

## **CHAPTER 15.1-32 SPECIAL EDUCATION**

### **15.1-32-01. Definitions.** As used in this chapter:

1. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
2. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.
3. "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:
  - (1) Mental retardation;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

**15.1-32-02. Coordination of special education policies and programs.** The superintendent of public instruction shall establish, within the provisions of this chapter, general state policy regarding special education and shall endeavor to ensure a cooperative special education program coordinating all available services. The superintendent of public instruction

shall cooperate with private agencies and solicit their advice and cooperation in the establishment of policy and in the coordination and development of special education programs.

**15.1-32-03. Interagency cooperative agreements - Development and implementation.** The superintendent of public instruction shall develop and implement interagency agreements with the department of corrections and rehabilitation, the department of human services, the state department of health, and other public and private entities to maximize the state resources available for fulfilling the educationally related service requirements of Public Law No. 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

**15.1-32-04. Institutions not supervised by public school authorities - Rules.** The superintendent of public instruction shall adopt rules governing special education programs in institutions that are supported in whole or in part by the state, but which are not supervised by public school authorities. The rules must be similar to those established for the delivery of special education in a public school.

**15.1-32-05. Special education - Cooperation among agencies.** The superintendent of public instruction, the state department of health, and the department of human services shall cooperate in planning and coordinating early intervention programs for individuals under the age of three.

**15.1-32-06. Director of special education.** The superintendent of public instruction shall employ a qualified director of special education and any necessary assistants.

**15.1-32-07. Director of special education - Assistance to school districts.** The director of special education shall assist school districts with the development and administration of special education programs.

**15.1-32-08. School districts - Provision of special education.** Each school district shall provide special education and related services as a single district, as a member of a multidistrict special education unit in accordance with chapter 15.1-33, or as a participating district in a regional education association under chapter 15.1-09.1. Each school district and entity providing special education shall cooperate with the director of special education and with the institutions of this state in the provision of special education.

**15.1-32-09. Superintendent of public instruction - Rules.** The superintendent of public instruction shall adopt rules for the provision of special education to students with disabilities and for the administration of this chapter.

**15.1-32-10. Gifted students.** A school district may provide special education to students who are gifted.

**15.1-32-11. School district records - Students with disabilities.** Each school district shall make and keep current a record of all students with disabilities who are residents of the district.

**15.1-32-12. Multidisciplinary teams - Individualized education programs - Services plans.** If a school district has evidence of a student's disability, the school district shall convene a multidisciplinary team consisting of educational professionals, medical professionals, and the student's parent to share assessment information related to the student's suspected disability. If necessary, the team shall develop an individualized education program or services plan and make recommendations for the delivery of special education and related services to the student.

**15.1-32-13. Related services - Insurance options - School district responsibility.** Each school district shall require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability and in paying for the provision of related services to the student, provided there is no financial loss to the student or the student's parent. The school district is responsible for all costs not covered by the family's insurance.

**15.1-32-14. Special education students - Contracts for placement.**

1. If in the opinion of an individualized education program team or a services plan team a student is unable to attend a public school in the special education unit to which the student's school district of residence belongs, the student's school district of residence shall contract with another public school that:
  - a. Does not belong to the same special education unit;
  - b. Is located in this state;
  - c. Is willing to admit the student; and
  - d. Is able to provide appropriate services to the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.
3. The contract must provide that the student's school district of residence is liable for the cost of educating the student.
4. Upon being notified by the district in which the student receives services that the student's school district of residence has not paid for services that were provided to the student, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled, until the required payments have been made.

**15.1-32-15. Student with disabilities - Attendance at private institution or out-of-state public school.**

1. If in the opinion of an individualized education program team or an education services team a student is unable to attend a public school in the student's school district of residence because of a physical disability, a mental disability, or a learning disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with:
  - a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
  - b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
3. The contract must provide that the student's school district of residence is liable for the cost of educating the student.
4. A student who receives services under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership.

**15.1-32-16. Transportation services.** If a student's individualized education program or services plan requires the provision of transportation services, the student's school district of residence shall provide the services by any reasonably prudent means, including a regularly scheduled schoolbus, public transit, commercial transportation, chartered or other contracted transportation, and transportation provided by the student's parent or other responsible party.

**15.1-32-17. Extended educational program.** A student with disabilities is entitled to an educational program that extends beyond the normal school calendar if the student's individualized education program team or services team determines that regression would be caused by an interruption in the student's educational program and that the student's limited recoupment capacity makes it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers which the student would otherwise be expected to reach.

**15.1-32-18. Cost - Liability of school district for special education.**

1. Each year the superintendent of public instruction shall identify the approximately one percent of special education students statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement beyond the multiplier that is established in subsection 3.
2. The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.
3. "Excess costs" are those that exceed four times the state average cost of education per student and which are incurred by the special education students identified in subsection 1.
4. All costs of providing special education and related services to those students identified in subsection 1, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence.
5. In addition to any other reimbursements provided under this section, if a school district expends more than two percent of its annual budget for the provision of special education and related services to one student, the district shall notify the superintendent of public instruction. Upon verification, the superintendent shall reimburse the district for the difference between:
  - a. Two percent of the district's annual budget; and
  - b. The lesser of:
    - (1) The amount actually expended by the district for the provision of special education and related services to that student; or
    - (2) The amount representing four times the state average cost of education per student.

**15.1-32-19. Boarding care costs - Reimbursement of school district.** The superintendent of public instruction, within the limits of legislative appropriation, shall reimburse a student's school district of residence an amount equal to eighty percent of the room and board costs paid for a student with disabilities who is placed in a facility located outside of the student's school district of residence in order to receive special education services not available within the student's school district of residence. The student's school district of residence is liable for any room and board costs in excess of those reimbursed as provided in this section. The placement of a student with disabilities in a public or private facility will be made by a school district. The placement of a student with disabilities in congregate care will be made in a facility designated by the department of human services.

**15.1-32-20. School district financing - Levy.** The board of a school district may budget an amount from the school district general fund for its special education program. With approval

by a majority of the board, the school board may levy a tax pursuant to subdivision d of subsection 1 of section 57-15-14.2 for the purpose of carrying out a special education program, separately or jointly with other school districts.

**15.1-32-21. Federal aid for special education.**

1. The superintendent of public instruction may apply for, receive, and administer federal aid available for the provision of special education services to students.
2. The superintendent may expend any federal aid received in the administration of this chapter within the limits of legislative appropriations.
3. School districts and multidistrict special education units are deemed to be local education agencies for purposes related to the funding of special education services within the limits of legislative appropriations.
4. North Dakota vision services - school for the blind, the school for the deaf, the developmental center at westwood park, Grafton, the youth correctional center, and the state hospital may apply for, receive, and administer federal aid and may expend federal aid within the limits of legislative appropriations.

**15.1-32-22. Right to educational services - Attorney's fees.** In any judicial proceeding to enforce the rights of an individual with disabilities to receive educational services, the court may award reasonable attorney's fees and costs to a prevailing parent or to the individual with disabilities.

**15.1-32-23. Special education teachers - Credentialing process.** The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on July 1, 2001, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the proposed changes before July 1, 2003.

**15.1-32-24. Noncategorical delay.** If an individual who is at least three years of age but less than ten years of age exhibits a developmental profile in which cognitive, fine motor, vision, hearing, communication, preacademic, socialization, or adaptive skill acquisitions are significantly below that of same-age peers, and if the individual needs special education and related services, the school district may determine that the individual is a student with a disability as a result of a noncategorical delay.