

Senator Jacob L. Anderegg proposes the following substitute bill:

**SPECIAL EDUCATION LEAST RESTRICTIVE
REQUIREMENT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the delivery of special education services in public schools.

Highlighted Provisions:

This bill:

- ▶ requires a local education agency (LEA) to provide special education in the least restrictive environment;
- ▶ permits an LEA to:
 - provide special education to a student with disabilities regardless of whether the other students in the class or setting are students without a disability;
 - use state special education funds for special education, even if doing so provides an incidental benefit to students without a disability;
- ▶ requires the State Board of Education to:
 - make rules related to accounting for the use of state special education funds; and
 - provide training on the appropriate use of special education funds to LEAs;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.



Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-7-201, as last amended by Laws of Utah 2019, Chapter 187 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 187

53E-7-204, as last amended by Laws of Utah 2020, Chapter 354

53E-7-206, as repealed and reenacted by Laws of Utah 2019, Chapter 187

53E-7-207, as repealed and reenacted by Laws of Utah 2019, Chapter 187

53E-7-208, as last amended by Laws of Utah 2020, Chapter 354

53F-2-307, as last amended by Laws of Utah 2020, Chapter 408

ENACTS:

53E-7-209, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53E-7-201** is amended to read:

53E-7-201. Definitions.

As used in this part:

(1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec. [300.308] 300.8.

(2) "Due process hearing" means an administrative due process hearing authorized by 20 U.S.C. Sec. 1415.

(3) "IEP team" means the same as that term is defined in 34 C.F.R. Sec. 300.321.

~~[(3)]~~ (4) "LEA special education program" means ~~[the implementation of an eligible student's IEP by the eligible student's LEA.]~~ systems an LEA establishes to:

(a) implement an eligible student's IEP;

(b) appropriately and timely identify eligible students;

(c) evaluate and classify eligible students by qualified personnel;

(d) implement standards for special education classes and services;

(e) deliver special education service responsibilities;

(f) ensure special education instructional staff are appropriately credentialed; and

(g) provide services for dual enrollment students that are:

(i) eligible students; and

(ii) attending public school on a part-time basis.

(5) "Least restrictive environment" means the same as that term is defined in 34 C.F.R. Secs. 300.114 through 300.116.

~~[(4)]~~ (6) "Special education [services]" means the [specialized instruction and related services, described in an eligible student's IEP, that are necessary to provide a free appropriate public education to the eligible student] same as that term is defined in 34 C.F.R. Sec. 300.39.

(7) "Specially designed instruction" means the same as that term is defined in C.F.R. Sec. 300.39.

~~[(5)]~~ (8) "Student who is eligible for special education services" or "eligible student" means a child with a disability who is:

(a) at least 3 years old but younger than 22 years old; or

(b) 22 years old, if the school year in which the child with a disability turned 22 years old has not yet ended.

Section 2. Section **53E-7-204** is amended to read:

53E-7-204. State board special education authority and duties -- Rulemaking.

(1) The state board shall have general control and supervision over ~~[all public educational]~~ LEA special education programs in the state for eligible students ~~[who are eligible for special education services].~~

(2) A program described in Subsection (1) shall comply with state board rule.

(3) In accordance with federal and state law, the state board shall make rules to implement this part, including provisions that ensure:

(a) appropriate and timely identification of a potential eligible student;

(b) the evaluation and classification of an eligible student by qualified personnel;

(c) standards for special education services and supports;

(d) availability of LEA special education programs;

(e) delivery of special education [service responsibilities] in the least restrictive environment;

(f) certification and qualification for the instructional staff of eligible students; and
(g) special education [~~services~~] for eligible students who are dual enrollment students attending public school on a part-time basis as described in Section [53G-6-702](#).

(4) In accordance with federal and state law, the state board may make rules to otherwise administer the state board's authority described in Subsection (1).

Section 3. Section **53E-7-206** is amended to read:

53E-7-206. Special education funding.

In accordance with Title 53F, Chapter 2, State Funding -- Minimum School Program, state board rule, and other applicable law, the state board shall administer the payment of restricted state and federal funds to an LEA to provide special education [~~services~~] to an eligible student.

Section 4. Section **53E-7-207** is amended to read:

53E-7-207. Local education agency special education duty and authority.

(1) An LEA shall, at no cost to the eligible student, provide to an eligible student enrolled at the LEA a full continuum of special education services and placements to an eligible student enrolled at the LEA.

(2) As determined by an eligible student's IEP team, an LEA may provide special education to an eligible student, regardless of whether the other students in the class or setting are eligible students.

~~[(2)]~~ (3) (a) Upon request of the Division of Child and Family Services and if the LEA obtains appropriate consent for the evaluation, an LEA shall provide an initial special education evaluation to an individual who enters the custody of the Division of Child and Family Services, if the Division of Child and Family Services suspects the individual may be an eligible student.

(b) (i) Except as provided in Subsection ~~[(2)]~~ (3)(b)(ii), the LEA shall conduct an evaluation described in Subsection ~~[(2)]~~ (3)(a) within 30 days after the day on which the Division of Child and Family Services makes the request.

(ii) An LEA may refuse to conduct an evaluation described in Subsection ~~[(2)]~~ (3)(a) if the LEA reviews the relevant data regarding the individual and, within 10 days after the day on which the LEA received the request described in Subsection ~~[(2)]~~ (3)(a), gives the Division of Child and Family Services written prior notice of refusal to evaluate.

[~~(3)~~] (4) (a) In accordance with Subsection [~~(3)~~] (4)(b), an LEA may provide education or training for an individual with a disability who is:

- (i) younger than 3 years old; or
- (ii) at least 22 years old and not an eligible student.

(b) (i) Except as provided in Subsection [~~(3)~~] (4)(b)(ii), an LEA may not use funding described in Title 53F, Chapter 2, State Funding -- Minimum School Program, to pay for the cost of education or training described in Subsection [~~(3)~~] (4)(a).

(ii) An LEA may use adult education program funding described in Section 53F-2-401, in accordance with the requirements described in Section 53F-2-401, to pay for the cost of the education or training described in Subsection [~~(3)~~] (4)(a).

(c) To pay for the cost of education or training described in Subsection [~~(3)~~] (4)(a), an LEA may use fees, contributions, or other funds received by the LEA if the purpose of the fees, contributions, or other funds is to provide the education or training.

Section 5. Section 53E-7-208 is amended to read:

53E-7-208. Special education dispute resolution -- Rulemaking -- Due process hearing -- Right to appeal.

(1) In accordance with this section, the state board shall make rules that:

(a) allow for a prompt, fair, and final resolution of a dispute that arises over the provision of special education [~~services~~] to an eligible student;

(b) establish and maintain procedural safeguards that meet the requirements of 20 U.S.C. Sec. 1415; and

(c) establish timelines that provide adequate time to address and resolve a dispute described in Subsection (1)(a) without unnecessarily disrupting or delaying an eligible student's free appropriate public education.

(2) A party to a dispute described in Subsection (1)(a), including an LEA, shall make a diligent and good faith effort to resolve the dispute informally at the LEA level before seeking a due process hearing under state board rule.

(3) (a) If a dispute is not resolved informally as described in Subsection (2), a party to the dispute may request a due process hearing in accordance with state board rule.

(b) Upon request of a party to a dispute described in Subsection (2), the state board shall, in accordance with state board rule and 20 U.S.C. Sec. 1415:

(i) conduct a due process hearing; and

(ii) issue a decision on the due process hearing.

(4) (a) A party to a due process hearing may appeal the decision resulting from the due process hearing by filing a civil action with a court described in 20 U.S.C. Sec. 1415(i), if the party files the action within 30 days after the day on which the due process hearing decision was issued.

(b) If parties to a due process hearing fail to reach agreement on the payment of attorney fees for the due process hearing, a party may seek to recover attorney fees in accordance with 20 U.S.C. Sec. 1415(i) by filing a court action within 30 days after the day on which the due process hearing decision was issued.

Section 6. Section **53E-7-209** is enacted to read:

53E-7-209. Use of state special education funds.

(1) An LEA may use state special education funds to:

(a) provide special education or specially designed instruction in the least restrictive environment; or

(b) (i) employ appropriately credentialed staff necessary to provide specially designed instruction and related services; or

(ii) employ staff who are trained and supervised by appropriately credentialed staff necessary to provide specially designed instruction and related services.

(2) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) for accounting for the use of state special education funds; and

(b) for documentation required for an LEA to demonstrate appropriate use of state special education funds under this section.

(3) The state board shall annually provide training and training materials to LEAs on:

(a) appropriate use of state special education funds;

(b) rules the state board creates under Subsection (2)(a); and

(c) the documentation described in Subsection (2)(b).

Section 7. Section **53F-2-307** is amended to read:

**53F-2-307. Weighted pupil units for programs for students with disabilities --
Local school board allocation.**

181 (1) As used in this section:

182 (a) "Incidental benefit" means the same as "services and aids that also benefit
183 nondisabled children" is defined in 34 C.F.R. Sec. 300.208.

184 (b) "LEA" means:

185 (i) a school district; or

186 (ii) a charter school.

187 ~~[(1)]~~ (2) The number of weighted pupil units for students with disabilities shall reflect
188 the direct cost of programs for those students conducted in accordance with rules established by
189 the state board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

190 ~~[(2)]~~ (3) ~~[Disability]~~ Special education program money allocated to ~~[school districts or~~
191 ~~charter schools]~~ LEAs is restricted and shall be spent for the education of students with
192 disabilities but may include expenditures for approved programs of services conducted for
193 ~~[certified]~~ credentialed instructional personnel who have students with disabilities in their
194 classes, even if the programs or services provide an incidental benefit to a student who is not a
195 student with a disability.

196 ~~[(3)]~~ (4) The state board shall establish and strictly interpret definitions and provide
197 standards for determining which students have disabilities and shall assist ~~[school districts and~~
198 ~~charter schools]~~ LEAs in determining the services that should be provided to students with
199 disabilities.

200 ~~[(4) Each year the]~~

201 (5) The state board shall evaluate the standards and guidelines that establish the
202 identifying criteria for disability classifications to assure strict compliance with those standards
203 by the ~~[school districts and charter schools]~~ LEAs.

204 ~~[(5)]~~ (6) (a) ~~[Money]~~ The state board shall allocate money appropriated to the state
205 board for add-on WPU for students with disabilities enrolled in regular programs ~~[shall be~~
206 ~~allocated]~~ to ~~[school districts and charter schools]~~ LEAs as provided in this Subsection ~~[(5)]~~
207 (6).

208 (b) The state board shall use ~~[a school district's or charter school's]~~ an LEA's average
209 number of special education add-on weighted pupil units determined by the previous five year's
210 average daily membership data as a foundation for the special education add-on appropriation.

211 (c) ~~[A school district's or charter school's]~~ An LEA's special education add-on WPUs

for the current year may not be less than the foundation special education add-on WPUs.

(d) (i) Growth WPUs shall be added to the prior year special education add-on WPUs, and growth WPUs shall be determined ~~[as follows:]~~ in accordance with this Subsection (6)(d).

~~[(i)]~~ (ii) The special education student growth factor is calculated by comparing ~~[S-3]~~ total special education ADM of two years previous to the current year to the ~~[S-3]~~ total special education ADM three years previous to the current year, not to exceed the official October total school district growth factor from the prior year.

~~[(ii)]~~ (iii) When calculating and applying the growth factor, a school district's ~~[S-3]~~ total special education ADM for a given year is limited to 12.18% of the school district's ~~[S-3]~~ total student ADM for the same year.

~~[(iii)]~~ (iv) Growth ADMs are calculated by applying the growth factor to the ~~[S-3]~~ total special education ADM of two years previous to the current year.

~~[(iv)]~~ (v) Growth ADMs for each ~~[school district or each charter school]~~ LEA are multiplied by 1.53 weighted pupil units and added to the prior year special education add-on WPU to determine each ~~[school district's or each charter school's]~~ LEA's total allocation.

~~[(6)]~~ (7) If money appropriated under this chapter for programs for students with disabilities does not meet the costs of ~~[school districts and charter schools]~~ LEAs for those programs, each ~~[school district and each charter school]~~ LEA shall first receive the amount generated for each student with a disability under the basic program.