

**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 services in the least restrictive environment;
- ▶ permits an LEA to:
 - provide special education services to a student with disabilities in a general education classroom, even if doing so provides an incidental benefit to students without a disability;
 - use state special education funds for special education services, even if those services provide 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; and
- ▶ defines terms.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53E-7-201**, as last amended by Laws of Utah 2019, Chapter 187 and last amended by
33 Coordination Clause, Laws of Utah 2019, Chapter 187

34 **53E-7-204**, as last amended by Laws of Utah 2020, Chapter 354

35 **53E-7-207**, as repealed and reenacted by Laws of Utah 2019, Chapter 187

36 **53F-2-307**, as last amended by Laws of Utah 2020, Chapter 408

37 ENACTS:

38 **53E-7-209**, Utah Code Annotated 1953



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

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

42 **53E-7-201. Definitions.**

43 As used in this part:

44 (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec.
45 300.308.

46 (2) "Due process hearing" means an administrative due process hearing authorized by
47 20 U.S.C. Sec. 1415.

48 (3) "LEA special education program" means the implementation of an eligible student's
49 IEP by the eligible student's LEA.

50 (4) "Least restrictive environment" means the same as that term is defined in 34 C.F.R.
51 Sec. 300.114.

52 [~~4~~] (5) (a) "Special education services" means the specialized instruction and related
53 services, described in an eligible student's IEP, that are necessary to provide a free appropriate
54 public education to the eligible student.

55 (b) "Special education services" includes special education services provided to an
56 eligible student in a general education classroom that provide an incidental benefit to students
57 in the general education classroom who are not eligible students.

58 (6) "Specially designed instruction" means adapting the content, methodology, or

59 means of delivering grade-appropriate core curriculum instruction to:

60 (a) meet the specific needs of an eligible student as outlined in the eligible student's

61 IEP;

62 (b) ensure an eligible student has access to grade-appropriate general curriculum; and

63 (c) ensure an eligible student can meet the educational standards that apply to all
64 students.

65 [~~5~~] (7) "Student who is eligible for special education services" or "eligible student"
66 means a child with a disability who is:

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

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

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

71 **53E-7-204. State board special education authority and duties -- Rulemaking.**

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

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

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

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

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

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

80 (d) availability of LEA special education programs;

81 (e) delivery of special education service responsibilities in the least restrictive
82 environment;

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

84 (g) special education services for eligible students who are dual enrollment students
85 attending public school on a part-time basis as described in Section **53G-6-702**.

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

88 Section 3. Section **53E-7-207** is amended to read:

89 **53E-7-207. Local education agency special education duty and authority.**

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

93 (2) An LEA may provide special education services to an eligible student in a regular
94 education classroom, regardless of whether the other students in the regular education
95 classroom are eligible students.

96 [~~2~~] (3) (a) Upon request of the Division of Child and Family Services and if the LEA
97 obtains appropriate consent for the evaluation, an LEA shall provide an initial special
98 education evaluation to an individual who enters the custody of the Division of Child and
99 Family Services, if the Division of Child and Family Services suspects the individual may be
100 an eligible student.

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

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

108 [~~3~~] (4) (a) In accordance with Subsection [~~3~~] (4)(b), an LEA may provide education
109 or training for an individual with a disability who is:

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

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

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

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

121 Section 4. Section **53E-7-209** is enacted to read:

122 **53E-7-209. Use of state special education funds.**

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

124 (a) provide special education services and specially designed instruction, even if
 125 special education services or specially designed instruction provides an incidental benefit to a
 126 student who is not an eligible student;

127 (b) provide special education services or specially designed services in the least
 128 restrictive environment; or

129 (c) employ staff necessary to provide special education services or specially designed
 130 services in the least restrictive environment.

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

133 (a) that create procedures for accounting for the use of state special education funds;
 134 and

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

137 (3) The state board shall annually publish an instruction manual on, and provide
 138 training to LEAs on:

139 (a) appropriate use of state special education funds;

140 (b) accounting procedures the state board creates under Subsection (2)(a); and

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

142 Section 5. Section **53F-2-307** is amended to read:

143 **53F-2-307. Weighted pupil units for programs for students with disabilities --**
 144 **Local school board allocation.**

145 (1) The number of weighted pupil units for students with disabilities shall reflect the
 146 direct cost of programs for those students conducted in accordance with rules established by the
 147 state board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

148 (2) Disability program money allocated to school districts or charter schools is
 149 restricted and shall be spent for the education of students with disabilities but may include
 150 expenditures for approved programs [~~of~~] or services [~~conducted for certified instructional~~
 151 ~~personnel who have students with disabilities in their classes~~], even if the programs or services

152 provide an incidental benefit to a student who is not a student with a disability.

153 (3) The state board shall establish and strictly interpret definitions and provide
154 standards for determining which students have disabilities and shall assist school districts and
155 charter schools in determining the services that should be provided to students with disabilities.

156 (4) Each year the state board shall evaluate the standards and guidelines that establish
157 the identifying criteria for disability classifications to assure strict compliance with those
158 standards by the school districts and charter schools.

159 (5) (a) ~~[Money]~~ The state board shall allocate money appropriated to the state board for
160 add-on WPUs for students with disabilities enrolled in regular programs ~~[shall be allocated]~~
161 school districts and charter schools as provided in this Subsection (5).

162 (b) The state board shall use a school district's or charter school's average number of
163 special education add-on weighted pupil units determined by the previous five year's average
164 daily membership data as a foundation for the special education add-on appropriation.

165 (c) A school district's or charter school's special education add-on WPUs for the
166 current year may not be less than the foundation special education add-on WPUs.

167 (d) (i) Growth WPUs shall be added to the prior year special education add-on WPUs,
168 and growth WPUs shall be determined ~~[as follows:]~~ in accordance with this Subsection (5)(d).

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

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

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

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

181 (6) If money appropriated under this chapter for programs for students with disabilities
182 does not meet the costs of school districts and charter schools for those programs, each school

183 district and each charter school shall first receive the amount generated for each student with a
184 disability under the basic program.