

Selected Federal Legislation

Table of Contents

The Americans With Disabilities Act of 1990

The Family and Medical Leave Act of 1993

The Elementary and Secondary Education Act of 1965

The Education Consolidation and Improvement Act of 1981

Project Head Start

National School Lunch Act

**The Anti-Drug Education Act of 1990 and the Drug Abuse Resistance
Education (DARE) Act of 1990**

Juvenile Justice and Delinquency Prevention Act of 1974

Public Broadcasting Act of 1967

**The Excellence in Mathematics, Science and Engineering Education
Act of 1990**

Asbestos School Hazard Protection and Control Act of 1980

Bibliography

Chapter 7: Selected Federal Legislation

September 16, 1993/updated 10/20/93--11/29/93--NLR edits/proofers 12/23/93

Although the administration of public education remains largely with the states, the federal government continues to guide educational policy through a variety of programs and funding initiatives. Federal laws have addressed public education issues as complex and as diverse as employment practices, drugs and violence, opportunities for disadvantaged students, the rights of disabled pupils, and school safety. The following provides a brief summary of selected federal statutes not addressed elsewhere in this publication.

The Americans With Disabilities Act of 1990

Enacted by Congress in 1990 and effective January 26, 1992, the **Americans With Disabilities Act** (ADA) was designed to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Described by some as "the most progressive and aggressive piece of legislation passed since the Civil Rights Act of 1964," the Act consists of five titles, addressing discrimination in employment and government programs, access to public places, telecommunications issues, and insurance.¹ Of especial interest to the administration of public education are the provisions of Title I, which specifically prohibits an employer from discriminating against a "qualified individual with a disability" on the basis of that disability in the job application, hiring, promotions, training, compensation, and discharge processes, and Title II, which bars the exclusion of disabled persons from participation in or benefits of government programs and services due to that disability.²

Central to the application of the Act is the definition of "disability"; for purposes of the ADA, a disabled person is one who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such impairment; or
- is regarded as having such an impairment.

¹ 42 U.S.C. §§ 12101-12213 (1990); S. Gravely, "The Americans With Disabilities Act: New Rights for the Disabled, New Complexity for Businesses," *Virginia Lawyer* 27 at 27-28 (March 1992)[hereinafter referred to as Gravely]; L. Bauer, "Trying To Comply With the ADA," *State Legislatures* 40 at 41-43 (January 1993)[hereinafter referred to as Bauer].

² V. Askew, *Analysis of the Americans With Disabilities Act of 1990 and Section 504* (presented at Virginia School Boards Association Annual Conference on School Law, June 4, 1993)[hereinafter referred to as Askew].

Federal regulations clarify that the disabilities covered by the Act include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more specified body systems (neurological, cardiovascular, musculoskeletal, respiratory, etc.) and any mental or psychological disorder, such as mental retardation, emotional or mental illness, organic brain syndrome, and specific learning disabilities. "Major life activities" include those basic activities--self-care, walking, seeing, hearing, speaking, performing manual tasks--that the average person can perform with little difficulty. The disability is deemed to "substantially limit" an individual if it constitutes an inability to perform a major life activity or places significant restrictions on the manner, duration, or conditions under which the individual may perform a major life activity. Specifically listed among those conditions and behaviors that do not constitute disabilities are illegal drug use, compulsive gambling, kleptomania and pyromania, and homosexuality and bisexuality.³

Pursuant to Title I, employers may not discriminate against a disabled person who is "qualified to perform the essential functions of the job." Compliance with Title I has prompted employers to review and define carefully those functions that are critical to job performance. While the statute does not define "essential job functions," regulations suggest that these determinations incorporate consideration of the amount of job time devoted to the particular function, the experience of job incumbents in the specific function, the consequences of not requiring current employees to perform the function, the written job description, and the employer's judgment. The Act directs the employer to provide "reasonable accommodation" for the disabled individual; these accommodations may include physical alteration of facilities, modifications of job requirements, examinations, training materials, and work schedules. The Act clearly states, however, that eliminating an essential job function and undertaking accommodations that constitute an "undue hardship"--generally determined by the cost and impact of the proposed accommodation--are not required.⁴

Persons seeking redress for employment discrimination in violation of Title or Equal Employment Opportunity Commission regulations are entitled to the same remedies available to all other minorities under the Civil Rights Act of 1964; plaintiffs may seek injunctive relief, reinstatement, back pay. While the prevailing party may be awarded attorney's fees and litigation expenses, these fees are not assessed against a plaintiff unless the claim was frivolous or groundless.⁵

Title II's mandate to ensure access to government programs and services reinforces and supplements the protections already afforded handicapped students by § 504 of the **Rehabilitation Act of 1973**, which prohibits entities receiving federal funds

³ Gravelly, *supra* note 1, at 28; Askew, *supra* note 2, at 3-5, 7; Bauer *supra* note 1, at 43.

⁴ Gravelly, *supra* note 1, at 28-29; Askew, *supra* note 2, at 9.

⁵ C. Midkiff, "The Americans With Disabilities Act," *The Virginia Bar Association Journal* 5 at 6 (Spring 1992).

from discriminating on the basis of handicap, and the **Individuals With Disabilities Education Act** (formerly the **Education for All Handicapped Children Act**), which pledges federal funding to states providing a "free and appropriate education" for handicapped pupils. (See Chapter 6). Remedies under Title II include corrective action and compensatory damages. Plaintiffs may seek redress in district court or may file complaints with eight federal agencies, including the Department of Justice. Complaints may also be filed with any federal agency that provides funds for the alleged violator.⁶

The Family and Medical Leave Act of 1993 (Pub. L. No. 103-3)

Affecting the employment practices of local school boards and the benefits of school personnel is the **Family and Medical Leave Act of 1993** (Pub. L. No. 103-3). Effective August 5, 1993, employers of more than 50 persons must provide eligible employees with up to 12 weeks of unpaid leave for the birth or placement for adoption of a child and the serious health condition of the employee, spouse, child, or parent. Eligible employees must have been working for the same employer for at least one year, must have worked a minimum of 1,250 hours (an average of 24 hours per week) in the previous 12 months, and must be employed by an employer with no fewer than 50 employees in a 75-mile radius. The Act makes no distinction between full- and part-time employees.⁷

Unpaid leave may be taken as needed or through a reduced work schedule. The employer is obligated to continue employee health coverage during the leave period. While the employee may not lose seniority or other benefits, he is not entitled to accrual of these benefits during the unpaid leave. The employer may recover benefit premiums from an employee who fails to return for reasons other than health or circumstances beyond the employee's control. Upon return, the employee must be restored to his previous position or a "genuinely equivalent position."

The Act includes specific provisions for instructional employment. If an instructional employee seeks intermittent leave for medical care exceeding 20 percent of the total number of working days, the employer may require the worker to take leave not to exceed the actual treatment period or to transfer to a position for which the employee is qualified, offering equal compensation and better suited to the proposed leave.

⁶ Bauer, *supra* note 1, at 42, 44-45; W. Buss, "Human Immunodeficiency Virus, the Legal Meaning of 'Handicap,' and Implications for Public Education Under Federal Law at the Dawn of the Age of the ADA," 77 *Iowa L. Rev.* 1389 at 1405-1406; 1481 (1992)[hereinafter referred to as Buss].

⁷ D. Stephens, "How the Family and Medical Leave Act Affects Employee Health Leave and Benefits," 10 *HealthSpan* 16 at 16 (April 1993)[hereinafter referred to as Stephens]; D. P. Lacy, "Recent Developments in Personnel Law" (presented at Virginia School Boards Association Annual Conference on School Law, June 4, 1993)[hereinafter referred to as Lacy].

Finally, the Act also incorporates special provisions governing instructional leave scheduled near the end of an academic term.⁸

The U.S. Department of Labor is authorized to investigate and resolve claims under the Act; in addition, the employee may bring a civil action against his employer in state or federal court for monetary damages--generally limited to lost wages and benefits or equitable relief, such as reinstatement or promotion.⁹

The Elementary and Secondary Education Act of 1965 (Pub. L. No. 89-10)

Addressing a wide range of educational programs, including library resources, instructional materials, and educational research and training, the **Elementary and Secondary Education Act of 1965** (ESEA) is perhaps best known for its grants initiative for elementary and secondary school programs for disadvantaged children, contained in Title I/Chapter 1. Simply referred to today as **Chapter 1**, this initiative has been described as "the bedrock upon which federal aid to elementary and secondary education has been built..." Constituting the largest single program of federal education aid to elementary and secondary school students, Chapter 1 claims about 22 percent of the U.S. Department of Education budget and provided \$5.4 billion for educational services for five million children in 1990-91. In 1991-92, Chapter 1 offered \$6.2 billion, afforded by a 16 percent budget increase.¹⁰

Recognizing the link between poverty and poor academic performance, the programs target low-achieving, disadvantaged students. Chapter 1 services are typically offered separately from regular instruction in "pull-out programs" or through in-class programs, in which a Chapter 1 teacher or aide works in the classroom with the primary teacher. Variations on these models include comprehensive classroom programs, integrating mixed-ability working groups and continuous progress programs. Supplemental programs may provide intense instruction for brief periods of time, using preventive and remedial tutoring and computer-assisted instruction.¹¹

⁸ Lacy, *supra* note 7; U.S. Department of Labor, Employment Standards Administration, "Your Rights Under the Family and Medical Leave Act of 1993" (1993)[hereinafter referred to as DOL].

⁹ Stephens, *supra* note 7; DOL, *supra* note 8.

¹⁰ U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1992* 354 (October 1993)[hereinafter referred to as *Digest*]; M. LeTendre, "Improving Chapter 1 Programs: We Can Do Better," *Phi Delta Kappan* 576 at 577-578 (April 1991)[hereinafter referred to as LeTendre].

¹¹ V. Plunkett, "From Title I to Chapter 1: The Evolution of Compensatory Education," *Phi Delta Kappan* 533 at 534-535 (April 1985); R. Slavin, "Making Chapter 1 Make a Difference," *Phi Delta Kappan* 110 at 110-114 (October 1987).

As reauthorized in 1988 by the **Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988** (Pub. L. No. 100-297), Chapter 1 now incorporates accountability for student performance, emphasizes parental involvement, and mandates coordination of Chapter programs with regular educational programs. In 1990, the **National Assessment of Chapter 1 Act** (Pub. L. No. 101-305) directed the U.S. Secretary of Education to review and evaluate programs supported by Chapter 1.¹² An independent commission on Chapter 1 recommended a new \$6 billion framework for the program in December 1992; Congress is expected to consider legislation (H.R. 6) in Fall 1993 to reauthorize the ESEA and Chapter 1 through 1999.¹³

The Education Consolidation and Improvement Act of 1981 (Pub. L. No. 97-35)

The first education block grants were enacted in 1981, with the passage of the **Education Consolidation and Improvement Act**, which combined funding from a variety of categorical programs to provide states greater discretion in the application of federal education dollars. Cited for its "minimum paperwork load and unprecedented flexibility," **Chapter 2** of this initiative was described as the "cornerstone" of the Reagan administration's education policy.¹⁴ Chapter 2 moneys are disbursed from the U.S. Department of Education to the states pursuant to a formula based on school-age population. Divided into three parts, Chapter 2 funds address basic skills development; improvement and support services, including instructional materials, staff training, and desegregation; and special projects, such as gifted and talented education, ethnic heritage, and community and career education.¹⁵

The states may reserve only 20 percent of Chapter 2 funds for administrative costs; local school divisions receive the remainder under a state-devised formula, incorporating enrollments as well as adjustments for divisions with special "high-cost" student populations. The actual distribution of these funds has raised some questions, however, as there is no requirement that local school divisions must spend these "high-cost education" funds on the particular population that garnered them. In addition, the

¹² *Digest, supra* note 10, at 357, 358; LeTendre, *supra* note 7, at 578.

¹³ A. Lewis, "Frustration and Vision," *Phi Delta Kappan* 356 (January 1993); "Legislative Update," *Education Daily* 5 (September 7, 1993).

¹⁴ *Digest, supra* note 10, at 356; A. Henderson, "The First Education Block Grant: Has It Improved Education?" *Education Digest* 16 (September 1986)[hereinafter referred to as Henderson]; R. Apling and C. Padilla, "Distribution and Spending of Chapter 2 Funds," *Education Digest* 20 (January 1988)[hereinafter referred to as Apling and Padilla].

¹⁵ A. Henderson, "'Chapter 2: For Better or Worse?'" *Phi Delta Kappan* 597 at 597-598 (April 1986)[hereinafter referred to as Chapter 2]; "Congressmen Call for Tighter Controls On Chapter 2 Funds," *Phi Delta Kappan* 89 (September 1986).

local school divisions must share these funds with private schools, even if the private schools do not serve the particular "high-cost" student population. These concerns, coupled with issues such as administrative responsibility, parental and public involvement, and the application of desegregation moneys, prompted some to clamor for increased accountability in the expenditure of Chapter 2 funds.¹⁶ The program was reauthorized in 1988, pursuant to the **Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments** (Pub. L. No. 100-297).¹⁷

Project Head Start

Part of Lyndon Johnson's War on Poverty, the **Economic Opportunity Act of 1964** (Pub. L. No. 88-452) established **Project Head Start**, a program of preschool development for low-income children. Initiated in 1965 as a six-week summer experiment, today Head Start is monitored by 250 employees of the U.S. Department of Health and Human Services and serves 1,321 individual grantees. Both praised and criticized, Head Start remains an extremely popular federal initiative, one that has demonstrated success in improving pupils' intellectual and emotional development. Recent studies indicating that these initial positive effects may disappear within two years have prompted proposals for reforms to improve and ensure program quality.¹⁸

Reauthorized in 1981 (**Head Start Act of 1981**, Pub. L. No. 97-35), amended in 1984 (**Human Services Reauthorization Act of 1984**, Pub. L. No. 98-558), and ultimately replaced in 1988 (42 U.S.C. §§ 9831-9852), the Head Start program received \$2.2 billion in federal funds in 1992, but served only one-fourth of the 2.5 million eligible children. It is estimated that full funding for Head Start might cost \$7.7 billion in 1994.¹⁹

National School Lunch Act (Pub. L. No. 79-396)

Adopted in 1946, the **National School Lunch Act** provided grants-in-aid to assist states in establishing and operating nonprofit school lunch programs. Prior legislation, the **School Lunch Indemnity Plan** (Pub. L. No. 78-16 (1943)), had

¹⁶ Chapter 2, *supra* note 15, at 598-599.

¹⁷ *Digest*, *supra* note 10, at 357.

¹⁸ J. Boger, "Race and the American City: The Kerner Commission in Retrospect--An Introduction," 71 *N.C.L. Rev.* 1289 at 1292, n.12, 1326, n.160 (1993)[hereinafter referred to as Boger]; D. Besharov, "New Directions for Head Start," *Education Digest* 7 at 7-8 (September 1992); D. Friedman, "A reputation that outruns reality," *U.S. News & World Report* 63 at 63-64 (January 25, 1993).

¹⁹ Boger, *supra* note 11, at 1326, n.158; W. Taylor, "The Continuing Struggle for Educational Opportunity," 71 *N.C.L. Rev.* 1693 at 1693, n.4; 1708 (1993); P. Dreier, "America's Urban Crisis: Symptoms, Causes, Solutions," 71 *N.C.L. Rev.* 1351 at 1391 (1993).

earmarked federal dollars for local lunch food purchases. The 1954 **School Milk Program Act** (Pub. L. No. 83-597) funded school milk purchases. The School Breakfast Program was established pursuant to the **Child Nutrition Act of 1966** (Pub. L. No. 89-642). Today the National School Lunch Program, administered by the Food and Nutrition Service, U.S. Department of Agriculture, provides low-cost or free lunches to approximately 24 million students, while the School Breakfast Program served an average of 4.1 million children daily in 1991.²⁰ (See Chapter 5).

The Anti-Drug Education Act of 1990 and the Drug Abuse Resistance Education (DARE) Act of 1990

Folded into the **Comprehensive Crime Control Act of 1990** (Pub. L. No. 101-647), the **Anti-Drug Education Act of 1990** and the **Drug Abuse Resistance Education (DARE) Act of 1990** increased federal funding for school personnel training and provided funds for the duplication of successful drug education initiatives. The measure also established a grants program through the U.S. Department of Health and Human Services for DARE programs. The 1990 Act amended the **Drug Free Schools and Communities Act**, initially enacted in 1986 (Pub. L. No. 99-570, amended 1989, Pub. L. No. 101-226) to establish federally funded programs for drug abuse education and prevention that coordinate with community efforts.²¹

Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. No. 93-415)

Targeting dropout prevention was the **Juvenile Justice and Delinquency Prevention Act of 1974**, which supported technical assistance, training, and research for programs to keep students in elementary and secondary school. The Act also established the National Institute for Juvenile Justice and Delinquency Prevention within the Department of Justice. Supplementing this legislation in 1990 was the **School Dropout Prevention and Basic Schools Improvement Act** (Pub. L. No. 101-600), which focused on initiatives at the secondary school level.²²

Public Broadcasting Act of 1967 (Pub. L. No. 90-129)

Educational television received a boost from the **Public Broadcasting Act of 1967**, which established a corporation for public broadcasting to direct federal funds to educational television and noncommercial radio and television stations. The corporation

²⁰ *Digest, supra* note 10, at 352; Virginia Department of Education, *Summary of Federal Programs 1988-89* at 51 (1988); U.S. Department of Agriculture, Food and Nutrition Service, "Food Program Facts: The National School Lunch Program" (July 1992); U.S. Department of Agriculture, Food and Nutrition Service, "Food Program Facts: The School Breakfast Program" (April 1992)..

²¹ *Digest, supra* note 10, at 357, 359.

²² *Id.* at 356, 358.

was also authorized to conduct research and to award grants for the construction of educational broadcasting facilities. The 1962 **Amendments to the Communications Act of 1934** (Pub. L. No. 87-447) had funded grants for the construction of educational television facilities. In 1976, the **Educational Broadcasting Facilities and Telecommunications Demonstration Act** (Pub. L. No. 94-309) created a demonstration program for the development of nonbroadcast facilities for the dissemination of information on health, education, and public services. The 1990 **Children's Television Act** (Pub. L. No. 101-437) required the Federal Communications Commission to revive restrictions on advertising during children's television; the measure also directed broadcasters to "meet the educational and informational needs of the child audience."²³

The Excellence in Mathematics, Science and Engineering Education Act of 1990 (Pub. L. No. 101-589)

Acknowledging the need for improved mathematics and science education, the **Excellence in Mathematics, Science and Engineering Education Act of 1990** (Pub. L. No. 101-589) launched a national mathematics and science clearinghouse and created regional math and science consortia. Similarly, the **Education for Economic Security Act** (Pub. L. No. 98-377), passed in 1984, and the **Omnibus Trade and Competitiveness Act of 1988** (Pub. L. No. 100-418) expanded mathematics and science education in elementary, secondary, and higher education. Emphasis on effective science and mathematics education can be traced to the 1958 enactment of the **National Defense Education Act** (Pub. L. No. 85-865), which aided public schools in enhancing these curriculum areas.²⁴

Asbestos School Hazard Protection and Control Act of 1980 (Pub. L. No. 96-270)

The containment and removal of asbestos in public schools was the focus of the **Asbestos School Hazard Protection and Control Act of 1980**. The Act established an inspection program for detection of asbestos in public school buildings and provided loans to support containment and removal. The **Asbestos School Hazard Abatement Reauthorization Act of 1990** (Pub. L. No. 101-637) extended the **Asbestos School Hazard Abatement Act of 1984**, which supported asbestos inspections and management plans as well as information and training programs.²⁵

²³ *Id.* at 354, 353, 356, 358.

²⁴ *Id.* at 358, 357, 353.

²⁵ *Id.* at 356-358.

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