norm-referenced language test that measures at least one and
10 one-half standard deviations below the mean for children of the same
11 chronological age or whose speech, out of context, is unintelligible to a
12 listener who is unfamiliar with the child. Eligibility under this paragraph
13 is appropriate only if a comprehensive developmental assessment or
14 norm-referenced assessment and parental input indicate that the child is not
15 eligible for services under another preschool category. The evaluation team
16 shall determine eligibility based on a preponderance of the information
17 presented.

18 27. "Prior written notice" means notice, as defined in 20 United States
19 Code sections 1414 and 1415, that includes a description of the action
20 proposed or refused by the school, an explanation of why the school proposes
21 or refuses to take the action, a description of any options the school
22 considered and the reasons why those options were rejected, a description of
23 each evaluation procedure, test, record or report the school used as a basis
24 for the proposal or refusal, a description of any other factors that were
25 relevant to the school's proposal or refusal, a full explanation of all of
26 the procedural safeguards available to the parent and a listing of sources
27 for parents to contact to obtain assistance in understanding the notice.

28 28. "Related services" means those supportive services, as defined in
29 20 United States Code section 1401, that are required to assist a child with
30 a disability who is eligible to receive special education services in order
31 for the child to benefit from special education.

32 29. "Residential special education placement" means the placement of
33 a child with a disability in a public or private residential program, as
34 provided in section 15-765, subsection G, in order to provide necessary
35 special education and related services as specified in the child's
36 individualized education program.

37 30. "Severe mental retardation" means performance on standard measures
38 of intellectual and adaptive behavior measures at least four standard
39 deviations below the mean for children of the same age.

40 31. "Special education" means the adjustment of the environmental
41 factors, modification of the course of study and adaptation of teaching
42 methods, materials and techniques to provide educationally for those children
43 who are gifted or disabled to such an extent that they need specially
44 designed instruction in order to receive educational benefit. Difficulty in
45 writing, speaking or understanding the English language due to an

1 environmental background wherein a language other than English is spoken
2 primarily or exclusively shall not be considered a disability that requires
3 special education.

4 32. "Special education referral" means a written request for an
5 evaluation to determine whether a pupil is eligible for special education
6 services that, for referrals not initiated by a parent, includes
7 documentation of appropriate efforts to educate the pupil in the regular
8 education program.

9 33. "Specific learning disability":

10 (a) Means a specific learning disorder in one or more of the basic
11 psychological processes involved in understanding or in using language,
12 spoken or written, which may manifest itself in an imperfect ability to
13 listen, think, speak, read, write, spell or do mathematical calculations.

14 (b) Includes such conditions as perceptual disabilities, minimal brain
15 dysfunction, dyslexia and aphasia.

16 (c) Does not include learning problems which are primarily the result
17 of visual, hearing, motor or emotional disabilities, of mental retardation
18 or of environmental, cultural or economic disadvantage.

19 34. "Speech/language impairment" means a communication disorder such
20 as stuttering, impaired articulation, severe disorders of syntax, semantics
21 or vocabulary, or functional language skills, or a voice impairment, as
22 determined by evaluation pursuant to section 15-766, to the extent that it
23 calls attention to itself, interferes with communication or causes a child
24 to be maladjusted.

25 35. "State placing agency" has the same meaning prescribed in section
26 15-1181.

27 36. "Surrogate parent" means a person who has been appointed by the
28 court pursuant to section 15-763.01 in order to represent a child in
29 decisions regarding special education.

30 37. "Traumatic brain injury":

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

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

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

42 38. "Visual impairment" means a loss in visual acuity or a loss of
43 visual field, as determined by evaluation pursuant to section 15-766, that
44 interferes with the child's performance in the educational environment and
45 that requires the provision of special education and related services.

APPROVED BY THE GOVERNOR MAY 20, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2004.

Passed the House March 9, 2004

Passed the Senate April 14, 2004

by the following vote: 56 Ayes,

by the following vote: 30 Ayes,

1 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Rob Barrett
President of the Senate

Norman L. Joyce
Chief Clerk of the House

Charmine Bellinger
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20__

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20__

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20__

at _____ o'clock _____ M.

Secretary of State

H.B. 2558

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 12, 2004,

by the following vote: 44 Ayes,

12 Nays, 4 Not Voting

Jake Flake
Speaker of the House

German L. Fryore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 13, 2004,

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Klu Bennett
President of the Senate

Charmine Bellard
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 14th day of May, 2004,

at 11:07 o'clock a. M.

Wendee Ipharra
Secretary to the Governor

Approved this 20 day of

May, 2004,
at 2:55 o'clock P. M.

Jt. Noyak
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2004,

at 4:21 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2558