

**Effective 1/24/2018**

## **Part 2 Special Education Program**

### **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. 300.8.
- (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.
- (4) "LEA special education program" means 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.
- (6) "Special education" means the 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 34 C.F.R. Sec. 300.39.
- (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.

Amended by Chapter 431, 2022 General Session

### **53E-7-202 Free appropriate public education for eligible students.**

An eligible student who has not received a regular high school diploma is entitled to a free appropriate public education.

Repealed and Re-enacted by Chapter 187, 2019 General Session

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

- (1) The state board shall have general control and supervision over LEA special education programs in the state for eligible students.
- (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 potentially eligible student;

- (b) the evaluation of a student and classification of a student as 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 in the least restrictive environment as determined by an eligible student's IEP team;
  - (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).

Amended by Chapter 431, 2022 General Session

**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 to an eligible student.

Amended by Chapter 431, 2022 General Session

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

- (1) An LEA shall, at no cost to the eligible student, provide 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 in the least restrictive environment as determined by the eligible student's IEP team, regardless of whether the other students in the class or setting are eligible students.
- (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 (3)(b)(ii), the LEA shall conduct an evaluation described in Subsection (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 (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 (3)(a), gives the Division of Child and Family Services written prior notice of refusal to evaluate.
- (4)
  - (a) In accordance with Subsection (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 (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 (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 (4)(a).
  - (c) To pay for the cost of education or training described in Subsection (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.
- (5) In accordance with Subsection (6) and beginning July 1, 2025:
- (a) An LEA shall provide education to all students within the LEA in the least restrictive environment possible that does not predictably threaten serious bodily injury to educators, school staff, or other students.
  - (b) An LEA shall provide education to all students within the LEA in the least restrictive environment possible that does not result in a pattern of behavior that interferes substantially and materially with the instruction of the other students in the classroom.
  - (c) An LEA shall provide an environment to all educators, school staff, and students in the least restrictive environment possible that does not allow for repeated:
    - (i) verbal or physical sexual harassment; or
    - (ii) sexual assault.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board shall make rules to ensure implementation of the requirements described in Subsection (5).
- (7) Nothing in this section creates a private right of action or constitutes a waiver of immunity under Section 63G-7-301.

Amended by Chapter 69, 2024 General Session

**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 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.

Amended by Chapter 431, 2022 General Session

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

- (1) An LEA may use state special education funds to:
  - (a) provide an LEA special education program and specially designed instruction and related services and supports to an eligible student in the least restrictive environment;
  - (b) employ appropriately credentialed staff necessary to provide specially designed instruction and related services; or
  - (c) 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 for:
  - (a) accounting for the use of state special education funds; and
  - (b) 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).

Enacted by Chapter 431, 2022 General Session

**53E-7-210 Boundary change notice requirement.**

- (1) As used in this section:
  - (a) "Boundary change" means any change to the geographic boundary or school assignment that affects the location of an eligible student's special class.
  - (b)
    - (i) "Special class" means a placement on the continuum of alternative placements under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq. where an eligible student receives specially designed instruction in a class designated only for a student with a disability.
    - (ii) "Special class" does not mean a special enrollment program as that term is defined in Subsection 53G-4-402(24).
- (2)
  - (a) If a boundary change will result in the relocation of an eligible student's special class, the LEA where the eligible student is enrolled shall send the parent of the eligible student written notice of the boundary change:
    - (i) at least 30 days before the effective date of the boundary change;
    - (ii) that includes, at minimum:

- (A) a description of the action, including the reason for the boundary change and how the boundary change will impact the eligible student;
  - (B) the name and location of the new school or program site;
  - (C) instructions on how the parent may obtain more information about the boundary change;
  - (D) key dates and a timeline for implementation;
  - (E) information about the new school or program, including contact information for relevant staff;
  - (F) information about scheduling an IEP meeting and other transfer services available to the eligible student; and
  - (G) instructions on how the parent may obtain other logistical information relevant to the boundary change, including transportation arrangements; and
- (iii) through one or more of the following methods:
- (A) regular mail;
  - (B) certified mail;
  - (C) email; or
  - (D) hand delivery.
- (b) Notwithstanding Subsection (2)(a), an LEA is not required to notify a parent if the boundary change that results in the relocation of an eligible student's special class occurs due to compliance with Subsection 53G-4-402(24).
- (3) Before implementing a boundary change that affects a special class an LEA shall:
- (a) provide a parent of an affected eligible student an opportunity to submit a written or verbal comment regarding the proposed boundary change; and
  - (b) document and consider each comment the LEA receives before making a final decision.

Enacted by Chapter 174, 2026 General Session