

CHAPTER 198

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 94-1198

BY REPRESENTATIVES Keller, Reeves, Anderson, Blue, Eisenach, Fleming, Kerns, Mattingly, Nichol, Pierson, Reeser, Taylor, and Williams;
also SENATOR Wattenberg.

AN ACT

CONCERNING SPECIAL EDUCATION PROGRAMS APPROVED BY THE DEPARTMENT OF EDUCATION FOR THE EDUCATION OF EXCEPTIONAL CHILDREN, AND, IN CONNECTION THEREWITH, THE FUNDING AND DATA COLLECTION REQUIREMENTS OF THOSE PROGRAMS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that the provisions of this act which change the method for allocating state moneys to school districts for special education services in no way endorse or encourage any particular method of providing special education services, including inclusion, that may be offered by an administrative unit.

SECTION 2. 22-20-114, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-20-114. Funding of programs. (1) ~~An administrative unit which maintains and operates special educational programs approved by the department for the education of exceptional children, except as provided in paragraph (c) of subsection (3) of this section, shall be entitled to reimbursement for:~~

(a) ~~Eighty percent of that portion of the salary of the following personnel which is attributable, in accordance with regulations of the department, to special educational programs:~~ FOR THE 1994-95 BUDGET YEAR AND BUDGET YEARS THEREAFTER, EACH ADMINISTRATIVE UNIT THAT MAINTAINS AND OPERATES SPECIAL EDUCATION PROGRAMS APPROVED BY THE DEPARTMENT FOR THE EDUCATION OF EXCEPTIONAL CHILDREN SHALL BE ENTITLED TO A BASE AMOUNT OF STATE FUNDING OF NO LESS THAN THE STATE BASE AMOUNT RECEIVED FOR THE IMMEDIATELY PRECEDING BUDGET

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

YEAR. SUCH STATE FUNDING SHALL BE PROVIDED OUT OF THE APPROPRIATION MADE TO THE DEPARTMENT FOR PAYMENT OF COSTS INCURRED BY ADMINISTRATIVE UNITS FOR THE PROVISION OF SPECIAL EDUCATION PROGRAMS.

~~(I) Administrator and assistant administrator of special education in an administrative unit, if such administrator meets the qualification standards for administrators as set by the state board;~~

~~(II) Supervisors of special programs;~~

~~(III) Teachers of special classes;~~

~~(IV) Teachers of special resource rooms;~~

~~(V) Teachers of special itinerant programs;~~

~~(VI) School psychologists;~~

~~(VII) School social workers;~~

~~(VIII) School audiologists;~~

~~(IX) Occupational therapists;~~

~~(X) Physical therapists;~~

~~(XI) Special education instructional aides;~~

~~(XII) Special education instructional materials specialists;~~

~~(XIII) Speech correctionists;~~

~~(XIV) Mobility specialists for the blind;~~

~~(XV) Special education secretaries;~~

~~(XVI) Registered school nurses;~~

(b) (I) ~~Eighty percent of the costs of:~~ AFTER THE DEPARTMENT DETERMINES THE BASE AMOUNT TO WHICH EACH ADMINISTRATIVE UNIT IS ENTITLED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), ANY REMAINING PORTION OF THE APPROPRIATION MADE TO THE DEPARTMENT SHALL BE PRORATED TO THOSE ADMINISTRATIVE UNITS PROVIDING SPECIAL EDUCATION SERVICES TO MORE CHILDREN THAN DURING THE IMMEDIATELY PRECEDING BUDGET YEAR BASED ON EACH UNIT'S SHARE OF THE TOTAL NUMBER OF ADDITIONAL CHILDREN IN THE STATE BEING PROVIDED SPECIAL EDUCATION SERVICES.

(II) ON OR BEFORE JULY 1, 1996, AND EVERY TWO YEARS THEREAFTER, THE DEPARTMENT, SCHOOL DISTRICTS, AND ADMINISTRATIVE UNITS SHALL REVIEW THE DISTRIBUTION OF REMAINING APPROPRIATIONS PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) TO ASSURE AN EQUITABLE DISTRIBUTION OF THE

APPROPRIATIONS.

(c) NO ADMINISTRATIVE UNIT SHALL RECEIVE THE AMOUNT OF FUNDING TO WHICH IT IS ENTITLED UNDER THE PROVISIONS OF THIS SUBSECTION (1) UNLESS THE ADMINISTRATIVE UNIT HAS PROVIDED THE DEPARTMENT WITH THE DATA COLLECTED CONCERNING SPECIAL EDUCATION PROGRAMS, AS REQUIRED BY SUBSECTION (3) OF THIS SECTION, INCLUDING THE COUNT OF ASSESSED SPECIAL EDUCATION STUDENTS.

~~(f) Repealed, L. 88, p. 777, § 7, effective May 29, 1988.~~

~~(H) Home-to-school or hospital-to-school equipment;~~

~~(HH) Consultation and evaluation services provided by psychiatrists, psychologists, and social workers employed by mental health clinics and centers approved by the department;~~

~~(IV) In-service training of teachers, supervisors, and any salaried employees of an administrative unit who have pupil contact, to provide special education services to children within the total educational program insofar as is practicable and efficacious;~~

~~(V) For each child so accepted, the average cost per pupil of educating children with similar disabilities in any unit which accepts a child from another administrative unit in one or more of its special education programs, in any group care facility or home, as defined by the department in its regulations and as approved by the state board pursuant to section 22-2-107 (1) (p), which accepts a child from an administrative unit in one or more of its special education programs, or in any community centered board, as provided for in section 27-10.5-104, C.R.S., and as approved by the state board pursuant to section 22-2-107 (1) (p), which accepts a child from an administrative unit in one or more of its special education programs, such reimbursement to be made to the administrative unit of the child's residence. State reimbursement under this subparagraph (V) shall be based upon the amount of the tuition charge under the provisions of section 22-20-109 in excess of the district of residence's per pupil operating revenues, as defined in section 22-53-103 (6); except that, for a group care facility or home or for a community centered board, reimbursement shall be based on the amount of the tuition charge under the provisions of section 22-20-109 in excess of the state average per pupil operating revenues, as defined in section 22-53-103 (8).~~

~~(VI) Mileage expenses incurred by psychiatrists, psychologists, speech therapists, and social workers in traveling from their base of operations to other attendance centers in the course of fulfilling job requirements; or~~

~~(VII) Any contract for services which meets the requirements of section 22-20-106 (6) and which would be reimbursable if such services were provided by the administrative unit, except instructional services.~~

~~(e) Repealed, L. 88, p. 763, § 4, effective May 31, 1988.~~

~~(d) Eighty percent of the expenses of any individual item of equipment which exceeds five hundred dollars and is used exclusively for the instruction or assessment of children with disabilities;~~

~~(e) One hundred percent of the costs of maintenance of a child in a licensed family care home.~~

(2) Payments made under the provisions of this article shall in no way affect the amount of other state aid for which a school district may qualify.

~~(3) (a) In the event appropriations shall be insufficient to cover reimbursements provided for in subsection (1) of this section, all approved reimbursements, except for maintenance in a family care home, which shall always be fully reimbursed, shall be prorated on the basis of total claims submitted in proportion to funds available for reimbursement. EACH ADMINISTRATIVE UNIT SHALL BE REQUIRED TO COLLECT ONLY THE DATA REQUIRED BY THE FEDERAL GOVERNMENT CONCERNING SPECIAL EDUCATION PROGRAMS. THE DATA COLLECTED CONCERNING SPECIAL EDUCATION PROGRAMS MUST BE PROVIDED TO THE DEPARTMENT FOR AN ADMINISTRATIVE UNIT TO RECEIVE THE AMOUNT OF FUNDING TO WHICH IT IS ENTITLED UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION.~~

~~(b) Appropriations shall be based on estimates of the factors listed in subsection (1) of this section and shall not be based on the ratio of full-time equivalent students to full-time equivalent teachers.~~

~~(c) Funding for the gifted shall be for teachers of special classes, teachers of special resource rooms, teachers of special itinerant programs, and for educational equipment and materials. Funding for gifted programs shall supplement, not supplant, programs for students with disabilities.~~

~~(4) (Deleted by amendment, L. 79, p. 778, § 9, effective July 1, 1979.)~~

~~(5) Reimbursements to any administrative unit under the provisions of this article shall in no instance exceed one hundred percent of the direct costs of providing special education services, after deduction of any other state funds and any local, private, and federal funds received for special education purposes including the amounts specified in subsection (6) of this section. On and after January 1, 1992, a separate calculation shall be made for the provision of services to three- and four-year-old children with disabilities and the maximum reimbursement shall be determined after deduction of other state funds available for the education of such children, including funds received for such children pursuant to the "Public School Finance Act of 1988", article 53 of this title, and all other local, private, and federal funds received for the education of such children. This provision does not affect the calculation of tuition or excess costs.~~

~~(6) For purposes of determining the level of funding for special education programs under this article, the amount of the per pupil operating revenues (including both the state and local shares) attributable to any child who receives special education services but who is never present in a regular classroom shall be considered as available to provide special education services for such child. This subsection (6) shall apply whether the applicable per pupil operating revenues are the district of residence's per pupil operating revenues or the state average per pupil operating revenues, in accordance with subparagraph (V) of paragraph (b) of subsection (1) of this section.~~

SECTION 3. 22-20-104 (4), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

22-20-104. Administration. (4) To comply with this section, the department shall maintain a data and information system on children, personnel, costs, and revenues, AND SUCH DATA AND INFORMATION SHALL BE USED TO INSURE THAT STATE MONEYS PROVIDED TO DISTRICTS UNDER THE PROVISIONS OF SECTION 22-20-106(1) ARE BEING SPENT ONLY ON SPECIAL EDUCATION SERVICES AND PROGRAMS.

SECTION 4. 22-20-104 (3), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-20-104. Administration. (3) The department shall submit to the governor and the education committees and the joint budget committee of the general assembly an annual report of the ~~type and number of children with disabilities served and not served, what educational services are provided to them, and the total costs incurred for the services, whether state-funded or federally, locally, or privately funded. The report shall include a measurable qualitative evaluation of the educational services rendered. The audit performed by the school district shall certify the number of pupils enrolled in special education programs and the numbers and salaries of reimbursable personnel.~~ DATA REQUIRED BY THE FEDERAL GOVERNMENT CONCERNING SPECIAL EDUCATION PROGRAMS.

SECTION 5. 22-20-104 (5) and (6), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are repealed as follows:

22-20-104. Administration. (5) ~~This article will be administered so that the total number of children with disabilities of all ages in programs to be funded by this article shall not exceed eleven percent of the total number of children in Colorado ages five through seventeen and, on and after January 1, 1992, shall not exceed eleven percent of the total number of children in Colorado ages three through seventeen.~~

(6) ~~The state board of education shall be responsible for developing such priorities and standards as may be required for apportioning the number of children with disabilities in programs to be funded by this article to administrative units and for assuring that those children whose disability is the most severe are served.~~

SECTION 6. 22-20-104.5, Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-20-104.5. Plan for academic excellence - inclusion of gifted children - cooperation. (3) FUNDING FOR THE GIFTED SHALL BE FOR APPROPRIATELY CERTIFIED, ENDORSED, OR LICENSED STAFF, FOR ACTIVITIES RELATED TO SERVING GIFTED CHILDREN, AND FOR EDUCATIONAL EQUIPMENT AND MATERIALS. FUNDING FOR GIFTED PROGRAMS SHALL SUPPLEMENT, NOT SUPPLANT, PROGRAMS FOR STUDENTS WITH DISABILITIES.

SECTION 7. 22-20-106 (3) and (6), Colorado Revised Statutes, 1988 Repl. Vol., as amended, are amended to read:

22-20-106. Special educational programs. (3) Administrative units shall make available special educational services for the education of any child with a disability between the ages of five and twenty-one and, on and after January 1, 1992, between the ages of three and twenty-one under jurisdiction of the administrative unit and may serve gifted students. IN PROVIDING THESE SERVICES, AN ADMINISTRATIVE UNIT SHALL PAY FOR SALARIES AND EMPLOYEE BENEFITS OF CERTIFIED SPECIAL EDUCATION TEACHERS AND SPECIAL EDUCATION STAFF; EQUIPMENT; IN-SERVICE TRAINING OF THE STAFF OF AN ADMINISTRATIVE UNIT WHO HAVE PUPIL CONTACT; MILEAGE EXPENSES INCURRED BY STAFF; THE COSTS OF EDUCATIONAL SERVICES FOR A CHILD IN AN ELIGIBLE FACILITY; OR ANY OTHER EXPENSES RELATED TO SPECIAL EDUCATION. Special education services may be provided by community centers for the mentally retarded and persons with serious disabilities CENTERED BOARDS in cooperation with administrative units and school districts.

(6) By July 1, 1977, and thereafter, each administrative unit shall employ a sufficient number of school psychologists, school registered nurses, school social workers, and other personnel certified by the department, pursuant to article 60 of this title, or contract for department-approved services with department-approved agencies APPROPRIATELY CERTIFIED, ENDORSED, OR LICENSED SPECIAL EDUCATION TEACHERS AND STAFF to adequately carry out those functions that provide for case finding and assessment of children who may have disabilities, staffing of the special committee as provided in section 22-20-108, teacher and parent counseling and consultation, in-service education for school staff and volunteers, and necessary supporting services approved by the department. ~~The department shall require administrative units to submit such a contract for services to the department for review and approval before such contract qualifies for reimbursements pursuant to section 22-20-114 (1) (b) (VII).~~ In the case of school registered nurses, such ANY persons as WHO were registered nurses prior to July 1, 1978, and were employed as school registered nurses prior to July 1, 1978, need not be certified by the department pursuant to article 60 of this title in order to qualify for employment under this section. ~~Such persons need not be so certified in order for the administrative unit by which they are employed to receive reimbursement under section 22-20-114.~~ The provision relating to school registered nurses employed prior to July 1, 1978, applies only during continuous employment of the school registered nurse who is not so certified.

SECTION 8. 22-20-107 (2), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

22-20-107. Authority to contract with institutions of higher education or community centered boards. (2) ~~The two agencies shall agree to an amount per child that the institution of higher education or community centered board shall pay to the administrative unit for providing such services. No school district providing an education and training program for children with disabilities under contract with an institution of higher education or a community centered board shall count the resources necessary to serve such children under section 22-20-114. The institution of higher education or community centered board shall pay to the administrative unit providing the program an amount per child as agreed upon by the institution or board and the administrative unit, but such amount shall not be less than the amount per child provided to the institution or board by the department of institutions for educational purposes pursuant to section 27-10.5-104 (7), C.R.S. Any school district~~

~~providing an education and training program for children with disabilities domiciled in that district shall not be required to provide to an institution of higher education or a community centered board the amount required by section 27-10.5-104 (7), C.R.S., on behalf of those children; but each such school district shall expend out of its own funds at least the amount required by the said section 27-10.5-104 (7), C.R.S., in providing the program:~~

SECTION 9. 22-20-109, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-20-109. Tuition. (1) ~~Upon approval by the department,~~ An administrative unit of residence may contract with another administrative unit, with a community centered board, or with a facility, as defined by the department in its regulations, approved by the state board pursuant to section 22-2-107 (1) (p) to provide a special education program for a child with a disability. In such an instance, ~~the administrative unit of attendance,~~ the community centered board or the facility where the child receives a special education program shall document to the department a list of costs of providing such special education program, and the applicable revenues. Notwithstanding any provision of section 22-32-115 to the contrary, the tuition charge for educating a child with a disability IN A COMMUNITY CENTERED BOARD OR A FACILITY shall be established by the department and approved by the state board. Such tuition charge shall be the maximum amount the school district of residence shall be obligated to pay for the special educational program; except that the school district of residence may pay a higher tuition charge than the charge established and approved pursuant to this subsection (1) for students in need of specialized services, which services were included in the individual education plan but which were not included in the tuition charge established pursuant to this subsection (1).

(2) The state board shall promulgate rules and regulations to define the contract approval process, TO DEFINE the types and amounts of costs in excess of the state average per pupil operating revenues, as defined in section 22-53-103 (8), ~~or the per pupil operating revenues of the district of residence, as defined in section 22-53-103 (6), whichever is appropriate, as determined by the department pursuant to its regulations,~~ and to define other applicable revenues that a school district of residence of a child with a disability shall pay as tuition to educate that child elsewhere ~~at an administrative unit, or~~ at A COMMUNITY CENTERED BOARD or a facility approved by the state board pursuant to section 22-2-107 (1) (p). These rules and regulations shall include, but shall not be limited to, the limitations on the number of staff members per number of students, the amount of equipment necessary for classroom instruction of the child, the number of days of school, and any other expenses involved in the provision of educational services as determined by the child's individualized education program. The school district of residence shall be responsible for paying as tuition any excess costs above the applicable STATE AVERAGE per pupil operating revenues ~~as determined by the department pursuant to its regulations~~ to provide these services.

(3) In addition to any other tuition costs that a school district of residence is required to pay pursuant to this section, ~~such~~ THE school district may pay those costs documented to and approved by the department pursuant to subsection (1) of this section. ~~but which costs are not reimbursable pursuant to the tuition cost formula established by the department.~~

SECTION 10. 22-20-111, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-20-111. Equipment. An administrative unit may purchase ~~and be reimbursed for~~ equipment for the instruction or assessment of children with disabilities. ~~To be eligible for reimbursement, the administrative unit shall maintain a special education instructional materials center and may employ a special education instructional materials specialist. A qualifying center may be operated as a part of an existing instructional materials center, but such portion shall be specifically accounted for.~~

SECTION 11. Repeal. 22-20-113, Colorado Revised Statutes, 1988 Repl. Vol., is repealed.

SECTION 12. 22-53-402, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-53-402. Definitions. As used in this part 4, unless the context otherwise requires:

(8.5) "EXCEPTIONAL STUDENTS" MEANS THOSE STUDENTS DEFINED IN SECTION 22-20-103 (1.5) AS CHILDREN WITH DISABILITIES AND STUDENTS DEFINED IN SECTION 22-20-103 (3.7) AS GIFTED CHILDREN.

SECTION 13. 22-53-403 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-53-403. Commitment to equity and excellence. (1) All activities undertaken pursuant to this part 4 shall reflect a strong commitment to equity and excellence on the part of the council, the department, the board, and districts. The council, in the development and recommendation of state model content standards, state assessments, and model professional educator development materials and pilot programs pursuant to section 22-53-405, the board in the adoption of the state model content standards and state assessments pursuant to section 22-53-406, and districts in the adoption of content standards and implementation plans pursuant to section 22-53-407 shall consciously avoid gender or cultural bias and shall actively address the needs of systems and methods for the education of ~~handicapped children~~ EXCEPTIONAL STUDENTS.

SECTION 14. 22-53-404 (1) (b), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-53-404. State standards and assessments development and implementation council - creation - membership. (1) (b) Members of the council shall include experts in the areas of curriculum, student learning, instruction, assessments, and professional educator development. Members of the council shall represent all areas of the state, including urban and rural areas and large and small districts and shall represent the ethnic and cultural diversity and gender balance of the state. At least one council member shall be a resident of the western slope and at least one council member shall have expertise in addressing the needs of ~~handicapped~~ EXCEPTIONAL students.

SECTION 15. 22-53-406 (5), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-53-406. Adoption of state model content standards, state assessments, and timelines - resource bank. (5) The board shall establish a resource bank which shall include the state model content standards. In addition, the resource bank shall include national model standards, model programs of instruction, model assessments, and model materials for professional educator development which are collected from districts, from national organizations, and from other states for use as examples by districts at their discretion. All items included in the resource bank shall explicitly address systems and methods for the education of ~~handicapped children~~ EXCEPTIONAL STUDENTS. Any model assessments included in the resource bank shall include all normal format modifications that are used for ~~handicapped children~~ EXCEPTIONAL STUDENTS. Resource bank materials shall be available for use on or before June 1, 1995.

SECTION 16. 22-53-407 (3), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

22-53-407. Adoption of content standards by districts. (3) The plan adopted pursuant to subsection (2) of this section shall specifically address the education of ~~handicapped children~~ EXCEPTIONAL STUDENTS. In addition, such plan shall adopt timelines for the implementation of standards-based education pursuant to this part 4.

SECTION 17. Effective date. This act shall take effect July 1, 1994.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 19, 1994