

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.



26 **Money Appropriated in this Bill:**

27 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35 **53E-7-206**, as repealed and reenacted by Laws of Utah 2019, Chapter 187

36 **53E-7-207**, as repealed and reenacted by Laws of Utah 2019, Chapter 187

37 **53E-7-208**, as last amended by Laws of Utah 2020, Chapter 354

38 **53F-2-307**, as last amended by Laws of Utah 2020, Chapter 408

39 ENACTS:

40 **53E-7-209**, Utah Code Annotated 1953



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

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

44 **53E-7-201. Definitions.**

45 As used in this part:

46 (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec.
47 ~~[300.308]~~ 300.8.

48 (2) "Due process hearing" means an administrative due process hearing authorized by
49 20 U.S.C. Sec. 1415.

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

51 ~~[(3)]~~ (4) "LEA special education program" means ~~[the implementation of an eligible~~
52 ~~student's IEP by the eligible student's LEA.]~~ systems an LEA establishes to:

- 53 (a) implement an eligible student's IEP;
- 54 (b) appropriately and timely identify eligible students;
- 55 (c) evaluate and classify eligible students by qualified personnel;
- 56 (d) implement standards for special education classes and services;

- 57 (e) deliver special education service responsibilities;
- 58 (f) ensure special education instructional staff are appropriately credentialed; and
- 59 (g) provide services for dual enrollment students that are:
- 60 (i) eligible students; and
- 61 (ii) attending public school on a part-time basis.
- 62 (5) "Least restrictive environment" means the same as that term is defined in 34 C.F.R.
- 63 Secs. 300.114 through 300.116.

64 ~~[(4)]~~ (6) "Special education [services]" means the [specialized instruction and related

65 services, described in an eligible student's IEP, that are necessary to provide a free appropriate

66 public education to the eligible student] same as that term is defined in 34 C.F.R. Sec. 300.39.

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

68 Sec. 300.39.

69 ~~[(5)]~~ (8) "Student who is eligible for special education services" or "eligible student"

70 means a child with a disability who is:

- 71 (a) at least 3 years old but younger than 22 years old; or
- 72 (b) 22 years old, if the school year in which the child with a disability turned 22 years
- 73 old has not yet ended.

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

75 **53E-7-204. State board special education authority and duties -- Rulemaking.**

76 (1) The state board shall have general control and supervision over ~~[all public~~

77 ~~educational]~~ LEA special education programs in the state for eligible students ~~[who are eligible~~

78 ~~for special education services].~~

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

80 (3) In accordance with federal and state law, the state board shall make rules to

81 implement this part, including provisions that ensure:

- 82 (a) appropriate and timely identification of a potential eligible student;
- 83 (b) the evaluation and classification of an eligible student by qualified personnel;
- 84 (c) standards for special education services and supports;
- 85 (d) availability of LEA special education programs;
- 86 (e) delivery of special education ~~[service responsibilities]~~ in the least restrictive
- 87 environment;

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

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

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

94 **53E-7-206. Special education funding.**

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

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

100 **53E-7-207. Local education agency special education duty and authority.**

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

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

107 [~~(2)~~] (3) (a) Upon request of the Division of Child and Family Services and if the LEA
108 obtains appropriate consent for the evaluation, an LEA shall provide an initial special
109 education evaluation to an individual who enters the custody of the Division of Child and
110 Family Services, if the Division of Child and Family Services suspects the individual may be
111 an eligible student.

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

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

119 ~~[(3)]~~ (4) (a) In accordance with Subsection ~~[(3)]~~ (4)(b), an LEA may provide education
120 or training for an individual with a disability who is:

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

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

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

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

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

133 **53E-7-208. Special education dispute resolution -- Rulemaking -- Due process**
134 **hearing -- Right to appeal.**

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

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

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

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

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

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

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

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

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

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

161 **53E-7-209. Use of state special education funds.**

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

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

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

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

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

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

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

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

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

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

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

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

179 **53F-2-307. Weighted pupil units for programs for students with disabilities --**
180 **Local school board allocation.**

181 (1) As used in this section:

182 (a) "Co-taught class" means a class in which:

183 (i) a licensed general education teacher and a licensed special education teacher deliver
184 core instruction to all students along with specially designed instruction to eligible students in a
185 single physical space; and

186 (ii) the licensed general education teacher and licensed special education teacher make
187 joint instructional decisions and share responsibility and accountability for eligible students and
188 students who are not eligible students in the class.

189 (b) "Eligible student" means the same as that term is defined in Section [53E-7-201](#).

190 (c) (i) "Incidental benefit" means the same as "services and aids that also benefit
191 nondisabled children" is defined in 34 C.F.R. Sec. 300.208.

192 (ii) "Incidental benefit" includes one or more students without a disability benefitting
193 from specially designed instruction, related services, and supplementary aids and services
194 described in an eligible student's IEP if:

195 (A) the special education provider performs the task related to the specific needs of at
196 least one eligible student as outlined in the eligible student's IEP;

197 (B) the task does not require additional time beyond what is required to address the
198 needs of at least one eligible student as outlined in the eligible student's IEP; and

199 (C) the provision of free and appropriate public education or any IEP services are not
200 compromised if the special education provider performs the task.

201 (iii) "Incidental benefit" does not include, except in a co-taught class, costs related to
202 personnel time spent:

203 (A) grading;

204 (B) for parent-teacher conferences; or

205 (C) performing other regular education functions for students who are not eligible
206 students.

207 (d) "LEA" means:

208 (i) a school district; or

209 (ii) a charter school.

210 (e) "Specially designed instruction" means the same as that term is defined in Section
211 [53E-7-201](#).

212 ~~[(1)]~~ (2) The number of weighted pupil units for students with disabilities shall reflect
213 the direct cost of programs for those students conducted in accordance with rules established by
214 the state board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

215 ~~[(2)]~~ (3) ~~[Disability]~~ Special education program money allocated to ~~[school districts or~~
216 ~~charter schools]~~ LEAs is restricted and shall be spent for the education of students with
217 disabilities but may include expenditures for approved programs of services conducted for
218 ~~[certified]~~ credentialed instructional personnel who have students with disabilities in their
219 classes, even if the programs or services provide an incidental benefit to a student who is not a
220 student with a disability.

221 ~~[(3)]~~ (4) The state board shall establish and strictly interpret definitions and provide
222 standards for determining which students have disabilities and shall assist ~~[school districts and~~
223 ~~charter schools]~~ LEAs in determining the services that should be provided to students with
224 disabilities.

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

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

229 ~~[(5)]~~ (6) (a) ~~[Money]~~ The state board shall allocate money appropriated to the state
230 board for add-on WPU for students with disabilities enrolled in regular programs ~~[shall be~~
231 ~~allocated]~~ to ~~[school districts and charter schools]~~ LEAs as provided in this Subsection ~~[(5)]~~
232 (6).

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

236 (c) ~~[A school district's or charter school's]~~ An LEA's special education add-on WPU
237 for the current year may not be less than the foundation special education add-on WPU.

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

240 ~~[(1)]~~ (ii) The special education student growth factor is calculated by comparing ~~[S-3]~~
241 total special education ADM of two years previous to the current year to the ~~[S-3]~~ total special
242 education ADM three years previous to the current year, not to exceed the official October total

243 school district growth factor from the prior year.

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

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

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

252 [(6)] (7) If money appropriated under this chapter for programs for students with
253 disabilities does not meet the costs of [~~school districts and charter schools~~] LEAs for those
254 programs, each [~~school district and each charter school~~] LEA shall first receive the amount
255 generated for each student with a disability under the basic program.