

1 HOUSE BILL NO. 436
2 INTRODUCED BY Rep. Kelly Beal

3 BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

4 Annis Gook Hayne
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 DEFINITIONS AND PROVISIONS RELATED TO SPECIAL EDUCATION OF
7 CHILDREN WITH DISABILITIES; AMENDING SECTIONS 20-3-103,
8 20-5-102, 20-7-401, 20-7-411, 20-7-412, 20-7-414, 20-7-461,
9 AND 53-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 20-5-102, MCA, is amended to read:

13 **"20-5-102. Compulsory enrollment and excuses. (1)**
14 Except as provided in subsection (2), any parent, guardian,
15 or other person who is responsible for the care of any child
16 who is 7 years of age or older prior to the first day of
17 school in any school fiscal year shall cause the child to be
18 instructed in the program prescribed by the board of public
19 education pursuant to 20-7-111 until the later of the
20 following dates:

- 21 (a) the child's 16th birthday;
- 22 (b) the date of completion of the work of the 8th
23 grade.
- 24 (2) Such A parent, guardian, or other person shall
25 enroll the child in the school assigned by the trustees of

1 the district within the first week of the school term or
2 when he establishes residence in the district unless the
3 child is:

4 (a) enrolled in a school of another district or state
5 under any of the tuition provisions of this title;

6 (b) provided with supervised correspondence study or
7 supervised home study under the transportation provisions of
8 this title;

9 (c) ~~excused from enrollment in a school of the district~~
10 ~~when it is shown that his bodily or mental condition does~~
11 ~~not permit his attendance and the child cannot be instructed~~
12 ~~under the special education provisions of this title;~~

13 {d} excused from compulsory school attendance upon a
14 determination by a district judge that such attendance is
15 not in the best interest of the child;

16 {e}{d} excused by the board of trustees upon a
17 determination that such attendance by a child who has
18 attained the age of 16 is not in the best interest of the
19 child and the school; or

20 {f}{e} enrolled in a nonpublic or home school that
21 complies with the provisions of 20-5-109. For the purposes
22 of this subsection {f}{e}, a home school is the instruction
23 by a parent of his child, stepchild, or ward in his
24 residence and a nonpublic school includes a parochial,
25 church, religious, or private school.



~~{3}--The--excuse--provided--for--in-subsection-{2}{c}-of
 this-section-shall-be-issued-by-the-district--superintendent
 or--the--county--superintendent--when--there--is-no-district
 superintendent-employed-by-the-district.--Whenever-an--excuse
 is--denied--by--the--applicable--official,-an-appeal-of-such
 decision-may-be-made-to-the-district--court--of--the--county
 within--10-days-after-the-decision-upon-giving-a-bond-in-the
 amount-set-by-the-court-to-pay-all-costs-of-the-appeal.--The
 decision-of-the-district-court-shall-be-final--"~~

Section 2. Section 20-3-103, MCA, is amended to read:

"20-3-103. Deputy superintendent -- staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal superintendent or in the case of vacancy in his office, shall perform all the duties of office until such the disability be is removed or the vacancy be is filled. Such The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction ~~shall have~~ has the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a

graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of K-12 vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of related to special education for the-mentally-retarded-or-physically-handicapped persons with disabilities and who has not less than 2 years' experience in special education."

Section 3. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate-public-education"--mean:-the--provision of--regular--or--special--education--and--related--aids--and services--that--are--designed-to-meet-individual-educational needs-of-handicapped-persons-as-adequately-as-the--needs--of nonhandicapped--are--met; "Autism" means a condition that is manifested by severe communication and other developmental and educational problems.

(2) "Child with disabilities" means a child with cognitive delay; hearing impairment; speech-language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism;

1 traumatic brain injury; other health impairments; or
 2 specific learning disabilities, who because of those
 3 impairments needs special education and related services. A
 4 child who is 5 years of age or younger may be identified as
 5 a child with disabilities without the specific disabilities
 6 being specified.

7 (3) "Cognitive delay" means significantly subaverage
 8 general intellectual functioning existing concurrently with
 9 deficits in adaptive behavior and manifested during the
 10 developmental period that adversely affects a child's
 11 educational performance.

12 (2)(4) "Deaf" "Deafness" means a hearing impairment
 13 which that is so severe that the child's hearing is
 14 nonfunctional for the purpose of educational performance.

15 (3) "Deaf/blind" means concomitant hearing and visual
 16 impairments, the combination of which causes such severe
 17 educational problems for the child so impaired that the
 18 child cannot be accommodated in a special education program
 19 designed solely for deaf or blind children.

20 (4)(5) "Emotionally-disturbed" "Emotional disturbance"
 21 means a condition exhibiting one or more of the following
 22 characteristics to a marked degree and over a long period of
 23 time that adversely affects educational performance: an
 24 inability to learn which that cannot be explained by
 25 intellectual, sensory, or health factors; an inability to

1 build or maintain satisfactory interpersonal relationships
 2 with peers and teachers; inappropriate types of behavior or
 3 feelings under normal circumstances; a general pervasive
 4 mood of unhappiness or depression; or a tendency to develop
 5 physical symptoms or fears associated with personal or
 6 school problems. The term includes a child who is
 7 schizophrenic schizophrenia. The term does not include a
 8 child who is socially maladjusted social maladjustment,
 9 unless it is determined that the child is emotionally
 10 disturbed.

11 (5) "Handicapped child" means a child evaluated as
 12 being mentally retarded, hard of hearing, deaf,
 13 speech impaired, visually handicapped, emotionally
 14 disturbed, deaf/blind, multihandicapped, orthopedically
 15 impaired, other health impaired, or as having specific
 16 learning disabilities, who because of those impairments
 17 needs special education and related services. A child who is
 18 5 years of age or younger may be identified as handicapped
 19 without the handicapping condition being specified.

20 (6) "Free appropriate public education" means the
 21 provision of regular or special education and related aids
 22 and services that are designed to meet individual
 23 educational needs of children with disabilities as
 24 adequately as the needs of children without disabilities are
 25 met.

1 {6}{7} "Hard-of-hearing"--means--a--hearing--impairment
 2 "Hearing impairment" means an impairment, whether permanent
 3 or fluctuating, which that adversely affects a child's
 4 educational performance but which that is not included
 5 within the definition of deaf deafness.

6 {7}--"Mentally-retarded"--means--significantly--subaverage
 7 general--intellectual--functioning--existing--concurrently--with
 8 deficits--in--adaptive--behavior--and--manifested--during--the
 9 developmental--period--which--adversely--affects--a--child's
 10 educational--performance.

11 {8}--"Multihandicapped"--means--concomitant--impairments
 12 (e.g.,--mentally--retarded/blind--or--mentally
 13 retarded/orthopedically--impaired)--the--combination--of--which
 14 causes--such--severe--educational--problems--for--the--child--so
 15 impaired--that--the--child--cannot--be--accommodated--in--a--special
 16 education--program--designed--solely--for--one--of--the
 17 impairments--The--term--does--not--include--deaf/blind--children.

18 {9}{8} "Orthopedically-----impaired" "Orthopedic
 19 impairment" means a severe orthopedic impairment--which
 20 disability that adversely affects a child's educational
 21 performance. The term includes but is not limited to
 22 impairment caused by congenital anomaly (e.g., clubfoot or
 23 absence of some member), impairments caused by disease
 24 (e.g., poliomyelitis, or bone tuberculosis), and impairments
 25 from other causes (e.g., fractures or burns which that cause

1 contractures, amputation, cerebral palsy).

2 {10}{9} "Other-----health-impaired" "Other health
 3 impairment" means:

4 {a}--having-an-autistic-condition-that-is-manifested--by
 5 severe-communication-and-other-developmental-and-educational
 6 problems;-or

7 {b}--having limited strength, vitality, or alertness due
 8 to chronic or acute health problems, such as a heart
 9 condition, tuberculosis, rheumatic fever, nephritis, asthma,
 10 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
 11 leukemia, or diabetes.

12 {11}{10} "Related services" means transportation and
 13 such any developmental, corrective, and other supportive
 14 services as that are required to assist a handicapped child
 15 with disabilities to benefit from special education and
 16 includes speech-language pathology, audiology, occupational
 17 therapy, and physical therapy.

18 {12}{11} "Special education" means specially designed
 19 instruction, given at no cost to the parents or guardians,
 20 to meet the unique needs of a handicapped child with
 21 disabilities, including but not limited to classroom
 22 instruction, conducted in a classroom, home, hospital,
 23 institution, or other setting and instruction in physical
 24 education, home-instruction, and--instruction--in--hospitals
 25 and-institutions.

1 ~~{13}~~(12) "Specific learning disability" means a disorder
 2 in one or more of the basic psychological processes involved
 3 in understanding or in using language, spoken or written,
 4 which that may manifest itself in an imperfect ability to
 5 listen, think, speak, read, write, spell, or do mathematical
 6 calculations. The term includes but is not limited to such
 7 conditions as perceptual handicaps, brain injury, minimal
 8 brain dysfunction, dyslexia, and developmental aphasia. The
 9 term does not include children who have learning problems
 10 which that are primarily the result of visual, hearing, or
 11 motor handicaps; ~~mental--retardation~~ cognitive delay; or
 12 environmental, cultural, or economic disadvantages.

13 ~~{14}~~(13) "~~Speech/language---impaired~~" "Speech-language
 14 impairment" means a communication disorder, such as
 15 stuttering, impaired articulation, or a language or voice
 16 impairment, which that adversely affects a child's
 17 interpersonal relationships or educational performance.

18 ~~{15}~~(14) "Surrogate parent" means an individual
 19 appointed to safeguard a child's rights and protect the
 20 child's interests in educational evaluation, placement, and
 21 hearing or appeal procedures concerning the child.

22 ~~{16}~~(15) "~~Visually---handicapped~~" "Visual impairment"
 23 means a ~~visual~~ an impairment which that, after correction,
 24 adversely affects a child's educational performance. The
 25 term includes both ~~partially-seeing~~ partial blindness and

1 ~~blind-children~~ blindness."

2 **Section 4.** Section 20-7-411, MCA, is amended to read:

3 "20-7-411. Regular classes preferred -- obligation to
 4 establish special education program. (1) All handicapped
 5 children with disabilities in Montana are entitled to a free
 6 appropriate public education provided in the least
 7 restrictive alternative setting. To the maximum extent
 8 appropriate, handicapped children with disabilities,
 9 including children in public or private institutions or
 10 other care facilities, ~~shall~~ must be educated with children
 11 who ~~are-not-handicapped~~ do not have disabilities. Separate
 12 schooling or other removal of handicapped children with
 13 disabilities from the regular educational environment may
 14 occur only when the nature or severity of the handicap
 15 disability is such that education in regular classes with
 16 the use of supplementary aids and services cannot be
 17 achieved satisfactorily.

18 (2) After September 1, 1977, the board of trustees of
 19 every school district ~~must~~ shall provide or establish and
 20 maintain a special education program for every handicapped
 21 person with a disability as herein defined between the ages
 22 of 6 and 18, inclusive.

23 (3) On or before September 1, 1990, the board of
 24 trustees of each elementary district shall provide or
 25 establish and maintain a special education program for each

1 handicapped preschool child with disabilities between the
2 ages of 3 and 6, inclusive.

3 (4) The board of trustees of any a school district may
4 meet its obligation to serve handicapped persons with
5 disabilities by establishing its own special education
6 program, by establishing a cooperative special education
7 program, or by participating in a regional services
8 program."

9 **Section 5.** Section 20-7-412, MCA, is amended to read:

10 "20-7-412. Establishment of individual district special
11 education program. (1) The trustees of any a district, upon
12 obtaining the approval of the superintendent of public
13 instruction, shall establish and maintain a special
14 education program whenever, in the judgment of the trustees
15 and the superintendent of public instruction:

16 (a) there are sufficient numbers of handicapped
17 children with disabilities in the district to justify the
18 establishment of a program; or

19 (b) an individual child requires special education
20 services such as home or hospital tutoring, school-to-home
21 telephone communication, or other individual programs.

22 (2) Programs may be established for handicapped persons
23 with disabilities between the ages of 0 and 21 when the
24 superintendent of public instruction and the trustees have
25 determined that such the programs will:

1 (a) assist a person to achieve levels of competence
2 that will enable him to participate in the regular
3 instruction of the district when he could not participate
4 without special education;

5 (b) permit the conservation or early acquisition of
6 skills which that will provide the person with an equal
7 opportunity to participate in the regular instruction of the
8 district; or

9 (c) provide other demonstrated educational advantages
10 which that will materially benefit the person.

11 (3) Approval and operation of programs established
12 pursuant to subsection (2) do not obligate the state or a
13 school district to offer regular educational programs to a
14 similar age group unless specifically provided by law.

15 (4) When an agency which that has responsibility for a
16 handicapped person with disabilities over 21 but not more
17 than 25, inclusive, cannot provide appropriate services to
18 that person, the agency may contract with the local school
19 district to provide such the services."

20 **Section 6.** Section 20-7-414, MCA, is amended to read:

21 "20-7-414. Determination of children in need and type
22 of special education needed -- approval of classes and
23 programs by superintendent. (1) The determination of the
24 children requiring special education and the type of special
25 education needed by these children is the responsibility of

1 the trustees, and the determination must be made in
 2 compliance with the procedures established in the rules of
 3 the superintendent of public instruction. Whenever the
 4 trustees of a school district or the governing authority of
 5 an institution learn of a handicapped child with
 6 disabilities in their jurisdiction who is in need of special
 7 education, they shall determine whether that the child is in
 8 need of a surrogate parent ~~by--determining--whether if~~ the
 9 parents or guardian ~~is--unknown--or-unavailable~~ cannot be
 10 identified or, after reasonable efforts, the whereabouts of
 11 the parents cannot be discovered or if the child is a ward
 12 of the state. The determination must be made within 10 days
 13 of the date on which the trustees of a school district or
 14 the governing authority of an institution learned of the
 15 presence of the child in the district. If the child is in
 16 need of a surrogate parent, the trustees of a school
 17 district or the governing authority of an institution ~~must~~
 18 shall nominate a surrogate parent for the child as provided
 19 in 20-7-461.

20 (2) Whenever the trustees of any a district intend to
 21 establish a special education class or program, they shall
 22 apply for approval and funding of the class or program by
 23 the superintendent of public instruction. The superintendent
 24 of public instruction shall approve or disapprove the
 25 application for the special education class or program on

1 the basis of its compliance with the laws of the state of
 2 Montana, the special education policies adopted by the board
 3 of public education, and the rules of the superintendent of
 4 public instruction. No A special education class may not be
 5 operated by the trustees without the approval of the
 6 superintendent of public instruction. Each special education
 7 class or program must be approved annually to be funded as
 8 part of the foundation program for special education."

9 **Section 7.** Section 20-7-461, MCA, is amended to read:

10 "20-7-461. Appointment and termination of appointment
 11 of surrogate parent. (1) Any person may advise the trustees
 12 of a school district or the governing authority of an
 13 institution of a handicapped child with disabilities within
 14 the district who may be in need of a surrogate parent. The
 15 trustees of a school district or the governing authority of
 16 an institution ~~must~~ shall determine whether the child is in
 17 need of a surrogate parent as provided in 20-7-414. If the
 18 trustees of a school district or the governing authority of
 19 an institution determine that the child is in need of a
 20 surrogate parent, they shall nominate a surrogate parent for
 21 the child within 30 days of that determination.

22 (2) The person nominated as a surrogate parent must be
 23 an adult who is not an employee of a state or local
 24 educational agency. The surrogate parent may not have a
 25 vested interest that will conflict with his representation

1 and protection of the child. The surrogate, whenever
2 practicable, must be knowledgeable about the educational
3 system, special education requirements, and the legal rights
4 of the child in relation to the educational system. Whenever
5 practicable, the surrogate parent must be familiar with the
6 cultural or language background of the child.

7 (3) The nomination for appointment of a surrogate
8 parent, along with all necessary supporting documents, must
9 be submitted to the youth court for official appointment of
10 the surrogate parent by the court. ~~if--the--court--docs--not~~
11 ~~appoint--the--nominee,--the~~ The trustees of a school district
12 or the governing authority of an institution ~~must--make~~
13 ~~another---nomination--under--this--section~~ shall take all
14 reasonable action to ensure that the youth court appoints or
15 denies the appointment of a person nominated as a surrogate
16 parent within 45 days of the court's receipt of all
17 necessary supporting documents. If the youth court denies an
18 appointment, the trustees of a district or the governing
19 authority of an institution shall nominate another person to
20 be appointed as the surrogate parent.

21 (4) The superintendent of public instruction shall
22 adopt rules for a procedure to terminate the appointment of
23 a surrogate parent when:

- 24 (a) a child's parents are identified;
25 (b) the whereabouts of the parents are discovered;

- 1 (c) the child is no longer a ward of the state; or
2 (d) the surrogate parent wishes to discontinue his
3 appointment."

4 **Section 8.** Section 53-4-101, MCA, is amended to read:

5 "53-4-101. Definitions. As used in this part, the
6 following definitions apply:

7 (1) "Child welfare services" means the establishing,
8 extending, and strengthening of child welfare services
9 (especially in predominantly rural areas) for the protection
10 and care of abused, dependent, or neglected children.

11 (2) "Department" means the department of family
12 services provided for in 2-15-2401.

13 (3) (a) "Emotionally disturbed child" means a child
14 determined by a psychologist, psychiatrist, licensed social
15 worker, or special education child study team (established
16 under rules adopted by the superintendent of public
17 instruction to implement Title 20, chapter 7, part 4) to
18 have:

19 (i) an identifiable mental health problem as identified
20 in a nationally recognized classification system or as
21 defined in 20-7-401(4)(5); and

22 (ii) a substantial impairment, evident for a reasonable
23 length of time, that is characterized by a dysfunction in
24 any of the following areas:

25 (A) relationships;

- 1 (B) behavior;
- 2 (C) cognition; or
- 3 (D) education.

4 (b) The nationally recognized classification system
5 referred to in subsection (3)(a)(i) must be one recognized
6 by rules established by the department.

7 (4) "Public assistance" or "assistance" means any type
8 of monetary or other assistance furnished under this title
9 to a person by a state or county agency, regardless of the
10 original source of the assistance."

11 NEW SECTION. Section 9. Name change -- code
12 commissioner instruction. Whenever it appears in Title 20
13 and in all law enacted by the 52nd legislature, the code
14 commissioner is directed to change the term "handicapped
15 child" to "child with disabilities" and the term
16 "handicapped children" to "children with disabilities".

17 NEW SECTION. Section 10. Effective date. [This act] is
18 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0436, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

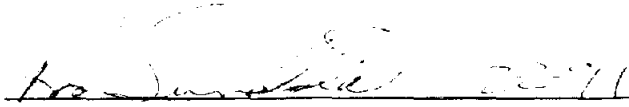
An act to generally revise the definitions and provisions related to special education of children with disabilities.

ASSUMPTIONS:

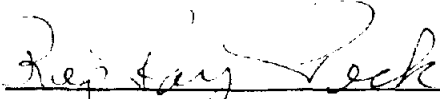
1. These are technical amendments, some of which align OPI definitions and titles for categories with the federal reauthorization terms.
2. The state obligation for special educational services does not change with this legislation.

FISCAL IMPACT:

No fiscal impact.



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



RAY BECK, PRIMARY SPONSOR DATE

Fiscal Note for HB0436, as introduced

HB 436

APPROVED BY COMM. ON EDUCATION AND CULTURAL RESOURCES

1 HOUSE BILL NO. 436
2 INTRODUCED BY PECK, CODY, BACHINI, DAVIS, ZOOK, L. NELSON,
3 HAYNE, J. JOHNSON
4 BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

5
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7 DEFINITIONS AND PROVISIONS RELATED TO SPECIAL EDUCATION OF
8 CHILDREN WITH DISABILITIES; AMENDING SECTIONS 20-3-103,
9 20-5-102, 20-7-401, 20-7-411, 20-7-412, 20-7-414, 20-7-461,
10 20-9-321, AND 53-4-101, MCA; AND PROVIDING AN EFFECTIVE
11 DATE."

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17 or other person who is responsible for the care of any child
18 who is 7 years of age or older prior to the first day of
19 school in any school fiscal year shall cause the child to be
20 instructed in the program prescribed by the board of public
21 education pursuant to 20-7-111 until the later of the
22 following dates:

- 23 (a) the child's 16th birthday;
24 (b) the date of completion of the work of the 8th
25 grade.

1 (2) Such A parent, guardian, or other person shall
2 enroll the child in the school assigned by the trustees of
3 the district within the first week of the school term or
4 when he establishes residence in the district unless the
5 child is:

6 (a) enrolled in a school of another district or state
7 under any of the tuition provisions of this title;

8 (b) provided with supervised correspondence study or
9 supervised home study under the transportation provisions of
10 this title;

11 (c) ~~excused from enrollment in a school of the district~~
12 ~~when it is shown that his bodily or mental condition does~~
13 ~~not permit his attendance and the child cannot be instructed~~
14 ~~under the special education provisions of this title;~~

15 (d) excused from compulsory school attendance upon a
16 determination by a district judge that such attendance is
17 not in the best interest of the child;

18 (e) excused by the board of trustees upon a
19 determination that such attendance by a child who has
20 attained the age of 16 is not in the best interest of the
21 child and the school; or

22 (f) enrolled in a nonpublic or home school that
23 complies with the provisions of 20-5-109. For the purposes
24 of this subsection (f), a home school is the instruction
25 by a parent of his child, stepchild, or ward in his

1 residence and a nonpublic school includes a parochial,
 2 church, religious, or private school.

3 ~~(3) The excuse provided for in subsection (2)(c) of~~
 4 ~~this section shall be issued by the district superintendent~~
 5 ~~or the county superintendent when there is no district~~
 6 ~~superintendent employed by the district. Whenever an excuse~~
 7 ~~is denied by the applicable official, an appeal of such~~
 8 ~~decision may be made to the district court of the county~~
 9 ~~within 10 days after the decision upon giving a bond in the~~
 10 ~~amount set by the court to pay all costs of the appeal. The~~
 11 ~~decision of the district court shall be final.~~"

12 **Section 2.** Section 20-3-103, MCA, is amended to read:

13 "20-3-103. Deputy superintendent -- staff. (1) The
 14 state superintendent of public instruction shall appoint a
 15 deputy who, in the absence of the ~~principal~~ superintendent
 16 or in the case of vacancy in his office, shall perform all
 17 the duties of office until such the disability be is removed
 18 or the vacancy be is filled. Such The deputy shall
 19 subscribe, take, and file the oath of office provided by law
 20 for other state officers before entering upon the
 21 performance of his duties.

22 (2) The superintendent of public instruction ~~shall have~~
 23 has the power to employ, organize, and administer a staff of
 24 personnel to assist him in the administration of the duties
 25 and services of the office. In organizing his staff, the

1 superintendent of public instruction may employ:

2 (a) a supervisor of physical education who is a
 3 graduate of an accredited institution of higher education
 4 with a master's degree in physical education;

5 (b) a professional staff for the state supervision and
 6 administration of K-12 vocational education; and

7 (c) a special education supervisor who is a graduate of
 8 an accredited institution of higher education with a
 9 master's degree in a field of related to special education
 10 for the mentally-retarded-or-physically-handicapped persons
 11 with disabilities and who has not less than 2 years'
 12 experience in special education."

13 **Section 3.** Section 20-7-401, MCA, is amended to read:

14 "20-7-401. Definitions. In this title, unless the
 15 context clearly indicates otherwise, the following
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17 (1) ~~"Appropriate public education" means the provision~~
 18 ~~of regular or special education and related aids and~~
 19 ~~services that are designed to meet individual educational~~
 20 ~~needs of handicapped persons as adequately as the needs of~~
 21 ~~nonhandicapped are met.~~ "Autism" means a condition that is
 22 manifested by severe communication and other developmental
 23 and educational problems.

24 (2) "Child with disabilities" means a child with
 25 cognitive delay; hearing impairment, INCLUDING DEAFNESS;

1 speech-language impairment; visual impairment, including
 2 blindness; emotional disturbance; orthopedic impairment;
 3 autism; traumatic brain injury; other health impairments; or
 4 specific learning disabilities, who because of those
 5 impairments needs special education and related services. A
 6 child who is 5 years of age or younger may be identified as
 7 a child with disabilities without the specific disabilities
 8 being specified.

9 (3) "Cognitive delay" means significantly subaverage
 10 general intellectual functioning existing concurrently with
 11 deficits in adaptive behavior and manifested during the
 12 developmental period that adversely affects a child's
 13 educational performance.

14 (2)(4) "Deaf" "Deafness" means a hearing impairment
 15 which that is so severe that the child's hearing is
 16 nonfunctional for the purpose of educational performance.

17 (3)--"Deaf/blind"--means--concomitant--hearing--and--visual
 18 impairments;--the--combination--of--which--causes--such--severe
 19 educational--problems--for--the--child--so--impaired--that--the
 20 child--cannot--be--accommodated--in--a--special--education--program
 21 designed--solely--for--deaf--or--blind--children;

22 (4)(5) "Emotionally--disturbed" "Emotional disturbance"
 23 means a condition exhibiting one or more of the following
 24 characteristics to a marked degree and over a long period of
 25 time that adversely affects educational performance: an

1 inability to learn which that cannot be explained by
 2 intellectual, sensory, or health factors; an inability to
 3 build or maintain satisfactory interpersonal relationships
 4 with peers and teachers; inappropriate types of behavior or
 5 feelings under normal circumstances; a general pervasive
 6 mood of unhappiness or depression; or a tendency to develop
 7 physical symptoms or fears associated with personal or
 8 school problems. The term includes a---child---who---is
 9 schizophrenic schizophrenia. The term does not include a
 10 child-who--is--socially--maladjusted social maladjustment,
 11 unless it is determined that the child is emotionally
 12 disturbed.

13 (5)--"Handicapped-child"--means--a--child--evaluated--as
 14 being----mentally----retarded;----hard-of-hearing;----deaf;
 15 speech-impaired;----visually----handicapped;----emotionally
 16 disturbed;--deaf/blind;--multihandicapped;--orthopedically
 17 impaired;--other--health-impaired;--or--as--having--specific
 18 learning-disabilities;--who--because--of--those--impairments
 19 needs-special-education-and-related-services;--A-child-who-is
 20 5--years--of-age-or-younger-may-be-identified-as-handicapped
 21 without-the-handicapping-condition-being-specified;

22 (6) "Free appropriate public education" means the
 23 provision of regular or special education and related aids
 24 and services that are designed to meet individual
 25 educational needs of children with disabilities as

1 adequately as the needs of children without disabilities are
 2 met.

3 {6}(7) "Hard-of-hearing"--means--a--hearing--impairment
 4 "Hearing impairment" means an impairment, whether permanent
 5 or fluctuating, which that adversely affects a child's
 6 educational performance but which that is not included
 7 within the definition of deaf deafness.

8 {7}--"Mentally--retarded"--means--significantly--subaverage
 9 general--intellectual--functioning--existing--concurrently--with
 10 deficits--in--adaptive--behavior--and--manifested--during--the
 11 developmental--period--which--adversely--affects--a--child's
 12 educational--performance--

13 {8}--"Multihandicapped"--means--concomitant--impairments
 14 (e.g.,--mentally--retarded/blind--or--mentally
 15 retarded/orthopedically--impaired)--the--combination--of--which
 16 causes--such--severe--educational--problems--for--the--child--so
 17 impaired--that--the--child--cannot--be--accommodated--in--a--special
 18 education--program--designed--solely--for--one--of--the
 19 impairments--The--term--does--not--include--deaf/blind--children--

20 {9}(8) "Orthopedically--impaired" "Orthopedic
 21 impairment" means a severe orthopedic impairment--which
 22 disability that adversely affects a child's educational
 23 performance. The term includes but is not limited to
 24 impairment caused by congenital anomaly (e.g., clubfoot or
 25 absence of some member), impairments caused by disease

1 (e.g., poliomyelitis, or bone tuberculosis), and impairments
 2 from other causes (e.g., fractures or burns which that cause
 3 contractures, amputation, cerebral palsy).

4 {10}(9) "Other--health-impaired" "Other health
 5 impairment" means:

6 (a)--having--an--autistic--condition--that--is--manifested--by
 7 severe--communication--and--other--developmental--and--educational
 8 problems--or

9 (b)--having limited strength, vitality, or alertness due
 10 to chronic or acute health problems, such as a heart
 11 condition, tuberculosis, rheumatic fever, nephritis, asthma,
 12 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
 13 leukemia, or diabetes, THAT ADVERSELY AFFECTS A CHILD'S
 14 EDUCATIONAL PERFORMANCE.

15 {11}(10) "Related services" means transportation and
 16 such any developmental, corrective, and other supportive
 17 services as that are required to assist a handicapped child
 18 with disabilities to benefit from special education and
 19 includes speech-language pathology, audiology, occupational
 20 therapy, and physical therapy.

21 {12}(11) "Special education" means specially designed
 22 instruction, given at no cost to the parents or guardians,
 23 to meet the unique needs of a handicapped child with
 24 disabilities, including but not limited to classroom
 25 instruction, conducted in a classroom, home, hospital,

1 institution, or other setting and instruction in physical
 2 education, home instruction, and instruction in hospitals
 3 and institutions.

4 ~~(13)~~(12) "Specific learning disability" means a disorder
 5 in one or more of the basic psychological processes involved
 6 in understanding or in using language, spoken or written,
 7 which that may manifest itself in an imperfect ability to
 8 listen, think, speak, read, write, spell, or do mathematical
 9 calculations. The term includes but is not limited to such
 10 conditions as perceptual handicaps, brain injury, minimal
 11 brain dysfunction, dyslexia, and developmental aphasia. The
 12 term does not include children who have learning problems
 13 which that are primarily the result of visual, hearing, or
 14 motor handicaps; ~~mental retardation~~ cognitive delay; or
 15 environmental, cultural, or economic disadvantages.

16 ~~(14)~~(13) "~~Speech/language---impaired~~" "Speech-language
 17 impairment" means a communication disorder, such as
 18 stuttering, impaired articulation, or a language or voice
 19 impairment, which that adversely affects a child's
 20 interpersonal relationships or educational performance.

21 ~~(15)~~(14) "Surrogate parent" means an individual
 22 appointed to safeguard a child's rights and protect the
 23 child's interests in educational evaluation, placement, and
 24 hearing or appeal procedures concerning the child.

25 ~~(16)~~(15) "~~Visually---handicapped~~" "Visual impairment"

1 means ~~a visual~~ an impairment which that, after correction,
 2 adversely affects a child's educational performance. The
 3 term includes both ~~partially-seeing~~ partial blindness and
 4 ~~blind-children~~ blindness."

5 **Section 4.** Section 20-7-411, MCA, is amended to read:

6 "20-7-411. Regular classes preferred -- obligation to
 7 establish special education program. (1) All handicapped
 8 children with disabilities in Montana are entitled to a free
 9 appropriate public education provided in the least
 10 restrictive alternative setting. To the maximum extent
 11 appropriate, handicapped children with disabilities,
 12 including children in public or private institutions or
 13 other care facilities, ~~shall~~ must be educated with children
 14 who ~~are not handicapped~~ do not have disabilities. Separate
 15 schooling or other removal of handicapped children with
 16 disabilities from the regular educational environment may
 17 occur only when the nature or severity of the handicap
 18 disability is such that education in regular classes with
 19 the use of supplementary aids and services cannot be
 20 achieved satisfactorily.

21 (2) After September 1, 1977, the board of trustees of
 22 every school district ~~must~~ shall provide or establish and
 23 maintain a special education program for every handicapped
 24 person with a disability as herein defined between the ages
 25 of 6 and 18, inclusive.

1 (3) On or before September 1, 1990, the board of
 2 trustees of each elementary district shall provide or
 3 establish and maintain a special education program for each
 4 handicapped preschool child with disabilities between the
 5 ages of 3 and 6, inclusive.

6 (4) The board of trustees of any a school district may
 7 meet its obligation to serve handicapped persons with
 8 disabilities by establishing its own special education
 9 program, by establishing a cooperative special education
 10 program, or by participating in a regional services
 11 program."

12 **Section 5.** Section 20-7-412, MCA, is amended to read:

13 "20-7-412. **Establishment of individual district special**
 14 **education program.** (1) The trustees of any a district, upon
 15 obtaining the approval of the superintendent of public
 16 instruction, shall establish and maintain a special
 17 education program whenever, in the judgment of the trustees
 18 and the superintendent of public instruction:

19 (a) there are sufficient numbers of handicapped
 20 children with disabilities in the district to justify the
 21 establishment of a program; or

22 (b) an individual child requires special education
 23 services such as home or hospital tutoring, school-to-home
 24 telephone communication, or other individual programs.

25 (2) Programs may be established for handicapped persons

1 with disabilities between the ages of 0 and 21 when the
 2 superintendent of public instruction and the trustees have
 3 determined that such the programs will:

4 (a) assist a person to achieve levels of competence
 5 that will enable him to participate in the regular
 6 instruction of the district when he could not participate
 7 without special education;

8 (b) permit the conservation or early acquisition of
 9 skills which that will provide the person with an equal
 10 opportunity to participate in the regular instruction of the
 11 district; or

12 (c) provide other demonstrated educational advantages
 13 which that will materially benefit the person.

14 (3) Approval and operation of programs established
 15 pursuant to subsection (2) do not obligate the state or a
 16 school district to offer regular educational programs to a
 17 similar age group unless specifically provided by law.

18 (4) When an agency which that has responsibility for a
 19 handicapped person with disabilities over 21 but not more
 20 than 25, inclusive, cannot provide appropriate services to
 21 that person, the agency may contract with the local school
 22 district to provide such the services."

23 **Section 6.** Section 20-7-414, MCA, is amended to read:

24 "20-7-414. **Determination of children in need and type**
 25 **of special education needed -- approval of classes and**

1 programs by superintendent. (1) The determination of the
 2 children requiring special education and the type of special
 3 education needed by these children is the responsibility of
 4 the trustees, and the determination must be made in
 5 compliance with the procedures established in the rules of
 6 the superintendent of public instruction. Whenever the
 7 trustees of a school district or the governing authority of
 8 an institution learn of a handicapped child with
 9 disabilities in their jurisdiction who is in need of special
 10 education, they shall determine whether that the child is in
 11 need of a surrogate parent ~~by--determining--whether~~ if the
 12 parents or guardian ~~is--unknown--or-unavailable~~ cannot be
 13 identified or, after reasonable efforts, the whereabouts of
 14 the parents cannot be discovered or if the child is a ward
 15 of the state. The determination must be made within 10 days
 16 of the date on which the trustees of a school district or
 17 the governing authority of an institution learned of the
 18 presence of the child in the district. If the child is in
 19 need of a surrogate parent, the trustees of a school
 20 district or the governing authority of an institution ~~must~~
 21 shall nominate a surrogate parent for the child as provided
 22 in 20-7-461.

23 (2) Whenever the trustees of any a district intend to
 24 establish a special education class or program, they shall
 25 apply for approval and funding of the class or program by

1 the superintendent of public instruction. The superintendent
 2 of public instruction shall approve or disapprove the
 3 application for the special education class or program on
 4 the basis of its compliance with the laws of the state of
 5 Montana, the special education policies adopted by the board
 6 of public education, and the rules of the superintendent of
 7 public instruction. ~~No A~~ A special education class may not be
 8 operated by the trustees without the approval of the
 9 superintendent of public instruction. Each special education
 10 class or program must be approved annually to be funded as
 11 part of the foundation program for special education."

12 **Section 7.** Section 20-7-461, MCA, is amended to read:

13 **"20-7-461. Appointment and termination of appointment**
 14 **of surrogate parent.** (1) Any person may advise the trustees
 15 of a school district or the governing authority of an
 16 institution of a handicapped child with disabilities within
 17 the district who may be in need of a surrogate parent. The
 18 trustees of a school district or the governing authority of
 19 an institution ~~must~~ shall determine whether the child is in
 20 need of a surrogate parent as provided in 20-7-414. If the
 21 trustees of a school district or the governing authority of
 22 an institution determine that the child is in need of a
 23 surrogate parent, they shall nominate a surrogate parent for
 24 the child within 30 days of that determination.

25 (2) The person nominated as a surrogate parent must be

1 an adult who is not an employee of a state or local
 2 educational agency. The surrogate parent may not have a
 3 vested interest that will conflict with his representation
 4 and protection of the child. The surrogate, whenever
 5 practicable, must be knowledgeable about the educational
 6 system, special education requirements, and the legal rights
 7 of the child in relation to the educational system. Whenever
 8 practicable, the surrogate parent must be familiar with the
 9 cultural or language background of the child.

10 (3) The nomination for appointment of a surrogate
 11 parent, along with all necessary supporting documents, must
 12 be submitted to the youth court for official appointment of
 13 the surrogate parent by the court. ~~if--the--court--does--not~~
 14 ~~appoint--the--nominee;--the~~ The trustees of a school district
 15 or the governing authority of an institution must--make
 16 another---nomination--under--this--section shall take all
 17 reasonable action to ensure that the youth court appoints or
 18 denies the appointment of a person nominated as a surrogate
 19 parent within 45 days of the court's receipt of all
 20 necessary supporting documents. If the youth court denies an
 21 appointment, the trustees of a district or the governing
 22 authority of an institution shall nominate another person to
 23 be appointed as the surrogate parent.

24 (4) The superintendent of public instruction shall
 25 adopt rules for a procedure to terminate the appointment of

1 a surrogate parent when:

- 2 (a) a child's parents are identified;
- 3 (b) the whereabouts of the parents are discovered;
- 4 (c) the child is no longer a ward of the state; or
- 5 (d) the surrogate parent wishes to discontinue his
 6 appointment."

7 **SECTION 8. SECTION 20-9-321, MCA, IS AMENDED TO READ:**

8 "20-9-321. Foundation program and contingency funds for
 9 special education. (1) For the purpose of establishing the
 10 foundation program amount for a current year special
 11 education program for a school district, the superintendent
 12 of public instruction shall determine the total estimated
 13 cost of the special education program for the school
 14 district on the basis of a special education program budget
 15 submitted by the district. The budget must be prepared on
 16 forms provided by the superintendent of public instruction
 17 and must set out for each program:

18 (a) the estimated allowable costs associated with
 19 operating the program where allowable costs are as defined
 20 in 20-7-431;

21 (b) the number of pupils expected to be enrolled in the
 22 program; and

23 (c) any other data required by the superintendent of
 24 public instruction for budget justification purposes and to
 25 administer the provisions of 20-9-315 through 20-9-321.

1 (2) The total amount of allowable costs approved by the
 2 superintendent of public instruction is the special
 3 education foundation program amount for current year special
 4 education program purposes. The total amount of allowable
 5 costs that are approved for the special education budget may
 6 not, under any condition, be less than the foundation
 7 program amount for one regular ANB for each full-time
 8 special pupil in the school district.

9 (3) Any amount of the special education allowable costs
 10 for a district approved under the provisions of subsection
 11 (2) that is an increase in the approved allowable costs from
 12 the previous school fiscal year and is a result of expanded
 13 programs or recalculations of the special education
 14 allowable costs base may be deposited and managed in the
 15 separate account of the miscellaneous programs fund of the
 16 district that is prescribed in subsection (4).

17 (4) If a special education program is implemented or
 18 expanded during a given school term too late to be included
 19 in the determination of the district foundation program for
 20 the school year as prescribed in this part, allowable costs
 21 approved under the budgeting provisions of subsections (1)
 22 and (2) for the operation of the program during the given
 23 year must be funded from any legislative appropriation for
 24 contingency financing for special education. Contingency
 25 funds granted under this subsection must be deposited in a

1 separate account of the miscellaneous programs fund of the
 2 district as provided in 20-9-507. However, if contingency
 3 funds are not available, then subject to the approval of the
 4 program by the superintendent under the emergency budget
 5 provisions of 20-9-161(5), allowable costs for the given
 6 year may be added to the foundation program amount for
 7 special education for the subsequent school year. The
 8 allowable costs must be recorded as previous year special
 9 education expenses in the school district budget for the
 10 subsequent school year.

11 (5) (a) The special education contingency funds in
 12 subsection (4):

13 (i) are biennially appropriated;

14 (ii) are for emergencies that may arise in the special
 15 education programs of school districts or special education
 16 cooperatives; and

17 (iii) may be used to fund positions that have gone
 18 unfilled for a full school fiscal year and for which state
 19 special education funds were not awarded.

20 (b) The board of trustees of a district or the
 21 management board of a special education cooperative may
 22 apply for contingency funding by submitting to the
 23 superintendent of public instruction, in the form prescribed
 24 by the superintendent of public instruction, written
 25 documentation that describes the need for the funds.

1 ~~4~~(6) The sum of the previous year special education
 2 expenses as defined in subsection subsections (3) and (4)
 3 and the foundation program amount for current year special
 4 education as defined in subsections (1) and (2) is the
 5 special education budget for accounting purposes.

6 ~~5~~(7) The foundation program amount for special
 7 education must be added to the foundation program amount of
 8 the regular program ANB defined in 20-9-311 and 20-9-313 to
 9 obtain the total foundation program amount for the
 10 district."

11 **Section 9.** Section 53-4-101, MCA, is amended to read:

12 "53-4-101. **Definitions.** As used in this part, the
 13 following definitions apply:

14 (1) "Child welfare services" means the establishing,
 15 extending, and strengthening of child welfare services
 16 (especially in predominantly rural areas) for the protection
 17 and care of abused, dependent, or neglected children.

18 (2) "Department" means the department of family
 19 services provided for in 2-15-2401.

20 (3) (a) "Emotionally disturbed child" means a child
 21 determined by a psychologist, psychiatrist, licensed social
 22 worker, or special education child study team (established
 23 under rules adopted by the superintendent of public
 24 instruction to implement Title 20, chapter 7, part 4) to
 25 have:

1 (i) an identifiable mental health problem as identified
 2 in a nationally recognized classification system or as
 3 defined in 20-7-401~~4~~(5); and

4 (ii) a substantial impairment, evident for a reasonable
 5 length of time, that is characterized by a dysfunction in
 6 any of the following areas:

- 7 (A) relationships;
- 8 (B) behavior;
- 9 (C) cognition; or
- 10 (D) education.

11 (b) The nationally recognized classification system
 12 referred to in subsection (3)(a)(i) must be one recognized
 13 by rules established by the department.

14 (4) "Public assistance" or "assistance" means any type
 15 of monetary or other assistance furnished under this title
 16 to a person by a state or county agency, regardless of the
 17 original source of the assistance."

18 NEW SECTION. **Section 10.** Name change -- code
 19 **commissioner** instruction. Whenever it appears in Title 20
 20 and in all law enacted by the 52nd legislature, the code
 21 commissioner is directed to change the term "handicapped
 22 child" to "child with disabilities" and the term
 23 "handicapped children" to "children with disabilities".

24 NEW SECTION. **Section 11.** Effective date. [This act] is
 25 effective July 1, 1991.

1 HOUSE BILL NO. 436

2 INTRODUCED BY PECK, CODY, BACHINI, DAVIS, ZOOK, L. NELSON,
3 HAYNE, J. JOHNSON

4 BY REQUEST OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 DEFINITIONS AND PROVISIONS RELATED TO SPECIAL EDUCATION OF
8 CHILDREN WITH DISABILITIES; AMENDING SECTIONS 20-3-103,
9 20-5-102, 20-7-401, 20-7-411, 20-7-412, 20-7-414, 20-7-461,
10 20-9-321, AND 53-4-101, MCA; AND PROVIDING AN EFFECTIVE
11 DATE."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 20-5-102, MCA, is amended to read:

15 **"20-5-102. Compulsory enrollment and excuses. (1)**

16 Except as provided in subsection (2), any parent, guardian,
17 or other person who is responsible for the care of any child
18 who is 7 years of age or older prior to the first day of
19 school in any school fiscal year shall cause the child to be
20 instructed in the program prescribed by the board of public
21 education pursuant to 20-7-111 until the later of the
22 following dates:

23 (a) the child's 16th birthday;

24 (b) the date of completion of the work of the 8th
25 grade.

1 (2) Such A parent, guardian, or other person shall
2 enroll the child in the school assigned by the trustees of
3 the district within the first week of the school term or
4 when he establishes residence in the district unless the
5 child is:

6 (a) enrolled in a school of another district or state
7 under any of the tuition provisions of this title;

8 (b) provided with supervised correspondence study or
9 supervised home study under the transportation provisions of
10 this title;

11 ~~(c) excused from enrollment in a school of the district~~
12 ~~when it is shown that his bodily or mental condition does~~
13 ~~not permit his attendance and the child cannot be instructed~~
14 ~~under the special education provisions of this title;~~

15 ~~(d)~~ excused from compulsory school attendance upon a
16 determination by a district judge that such attendance is
17 not in the best interest of the child;

18 ~~(e)~~(d) excused by the board of trustees upon a
19 determination that such attendance by a child who has
20 attained the age of 16 is not in the best interest of the
21 child and the school; or

22 ~~(f)~~(e) enrolled in a nonpublic or home school that
23 complies with the provisions of 20-5-109. For the purposes
24 of this subsection ~~(f)~~(e), a home school is the instruction
25 by a parent of his child, stepchild, or ward in his

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1 residence and a nonpublic school includes a parochial,
2 church, religious, or private school.

3 ~~{3}--The excuse provided for in subsection {2}{c} of
4 this section shall be issued by the district superintendent
5 or the county superintendent when there is no district
6 superintendent employed by the district. Whenever an excuse
7 is denied by the applicable official, an appeal of such
8 decision may be made to the district court of the county
9 within 10 days after the decision upon giving a bond in the
10 amount set by the court to pay all costs of the appeal. The
11 decision of the district court shall be final."~~

12 **Section 2.** Section 20-3-103, MCA, is amended to read:

13 "20-3-103. Deputy superintendent -- staff. (1) The
14 state superintendent of public instruction shall appoint a
15 deputy who, in the absence of the principal superintendent
16 or in the case of vacancy in his office, shall perform all
17 the duties of office until such the disability be is removed
18 or the vacancy be is filled. Such The deputy shall
19 subscribe, take, and file the oath of office provided by law
20 for other state officers before entering upon the
21 performance of his duties.

22 (2) The superintendent of public instruction ~~shall have~~
23 has the power to employ, organize, and administer a staff of
24 personnel to assist him in the administration of the duties
25 and services of the office. In organizing his staff, the

1 superintendent of public instruction may employ:

2 (a) a supervisor of physical education who is a
3 graduate of an accredited institution of higher education
4 with a master's degree in physical education;

5 (b) a professional staff for the state supervision and
6 administration of K-12 vocational education; and

7 (c) a special education supervisor who is a graduate of
8 an accredited institution of higher education with a
9 master's degree in a field of related special education
10 for the mentally-retarded-or-physically-handicapped persons
11 with disabilities and who has not less than 2 years'
12 experience in special education."

13 **Section 3.** Section 20-7-401, MCA, is amended to read:

14 "20-7-401. Definitions. In this title, unless the
15 context clearly indicates otherwise, the following
16 definitions apply:

17 (1) ~~"Appropriate--public-education"--means-the-provision
18 of--regular--or--special--education--and--related--aids--and
19 services--that--are--designed--to--meet--individual--educational
20 needs--of--handicapped-persons--as--adequately--as--the--needs--of
21 nonhandicapped--are--met. "Autism" means a condition that is
22 manifested by severe communication and other developmental
23 and educational problems.~~

24 (2) "Child with disabilities" means a child with
25 cognitive delay; hearing impairment, INCLUDING DEAFNESS;

1 speech-language impairment; visual impairment, including
 2 blindness; emotional disturbance; orthopedic impairment;
 3 autism; traumatic brain injury; other health impairments; or
 4 specific learning disabilities, who because of those
 5 impairments needs special education and related services. A
 6 child who is 5 years of age or younger may be identified as
 7 a child with disabilities without the specific disabilities
 8 being specified.

9 (3) "Cognitive delay" means significantly subaverage
 10 general intellectual functioning existing concurrently with
 11 deficits in adaptive behavior and manifested during the
 12 developmental period that adversely affects a child's
 13 educational performance.

14 (4) "Deaf" "Deafness" means a hearing impairment
 15 which that is so severe that the child's hearing is
 16 nonfunctional for the purpose of educational performance.

17 (3) ~~"Deaf/blind" means concomitant hearing and visual~~
 18 ~~impairments, the combination of which causes such severe~~
 19 ~~educational problems for the child so impaired that the~~
 20 ~~child cannot be accommodated in a special education program~~
 21 ~~designed solely for deaf or blind children.~~

22 (4) (5) "Emotionally-disturbed" "Emotional disturbance"
 23 means a condition exhibiting one or more of the following
 24 characteristics to a marked degree and over a long period of
 25 time that adversely affects educational performance: an

1 inability to learn which that cannot be explained by
 2 intellectual, sensory, or health factors; an inability to
 3 build or maintain satisfactory interpersonal relationships
 4 with peers and teachers; inappropriate types of behavior or
 5 feelings under normal circumstances; a general pervasive
 6 mood of unhappiness or depression; or a tendency to develop
 7 physical symptoms or fears associated with personal or
 8 school problems. The term includes ~~a child who is~~
 9 ~~schizophrenic schizophrenia.~~ The term does not include a
 10 ~~child who is socially maladjusted social maladjustment,~~
 11 unless it is determined that the child is emotionally
 12 disturbed.

13 (5) ~~"Handicapped child" means a child evaluated as~~
 14 ~~being mentally retarded, hard of hearing, deaf,~~
 15 ~~speech impaired, visually handicapped, emotionally~~
 16 ~~disturbed, deaf/blind, multihandicapped, orthopedically~~
 17 ~~impaired, other health impaired, or as having specific~~
 18 ~~learning disabilities, who because of those impairments~~
 19 ~~needs special education and related services. A child who is~~
 20 ~~5 years of age or younger may be identified as handicapped~~
 21 ~~without the handicapping condition being specified.~~

22 (6) "Free appropriate public education" means the
 23 provision of regular or special education and related aids
 24 and services that are designed to meet individual
 25 educational needs of children with disabilities as

1 adequately as the needs of children without disabilities are
 2 met.

3 {6}{7} "Hard-of-hearing" means a hearing impairment
 4 "Hearing impairment" means an impairment, whether permanent
 5 or fluctuating, which that adversely affects a child's
 6 educational performance but which that is not included
 7 within the definition of deaf deafness.

8 {7} "Mentally-retarded" means significantly subaverage
 9 general intellectual functioning existing concurrently with
 10 deficits in adaptive behavior and manifested during the
 11 developmental period, which adversely affects a child's
 12 educational performance.

13 {8} "Multihandicapped" means concomitant impairments
 14 (e.g., mentally retarded/blind or mentally
 15 retarded/orthopedically impaired), the combination of which
 16 causes such severe educational problems for the child so
 17 impaired that the child cannot be accommodated in a special
 18 education program designed solely for one of the
 19 impairments. The term does not include deaf/blind children.

20 {9}{8} "Orthopedically-impaired" "Orthopedic
 21 impairment" means a severe orthopedic impairment which
 22 disability that adversely affects a child's educational
 23 performance. The term includes but is not limited to
 24 impairment caused by congenital anomaly (e.g., clubfoot or
 25 absence of some member), impairments caused by disease

1 (e.g., poliomyelitis, or bone tuberculosis), and impairments
 2 from other causes (e.g., fractures or burns which that cause
 3 contractures, amputation, cerebral palsy).

4 {10}{9} "Other health-impaired" "Other health
 5 impairment" means:

6 {a} having an autistic condition that is manifested by
 7 severe communication and other developmental and educational
 8 problems; or

9 {b} having limited strength, vitality, or alertness due
 10 to chronic or acute health problems, such as a heart
 11 condition, tuberculosis, rheumatic fever, nephritis, asthma,
 12 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
 13 leukemia, or diabetes, THAT ADVERSELY AFFECTS A CHILD'S
 14 EDUCATIONAL PERFORMANCE.

15 {11}{10} "Related services" means transportation and
 16 such any developmental, corrective, and other supportive
 17 services as that are required to assist a handicapped child
 18 with disabilities to benefit from special education and
 19 includes speech-language pathology, audiology, occupational
 20 therapy, and physical therapy.

21 {12}{11} "Special education" means specially designed
 22 instruction, given at no cost to the parents or guardians,
 23 to meet the unique needs of a handicapped child with
 24 disabilities, including but not limited to classroom
 25 instruction, conducted in a classroom, home, hospital,

1 institution, or other setting and instruction in physical
 2 education, home instruction, and instruction in hospitals
 3 and institutions.

4 ~~{13}~~(12) "Specific learning disability" means a disorder
 5 in one or more of the basic psychological processes involved
 6 in understanding or in using language, spoken or written,
 7 which that may manifest itself in an imperfect ability to
 8 listen, think, speak, read, write, spell, or do mathematical
 9 calculations. The term includes but is not limited to such
 10 conditions as perceptual handicaps, brain injury, minimal
 11 brain dysfunction, dyslexia, and developmental aphasia. The
 12 term does not include children who have learning problems
 13 which that are primarily the result of visual, hearing, or
 14 motor handicaps; ~~mental retardation~~ cognitive delay; or
 15 environmental, cultural, or economic disadvantages.

16 ~~{14}~~(13) ~~"Speech/language---impaired"~~ "Speech-language
 17 impairment" means a communication disorder, such as
 18 stuttering, impaired articulation, or a language or voice
 19 impairment, which that adversely affects a child's
 20 interpersonal relationships or educational performance.

21 ~~{15}~~(14) "Surrogate parent" means an individual
 22 appointed to safeguard a child's rights and protect the
 23 child's interests in educational evaluation, placement, and
 24 hearing or appeal procedures concerning the child.

25 ~~{16}~~(15) ~~"Visually---handicapped"~~ "Visual impairment"

1 ~~means a visual~~ an impairment which that, after correction,
 2 adversely affects a child's educational performance. The
 3 term includes both ~~partially-seeing~~ partial blindness and
 4 ~~blind-children~~ blindness."

5 **Section 4.** Section 20-7-411, MCA, is amended to read:

6 **"20-7-411. Regular classes preferred -- obligation to**
 7 **establish special education program. (1) All handicapped**
 8 **children with disabilities in Montana are entitled to a free**
 9 **appropriate public education provided in the least**
 10 **restrictive alternative setting. To the maximum extent**
 11 **appropriate, handicapped children with disabilities,**
 12 **including children in public or private institutions or**
 13 **other care facilities, shall must be educated with children**
 14 **who are not handicapped do not have disabilities. Separate**
 15 **schooling or other removal of handicapped children with**
 16 **disabilities from the regular educational environment may**
 17 **occur only when the nature or severity of the handicap**
 18 **disability is such that education in regular classes with**
 19 **the use of supplementary aids and services cannot be**
 20 **achieved satisfactorily.**

21 (2) After September 1, 1977, the board of trustees of
 22 every school district ~~must~~ shall provide or establish and
 23 maintain a special education program for every handicapped
 24 person with a disability as herein defined between the ages
 25 of 6 and 18, inclusive.

1 (3) On or before September 1, 1990, the board of
2 trustees of each elementary district shall provide or
3 establish and maintain a special education program for each
4 handicapped preschool child with disabilities between the
5 ages of 3 and 6, inclusive.

6 (4) The board of trustees of any a school district may
7 meet its obligation to serve handicapped persons with
8 disabilities by establishing its own special education
9 program, by establishing a cooperative special education
10 program, or by participating in a regional services
11 program."

12 **Section 5.** Section 20-7-412, MCA, is amended to read:

13 "20-7-412. **Establishment of individual district special**
14 **education program.** (1) The trustees of any a district, upon
15 obtaining the approval of the superintendent of public
16 instruction, shall establish and maintain a special
17 education program whenever, in the judgment of the trustees
18 and the superintendent of public instruction:

19 (a) there are sufficient numbers of handicapped
20 children with disabilities in the district to justify the
21 establishment of a program; or

22 (b) an individual child requires special education
23 services such as home or hospital tutoring, school-to-home
24 telephone communication, or other individual programs.

25 (2) Programs may be established for handicapped persons

1 with disabilities between the ages of 0 and 21 when the
2 superintendent of public instruction and the trustees have
3 determined that such the programs will:

4 (a) assist a person to achieve levels of competence
5 that will enable him to participate in the regular
6 instruction of the district when he could not participate
7 without special education;

8 (b) permit the conservation or early acquisition of
9 skills which that will provide the person with an equal
10 opportunity to participate in the regular instruction of the
11 district; or

12 (c) provide other demonstrated educational advantages
13 which that will materially benefit the person.

14 (3) Approval and operation of programs established
15 pursuant to subsection (2) do not obligate the state or a
16 school district to offer regular educational programs to a
17 similar age group unless specifically provided by law.

18 (4) When an agency which that has responsibility for a
19 handicapped person with disabilities over 21 but not more
20 than 25, inclusive, cannot provide appropriate services to
21 that person, the agency may contract with the local school
22 district to provide such the services."

23 **Section 6.** Section 20-7-414, MCA, is amended to read:

24 "20-7-414. **Determination of children in need and type**
25 **of special education needed -- approval of classes and**

1 programs by superintendent. (1) The determination of the
 2 children requiring special education and the type of special
 3 education needed by these children is the responsibility of
 4 the trustees, and the determination must be made in
 5 compliance with the procedures established in the rules of
 6 the superintendent of public instruction. Whenever the
 7 trustees of a school district or the governing authority of
 8 an institution learn of a handicapped child with
 9 disabilities in their jurisdiction who is in need of special
 10 education, they shall determine whether that the child is in
 11 need of a surrogate parent by--determining--whether if the
 12 parents or guardian is--unknown--or-unavailable cannot be
 13 identified or, after reasonable efforts, the whereabouts of
 14 the parents cannot be discovered or if the child is a ward
 15 of the state. The determination must be made within 10 days
 16 of the date on which the trustees of a school district or
 17 the governing authority of an institution learned of the
 18 presence of the child in the district. If the child is in
 19 need of a surrogate parent, the trustees of a school
 20 district or the governing authority of an institution must
 21 shall nominate a surrogate parent for the child as provided
 22 in 20-7-461.

23 (2) Whenever the trustees of any a district intend to
 24 establish a special education class or program, they shall
 25 apply for approval and funding of the class or program by

1 the superintendent of public instruction. The superintendent
 2 of public instruction shall approve or disapprove the
 3 application for the special education class or program on
 4 the basis of its compliance with the laws of the state of
 5 Montana, the special education policies adopted by the board
 6 of public education, and the rules of the superintendent of
 7 public instruction. No A special education class may not be
 8 operated by the trustees without the approval of the
 9 superintendent of public instruction. Each special education
 10 class or program must be approved annually to be funded as
 11 part of the foundation program for special education."

12 **Section 7.** Section 20-7-461, MCA, is amended to read:

13 "**20-7-461. Appointment and termination of appointment**
 14 **of surrogate parent.** (1) Any person may advise the trustees
 15 of a school district or the governing authority of an
 16 institution of a handicapped child with disabilities within
 17 the district who may be in need of a surrogate parent. The
 18 trustees of a school district or the governing authority of
 19 an institution must shall determine whether the child is in
 20 need of a surrogate parent as provided in 20-7-414. If the
 21 trustees of a school district or the governing authority of
 22 an institution determine that the child is in need of a
 23 surrogate parent, they shall nominate a surrogate parent for
 24 the child within 30 days of that determination.

25 (2) The person nominated as a surrogate parent must be

1 an adult who is not an employee of a state or local
 2 educational agency. The surrogate parent may not have a
 3 vested interest that will conflict with his representation
 4 and protection of the child. The surrogate, whenever
 5 practicable, must be knowledgeable about the educational
 6 system, special education requirements, and the legal rights
 7 of the child in relation to the educational system. Whenever
 8 practicable, the surrogate parent must be familiar with the
 9 cultural or language background of the child.

10 (3) The nomination for appointment of a surrogate
 11 parent, along with all necessary supporting documents, must
 12 be submitted to the youth court for official appointment of
 13 the surrogate parent by the court. ~~if--the--court--does--not~~
 14 ~~appoint--the--nominee,--the~~ The trustees of a school district
 15 or the governing authority of an institution ~~must--make~~
 16 ~~another---nomination--under--this--section~~ shall take all
 17 reasonable action to ensure that the youth court appoints or
 18 denies the appointment of a person nominated as a surrogate
 19 parent within 45 days of the court's receipt of all
 20 necessary supporting documents. If the youth court denies an
 21 appointment, the trustees of a district or the governing
 22 authority of an institution shall nominate another person to
 23 be appointed as the surrogate parent.

24 (4) The superintendent of public instruction shall
 25 adopt rules for a procedure to terminate the appointment of

1 a surrogate parent when:

- 2 (a) a child's parents are identified;
- 3 (b) the whereabouts of the parents are discovered;
- 4 (c) the child is no longer a ward of the state; or
- 5 (d) the surrogate parent wishes to discontinue his
 6 appointment."

7 **SECTION 8. SECTION 20-9-321, MCA, IS AMENDED TO READ:**

8 **"20-9-321. Foundation program and contingency funds for**
 9 **special education. (1) For the purpose of establishing the**
 10 **foundation program amount for a current year special**
 11 **education program for a school district, the superintendent**
 12 **of public instruction shall determine the total estimated**
 13 **cost of the special education program for the school**
 14 **district on the basis of a special education program budget**
 15 **submitted by the district. The budget must be prepared on**
 16 **forms provided by the superintendent of public instruction**
 17 **and must set out for each program:**

18 (a) the estimated allowable costs associated with
 19 operating the program where allowable costs are as defined
 20 in 20-7-431;

21 (b) the number of pupils expected to be enrolled in the
 22 program; and

23 (c) any other data required by the superintendent of
 24 public instruction for budget justification purposes and to
 25 administer the provisions of 20-9-315 through 20-9-321.

1 (2) The total amount of allowable costs approved by the
 2 superintendent of public instruction is the special
 3 education foundation program amount for current year special
 4 education program purposes. The total amount of allowable
 5 costs that are approved for the special education budget may
 6 not, under any condition, be less than the foundation
 7 program amount for one regular ANB for each full-time
 8 special pupil in the school district.

9 (3) Any amount of the special education allowable costs
 10 for a district approved under the provisions of subsection
 11 (2) that is an increase in the approved allowable costs from
 12 the previous school fiscal year and is a result of expanded
 13 programs or recalculations of the special education
 14 allowable costs base may be deposited and managed in the
 15 separate account of the miscellaneous programs fund of the
 16 district that is prescribed in subsection (4).

17 (4) If a special education program is implemented or
 18 expanded during a given school term too late to be included
 19 in the determination of the district foundation program for
 20 the school year as prescribed in this part, allowable costs
 21 approved under the budgeting provisions of subsections (1)
 22 and (2) for the operation of the program during the given
 23 year must be funded from any legislative appropriation for
 24 contingency financing for special education. Contingency
 25 funds granted under this subsection must be deposited in a

1 separate account of the miscellaneous programs fund of the
 2 district as provided in 20-9-507. However, if contingency
 3 funds are not available, then subject to the approval of the
 4 program by the superintendent under the emergency budget
 5 provisions of 20-9-161(5), allowable costs for the given
 6 year may be added to the foundation program amount for
 7 special education for the subsequent school year. The
 8 allowable costs must be recorded as previous year special
 9 education expenses in the school district budget for the
 10 subsequent school year.

11 (5) (a) The special education contingency funds in
 12 subsection (4):

13 (i) are biennially appropriated;

14 (ii) are for emergencies that may arise in the special
 15 education programs of school districts or special education
 16 cooperatives; and

17 (iii) may be used to fund positions that have gone
 18 unfilled for a full school fiscal year and for which state
 19 special education funds were not awarded.

20 (b) The board of trustees of a district or the
 21 management board of a special education cooperative may
 22 apply for contingency funding by submitting to the
 23 superintendent of public instruction, in the form prescribed
 24 by the superintendent of public instruction, written
 25 documentation that describes the need for the funds.

1 †4)†6) The sum of the previous year special education
 2 expenses as defined in subsection subsections (3) and (4)
 3 and the foundation program amount for current year special
 4 education as defined in subsections (1) and (2) is the
 5 special education budget for accounting purposes.

6 †5)†7) The foundation program amount for special
 7 education must be added to the foundation program amount of
 8 the regular program ANB defined in 20-9-311 and 20-9-313 to
 9 obtain the total foundation program amount for the
 10 district."

11 **Section 9.** Section 53-4-101, MCA, is amended to read:

12 "53-4-101. **Definitions.** As used in this part, the
 13 following definitions apply:

14 (1) "Child welfare services" means the establishing,
 15 extending, and strengthening of child welfare services
 16 (especially in predominantly rural areas) for the protection
 17 and care of abused, dependent, or neglected children.

18 (2) "Department" means the department of family
 19 services provided for in 2-15-2401.

20 (3) (a) "Emotionally disturbed child" means a child
 21 determined by a psychologist, psychiatrist, licensed social
 22 worker, or special education child study team (established
 23 under rules adopted by the superintendent of public
 24 instruction to implement Title 20, chapter 7, part 4) to
 25 have:

1 (i) an identifiable mental health problem as identified
 2 in a nationally recognized classification system or as
 3 defined in 20-7-401†4)†5); and

4 (ii) a substantial impairment, evident for a reasonable
 5 length of time, that is characterized by a dysfunction in
 6 any of the following areas:

7 (A) relationships;

8 (B) behavior;

9 (C) cognition; or

10 (D) education.

11 (b) The nationally recognized classification system
 12 referred to in subsection (3)(a)(i) must be one recognized
 13 by rules established by the department.

14 (4) "Public assistance" or "assistance" means any type
 15 of monetary or other assistance furnished under this title
 16 to a person by a state or county agency, regardless of the
 17 original source of the assistance."

18 **NEW SECTION. Section 10.** Name change -- code
 19 commissioner instruction. Whenever it appears in Title 20
 20 and in all law enacted by the 52nd legislature, the code
 21 commissioner is directed to change the term "handicapped
 22 child" to "child with disabilities" and the term
 23 "handicapped children" to "children with disabilities".

24 **NEW SECTION. Section 11.** Effective date. [This act] is
 25 effective July 1, 1991.