

SPECIAL EDUCATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Waldrip

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 as determined by an eligible student's individualized education program team;
- ▶ 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;
- ▶ requires an LEA to use state special education funds for special education, even if doing so provides an incidental benefit to students without a disability;
- ▶ amends provisions related to the use of state special education funds;
- ▶ requires the State Board of Education to:
 - make rules related to accounting for the use of state special education funds; and
 - provide training to LEAs on the appropriate use of special education funds;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

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35 **53E-7-206**, as repealed and reenacted by Laws of Utah 2019, Chapter 187

36 **53E-7-207**, as repealed and reenacted by Laws of Utah 2019, Chapter 187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

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

42 **53F-2-307**, as last amended by Laws of Utah 2020, Chapter 408



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

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

46 **53E-7-201. Definitions.**

47 As used in this part:

48 (1) "Child with a disability" means the same as that term is defined in 34 C.F.R. Sec.
49 300.308.

50 (2) "Due process hearing" means an administrative due process hearing authorized by
51 20 U.S.C. Sec. 1415.

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

53 ~~[(3)]~~ (4) "LEA special education program" means ~~[the implementation of an eligible~~
54 ~~student's IEP by the eligible student's LEA.]~~ systems an LEA establishes to:

- 55 (a) implement an eligible student's IEP;
- 56 (b) appropriately and timely identify eligible students;
- 57 (c) evaluate and classify eligible students by qualified personnel;

- 58 (d) implement standards for special education classes and services;
- 59 (e) deliver special education service responsibilities;
- 60 (f) ensure special education instructional staff are appropriately credentialed; and
- 61 (g) provide services for dual enrollment students that are:
- 62 (i) eligible students; and
- 63 (ii) attending public school on a part-time basis.

64 (5) "Least restrictive environment" means the same as that term is defined in 34 C.F.R.
 65 Secs. 300.114 through 300.116.

66 (6) "Special education" means the same as that term is defined in 34 C.F.R. Sec.
 67 300.39.

68 (7) "Specially designed instruction" means the same as that term is defined in 34
 69 C.F.R. Sec. 300.39.

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

73 ~~[(5)]~~ (8) "Student who is eligible for special education services" or "eligible student"
 74 means a child with a disability who is:

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

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

79 **53E-7-204. State board special education authority and duties -- Rulemaking.**

80 (1) The state board shall have general control and supervision over ~~[all public~~
 81 ~~educational]~~ LEA special education programs in the state for eligible students ~~[who are eligible~~
 82 ~~for special education services].~~

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

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

- 86 (a) appropriate and timely identification of a [~~potential~~] potentially eligible student;
- 87 (b) the evaluation of a student and classification of a student as an eligible student by
- 88 qualified personnel;
- 89 (c) standards for special education services and supports;
- 90 (d) availability of LEA special education programs;
- 91 (e) delivery of special education [~~service responsibilities~~] in the least restrictive
- 92 environment as determined by an eligible student's IEP team;
- 93 (f) certification and qualification for the instructional staff of eligible students; and
- 94 (g) special education services for eligible students who are dual enrollment students
- 95 attending public school on a part-time basis as described in Section 53G-6-702.

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

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

99 **53E-7-206. Special education funding.**

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

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

105 **53E-7-207. Local education agency special education duty and authority.**

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

108 (2) As determined by an eligible student's IEP team, an LEA may provide special
 109 education to an eligible student in the least restrictive environment as determined by the
 110 eligible student's IEP team, regardless of whether the other students in the class or setting are
 111 eligible students.

112 [~~(2)~~] (3) (a) Upon request of the Division of Child and Family Services and if the LEA
 113 obtains appropriate consent for the evaluation, an LEA shall provide an initial special

114 education evaluation to an individual who enters the custody of the Division of Child and
115 Family Services, if the Division of Child and Family Services suspects the individual may be
116 an eligible student.

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

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

124 [~~(3)~~] (4) (a) In accordance with Subsection [~~(3)~~] (4)(b), an LEA may provide education
125 or training for an individual with a disability who is:

126 (i) younger than 3 years old; or

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

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

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

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

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

138 **53E-7-208. Special education dispute resolution -- Rulemaking -- Due process**
139 **hearing -- Right to appeal.**

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

141 (a) allow for a prompt, fair, and final resolution of a dispute that arises over the

142 provision of special education [~~services~~] to an eligible student;

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

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

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

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

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

155 (i) conduct a due process hearing; and

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

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

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

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

166 **53E-7-209. Use of state special education funds.**

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

168 (a) provide an LEA special education program and specially designed instruction and
169 related services and supports to an eligible student in the least restrictive environment;

170 (b) employ appropriately credentialed staff necessary to provide specially designed
171 instruction and related services; or

172 (c) employ staff who are trained and supervised by appropriately credentialed staff
173 necessary to provide specially designed instruction and related services.

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

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

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

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

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

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

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

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

184 **53F-2-307. Weighted pupil units for programs for students with disabilities --**

185 **Local school board allocation.**

186 (1) As used in this section:

187 (a) (i) "Charter school" means the same as that term is defined in Section [53G-5-601](#).

188 (ii) "Charter school" includes a charter school with satellite charter schools.

189 (b) "LEA" means:

190 (i) a school district; or

191 (ii) a charter school.

192 (c) "Satellite charter school" means the same as that term is defined in Section

193 [53G-5-303](#).

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

197 ~~[(2) Disability program money allocated to school districts or charter schools is~~

198 ~~restricted and shall be spent for the education of students with disabilities but may include~~
199 ~~expenditures for approved programs of services conducted for certified instructional personnel~~
200 ~~who have students with disabilities in their classes.]~~

201 (3) (a) An LEA shall use special education program money to pay the costs of
202 providing an LEA special education program, even if the programs or services provide an
203 incidental benefit to a student who is not a student with a disability, including for the uses
204 described in 34 C.F.R. Sec. 300.208.

205 (b) Costs of providing an LEA special education program include only costs that are in
206 excess of funds allocated to an LEA for general education.

207 (c) In using special education program money, an LEA shall comply with federal
208 regulations including:

209 (i) the prohibition on comingling state special education program money with federal
210 funds as described in 34 C.F.R. Sec. 300.162; and

211 (ii) the requirements described in 34 C.F.R. Sec. 300.203 regarding maintenance of
212 effort.

213 (d) (i) An LEA may use state special education program money to supplement other
214 state funds, local funds, or federal funds.

215 (ii) An LEA may not use state special education program money to supplant other state
216 funds, local funds, or federal funds.

217 ~~[(3)] (4) The state board shall establish and strictly interpret definitions and provide~~
218 ~~standards for determining which students have disabilities and shall assist [school districts and~~
219 ~~charter schools] LEAs in determining the services that should be provided to students with~~
220 ~~disabilities.~~

221 ~~[(4)] (5) [Each year the] The state board shall evaluate the standards and guidelines that~~
222 ~~establish the identifying criteria for disability classifications to [assure strict compliance with~~
223 ~~those standards by the school districts and charter schools.] ensure that LEAs:~~

224 (a) comply with the standards and guidelines; and

225 (b) have flexibility to respond to the needs of students with disabilities.

226 ~~[(5)]~~ (6) (a) ~~[Money]~~ The state board shall allocate money appropriated to the state
 227 board for add-on WPU for students with disabilities enrolled in regular programs ~~[shall be~~
 228 ~~allocated to school districts and charter schools]~~ to LEAs as provided in this Subsection ~~[(5)]~~
 229 (6).

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

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

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

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

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

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

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

249 ~~[(6)]~~ (7) If money appropriated under this chapter for programs for students with
 250 disabilities does not meet the costs of ~~[school districts and charter schools]~~ LEAs for those
 251 programs, each ~~[school district and each charter school]~~ LEA shall first receive the amount
 252 generated for each student with a disability under the basic program.

253 Section 8. **Coordinating S.B. 134 with H.B. 113 -- Substantive and technical**

254 **amendments.**

255 If this S.B. 134 and H.B. 113, Funding for Students with Disabilities, both pass and
256 become law, it is the intent of the Legislature that the Office of Legislative Research and
257 General Counsel shall prepare the Utah Code database for publication by amending:

258 (1) Subsection 53F-2-307(4) to read:

259 "(4) Notwithstanding Subsection (3), special education program money allocated to
260 LEAs may be expended for constructing facilities or altering existing facilities if:

261 (a) the costs are necessary costs and reasonable costs;

262 (b) the costs are not for the general purpose of bringing facilities into compliance with:

263 (i) Section 504 of the Rehabilitation Act of 1973; or

264 (ii) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.;

265 (c) the construction or alteration meets the needs of one or more students with
266 disabilities; and

267 (d) the state board approves the expenditure in accordance with rules the state board
268 makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act."; and

269 (2) Subsection 53F-2-307(6) to read:

270 "(6) The state board shall annually evaluate, and amend as needed, the standards and
271 guidelines that establish the identifying criteria for disability classifications to [assure strict
272 compliance with those standards by the school districts and charter schools:] ensure that LEAs:

273 (a) comply with the standards and guidelines; and

274 (b) have flexibility to respond to the needs of students with disabilities.".