

HOUSE BILL NO. 494

INTRODUCED BY DOWELL
BY REQUEST OF THE SUPERINTENDENT
OF PUBLIC INSTRUCTION

IN THE HOUSE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 18, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 82; NOES, 15.
FEBRUARY 22, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
MARCH 15, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1993	SECOND READING, CONCURRED IN.
MARCH 17, 1993	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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INTRODUCED BY House BILL NO. 494
Daniel
BY REQUEST OF THE SUPERINTENDENT
OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SPECIAL EDUCATION LAWS TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401, 20-7-403, 20-7-411, 20-7-414, 20-7-461, AND 52-2-101, MCA; REPEALING SECTIONS 20-7-413 AND 20-7-415, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. 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) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology

device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a condition that is manifested by severe communication and other developmental and educational

problems developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

{2}(4) "Child with disabilities" means a child with evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech-language speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities, and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

{3}(5) "Cognitive delay" means significantly subaverage

general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

{4}(7) "Deafness" means a hearing impairment that is so severe that the child's--hearing-is-nonfunctional-for-the purpose--of child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

{5}(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or

depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

~~{6}{9}~~ "Free appropriate public education" means the provision--of--regular-or-special-education-and-related-aids and--services--that--are---designed---to---meet---individual educational---needs---of---children---with--disabilities--are adequately-as-the-needs-of-children-without-disabiities-are met special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

~~{7}{10}~~ "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not

included within the definition of deafness.

~~{8}{11}~~ "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

~~{9}{12}~~ "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

~~{10}{13}~~ "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work

1 services in schools, and parental counseling and training.

2 (14) "Special education" means specially designed
3 instruction, given at no cost to the parents or guardians,
4 to meet the unique needs of a child with disabilities,
5 including but not limited to instruction conducted in a
6 classroom, home, hospital, institution, or other setting and
7 instruction in physical education.

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

20 (16) "Speech-language impairment" means a
21 communication disorder, such as stuttering, impaired
22 articulation, or a language or voice impairment, that
23 adversely affects a child's interpersonal relationships or
24 educational performance.

25 (17) "Surrogate parent" means an individual

1 appointed to safeguard a child's rights and protect the
2 child's interests in educational evaluation, placement, and
3 hearing or appeal procedures concerning the child.

4 (18) "Traumatic brain injury" means an acquired
5 injury to the brain caused by an external physical force,
6 resulting in total or partial functional disability or
7 psychosocial impairment, or both, that adversely affects a
8 child's educational performance. The term does not apply to
9 brain injuries that are congenital or degenerative or to
10 brain injuries that are induced by birth trauma.

11 (19) "Visual impairment" means an impairment that, after
12 correction, adversely affects a child's educational
13 performance. The term includes both partial blindness and
14 blindness."

15 **Section 2.** Section 20-7-403, MCA, is amended to read:

16 "20-7-403. Duties of superintendent of public
17 instruction. The superintendent of public instruction shall
18 supervise and coordinate the conduct of special education in
19 the state by:

20 (1) recommending to the board of public education
21 adoption of those policies necessary to establish a planned
22 and coordinated program of special education in the state;

23 (2) administering the policies adopted by the board of
24 public education;

25 (3) certifying special education teachers on the basis

1 of the special qualifications for the teachers as prescribed
2 by the board of public education;

3 (4) establishing procedures to be used by school
4 district personnel in identifying children with
5 disabilities;

6 (5) recommending to districts the type of special
7 education class or program needed to serve the children with
8 disabilities of the districts and preparing appropriate
9 guides for developing ~~individual~~ individualized education
10 programs;

11 (6) seeking for local districts appropriate
12 interdisciplinary assistance from public and private
13 agencies in diagnosing the special education needs of
14 children, in planning programs, and in admitting and
15 discharging children from those programs;

16 (7) assisting local school districts, institutions, and
17 other agencies in developing full-service programs for all
18 children with disabilities;

19 (8) approving, as they are proposed and annually
20 thereafter after approval, those special education classes
21 or programs that comply with the laws of the state of
22 Montana, policies of the board of public education, and the
23 regulations of the superintendent of public instruction;

24 (9) providing technical assistance to district
25 superintendents, principals, teachers, and trustees;

1 (10) conducting conferences, offering advice, and
2 otherwise cooperating with parents and other interested
3 persons;

4 (11) preparing ensuring appropriate training and
5 instructional material for persons appointed as surrogate
6 parents that outlines their duties toward the child,
7 limitations on what they may do for the child, duties in
8 relation to the child's records, sources of assistance
9 available to the surrogate parent, and the need to seek
10 competent legal assistance in implementing hearing or appeal
11 procedures;

12 (12) ~~acting--as--the--coordinating--agency--with--federal~~
13 ~~agencies, other state agencies,--political--subdivisions--of~~
14 ~~the--state--and--private--bodies--on--matters--concerning--special~~
15 ~~education, ensuring that the requirements of the Individuals~~
16 ~~With Disabilities Education Act are met and that each~~
17 ~~educational program for children with disabilities~~
18 ~~administered within the state, including each program~~
19 ~~administered by any other agency, is under the general~~
20 ~~supervision of the superintendent of public instruction,~~
21 ~~meets the accreditation standards of the board of public~~
22 ~~education, and meets the requirements of the superintendent~~
23 ~~of public instruction, reserving to the other agencies and~~
24 ~~political subdivisions their full responsibilities for other~~
25 ~~aspects of the care of children needing special education or~~

1 for providing or paying for some or all of the costs of a
 2 free appropriate public education to children with
 3 disabilities within the state;

4 ~~(13) administering--regional--special-education-services~~
 5 ~~for-children-in-need-of-special-education-in-accordance-with~~
 6 ~~policies-of-the-board-of-public-education;~~

7 ~~{14}~~ contracting for the delivery of audiological
 8 services to those children allowed by Montana law in
 9 accordance with policies of the board of public education;
 10 and

11 ~~{15}~~~~{14}~~ contracting with a public school district or a
 12 private residential facility for the provision of a free
 13 appropriate public education for a child when a state agency
 14 places a child with disabilities who is in need of special
 15 education in:

16 (a) an in-state residential facility or children's
 17 psychiatric hospital; or

18 (b) an out-of-state public school or private
 19 residential facility."

20 **Section 3.** Section 20-7-411, MCA, is amended to read:

21 "20-7-411. Regular classes preferred -- obligation to
 22 establish special education program. (1) All children with
 23 disabilities in Montana are entitled to a free appropriate
 24 public education provided in the least restrictive
 25 alternative setting. To the maximum extent appropriate,

1 children with disabilities, including children in public or
 2 private institutions or other care facilities, must be
 3 educated with children who do not have disabilities.
 4 Separate schooling or other removal of children with
 5 disabilities from the regular educational environment may
 6 occur only when the nature or severity of the disability is
 7 such that education in regular classes with the use of
 8 supplementary aids and services cannot be achieved
 9 satisfactorily.

10 (2) ~~After--September-17-1977--the~~ The board of trustees
 11 of every school district shall provide or establish and
 12 maintain a special education program for ~~every-person~~ each
 13 child with a--disability--as--herein--defined disabilities
 14 between the ages of 6 and 18, inclusive.

15 (3) ~~On--or--before--September-17-1990--the~~ The board of
 16 trustees of each elementary district shall provide or
 17 establish and maintain a special education program for each
 18 preschool child with disabilities between the ages of 3 and
 19 6, inclusive.

20 (4) The board of trustees of a school district may meet
 21 its obligation to serve persons with disabilities by
 22 establishing its own special education program, by
 23 establishing a cooperative special education program, or by
 24 participating in a regional services program.

25 (5) The trustees of a school district shall ensure that

assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as a part of the child's special education services, related services, or supplementary aids."

Section 4. Section 20-7-414, MCA, is amended to read:

"20-7-414. Determination of children in need and type of special education needed -- approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the trustees school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. ~~Whenever the trustees of a school district or the governing authority of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district, if the child is in need of a~~

~~surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who are residents of the school district.~~

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education."

Section 5. Section 20-7-461, MCA, is amended to read:

"20-7-461. Appointment and termination of appointment of surrogate parent. (1) ~~Any person may advise the trustees of a school district or the governing authority of an~~

1 institution-of-a-child-with-disabilities-within-the-district
 2 who-may-be-in-need-of-a-surrogate-parent-The-trustees-of--a
 3 school-district-or-the-governing-authority-of-an-institution
 4 shall--determine-whether-the-child-is-in-need-of-a-surrogate
 5 parent-as-provided-in-20-7-414-If-the-trustees-of-a--school
 6 district--or--the--governing--authority--of--an--institution
 7 determine--that--the-child-is-in-need-of-a-surrogate-parent,
 8 they-shall-nominate-a-surrogate-parent-for-the-child--within
 9 30---days--of--that--determination- A school district or
 10 institution that provides education to a child with
 11 disabilities shall adopt procedures to assign an individual
 12 to act as a surrogate parent for a child with disabilities
 13 whenever the parents or guardian cannot be identified or,
 14 after reasonable efforts, the location of the parents cannot
 15 be discovered or if the child is a ward of the state. The
 16 determination of need for a surrogate parent must be made
 17 within 10 days of the date on which the school district or
 18 its designee or the governing authority of an institution or
 19 its designee learns of the presence of the child in the
 20 district. If the child is in need of a surrogate parent, the
 21 trustees of a school district or their designee or the
 22 governing authority of an institution or its designee shall
 23 nominate a surrogate for the child within 30 days of that
 24 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 the person's
 4 representation and protection of the child. The surrogate,
 5 whenever practicable, must be knowledgeable about the
 6 educational system, special education requirements, and the
 7 legal rights of the child in relation to the educational
 8 system. Whenever practicable, the surrogate parent must be
 9 familiar with the cultural or language background of the
 10 child.

11 (3) The nomination for appointment of a surrogate
 12 parent, along with all necessary supporting documents, must
 13 be submitted to the youth court for official appointment of
 14 the surrogate parent by the court. The trustees of a school
 15 district or their designee or the governing authority of an
 16 institution or its designee shall take all reasonable action
 17 to ensure that the youth court appoints or denies the
 18 appointment of a person nominated as a surrogate parent
 19 within 45 days of the court's receipt of all necessary
 20 supporting documents. If the youth court denies an
 21 appointment, the trustees of a district or their designee or
 22 the governing authority of an institution or its designee
 23 shall nominate another person to be appointed as the
 24 surrogate parent.

25 (4) The superintendent of public instruction shall

1 adopt rules for a procedure to terminate the appointment of
2 a surrogate parent when:

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

9 **Section 6.** Section 52-2-101, MCA, is amended to read:

10 "52-2-101. Definitions. As used in this part, the
11 following definitions apply:

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

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

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

- 24 (i) an identifiable mental health problem as identified
25 in a nationally recognized classification system or as

1 defined in 20-7-401~~(5)~~(8); and

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

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

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

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

16 NEW SECTION. **Section 7. Repealer.** Sections 20-7-413
17 and 20-7-415, MCA, are repealed.

18 NEW SECTION. **Section 8. Effective date.** [This act] is
19 effective July 1, 1993.

-End-

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

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INTRODUCED BY House BILL NO. 494
Daniel
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(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology

THERE ARE NO CHANGES ON THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO INTRODUCED (WHITE) BILL
FOR COMPLETE TEXT.

1 House BILL NO. 494
 2 INTRODUCED BY Daniel
 3 BY REQUEST OF THE SUPERINTENDENT
 4 OF PUBLIC INSTRUCTION

5
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{10}{13} "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, and physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work

services in schools, and parental counseling and training.

†11†(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

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

†13†(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

†14†(17) "Surrogate parent" means an individual

appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

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Section 2. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

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1 of the special qualifications for the teachers as prescribed
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3 (4) establishing procedures to be used by school
4 district personnel in identifying children with
5 disabilities;

6 (5) recommending to districts the type of special
7 education class or program needed to serve the children with
8 disabilities of the districts and preparing appropriate
9 guides for developing individual individualized education
10 programs;

11 (6) seeking for local districts appropriate
12 interdisciplinary assistance from public and private
13 agencies in diagnosing the special education needs of
14 children, in planning programs, and in admitting and
15 discharging children from those programs;

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17 other agencies in developing full-service programs for all
18 children with disabilities;

19 (8) approving, as they are proposed and annually
20 thereafter after approval, those special education classes
21 or programs that comply with the laws of the state of
22 Montana, policies of the board of public education, and the
23 regulations of the superintendent of public instruction;

24 (9) providing technical assistance to district
25 superintendents, principals, teachers, and trustees;

1 (10) conducting conferences, offering advice, and
2 otherwise cooperating with parents and other interested
3 persons;

4 (11) preparing ensuring appropriate training and
5 instructional material for persons appointed as surrogate
6 parents that outlines their duties toward the child,
7 limitations on what they may do for the child, duties in
8 relation to the child's records, sources of assistance
9 available to the surrogate parent, and the need to seek
10 competent legal assistance in implementing hearing or appeal
11 procedures;

12 (12) acting--as--the--coordinating--agency--with--federal
13 agencies, other state agencies, political subdivisions of
14 the state, and private bodies on matters concerning special
15 education, ensuring that the requirements of the Individuals
16 With Disabilities Education Act are met and that each
17 educational program for children with disabilities
18 administered within the state, including each program
19 administered by any other agency, is under the general
20 supervision of the superintendent of public instruction,
21 meets the accreditation standards of the board of public
22 education, and meets the requirements of the superintendent
23 of public instruction, reserving to the other agencies and
24 political subdivisions their full responsibilities for other
25 aspects of the care of children needing special education or

1 for providing or paying for some or all of the costs of a
 2 free appropriate public education to children with
 3 disabilities within the state;

4 ~~(13) administering--regional--special-education-services~~
 5 ~~for-children-in-need-of-special-education-in-accordance-with~~
 6 ~~policies-of-the-board-of-public-education;~~

7 ~~{14}~~ contracting for the delivery of audiological
 8 services to those children allowed by Montana law in
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11 ~~{15}~~{14} contracting with a public school district or a
 12 private residential facility for the provision of a free
 13 appropriate public education for a child when a state agency
 14 places a child with disabilities who is in need of special
 15 education in:

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 17 psychiatric hospital; or

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20 **Section 3.** Section 20-7-411, MCA, is amended to read:

21 "20-7-411. Regular classes preferred -- obligation to
 22 establish special education program. (1) All children with
 23 disabilities in Montana are entitled to a free appropriate
 24 public education provided in the least restrictive
 25 alternative setting. To the maximum extent appropriate,

1 children with disabilities, including children in public or
 2 private institutions or other care facilities, must be
 3 educated with children who do not have disabilities.
 4 Separate schooling or other removal of children with
 5 disabilities from the regular educational environment may
 6 occur only when the nature or severity of the disability is
 7 such that education in regular classes with the use of
 8 supplementary aids and services cannot be achieved
 9 satisfactorily.

10 (2) After--September-17-1977--the The board of trustees
 11 of every school district shall provide or establish and
 12 maintain a special education program for every-person each
 13 child with a--disability--as--herein--defined disabilities
 14 between the ages of 6 and 18, inclusive.

15 (3) On--or--before--September-17-1990--the The board of
 16 trustees of each elementary district shall provide or
 17 establish and maintain a special education program for each
 18 preschool child with disabilities between the ages of 3 and
 19 6, inclusive.

20 (4) The board of trustees of a school district may meet
 21 its obligation to serve persons with disabilities by
 22 establishing its own special education program, by
 23 establishing a cooperative special education program, or by
 24 participating in a regional services program.

25 (5) The trustees of a school district shall ensure that

1 assistive technology devices or assistive technology
 2 services, or both, are made available to a child with
 3 disabilities if required as a part of the child's special
 4 education services, related services, or supplementary
 5 aids."

6 **Section 4.** Section 20-7-414, MCA, is amended to read:

7 "20-7-414. Determination of children in need and type
 8 of special education needed -- approval of classes and
 9 programs by superintendent. (1) The determination of the
 10 children requiring special education and the type of special
 11 education needed by these children is the responsibility of
 12 the trustees school district, and the determination must be
 13 made in compliance with the procedures established in the
 14 rules of the superintendent of public instruction. Whenever
 15 ~~the-trustees-of-a-school-district-or-the-governing-authority~~
 16 ~~of-an-institution-learn-of--a--child--with--disabilities--in~~
 17 ~~their-jurisdiction-who-is-in-need-of-special-education, they~~
 18 ~~shall--determine--that--the--child-is-in-need-of-a-surrogate~~
 19 ~~parent-if-the-parents-or-guardian-cannot-be--identified--or,~~
 20 ~~after--reasonable--efforts,--the--whereabouts-of-the-parents~~
 21 ~~cannot-be-discovered-or-if-the-child-is-a-ward-of-the-state,~~
 22 ~~The-determination-must-be-made-within-10-days-of-the-date-on~~
 23 ~~which-the-trustees-of-a-school--district--or--the--governing~~
 24 ~~authority--of--an-institution-learned-of-the-presence-of-the~~
 25 ~~child-in-the--district,--if--the--child--is--in--need--of--a~~

1 ~~surrogate--parent,--the-trustees-of-a-school-district-or-the~~
 2 ~~governing-authority--of--an--institution--shall--nominate--a~~
 3 ~~surrogate--parent--for-the-child-as-provided-in-20-7-461~~ The
 4 school district shall make available a free appropriate
 5 public education to all children who are eligible under the
 6 Individuals With Disabilities Education Act and who are
 7 residents of the school district.

8 (2) Whenever the trustees of a district intend to
 9 establish a special education class or program, they shall
 10 apply for approval and funding of the class or program by
 11 the superintendent of public instruction. The superintendent
 12 of public instruction shall approve or disapprove the
 13 application for the special education class or program on
 14 the basis of its compliance with the laws of the state of
 15 Montana, the special education policies adopted by the board
 16 of public education, and the rules of the superintendent of
 17 public instruction. A special education class may not be
 18 operated by the trustees without the approval of the
 19 superintendent of public instruction. Each special education
 20 class or program must be approved annually to be funded as
 21 part of the foundation program for special education."

22 **Section 5.** Section 20-7-461, MCA, is amended to read:

23 "20-7-461. Appointment and termination of appointment
 24 of surrogate parent. (1) ~~Any-person-may-advise-the--trustees~~
 25 ~~of--a--school--district--or--the--governing--authority-of-an~~

1 institution-of-a-child-with-disabilities-within-the-district
 2 who-may-be-in-need-of-a-surrogate-parent:-The-trustees-of--a
 3 school-district-or-the-governing-authority-of-an-institution
 4 shall--determine-whether-the-child-is-in-need-of-a-surrogate
 5 parent-as-provided-in-20-7-414,-if-the-trustees-of-a--school
 6 district--or--the--governing--authority--of--an--institution
 7 determine--that--the-child-is-in-need-of-a-surrogate-parent,
 8 they-shall-nominate-a-surrogate-parent-for-the-child--within
 9 30---days--of--that--determination. A school district or
 10 institution that provides education to a child with
 11 disabilities shall adopt procedures to assign an individual
 12 to act as a surrogate parent for a child with disabilities
 13 whenever the parents or guardian cannot be identified or,
 14 after reasonable efforts, the location of the parents cannot
 15 be discovered or if the child is a ward of the state. The
 16 determination of need for a surrogate parent must be made
 17 within 10 days of the date on which the school district or
 18 its designee or the governing authority of an institution or
 19 its designee learns of the presence of the child in the
 20 district. If the child is in need of a surrogate parent, the
 21 trustees of a school district or their designee or the
 22 governing authority of an institution or its designee shall
 23 nominate a surrogate for the child within 30 days of that
 24 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 the person's
 4 representation and protection of the child. The surrogate,
 5 whenever practicable, must be knowledgeable about the
 6 educational system, special education requirements, and the
 7 legal rights of the child in relation to the educational
 8 system. Whenever practicable, the surrogate parent must be
 9 familiar with the cultural or language background of the
 10 child.

11 (3) The nomination for appointment of a surrogate
 12 parent, along with all necessary supporting documents, must
 13 be submitted to the youth court for official appointment of
 14 the surrogate parent by the court. The trustees of a school
 15 district or their designee or the governing authority of an
 16 institution or its designee shall take all reasonable action
 17 to ensure that the youth court appoints or denies the
 18 appointment of a person nominated as a surrogate parent
 19 within 45 days of the court's receipt of all necessary
 20 supporting documents. If the youth court denies an
 21 appointment, the trustees of a district or their designee or
 22 the governing authority of an institution or its designee
 23 shall nominate another person to be appointed as the
 24 surrogate parent.

25 (4) The superintendent of public instruction shall

1 adopt rules for a procedure to terminate the appointment of
2 a surrogate parent when:

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

9 **Section 6.** Section 52-2-101, MCA, is amended to read:

10 "52-2-101. Definitions. As used in this part, the
11 following definitions apply:

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

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

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

- 24 (i) an identifiable mental health problem as identified
25 in a nationally recognized classification system or as

1 defined in 20-7-401(5)(8); and

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

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

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

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

16 **NEW SECTION. Section 7. Repealer.** Sections 20-7-413
17 and 20-7-415, MCA, are repealed.

18 **NEW SECTION. Section 8. Effective date.** [This act] is
19 effective July 1, 1993.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1993

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration House Bill No. 494 (first reading copy -- blue), respectfully report that House Bill No. 494 be amended as follows and as so amended be concurred in.

Signed: Chet Blaylock
Senator Chet Blaylock, Chair

That such amendments read:

1. Page 10, line 21.

Following: "meets the"

Strike: "accreditation"

Insert: "education"

2. Page 14, lines 6 and 7.

Following: "who"

Strike: remainder of line 6 through "of" on line 7

Insert: "reside in"

-END-

SENATE

HB 494

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AM Amd. Coord.
AM Sec. of Senate

Bob Brown
Senator Carrying Bill

HOUSE BILL NO. 494

INTRODUCED BY DOWELL

BY REQUEST OF THE SUPERINTENDENT

OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SPECIAL EDUCATION LAWS TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401, 20-7-403, 20-7-411, 20-7-414, 20-7-461, AND 52-2-101, MCA; REPEALING SECTIONS 20-7-413 AND 20-7-415, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. 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) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology

device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a condition that--is--manifested--by severe-communication-and-other-developmental-and-educational

problems developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

{2}(4) "Child with disabilities" means a child with evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech-language speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities, and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

{3}(5) "Cognitive delay" means significantly subaverage

general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

{6} "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

{4}(7) "Deafness" means a hearing impairment that is so severe that the child's--hearing-is-nonfunctional-for-the purpose--of child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

{5}(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or

1 depression; or a tendency to develop physical symptoms or
 2 fears associated with personal or school problems. The term
 3 includes schizophrenia. The term does not include social
 4 maladjustment, unless it is determined that the child is
 5 emotionally disturbed.

6 {6}(9) "Free appropriate public education" means the
 7 ~~provision--of--regular-or-special-education-and-related-aids~~
 8 ~~and--services--that--are---designed---to---meet---individual~~
 9 ~~educational---needs---of---children---with---disabilities---as~~
 10 ~~adequately-as-the-needs-of-children-without-disabilities-are~~
 11 met special education and related services that:

12 (a) are provided at public expense under public
 13 supervision and direction and without charge;

14 (b) meet the accreditation standards of the board of
 15 public education, the special education requirements of the
 16 superintendent of public instruction, and the requirements
 17 of the Individuals With Disabilities Education Act;

18 (c) include preschool, elementary school, and high
 19 school education in Montana; and

20 (d) are provided in conformity with an individualized
 21 education program that meets the requirements of the
 22 Individuals With Disabilities Education Act.

23 {7}(10) "Hearing impairment" means an impairment in
 24 hearing, whether permanent or fluctuating, that adversely
 25 affects a child's educational performance but that is not

1 included within the definition of deafness.

2 {8}(11) "Orthopedic impairment" means a severe
 3 orthopedic disability that adversely affects a child's
 4 educational performance. The term includes but is not
 5 limited to impairment caused by congenital anomaly (e.g.,
 6 clubfoot or absence of some member), impairments caused by
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 21 therapy, recreation, including therapeutic recreation, early
 22 identification and assessment of disabilities in children,
 23 counseling services, including rehabilitation counseling,
 24 and medical services for diagnostic or evaluation purposes.
 25 The term also includes school health services, social work

services in schools, and parental counseling and training.

~~(14)~~ "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

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3 (4) establishing procedures to be used by school
4 district personnel in identifying children with
5 disabilities;

6 (5) recommending to districts the type of special
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8 disabilities of the districts and preparing appropriate
9 guides for developing ~~individual~~ individualized education
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12 interdisciplinary assistance from public and private
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14 children, in planning programs, and in admitting and
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 12 the trustees school district, and the determination must be
 13 made in compliance with the procedures established in the
 14 rules of the superintendent of public instruction. Whenever
 15 ~~the-trustees-of-a-school-district-or-the-governing-authority~~
 16 ~~of--an--institution--learn--of--a-child-with-disabilities-in~~
 17 ~~their-jurisdiction-who-is-in-need-of-special-education,--they~~
 18 ~~shall-determine-that-the-child-is-in--need--of--a--surrogate~~
 19 ~~parent--if--the-parents-or-guardian-cannot-be-identified-or,~~
 20 ~~after-reasonable-efforts,--the--whereabouts--of--the--parents~~
 21 ~~cannot-be-discovered-or-if-the-child-is-a-ward-of-the-state.~~
 22 ~~The-determination-must-be-made-within-10-days-of-the-date-on~~
 23 ~~which--the--trustees--of--a-school-district-or-the-governing~~
 24 ~~authority-of-an-institution-learned-of-the-presence--of--the~~
 25 ~~child--in--the--district,--if--the--child--is--in--need-of-a~~

1 ~~surrogate-parent,--the-trustees-of-a-school-district--or--the~~
 2 ~~governing--authority--of--an--institution--shall--nominate-a~~
 3 ~~surrogate-parent-for-the-child-as-provided-in--20-7-461. The~~
 4 ~~school district shall make available a free appropriate~~
 5 ~~public education to all children who are eligible under the~~
 6 ~~Individuals With Disabilities Education Act and who are~~
 7 ~~residents-of RESIDE IN the school district.~~

8 (2) Whenever the trustees of a district intend to
 9 establish a special education class or program, they shall
 10 apply for approval and funding of the class or program by
 11 the superintendent of public instruction. The superintendent
 12 of public instruction shall approve or disapprove the
 13 application for the special education class or program on
 14 the basis of its compliance with the laws of the state of
 15 Montana, the special education policies adopted by the board
 16 of public education, and the rules of the superintendent of
 17 public instruction. A special education class may not be
 18 operated by the trustees without the approval of the
 19 superintendent of public instruction. Each special education
 20 class or program must be approved annually to be funded as
 21 part of the foundation program for special education."

22 **Section 5.** Section 20-7-461, MCA, is amended to read:

23 "20-7-461. Appointment and termination of appointment
 24 of surrogate parent. (1) ~~Any-person-may-advise-the-trustees~~
 25 ~~of-a-school--district--or--the--governing--authority--of--an~~

1 institution-of-a-child-with-disabilities-within-the-district
 2 who--may-be-in-need-of-a-surrogate-parent--The-trustees-of-a
 3 school-district-or-the-governing-authority-of-an-institution
 4 shall-determine-whether-the-child-is-in-need-of-a--surrogate
 5 parent--as-provided-in-20-7-414--If-the-trustees-of-a-school
 6 district--or--the--governing--authority--of--an--institution
 7 determine-that-the-child-is-in-need-of-a--surrogate--parent,
 8 they--shall-nominate-a-surrogate-parent-for-the-child-within
 9 30--days--of--that--determination. A school district or
 10 institution that provides education to a child with
 11 disabilities shall adopt procedures to assign an individual
 12 to act as a surrogate parent for a child with disabilities
 13 whenever the parents or guardian cannot be identified or,
 14 after reasonable efforts, the location of the parents cannot
 15 be discovered or if the child is a ward of the state. The
 16 determination of need for a surrogate parent must be made
 17 within 10 days of the date on which the school district or
 18 its designee or the governing authority of an institution or
 19 its designee learns of the presence of the child in the
 20 district. If the child is in need of a surrogate parent, the
 21 trustees of a school district or their designee or the
 22 governing authority of an institution or its designee shall
 23 nominate a surrogate for the child within 30 days of that
 24 determination.

(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~~ the person's
 4 representation and protection of the child. The surrogate,
 5 whenever practicable, must be knowledgeable about the
 6 educational system, special education requirements, and the
 7 legal rights of the child in relation to the educational
 8 system. Whenever practicable, the surrogate parent must be
 9 familiar with the cultural or language background of the
 10 child.

(3) The nomination for appointment of a surrogate
 parent, along with all necessary supporting documents, must
 be submitted to the youth court for official appointment of
 the surrogate parent by the court. The trustees of a school
 district or their designee or the governing authority of an
 institution or its designee shall take all reasonable action
 to ensure that the youth court appoints or denies the
 appointment of a person nominated as a surrogate parent
 within 45 days of the court's receipt of all necessary
 supporting documents. If the youth court denies an
 appointment, the trustees of a district or their designee or
 the governing authority of an institution or its designee
 shall nominate another person to be appointed as the
 surrogate parent.

(4) The superintendent of public instruction shall

1 adopt rules for a procedure to terminate the appointment of
2 a surrogate parent when:

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

9 **Section 6.** Section 52-2-101, MCA, is amended to read:

10 "52-2-101. Definitions. As used in this part, the
11 following definitions apply:

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

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

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

- 24 (i) an identifiable mental health problem as identified
25 in a nationally recognized classification system or as

1 defined in 20-7-401~~(5)~~(8); and

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

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

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

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

16 NEW SECTION. **Section 7.** Repealer. Sections 20-7-413
17 and 20-7-415, MCA, are repealed.

18 NEW SECTION. **Section 8.** Effective date. [This act] is
19 effective July 1, 1993.

-End-