

Title 17:1941 et.seq
CHAPTER 8. EDUCATION OF STUDENTS
WITH EXCEPTIONALITIES

PART I. EDUCATIONAL OPPORTUNITIES FOR
STUDENTS WITH EXCEPTIONALITIES

§1941. Statement of policy

It is and shall be the duty of state and local educational agencies of the state of Louisiana to provide a free appropriate public education in the least restrictive environment to every student with an exceptionality, ages three through twenty-one, who is a resident therein.

Acts 1977, No. 754, §1; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2008, No. 376, §1.

§1942. Definitions

A. For purposes of this Chapter, the definitions in the Individuals with Disabilities Education Improvement Act of 2004 are hereby adopted unless otherwise provided by this Chapter or duly adopted regulations or policies.

B. A "student with an exceptionality", including a student with a disability, is any student who is evaluated according to state and federal regulation or policy and is deemed to have a mental disability, hearing impairment (including deafness), multiple disabilities, deaf-blindness, speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, traumatic brain injury, autism, or as deemed to be gifted or talented, and as a result requires special education and related services. A student with an exceptionality may include, as determined by the local education agency, a student experiencing developmental delay ages three through eight.

C. "Education service agency" means a regional public multiservice administrative agency authorized by state law to develop, manage, and provide services or programs to local education agencies and includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

D. "Local education agency" means a public board of education or other public authority legally constituted within Louisiana for administrative control and direction of or to perform a service function for public elementary or secondary schools in a city, parish, or other local public school district or other political subdivision. The term includes an education service agency and special schools and school districts as that term is used in R.S. 17:1945 and any other public institution or agency having administrative control and direction of a public elementary or secondary school.

E. "Resident" as it applies to a student with an exceptionality for purposes of this Chapter shall mean any one of the following:

(1) The student is a resident within the geographical boundaries of the local education agency in which the student's parent or parents have their legal residence, unless the parent or parents have relinquished custody of the student. In such case, the student is a resident within the geographical boundaries of the local education agency in which the student's legal custodian or custodians have their legal residence.

(2) If a student's parents are divorced, the student is a resident of the local education agency in which the student's domiciliary or custodial parent or parents have their legal residence.

(3) If a student is in foster care, the student is a resident of the local education agency in which the parent or parents with whom the student lived immediately prior to being placed into foster care have their legal residence.

Acts 1977, No. 754, §1; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2008, No. 376, §1.

§1942.1. Repealed by Acts 2008, No. 376, §2.

§1943. Administration and supervision

A.(1) Except as otherwise provided in Paragraph (2) of this Subsection, the provisions of this Chapter shall be administered at the state level by the Department of Education, with the approval of the State Board of Elementary and Secondary Education, and on the city or parish level by local education agencies.

(2) The Department of Education, with the approval of the State Board of Elementary and Secondary Education, shall provide only general supervision and monitoring when the provisions of this Chapter are administered through or in other state agencies.

B.(1) The State Board of Elementary and Secondary Education shall promulgate rules, regulations, and policies necessary for the administration of this Chapter and the implementation of the requirements of the Individuals with Disabilities Education Improvement Act of 2004.

(2)(a) The governor or his designee shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in Subparagraph (b) of this Paragraph and the state educational agency, in order to ensure that all services described in Subparagraph (b) of this Paragraph that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under Item (iii) of this Subparagraph. Such agreement or mechanism shall include the following:

(i) An identification of, or a method for defining, the financial responsibility of each agency for providing services described in Subparagraph (b) of this Paragraph to ensure a free appropriate public education to students with disabilities, provided that the financial responsibility of each public agency described in Subparagraph (b) of this Paragraph, including the state Medicaid agency and other public insurers of students with disabilities, shall precede the financial responsibility of the local education agency or the state agency responsible for developing the student's individualized education program.

(ii) The conditions, terms, and procedures under which a local education agency shall be reimbursed by other agencies.

(iii) Procedures for resolving interagency disputes, including procedures under which local education agencies may initiate proceedings, under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in Subparagraph (b) of this Paragraph.

(b) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to Subparagraph (a) of this Paragraph, to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to students with disabilities within the state, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(c) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in Subparagraph (b) of this Paragraph, the local education agency or state agency responsible for developing the student's individualized education program shall provide or pay for such services to the student. Such local education agency or state agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services, and such public agency shall reimburse the local education agency or state agency pursuant to the terms of the interagency agreement or other mechanism described in Item (a)(i) of this Paragraph according to the procedures established in such agreement pursuant to Item (a)(ii) of this Paragraph.

(d) The requirements of Subparagraph (a) of this Paragraph may be met through state law or regulation, signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services, or other appropriate written methods as determined by the governor or his designee.

C. The Department of Education shall establish pupil-teacher ratios and class sizes taking into account the chronological age of the student with an exceptionality, the severity of the disability, and the type of exceptionality.

Acts 1977, No. 754, §1. Acts 1984, No. 851, §1; Acts 1987, No. 640, §1, eff. July 9, 1987; Acts 1990, No. 1072, §1; Acts 1992, No. 458, §1, eff. June 20, 1992; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2001, No. 181, §1; Acts 2002, 1st Ex. Sess., No. 92, §1, eff. April 18, 2002; Acts 2008, No. 376, §1.

NOTE: SEE ACTS 1984, NO. 851, §3 AND §4.

§1944. Local education agency; responsibilities

A. Subject to the conditions and limitations of this Chapter, local education agencies as defined in R.S. 17:1942, in providing for the education of students with exceptionalities within their jurisdiction, shall have in effect policies, procedures, and programs that are consistent with state policies and procedures.

B. Special education and related services may be provided by local education agencies for eligible children under three years of age.

C. Except as otherwise specifically permitted by the State Board of Elementary and Secondary Education, there shall be a chronological age span of not more than three years, and special education classes shall be grouped to provide for the most efficient delivery of services in accordance with the student's individualized education program.

D. Whenever adequate education results can best be obtained by providing cooperative special education and related services, the local education agencies shall establish and maintain such facilities and programs according to procedures established by the Department of Education with the approval of the State Board of Elementary and Secondary Education. Adjacent and nearby local education agencies shall pool their resources for this purpose. The local education agency within whose boundaries said facility is located shall be designated as the coordinating fiscal agency.

E. Local education agencies shall provide whatever transportation is necessary to implement any individualized education program for a student with an exceptionality.

Transportation shall be provided in cooperative programs according to the method established in the contract between the cooperating agencies or districts and shall also be in accordance with the student's individualized education program.

Acts 1977, No. 754, §1; Acts 1992, No. 458, §1, eff. June 20, 1992; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2008, No. 376, §1.

§1945. Special schools and school districts

A. The State Board of Elementary and Secondary Education shall have jurisdiction and exercise supervision and control over the state's special schools for the blind, deaf, and orthopedically impaired. The Louisiana School for the Deaf, the Louisiana School for the Visually Impaired, and the Louisiana Special Education Center are residential schools established to provide such academic, vocational, and other related services as may be required.

B. The Louisiana School for the Deaf and the Louisiana School for the Visually Impaired shall establish an annual enrollment deadline for admission to each of the respective schools. After a school's deadline, any other children with hearing or visual impairments may enroll at the request of their parents, guardians, appointed custodians, or other legal surrogates if the school, as applicable, determines that there are sufficient resources to meet the needs of these children as well as the needs of the children enrolled prior to the enrollment deadline.

C.(1) A special school district shall be established to provide special education and related services to any student with exceptionalities who is enrolled in any state-operated facility as a resident of the facility and to provide appropriate educational services to any eligible student enrolled in any state-operated health facility.

(2) The special school district shall be considered an education service agency administered by the Department of Education, with the approval of the State Board of Elementary and Secondary Education, subject to the limitations of such units which shall include no authority to levy tax.

(3) The services of the special school district shall be available to all eligible students herein described, regardless of their place of residence within the state.

(4) The special school district may enter into interagency agreements with other state agencies to provide appropriate educational services to any eligible student who is not a resident of a state-operated facility but who is in the care or custody of a public or private department, agency, or institution.

(5) The special school district may enter into interagency agreements with other state agencies to provide appropriate educational services to any eligible student regardless of age who is enrolled in any state-operated facility as a resident of the facility.

Acts 1977, No. 754, §1. Amended by Acts 1980, No. 258, §1, eff. June 30, 1980; Acts 1992, No. 458, §1, eff. June 20, 1992; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2008, No. 376, §1.

§1946. Procedural safeguards

A. The Department of Education and the local education agencies shall establish and maintain regulations and procedures in accordance with this Section and the Individuals with Disabilities Education Improvement Act of 2004 to ensure that students with exceptionalities and their parents are provided procedural safeguards with respect to the provision of free appropriate public education by such agencies.

B.(1) The right of a parent or public agency to initiate a request for a special education due process hearing shall prescribe within one year of the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request.

(2) The one-year timeline does not apply to a parent if the parent was prevented from filing the due process hearing request due to either specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the due process hearing request or the local education agency's withholding of information from the parent that was

required to be provided by this Chapter and the Individuals with Disabilities Education Improvement Act of 2004.

C.(1) No person, who is an employee of a public school system, or his employer, who in good faith renders school health services and medical services to students with exceptionalities which are required by state or federal law, shall be liable for any civil damages as a result of any act or omission in rendering the care or services required.

(2) No individual appointed according to state or federal law to serve as a surrogate parent who in good faith performs the functions of such appointment which functions are required by state or federal law shall be liable for any civil damages as a result of any act or omission in rendering services in accordance with the functions of said appointment.

(3) The provisions of this Section shall not exempt from liability those individuals who intentionally or by grossly negligent acts or omissions cause damages to a student with an exceptionality or other individual participating in a special education program for individuals with exceptionalities.

D.(1) Except as provided in this Section, all oral and written communications and records made during the state mediation, whether or not conducted under this Chapter and whether before or after the institution of formal judicial proceedings, are not subject to disclosure and may not be used as evidence in any judicial or administrative proceeding.

(2) The state neutral individualized education program facilitator in an individualized education program meeting and the state mediator in a mediation shall not be required to testify concerning the mediation or individualized education program proceedings and are not subject to process or subpoena, issued in any judicial or administrative procedure, which requires the disclosure of any communications or records of the mediation, except with respect to the following:

(a) Reports made by the mediator to the state, only as to whether the parties appeared, whether the mediation took place, and whether a settlement resulted therein.

(b) A judicial determination of the meaning or enforceability of an agreement resulting from a mediation procedure if the court determines that testimony concerning what occurred in the mediation proceeding is necessary to prevent fraud or manifest injustice.

(3) The confidentiality provisions of this Section do not extend to statements, materials, and other tangible evidence, or communications that are otherwise subject to discovery or are otherwise admissible, merely because they were presented in the course of mediation, if they are based on proof independent of any communication or record made in mediation.

(4) If this Section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(5) Confidentiality, in whole or in part, may be waived when all parties and the mediator specifically agree in writing.

Acts 1977, No. 754, §1. Amended by Acts 1979, No. 728, §1, eff. July 20, 1979; Acts 1992, No. 433, §1, eff. June 20, 1992; Acts 1992, No. 458, §1, eff. June 20, 1992; Acts 1992, No. 911, §1; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 1999, No. 188, §1; Acts 2008, No. 376, §1.

§1947. Funding

A. Funding for public school special educational services as provided by local education agencies shall be as follows:

(1) Each local education agency shall provide special education and related services to students with exceptionalities who are located within its geographical boundaries; however, the agency shall pay the cost of such services only for such students who are residents within the geographical boundaries of the agency. Each local education agency shall provide child find and evaluation to nonresident students who attend a parentally placed private elementary or secondary school.

(2) If a local education agency provides special education and related services to a student with an exceptionality who is located within the geographical boundaries of such agency but is not a resident thereof, the cost of any special education and related services shall be reimbursed by the local education agency within the boundaries of which the student resides, except as provided in Paragraph (3) of this Subsection.

(3) If a student with an exceptionality is living in a private residential facility in this state but the student is not a resident of this state or in the legal or permanent custody of a state agency, the local education agency providing any special education and related services to that student shall be reimbursed by the residential facility for the cost of providing those services.

B. The state shall be responsible for funding the costs of special education and related services for students enrolled in the special school district and special schools as provided for in R.S. 17:1945.

C. The Department of Education and local education authorities may, under policies established by the State Board of Elementary and Secondary Education, enter into purchase of service agreements or contracts with other public or nonpublic agencies to provide special education and related services.

Acts 1977, No. 754, §1; Acts 1990, No. 1046, §1; Acts 1992, No. 458, §1, eff. June 20, 1992; Acts 1998, 1st Ex. Sess., No. 109, §1, eff. May 5, 1998; Acts 2001, No. 181, §1; Acts 2008, No. 376, §1.

§1947.1. Repealed by Acts 2008, No. 376, §2.

§1948. Repealed by Acts 2008, No. 376, §2.

§1949. Repealed by Acts 2008, No. 376, §2.

§1950. Repealed by Acts 2008, No. 376, §2.

§1951. Repealed by Acts 2008, No. 376, §2.

§1952. Repealed by Acts 2008, No. 376, §2.

§1953. Repealed by Acts 2008, No. 376, §2.

§1954. Repealed by Acts 2008, No. 376, §2.

§1955. Repealed by Acts 1998, 1st Ex. Sess., No. 109, §2, eff. May 5, 1998.

§1956. Repealed by Acts 1998, 1st Ex. Sess., No. 109, §2, eff. May 5, 1998.

§1957. Repealed by Acts 1998, 1st Ex. Sess., No. 109, §2, eff. May 5, 1998.

§1958. Repealed by Acts 2008, No. 376, §2.