

SENATE BILL NO. 76
INTRODUCED BY T. SCHMIDT
BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING CERTAIN SPECIAL EDUCATION DEFINITIONS TO COMPLY WITH FEDERAL CHANGES MADE BY CONGRESS IN THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401 AND 20-7-436, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.~~

~~———— (2) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:~~

~~———— (a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;~~

~~———— (b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;~~

~~———— (c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;~~

~~———— (d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;~~

~~———— (e) training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and~~

~~———— (f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise~~

substantially involved in the major life functions of a child with a disability.

~~————(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.~~

~~————(4)(1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities a disability and who because of those impairments the disability needs special education and related services. A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified.~~

~~————(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.~~

~~————(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.~~

~~————(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.~~

~~————(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.~~

~~————(9)(2)~~ "Free appropriate public education" means special education and related services that:

- (a) are provided at public expense under public supervision and direction and without charge;
- (b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;
- (c) include preschool, elementary school, and high school education in Montana; and
- (d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

~~(10)~~ "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

~~————(11)~~ "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy):

~~————(12)~~ "Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance:

~~————(13)(3)~~ "Related services" means transportation and any developmental, corrective, and other supportive services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

~~(14)(4)~~ "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

~~(15)~~ "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to

~~such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages.~~

~~————(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.~~

~~————(17)(5) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.~~

~~(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.~~

~~————(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness."~~

Section 2. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the ~~health care financing administration~~ centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a Montana resident child or youth who is less than 19 years of age, ~~who is emotionally disturbed as defined in 20-7-401, and whose~~ and who has an emotional problem that is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment."

NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2003.

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