

**SPECIAL EDUCATION AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Kory M. Holdaway**

AN ACT RELATING TO PUBLIC SCHOOLS; MODIFYING SPECIAL EDUCATION DEFINITIONS AND RULES TO BE ADOPTED BY THE STATE BOARD OF EDUCATION; MODIFYING PROVISIONS REGARDING PARTICIPATION OF STUDENTS WITH A DISABILITY IN EXTRACURRICULAR ACTIVITIES; MODIFYING THE PROCESS BY WHICH DISPUTES ARE RESOLVED OVER EDUCATIONAL PROGRAMS AND RIGHTS AND RESPONSIBILITIES OF STUDENTS WITH DISABILITIES, THEIR PARENTS, AND THE PUBLIC SCHOOLS; AND PROVIDING A REPEALER.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**53A-15-301**, as last amended by Chapter 53, Laws of Utah 1992

**53A-15-303.5**, as last amended by Chapter 53, Laws of Utah 1992

**53A-15-305**, as enacted by Chapter 238, Laws of Utah 1997

REPEALS:

**53A-15-303.7**, as enacted by Chapter 121, Laws of Utah 1993

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

Section 1. Section **53A-15-301** is amended to read:

**53A-15-301. Education programs for students with disabilities -- Supervision by the State Board of Education -- Enforcement.**

(1) (a) All students with disabilities, who are between the ages of three and 22 and have not graduated from high school with a regular diploma, are entitled to a free, appropriate public education.

(b) The State Board of Education shall adopt rules consistent with applicable state and federal law to implement this chapter.

(2) The rules adopted by the state board shall include the following:

(a) appropriate and timely identification of students with disabilities;

- (b) diagnosis, evaluation, and classification by ~~[competent]~~ qualified personnel;
- (c) standards for classes and services;
- (d) provision for multidistrict programs;
- (e) provision for ~~[out-of-district placement if necessary]~~ delivery of service responsibilities;
- (f) certification and qualifications for instructional staff; and
- (g) ~~[qualification standards for aides and instructional assistants]~~ services for dual enrollment students attending public school on a part-time basis under Section 53A-11-102.5.

(3) (a) The state board shall have general control and supervision over all educational programs for students within the state who have disabilities.

(b) Those programs must comply with rules adopted by the state board under this section.

(4) The state superintendent of public instruction shall enforce this chapter.

Section 2. Section **53A-15-303.5** is amended to read:

**53A-15-303.5. Participation of students with a disability in extracurricular activities.**

(1) A student with a disability may not be denied the opportunity of participating in public school programs or extracurricular activities solely because of the student's age, unless the participation threatens the health or safety of the student.

(2) The school district in cooperation with the Utah Department of Health shall establish criteria used to determine the health and safety factor.

(3) Subsection (1) applies to a student who:

(a) has not graduated from high school with a regular diploma; and [who]

(b) is under the age of 20, if participation is recommended by the student's individualized education program team.

Section 3. Section **53A-15-305** is amended to read:

**53A-15-305. Resolution of disputes in special education -- Hearing request -- Timelines -- Levels -- Appeal process -- Recovery of costs.**

(1) The Legislature finds that it is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and the public schools.

(2) Therefore, the State Board of Education shall adopt rules meeting the requirements of 20 U.S.C. Section 1415 governing the establishment and maintenance of procedural safeguards for students with disabilities and their parents or guardians as to the provision of free, appropriate public education to those students.

(3) The timelines established ~~[in this section are intended to ensure that]~~ by the board shall provide adequate time ~~[is given]~~ to address and resolve disputes without unnecessarily disrupting or delaying the provision of free, appropriate public education for students with disabilities.

(4) Prior to seeking a hearing or other formal proceedings, the parties to a dispute under this section shall make a good faith effort to resolve the dispute informally at the school building level.

(5) (a) If the dispute is not resolved under Subsection (4), ~~[the moving]~~ a party ~~[in the dispute concerning the rights of a special education student under state or federal law shall submit a written request for a hearing to the superintendent of the school district which is responsible for providing the special education services]~~ may request a due process hearing.

(b) The hearing shall be conducted under rules adopted by the board in accordance with 20 U.S.C. Section 1415.

~~[(6) (a) Within 45 days after receipt of the written request, the school district shall provide for a first level hearing and issuance of a written decision to the parties, together with a notice of rights of appeal, unless the hearing authority grants a time extension for good cause shown.]~~

~~[(b) The State Board of Education shall adopt minimum standards for information to be included in the notice of appeal.]~~

~~[(7) (a) A party to a first level hearing may appeal the decision to the State Office of Education by submitting a written request for review of the hearing to the Coordinator of Special Education in the State Office of Education within 30 days after issuance of the decision.]~~

~~[(b) The coordinator shall provide for review of the first level hearing record by a panel of three hearing officers chosen jointly by the student's parents and the district superintendent.]~~

~~[(c) The panel shall hold a hearing and issue a written decision to the parties within 30 days after receipt of the written request for review, unless the panel grants an extension for good cause shown.]~~

~~[(8)]~~ (6) (a) A party to the ~~[dispute]~~ hearing may appeal the decision issued under Subsection ~~[(7)(c)]~~ (5) to a court of competent jurisdiction under 20 U.S.C. Section 1415(e).

(b) The party must file the judicial appeal within 30 days after issuance of the ~~[review panel's]~~ due process hearing decision.

~~[(9)]~~ (7) If the parties fail to reach agreement on payment of attorney fees, then a party seeking recovery of attorney fees under 20 U.S.C. Section 1415(e) for a special education administrative action shall file a court action within 30 days after issuance of a decision under Subsection ~~[(6) or within 30 days after a decision under Subsection (7), whichever is later]~~ (5).

**Section 4. Repealer.**

This act repeals:

**Section 53A-15-303.7, Unique arts for students with disabilities pilot program.**