Senate Engrossed House Bill

**FILED**
**JANICE K. BREWER**
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CHAPTER 126

# HOUSE BILL 2393

AN ACT

AMENDING SECTIONS 15-761 AND 15-763.01, ARIZONA REVISED STATUTES; RELATING TO SPECIAL EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

15-761. Definitions

In this article, unless the context otherwise requires:

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

2. "Child with a disability":

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

(i) Autism.

(ii) Emotional disability.

(iii) Hearing impairment.

(iv) Other health impairments.

(v) Specific learning disability.

(vi) Mild, moderate or severe mental retardation.

(vii) Multiple disabilities.

(viii) Multiple disabilities with severe sensory impairment.

(ix) Orthopedic impairment.

(x) Preschool moderate delay.

(xi) Preschool severe delay.

(xii) Preschool speech/language delay.

(xiii) Speech/language impairment.

(xiv) Traumatic brain injury.

(xv) Visual impairment.

(b) Does not include a child who has difficulty in writing, speaking or understanding the English language due to an environmental background in which a language other than English is primarily or exclusively used.

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

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

5. "Eligibility for special education" means the pupil must have one of the disabilities contained in paragraph 2 of this section and must also

1 require special education services in order to benefit from an educational
2 program.
3 6. "Emotional disability":
4 (a) Means a condition whereby a child exhibits one or more of the
5 following characteristics over a long period of time and to a marked degree
6 that adversely affects the child's performance in the educational
7 environment:
8 (i) An inability to learn which cannot be explained by intellectual,
9 sensory or health factors.
10 (ii) An inability to build or maintain satisfactory interpersonal
11 relationships with peers and teachers.
12 (iii) Inappropriate types of behavior or feelings under normal
13 circumstances.
14 (iv) A general pervasive mood of unhappiness or depression.
15 (v) A tendency to develop physical symptoms or fears associated with
16 personal or school problems.
17 (b) Includes children who are schizophrenic but does not include
18 children who are socially maladjusted unless they are also determined to have
19 an emotional disability as determined by evaluation as provided in section
20 15-766.
21 7. "Hearing impairment" means a loss of hearing acuity, as determined
22 by evaluation pursuant to section 15-766, which interferes with the child's
23 performance in the educational environment and requires the provision of
24 special education and related services.
25 8. "Home school district" means the school district in which the
26 person resides who has legal custody of the child, as provided in section
27 15-824, subsection B. If the child is a ward of the state and a specific
28 person does not have legal custody of the child, the home school district is
29 the district that the child last attended or, if the child has not previously
30 attended a public school in this state, the school district within which the
31 child currently resides.
32 9. "Impartial administrative law judge" means an administrative law
33 judge of the office of administrative hearings who is knowledgeable in the
34 laws governing special education and administrative hearings.
35 10. "Individualized education program" means a written statement, as
36 defined in 20 United States Code sections 1401 and 1412, for providing
37 special education and related services to a child with a disability.
38 11. "Individualized education program team" means a team whose task is
39 to develop an appropriate educational program for the child and has the same
40 meaning prescribed in 20 United States Code section 1414.
41 12. "Mental retardation" means a significant impairment of general
42 intellectual functioning that exists concurrently with deficits in adaptive
43 behavior and that adversely affects the child's performance in the
44 educational environment.

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

14. "Moderate mental retardation" means performance on standard measures of intellectual and adaptive behavior between three and four standard deviations below the mean for children of the same age.

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

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

(a) Two or more of the following conditions:

(i) Hearing impairment.

(ii) Orthopedic impairment.

(iii) Moderate mental retardation.

(iv) Visual impairment.

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

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

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

(b) Severe visual impairment and severe hearing impairment.

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

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

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

21. "Parent" means:

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

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

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

(d) A surrogate parent.

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

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

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

(a) Cognitive development.

(b) Physical development.

(c) Communication development.

(d) Social or emotional development.

(e) Adaptive development.

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

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

(a) Cognitive development.

(b) Physical development.

(c) Communication development.

(d) Social or emotional development.

(e) Adaptive development.

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

25. "Preschool speech/language delay" means performance by a preschool child on a norm-referenced language test that measures at least one and one-half standard deviations below the mean for children of the same chronological age or whose speech, out of context, is unintelligible to a listener who is unfamiliar with the child. Eligibility under this paragraph is appropriate only if a comprehensive developmental assessment or norm-referenced assessment and parental input indicate that the child is not

1 eligible for services under another preschool category. The evaluation team
2 shall determine eligibility based on a preponderance of the information
3 presented.
4 26. "Prior written notice" means written prior notice that a public
5 educational agency is required to send to parents whenever the public
6 educational agency proposes or refuses to initiate or change the
7 identification, evaluation or educational placement of a child with a
8 disability or the provision of a free appropriate public education.
9 27. "Public educational agency" means a school district, a charter
10 school, an accommodation school, a state supported institution or any other
11 political subdivision of this state that is responsible for providing
12 education to children with disabilities.
13 28. "Related services" means those supportive services, as defined in
14 20 United States Code section 1401, that are required to assist a child with
15 a disability who is eligible to receive special education services in order
16 for the child to benefit from special education.
17 29. "Residential special education placement" means the placement of a
18 child with a disability in a public or private residential program, as
19 provided in section 15-765, subsection G, in order to provide necessary
20 special education and related services as specified in the child's
21 individualized education program.
22 30. "Severe mental retardation" means performance on standard measures
23 of intellectual and adaptive behavior measures at least four standard
24 deviations below the mean for children of the same age.
25 31. "Special education" means specially designed instruction that meets
26 the unique needs of a child with a disability and that is provided without
27 cost to the parents of the child.
28 32. "Special education referral" means a written request for an
29 evaluation to determine whether a pupil is eligible for special education
30 services that, for referrals not initiated by a parent, includes
31 documentation of appropriate efforts to educate the pupil in the regular
32 education program.
33 33. "Specially designed instruction" means adapting the content,
34 methodology or delivery of instruction to address the unique needs of a child
35 with a disability and to ensure that child's access to the general curriculum
36 as identified in the academic standards adopted by the state board of
37 education.
38 34. "Specific learning disability":
39 (a) Means a specific learning disorder in one or more of the basic
40 psychological processes involved in understanding or in using language,
41 spoken or written, which may manifest itself in an imperfect ability to
42 listen, think, speak, read, write, spell or do mathematical calculations.
43 (b) Includes such conditions as perceptual disabilities, minimal brain
44 dysfunction, dyslexia and aphasia.

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

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

36. "State educational agency" means the Arizona department of education.

37. "State placing agency" has the same meaning prescribed in section 15-1181.

38. "Surrogate parent" means a person who has been appointed by the court OR BY THE DEPARTMENT OF EDUCATION pursuant to section 15-763.01 in order to represent a child in decisions regarding special education.

39. "Traumatic brain injury":

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

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

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

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

Sec. 2. Section 15-763.01, Arizona Revised Statutes, is amended to read:

15-763.01. <u>Surrogate parent; appointment</u>

A. A petition for the appointment of a surrogate parent for a child with a disability shall be made to ~~a court of competent jurisdiction~~ THE DEPARTMENT OF EDUCATION if any of the following conditions ~~have~~ HAS been met:

1. ~~No~~ A parent AS DEFINED IN 34 CODE OF FEDERAL REGULATIONS SECTION 300.20 ~~can~~ CANNOT be identified.

2. A public agency cannot determine the whereabouts of a parent, after having made ~~three documented and~~ reasonable attempts.

3. The child is a ward of the state, AND A PARENT AS DEFINED IN 34 CODE OF FEDERAL REGULATIONS SECTION 300.20 CANNOT BE IDENTIFIED OR A PUBLIC AGENCY CANNOT DETERMINE THE LOCATION OF A PARENT AFTER HAVING MADE REASONABLE

ATTEMPTS. IN THE CASE OF A CHILD WHO IS A WARD OF THE STATE, THE SURROGATE PARENT MAY ALTERNATELY BE APPOINTED BY THE JUDGE WHO OVERSEES THE CHILD'S CASE IF THE SURROGATE PARENT MEETS THE REQUIREMENTS OF THIS SECTION.

4. THE CHILD MEETS THE CRITERIA OF AN UNACCOMPANIED YOUTH AS DEFINED IN THE MCKINNEY-VENTO HOMELESS ACT (42 UNITED STATES CODE SECTION 11434a(6)).

B. IF ALLOWED BY STATE AND FEDERAL LAW, THE DEPARTMENT OF EDUCATION SHALL NOTIFY THE COURT OF COMPETENT JURISDICTION IF THE DEPARTMENT OF EDUCATION APPOINTS A SURROGATE PARENT FOR A WARD OF THE STATE PURSUANT TO SUBSECTION A.

~~B.~~ C. In order for a person to be eligible to receive an appointment as a surrogate parent for a child with a disability, all of the following must be true:

1. The person shall be determined by the ~~court~~ DEPARTMENT OF EDUCATION to possess knowledge and skills that will ensure adequate representation of the child.

2. The person may not be an employee of a state agency if that agency is involved in the education or care of the child.

3. The person may not have any interests that would conflict with the best interests of the child.

4. The person shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

~~C.~~ D. A person who is appointed as a surrogate parent for a child with a disability shall not be deemed to be an employee of the state solely as a result of serving as a surrogate parent and receiving compensation for that service.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.