CHAPTER 15.1-32
SPECIAL EDUCATION

15.1-32-01. Definitions.

As used in this chapter:

1. "Major life activities" include learning, walking, talking, breathing, and caring for oneself.
2. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
3. "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.
4. "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.
5. 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 August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
      (1) An intellectual disability;
      (2) Being deaf or hard of hearing;
      (3) Deaf-blindness;
      (4) A speech or language impairment;
      (5) A visual impairment, including blindness;
      (6) An emotional disability;
      (7) An orthopedic impairment;
      (8) Autism;
      (9) A traumatic brain injury;
      (10) An 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.
6. "Student with a significant medical condition" means a student with a physical or mental impairment, whether permanent or temporary, which substantially limits one or more major life activities and who is not entitled to special education and related services.

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 health and human services, 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 and the department of health and 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. The team must include educational professionals and the student's parent and may include medical professionals. The team shall 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 obtain parental consent before accessing any family insurance options, whether public or private, to pay for the cost of determining a student's medically related disability and to pay 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. High-cost students.

1. If in the opinion of an individualized education program team or a services plan team a student with a disability or a student with a significant medical condition is unable to attend a public school in the student's school district of residence, the student's school district of residence shall release the student at the time deemed necessary to begin attendance with another public school that:
   a. Is located in this state;
   b. Is willing to admit the student; and
   c. Is able to provide appropriate services to the student.
2. The contract must provide that the student's school district of residence is liable for the cost of educating the student.
3. 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 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 and other high-cost services.

1. Each year the superintendent of public instruction shall identify the approximately one percent of students with a disability and students with a significant medical condition statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures to provide them with education and services, including 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 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 the 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 students identified in subsection 1.
4. All costs of providing 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 education and services to one student with a disability or significant medical condition, 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 shall reimburse a student's school district of residence an amount equal to eighty percent of the room and board costs paid by the district for a student with disabilities who is placed in a facility that is located either within or outside of the student's school district of residence in order to receive special education services. 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 and approved by the superintendent of public instruction. The superintendent of public instruction may consult with the commissioner of the department of health and human services on congregate care facilities.

15.1-32-20. School district financing - Levy.

Repealed by S.L. 2015, ch. 137, § 38.

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 life skills and transition center, 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.

15.1-32-21.1. Postsecondary transitional grant program - Students.

The superintendent of public instruction shall provide integrated formula payments to postsecondary transitional programs for eligible students enrolled in a postsecondary transitional program within the state at the rate provided under section 15.1-27-04.1. For purposes of this section, "eligible student" means a student with a documented intellectual or developmental disability who is at least eighteen years of age but has not reached the age of twenty-two, who has graduated from a public high school in the state or obtained an equivalent degree, and who enrolls in a postsecondary transitional program. By June thirtieth of each year, postsecondary transitional programs shall submit to the superintendent of public instruction for the reimbursement of eligible students enrolled in the program. Grant payments under this section may not exceed the per student rate under section 15.1-27-04.1. The superintendent of public instruction shall review and approve postsecondary transitional programs and develop a system for the distribution of payments necessary to implement this section.

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.

Repealed by S.L. 2017, ch. 129, § 8.

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.

15.1-32-25. Reading screening.

Repealed by S.L. 2023, ch. 169, § 4.

15.1-32-26. Dyslexia screening and intervention - Report to legislative management - Professional development.

1. For purposes of this section, "dyslexia" means a specific learning disability that is neurobiological in origin and characterized by difficulties with accurate or fluent recognition of words and poor spelling and decoding abilities, independent of the individual's general intelligence level.
2. The superintendent of public instruction shall provide guidance and recommendations regarding proven strategies in early screening and intervention services for children with risk factors for dyslexia characteristics, including low phonemic awareness.
3. Each school district shall:
    a. For enrolled children seven years of age and younger, provide a universal screening for dyslexia including core components of phonemic awareness, decoding, and spelling, which must be approved by the superintendent of public instruction;
    b. Include a process to further evaluate identified risk factors;
    c. Describe the intervention services for the identified dyslexia risk factors;
    d. Provide reading intervention services to students with dyslexia characteristics;
    e. Administer assessments, approved by the superintendent of public instruction, to determine the effectiveness of the intervention services in improving the reading and learning skills of the child; and
    f. Provide professional development on dyslexia characteristics and interventions related to phonological and phonemic awareness, sound and symbol relationships, alphabet knowledge, rapid naming skills, and encoding and

decoding skills, to appropriate kindergarten through grade three personnel of the school district and special education unit. Professional development may meet the requirements for continuing education credits for license renewal.

4. A school district or special education unit shall provide a universal screener under subdivision a of subsection 3 upon request by a parent, legal guardian, or teacher.
5. Before July 1, 2024, the superintendent of public instruction shall provide a report to the legislative management regarding dyslexia screening and intervention under this section.