

SPECIAL EDUCATION RECODIFICATION

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill recodifies Title 53E, Chapter 7, Special Education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals outdated provisions related to special education;
- ▶ reorganizes, redrafts, and updates existing provisions related to special education;

and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

53E-3-503, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and amended by Laws of Utah 2018, Chapter 1

53E-7-201, as enacted by Laws of Utah 2018, Chapter 1

53G-8-305, as renumbered and amended by Laws of Utah 2018, Chapter 3

62A-2-108.1, as last amended by Laws of Utah 2018, Chapter 415

62A-5a-102, as last amended by Laws of Utah 2018, Chapter 415

62A-5a-105, as last amended by Laws of Utah 2018, Chapter 415

30 REPEALS AND REENACTS:

31 **53E-7-202**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and
32 amended by Laws of Utah 2018, Chapter 1

33 **53E-7-204**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and
34 amended by Laws of Utah 2018, Chapter 1

35 **53E-7-206**, as renumbered and amended by Laws of Utah 2018, Chapter 1

36 **53E-7-207**, as renumbered and amended by Laws of Utah 2018, Chapter 1

37 **53E-7-208**, as renumbered and amended by Laws of Utah 2018, Chapter 1

38 RENUMBERS AND AMENDS:

39 **53G-6-709**, (Renumbered from 53E-7-205, as renumbered and amended by Laws of
40 Utah 2018, Chapter 1)

41 REPEALS:

42 **53E-7-301**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and
43 amended by Laws of Utah 2018, Chapter 1

44 **53E-7-302**, as renumbered and amended by Laws of Utah 2018, Chapter 1

45 **53E-7-303**, as renumbered and amended by Laws of Utah 2018, Chapter 1

46 **53E-7-304**, as renumbered and amended by Laws of Utah 2018, Chapter 1

47 **Utah Code Sections Affected by Coordination Clause:**

48 **53E-7-201**, as enacted by Laws of Utah 2018, Chapter 1

49 **53E-7-204**, as last amended by Laws of Utah 2018, Chapter 75 and renumbered and
50 amended by Laws of Utah 2018, Chapter 1



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

53 Section 1. Section **53E-3-503** is amended to read:

54 **53E-3-503. Education of individuals in custody of or receiving services from**
55 **certain state agencies -- Establishment of coordinating council -- Advisory councils.**

56 (1) For purposes of this section, "board" means the State Board of Education.

57 (2) (a) The board is directly responsible for the education of all individuals who are:

58 (i) (A) younger than 21 years old; or
59 [~~(B) students with disabilities entitled to a free, appropriate public education as~~
60 ~~described in Section 53E-7-202; and]~~
61 (B) eligible for special education services as described in Chapter 7, Part 2, Special
62 Education Program; and
63 (ii) (A) receiving services from the Department of Human Services;
64 (B) in the custody of an equivalent agency of a Native American tribe recognized by
65 the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides
66 within the state; or
67 (C) being held in a juvenile detention facility.
68 (b) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah
69 Administrative Rulemaking Act, to provide for the distribution of funds for the education of
70 individuals described in Subsection (2)(a).
71 (3) Subsection (2)(a)(ii)(B) does not apply to an individual taken into custody for the
72 primary purpose of obtaining access to education programs provided for youth in custody.
73 (4) The board shall, where feasible, contract with school districts or other appropriate
74 agencies to provide educational, administrative, and supportive services, but the board shall
75 retain responsibility for the programs.
76 (5) The Legislature shall establish and maintain separate education budget categories
77 for youth in custody or who are under the jurisdiction of the following state agencies:
78 (a) detention centers and the Divisions of Juvenile Justice Services and Child and
79 Family Services;
80 (b) the Division of Substance Abuse and Mental Health; and
81 (c) the Division of Services for People with Disabilities.
82 (6) (a) The Department of Human Services and the board shall appoint a coordinating
83 council to plan, coordinate, and recommend budget, policy, and program guidelines for the
84 education and treatment of persons in the custody of the Division of Juvenile Justice Services
85 and the Division of Child and Family Services.

86 (b) The Department of Human Services and the board may appoint similar councils for
87 those in the custody of the Division of Substance Abuse and Mental Health or the Division of
88 Services for People with Disabilities.

89 (7) A school district contracting to provide services under Subsection (4) shall
90 establish an advisory council to plan, coordinate, and review education and treatment programs
91 for individuals held in custody in the district.

92 Section 2. Section **53E-7-201** is amended to read:

93 **53E-7-201. Definitions.**

94 [Reserved]

95 As used in this part:

96 (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec.
97 300.308.

98 (2) "Due process hearing" means an administrative due process hearing authorized by
99 20 U.S.C. Sec. 1415.

100 (3) "Individualized education program" or "IEP" means a written statement for an
101 eligible student that is developed, reviewed, and revised in accordance with the Individuals
102 with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

103 (4) "LEA special education program" means the implementation of an eligible student's
104 IEP by the eligible student's LEA.

105 (5) "Local education agency" or "LEA" means:

106 (a) a school district;

107 (b) a charter school; or

108 (c) the Utah Schools for the Deaf and the Blind.

109 (6) "Special education services" means the specialized instruction and related services,
110 described in an eligible student's IEP, that are necessary to provide a free appropriate public
111 education to the eligible student.

112 (7) "State board" means the State Board of Education.

113 (8) "Student who is eligible for special education services" or "eligible student" means

114 a child with a disability who is:

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

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

118 Section 3. Section **53E-7-202** is repealed and reenacted to read:

119 **53E-7-202. Free appropriate public education for eligible students.**

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

122 Section 4. Section **53E-7-204** is repealed and reenacted to read:

123 **53E-7-204. State Board of Education special education authority and duties --**

124 **Rulemaking.**

125 (1) The State Board of Education shall have general control and supervision over all
126 public educational programs in the state for students who are eligible for special education
127 services.

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

129 (3) In accordance with federal law, state law, and Title 63G, Chapter 3, Utah
130 Administrative Rulemaking Act, the state board shall make rules to implement this part,
131 including provisions that ensure:

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

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

134 (c) standards for special education services and supports;

135 (d) availability of LEA special education programs;

136 (e) delivery of special education service responsibilities;

137 (f) certification and qualification for the instructional staff of eligible students; and

138 (g) special education services for eligible students who are dual enrollment students

139 attending public school on a part-time basis as described in Section **53G-6-702**.

140 (4) In accordance with federal law, state law, and Title 63G, Chapter 3, Utah

141 Administrative Rulemaking Act, the state board may make rules to otherwise administer the

142 state board's authority described in Subsection (1).

143 Section 5. Section **53E-7-206** is repealed and reenacted to read:

144 **53E-7-206. Special education funding.**

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

149 Section 6. Section **53E-7-207** is repealed and reenacted to read:

150 **53E-7-207. Local education agency special education duty and authority.**

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

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

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

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

165 (3) (a) In accordance with Subsection (3)(b), an LEA may provide education or training
166 for an individual with a disability who is:

167 (i) younger than 3 years old; or

168 (ii) at least 22 years old and not an eligible student.

169 (b) (i) Except as provided in Subsection (3)(b)(ii), an LEA may not use funding

170 described in Title 53F, Chapter 2, State Funding -- Minimum School Program, to pay for the
171 cost of education or training described in Subsection (3)(a).

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

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

178 Section 7. Section 53E-7-208 is repealed and reenacted to read:

179 **53E-7-208. Special education dispute resolution -- Rulemaking -- Due process**
180 **hearing -- Right to appeal.**

181 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
182 this section, the state board shall make rules that:

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

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

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

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

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

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

197 (i) conduct a due process hearing; and

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

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

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

207 Section 8. Section **53G-6-709**, which is renumbered from Section 53E-7-205 is
208 renumbered and amended to read:

209 ~~[53E-7-205].~~ **53G-6-709. Participation of students with a disability in**
210 **extracurricular activities.**

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

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

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

217 (a) has not graduated from high school with a regular diploma; and

218 (b) is under the age of ~~[20]~~ 22, if participation is recommended by the student's
219 individualized education program team.

220 Section 9. Section **53G-8-305** is amended to read:

221 **53G-8-305. Exception.**

222 Behavior reduction intervention which is in compliance with Section **76-2-401** and with
223 state and local rules adopted under Section ~~[53E-7-202]~~ 53E-7-204 is excepted from this part.

224 Section 10. Section **62A-2-108.1** is amended to read:

225 **62A-2-108.1. Coordination of human services and educational services --**

226 **Licensing of programs -- Procedures.**

227 (1) For purposes of this section:

228 (a) "accredited private school" means a private school that is accredited by an
229 accrediting entity recognized by the Utah State Board of Education; and

230 (b) "education entitled children" means children:

231 (i) subject to compulsory education under Section 53G-6-202;

232 (ii) subject to the school attendance requirements of Section 53G-6-203; or

233 [~~(iii) entitled to educational services under Section 53E-7-202;~~]

234 (iii) who are eligible for special education services as described in Title 53E, Chapter
235 7, Part 2, Special Education Program.

236 (2) Subject to Subsection (8) or (9), a human services program may not be licensed to
237 serve education entitled children unless the human services program presents an educational
238 service plan that includes evidence:

239 (a) satisfactory to:

240 (i) the office; and

241 (ii) (A) the local school board of the school district in which the human services
242 program will be operated; or

243 (B) the school district superintendent of the school district in which the human services
244 program will be operated; and

245 (b) that children served by the human services program shall receive appropriate
246 educational services satisfying the requirements of applicable law.

247 (3) Subject to Subsection (8) or (9), if a human services program serves any education
248 entitled children whose custodial parents or legal guardians reside outside the state, then the
249 program shall also provide an educational funding plan that includes evidence:

250 (a) satisfactory to:

251 (i) the office; and

252 (ii) (A) the local school board of the school district in which the human services
253 program will be operated; or

254 (B) the school district superintendent of the school district in which the human services
255 program will be operated; and

256 (b) that all costs for educational services to be provided to the education entitled
257 children, including tuition, and school fees approved by the local school board, shall be borne
258 by the human services program.

259 (4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human
260 services program shall obtain and provide the office with a letter:

261 (a) from the entity referred to in Subsection (2)(a)(ii):

262 (i) approving the educational service plan referred to in Subsection (2); or

263 (ii) (A) disapproving the educational service plan referred to in Subsection (2); and

264 (B) listing the specific requirements the human services program must meet before
265 approval is granted; and

266 (b) from the entity referred to in Subsection (3)(a)(ii):

267 (i) approving the educational funding plan, referred to in Subsection (3); or

268 (ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and

269 (B) listing the specific requirements the human services program must meet before
270 approval is granted.

271 (5) Subject to Subsection (8), failure of a local school board or school district
272 superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent
273 to approval of the plan by the local school board or school district superintendent if the human
274 services program provides to the office:

275 (a) proof that:

276 (i) the human services program submitted the proposed plan to the local school board
277 or school district superintendent; and

278 (ii) more than 45 days have passed from the day on which the plan was submitted; and

279 (b) an affidavit, on a form produced by the office, stating:

280 (i) the date that the human services program submitted the proposed plan to the local
281 school board or school district superintendent;

282 (ii) that more than 45 days have passed from the day on which the plan was submitted;
283 and

284 (iii) that the local school board or school district superintendent described in
285 Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on
286 which the plan was submitted.

287 (6) If a licensee that is licensed to serve an education entitled child fails to comply with
288 its approved educational service plan or educational funding plan, then:

289 (a) the office shall give the licensee notice of intent to revoke the licensee's license; and

290 (b) if the licensee continues its noncompliance for more than 30 days after receipt of
291 the notice described in Subsection (6)(a), the office shall revoke the licensee's license.

292 (7) If an education entitled child whose custodial parent or legal guardian resides
293 within the state is provided with educational services by a school district other than the school
294 district in which the custodial parent or legal guardian resides, then the funding provisions of
295 Section 53G-6-405 apply.

296 (8) A human services program that is an accredited private school:

297 (a) for purposes of Subsection (2):

298 (i) is only required to submit proof to the office that the accreditation of the private
299 school is current; and

300 (ii) is not required to submit an educational service plan for approval by an entity
301 described in Subsection (2)(a)(ii);

302 (b) for purposes of Subsection (3):

303 (i) is only required to submit proof to the office that all costs for educational services
304 provided to education entitled children will be borne by the human services program; and

305 (ii) is not required to submit an educational funding plan for approval by an entity
306 described in Subsection (3)(a)(ii); and

307 (c) is not required to comply with Subsections (4) and (5).

308 (9) Except for Subsection (7), the provisions of this section do not apply to a human
309 services program that is:

- 310 (a) a foster home; and
- 311 (b) required to be licensed by the office.

312 Section 11. Section **62A-5a-102** is amended to read:

313 **62A-5a-102. Definitions.**

314 As used in this chapter:

- 315 (1) "Council" means the Coordinating Council for Persons with Disabilities.
- 316 (2) "State agencies" means:
 - 317 (a) the Division of Services for People with Disabilities and the Division of Substance
 - 318 Abuse and Mental Health, within the Department of Human Services;
 - 319 (b) the Division of Health Care Financing within the Department of Health;
 - 320 (c) family health services programs established under Title 26, Chapter 10, Family
 - 321 Health Services, operated by the Department of Health;
 - 322 (d) the Utah State Office of Rehabilitation created in Section [35A-1-202](#); and
 - 323 (e) special education programs operated by the State Board of Education [~~and local~~
 - 324 ~~school districts~~] or an LEA under Title 53E, Chapter 7, Part 2, Special Education Program.

325 Section 12. Section **62A-5a-105** is amended to read:

326 **62A-5a-105. Coordination of services for school-age children.**

327 (1) Within appropriations authorized by the Legislature, the state director of special
 328 education, the director of the Utah State Office of Rehabilitation created in Section [35A-1-202](#),
 329 the executive director of the Department of Human Services, and the family health services
 330 director within the Department of Health, or their designees, and the affected [~~local school~~
 331 ~~district~~] LEA, as defined in Section [53E-1-102](#), shall cooperatively develop a single
 332 coordinated education program, treatment services, and individual and family supports for
 333 students entitled to a free appropriate education under Title 53E, Chapter 7, Part 2, Special
 334 Education Program, who also require services from the Department of Human Services, the
 335 Department of Health, or the Utah State Office of Rehabilitation.

336 (2) Distribution of costs for services and supports described in Subsection (1) shall be
 337 determined through a process established by the State Board of Education, the Department of

338 Human Services, and the Department of Health.

339 Section 13. **Repealer.**

340 This bill repeals:

341 Section **53E-7-301, Definitions.**

342 Section **53E-7-302, Braille skills assessment -- Development of individualized**
343 **education program.**

344 Section **53E-7-303, Instruction in reading and writing of Braille.**

345 Section **53E-7-304, Braille versions of textbooks.**

346 Section 14. **Coordinating H.B. 29 with H.B. 27 -- Substantive and technical**
347 **amendments.**

348 If this H.B. 29 and H.B. 27, Public Education Definitions Amendments, both pass and
349 become law, it is the intent of the Legislature that the Office of Legislative Research and
350 General Counsel shall prepare the Utah Code database for publication by:

351 (1) repealing Subsections **53E-7-201**(3), (5), and (7) and renumbering the remaining
352 subsections accordingly; and

353 (2) replacing the words "State Board of Education" in Subsection **53E-7-204**(1) with
354 the words "state board".