

SUBSTITUTE FOR
HOUSE BILL NO. 5323

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending sections 1701, 1702, 1703, 1704, 1711, 1741, 1751, and
1761 (MCL 380.1701, 380.1702, 380.1703, 380.1704, 380.1711,
380.1741, 380.1751, and 380.1761), sections 1701, 1711, 1751, and
1761 as amended by 2008 PA 1, section 1703 as amended by 1995 PA
289, and section 1704 as added by 2000 PA 129.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1701. The ~~superintendent of public instruction~~ **STATE**
2 **BOARD** shall do all of the following:

3 (a) Require each intermediate school board to submit a plan
4 pursuant to section 1711, in accordance with special education
5 rules, to be approved by the ~~superintendent of public instruction~~
6 **STATE BOARD**.

7 (b) Promulgate rules setting forth the requirements of the

1 plans and procedures for submitting them.

2 Sec. 1702. (1) If a local school district board claims the
3 existence of an emergency due to extreme financial conditions
4 because of insufficient operating funds or due to a severe
5 classroom shortage, which emergency the local school district
6 claims renders it unable to provide special education programs and
7 services in compliance with section 1751, the local school district
8 board shall apply in writing to the state board before July 1 of
9 the particular school year for approval to provide special
10 education programs or services ~~which~~**THAT** do not comply with
11 section 1751. The state board may extend the filing date for good
12 cause.

13 (2) In its application the local school district board shall
14 demonstrate the need to provide noncomplying special education
15 programs and services and shall include the proposed programs and
16 services it is able to provide and the efforts to be undertaken to
17 alleviate the emergency. If the state board finds an emergency
18 exists in the local school district for the school year, the state
19 board may approve the providing of noncomplying special education
20 programs or services and prescribe conditions for those programs
21 and services.

22 (3) If the state board determines that a local school district
23 is not providing special education programs and services in
24 compliance with section 1751, and the local school district has not
25 obtained prior approval from the state board, the state board shall
26 give the local school district board written notice of the
27 noncompliance. Unless the local school district board submits proof

1 of compliance or of an unforeseen emergency within 30 days after
2 receipt of the notice, the state board shall direct the
3 intermediate school board of which the local school district is
4 constituent to provide complying programs or services. The state
5 board shall direct the intermediate school board to provide only
6 those programs or services which the state board determines the
7 local school district is not providing in compliance with section
8 1751.

9 (4) Special education programs or services ~~which~~**THAT** the
10 state board directs an intermediate school district to provide
11 shall be funded as if provided by the local school district and the
12 local school district board shall contribute to the intermediate
13 school district the unreimbursed cost of the programs or services.

14 Sec. 1703. (1) Special education personnel shall meet the
15 qualifications and requirements of rules promulgated by the state
16 board.

17 (2) Curriculum, eligibility of specific persons for special
18 education programs and services and for each particular program or
19 service, review procedures regarding the placement of persons in
20 the programs or services, size of classes, size of programs,
21 quantity and quality of equipment, supplies and housing, adequacy
22 of methods of instruction, and length and content of school day
23 shall be in accordance with rules promulgated by the state board
24 relative to special education programs and services.

25 (3) Not later than September 30, 1996, the state board shall
26 ~~conduct~~**COMPLETE** a review of all rules promulgated by the state
27 board or department pertaining to special education. The review

1 shall consider at least all of the following:

2 (a) The need to eliminate unnecessary separation and
3 duplication between regular education and special education
4 facilities, staff, programs, services, and pupils.

5 (b) Potential benefits from coordination between all relevant
6 federal, state, regional, and local organization services,
7 including public and private organization services, for pupils with
8 special needs, and encouragement of the provision of comprehensive
9 necessary services delivered by the most appropriate organization
10 or person in the most cost-effective and programmatically effective
11 manner.

12 (c) The advisability of simplification of rules or regulations
13 and processes relating to identification of need and provision of
14 services to special needs pupils, avoidance of barriers and cost
15 and other penalties or discouragements to effective programming,
16 and avoidance of requirements as to staff or program criteria that
17 are not research based; allowing and encouraging reasonably
18 flexible, workable, and, if appropriate, cooperatively operated
19 comprehensive services, including reasonable endorsement or other
20 qualification categories for personnel, to be delivered to pupils
21 with related or similar special needs, as may be consistent with
22 research.

23 (d) A goal of providing educational and training services in a
24 manner that maximizes for the benefit of the pupil the combination
25 of the provisions of this act and federal law relating to
26 inclusion, while avoiding, to the degree reasonably possible,
27 requiring by rule an overall increase in a program or service

1 beyond that required before December 23, 1978.

2 Sec. 1704. (1) This section shall be known and may be cited as
3 the "blind pupil's Braille literacy law".

4 (2) The ~~department~~**STATE BOARD** shall adopt Braille reading and
5 writing standards for teachers of blind and visually impaired
6 pupils and shall disseminate these standards to all **LOCAL** school
7 districts, intermediate school districts, and teacher preparation
8 programs. These standards shall be included in the rules governing
9 special education programs and services. In establishing these
10 standards, the ~~department~~**STATE BOARD** shall consider the standards
11 adopted by the national library service for the blind and
12 physically handicapped of the United States library of congress.

13 (3) When a local or intermediate school district receives
14 information from the department, or information that is approved by
15 the department from a consumer organization that advocates for the
16 blind, describing the benefits of instruction in Braille reading
17 and writing, the local or intermediate school district shall
18 provide this information to each person on the blind pupil's
19 individualized educational planning committee.

20 (4) The department shall accept and respond to requests from
21 local and intermediate school districts and shall work with
22 textbook publishers to obtain electronic file format versions of
23 textbooks or Braille versions of textbooks, or both. The department
24 may also, on behalf of local and intermediate school districts,
25 request and arrange for converting an electronic file format
26 version of a textbook to a Braille version. The department shall
27 process and make these requests in a timely manner.

1 (5) Upon request, a publisher of a textbook that is adopted
2 for instructional use by a school district shall furnish the
3 department with an electronic version of the textbook if the
4 textbook is for a literary subject or, for a textbook for a
5 nonliterary subject, if the technology is available to convert the
6 textbook directly to a format compatible with Braille translation
7 software. A publisher shall not charge a price for this electronic
8 version that exceeds the price it charges for the print or
9 electronic media version of the textbook.

10 (6) A local or intermediate school district or an
11 individualized educational planning committee shall not deny a
12 pupil the opportunity for instruction in Braille reading and
13 writing solely because the pupil has some remaining vision.

14 (7) Instruction for blind pupils shall be consistent with the
15 goals and standards established by this state for all pupils.

16 (8) As used in this section:

17 (a) "Blind pupil" means a pupil who is determined to manifest
18 1 or more of the following:

19 (i) A visual acuity of 20/200 or less in the better eye after
20 routine refractive correction.

21 (ii) A field of vision that is limited so that the widest
22 diameter of the visual field subtends an angle not greater than 20
23 degrees.

24 (iii) A medically indicated expectation of visual deterioration
25 that is expected to result in 1 or both of the conditions described
26 in subparagraphs (i) and (ii).

27 (b) "Individualized education program" means that term as

1 defined in section 614 of part B of title VI of the individuals
2 with disabilities education act, Public Law 91-230, 20 ~~U.S.C.~~**USC**
3 1414, or in R 340.1701A of the Michigan administrative code.

4 (c) "Individualized educational planning committee" means that
5 term as defined in R 340.1701A of the Michigan administrative code
6 or an individualized education program team as defined in section
7 614 of part B of title VI of the individuals with disabilities
8 education act, Public Law 91-230, 20 ~~U.S.C.~~**USC** 1414.

9 (d) "Textbook" includes a text published in electronic media
10 that is used for instructional purposes.

11 Sec. 1711. (1) The intermediate school board shall do all of
12 the following:

13 (a) Develop, establish, and continually evaluate and modify in
14 cooperation with its constituent districts, a plan for special
15 education that provides for the delivery of special education
16 programs and services designed to develop the maximum potential of
17 each student with a disability of whom the intermediate school
18 board is required to maintain a record under subdivision (f). The
19 plan shall coordinate the special education programs and services
20 operated or contracted for by the constituent districts and shall
21 be submitted to the ~~superintendent of public instruction~~**STATE**
22 **BOARD** for approval.

23 (b) Contract for the delivery of a special education program
24 or service, in accordance with the intermediate school district
25 plan in compliance with section 1701. Under the contract the
26 intermediate school board may operate special education programs or
27 services and furnish transportation services and room and board.

1 (c) Employ or engage special education personnel in accordance
2 with the intermediate school district plan, and appoint a director
3 of special education meeting the qualifications and requirements of
4 the rules promulgated by the ~~superintendent of public instruction~~
5 **STATE BOARD**.

6 (d) Accept and use available funds or contributions from
7 governmental or private sources for the purpose of providing
8 special education programs and services consistent with this
9 article.

10 (e) Lease, purchase, or otherwise acquire vehicles, sites,
11 buildings, or portions thereof, and equip them for its special
12 education staff, programs, and services.

13 (f) Maintain a record of each student with a disability under
14 26 years of age, who is a resident of 1 of its constituent
15 districts and who has not graduated from high school, and the
16 special education programs or services in which the student with a
17 disability is participating on the fourth Friday after Labor day
18 and Friday before Memorial day. The sole basis for determining the
19 local school district in which a student with a disability is a
20 resident shall be the rules promulgated by the ~~superintendent of~~
21 ~~public instruction~~ **STATE BOARD** notwithstanding the provisions of
22 section 1148. The records shall be maintained in accordance with
23 rules promulgated by the ~~superintendent of public instruction~~ **STATE**
24 **BOARD**.

25 (g) Have the authority to place in appropriate special
26 education programs or services a student with a disability for whom
27 a constituent district is required to provide special education

1 programs or services under section 1751.

2 (h) Investigate special education programs and services
3 operated or contracted for by the intermediate school board or
4 constituent district boards and report in writing failures to
5 comply with the provisions of a contract, statute, or rule
6 governing the special education programs and services or with the
7 intermediate school district plan, to the local school district
8 board and to the ~~superintendent of public instruction~~ **STATE BOARD**.

9 (i) Operate the special education programs or services or
10 contract for the delivery of special education programs or services
11 by local school district boards, in accordance with section 1702,
12 as if a local school district under section 1751. The contract
13 shall provide for items stated in section 1751 and shall be
14 approved by the ~~superintendent of public instruction~~ **STATE BOARD**.
15 The intermediate school board shall contract for the
16 transportation, or room and board, or both, or persons
17 participating in the program or service as if a local school
18 district board under sections 1756 and 1757.

19 (j) Receive the report of a parent or guardian or, with the
20 consent of a parent or guardian, receive the report of a licensed
21 physician, registered nurse, social worker, or school or other
22 appropriate professional personnel whose training and relationship
23 to students with a disability provide competence to judge them and
24 who in good faith believes that a person under 26 years of age
25 examined by the professional is or may be a student with a
26 disability, and immediately evaluate the person pursuant to rules
27 promulgated by the ~~superintendent of public instruction~~ **STATE**

1 **BOARD.** A person making or filing this report or a local school
 2 district board shall not incur liability to a person by reason of
 3 filing the report or seeking the evaluation, unless lack of good
 4 faith is proven.

5 (k) Evaluate pupils in accordance with section 1311.

6 (2) The intermediate school board may expend up to 10% of the
 7 annual budget but not to exceed \$12,500.00, for special education
 8 programs approved by the intermediate school board without having
 9 to secure the approval of the ~~superintendent of public instruction~~

10 **STATE BOARD.**

11 Sec. 1741. An intermediate school board operating or
 12 contracting for the operation of special education programs or
 13 services may carry pupils in membership in the same manner as a
 14 local school district and ~~shall be~~ **IS** entitled to its proportionate
 15 share of state school aid available for these programs. Membership
 16 shall be calculated on the basis provided in rules promulgated by
 17 the state board.

18 Sec. 1751. (1) The board of a local school district shall
 19 provide special education programs and services designed to develop
 20 the maximum potential of each student with a disability in its
 21 district on record under section 1711 for whom an appropriate
 22 educational or training program can be provided in accordance with
 23 the intermediate school district special education plan, in either
 24 of the following ways or a combination thereof ~~thereof~~ **OF THEM:**

25 (a) Operate the special education program or service.

26 (b) Contract with its intermediate school board, another
 27 intermediate school board, another local school district board, an

1 adjacent school district board in a bordering state, the Michigan
2 schools for the deaf and blind, the department of community health,
3 the department of human services, or any combination thereof ~~OF~~
4 **THEM**, for delivery of the special education programs or services,
5 or with an agency approved by the ~~superintendent of public~~
6 ~~instruction~~ **STATE BOARD** for delivery of an ancillary professional
7 special education service. The intermediate school district of
8 which the local school district is constituent shall be a party to
9 each contract even if the intermediate school district does not
10 participate in the delivery of the program or services.

11 (2) A local school district contract for the provision of a
12 special education program or service shall provide specifically
13 for:

14 (a) Special education buildings, equipment, and personnel
15 necessary for the operation of the subject program or service.

16 (b) Transportation or room and board, or both, for persons
17 participating in the programs or services as required under
18 sections 1756 and 1757.

19 (c) The contribution to be made by the sending local school
20 district if the program or service is to be operated by another
21 party to the contract. The contribution shall be in accordance with
22 rules promulgated by the ~~superintendent of public instruction~~ **STATE**
23 **BOARD**.

24 (d) Other matters the parties consider appropriate.

25 (3) Each program or service operated or contracted for by a
26 local school district shall be in accordance with the intermediate
27 school district's plan established pursuant to section 1711.

1 (4) A local school district may provide additional special
2 education programs and services not included in, or required by,
3 the intermediate school district plan.

4 (5) This section shall be construed to allow operation of
5 programs by departments of state government without local school
6 district contribution.

7 Sec. 1761. The board of a local school district shall not
8 solicit nor seek reimbursement from a student with a disability or
9 another person otherwise liable for the care of the student with a
10 disability for cost of a special education program or service
11 attributable to the expense for room and board. The board of a
12 local school district shall have the right to reimbursement for
13 room and board in an amount which may be paid reasonably by the
14 person in accordance with rules promulgated by the ~~superintendent~~
15 ~~of public instruction~~ **STATE BOARD**.

16 Enacting section 1. This amendatory act is intended to
17 transfer back to the state board of education certain powers,
18 duties, and functions that were transferred to the superintendent
19 of public instruction by Executive Reorganization Order No. 1996-7,
20 MCL 388.994.