URGENT: Please oppose
SB 175 Sub 4 Special Education Least Restrictive Requirement Amendments

Please contact your Senator and ask them to OPPOSE SB 175 Special Education Least Restrictive Requiremen t Amendments. SB 175 Sub 3 is currently circled on the Senate 3rd Reading Calendar. It could be uncircled this morning, 2/26/2021, and it is assumed that the 4th Substitute will be adopted. Utah PTA is opposed to all versions of SB 175.

The Bill can be found here: S.B. 175 Third Substitute -- Special Education Least Restrictive Requirement Amendments (Sen. Anderegg, J.)

Here are some important facts from Utah PTA Special Needs Specialist, Karen Conder:

- The IEP team, which includes the parents, determines what the student with a disability needs, then the LEA is responsible to provide it. The IEP team doesn't deal with funding, only with determining what the student needs. This is currently happening and won't change with the passage of this bill.
- This bill does not provide more flexibility for special education services. Special education in the least restrictive environment (LRE) is already required and also what is best for the individual student as outlined in their individual plan. This is currently happening and won't change with the passage of this bill.
- Students eligible for special education are not currently restricted from attending general education classes, in fact the state proactively encourages it. The current rules don't prohibit placing students eligible for special education into general education classes, they prohibit LEAs from filling classes with students not eligible for special education and funding it with special education funding. There is no need for this bill.
- Students receiving special education services receive special education funding in addition to general education funding. Special education funds are based on the number of students in the program, but the funds are not allotted to individual students nor do they follow the students around. They go into a pot and try to serve all the needs of all the students in special education. Most of the time it is not enough.
- This bill "waters down" the services students with disabilities would receive. More special education money given to students without disabilities takes intensity and support away from students with disabilities.
- Utah has had much success with inclusion of students with disabilities in general education classes. This bill threatens to interfere with that.

Braided funds
Currently LEAs are able to "braid" state special ed funds and federal IDEA funds and then pay for special education services through the one "braided" fund. If this bill passes, those two funds will need to be kept separate and used separately to pay for different services since the state rules will differ from the federal rules. This bill would make changes to the state system, but not the federal system (the Utah Legislature doesn't have the power to do that). This would make it more complicated for LEAs to track funds. It would be confusing with two different tracking systems. It could result in errors in tracking which would require LEAs to repay funds not tracked correctly from unrestricted funds.

An Important Omission
Lines 190-206 in the bill define "incidental benefit" and stipulations for how special education funding can be used. One important stipulation from state rule was not included in this bill – the requirement that
"the service being provided . . . must be outlined on the IEP for at least half of students participating in the group." This stipulation makes it very clear how special education funds can be used and gives LEAs the guardrail they need to accurately allocate special education funds and simultaneously provide required and appropriate services to students with disabilities to ensure they have the best possible outcomes given their individual circumstances.

USBE provided the definition of "incidental benefit" (or ways in which students not eligible for special education can benefit from special education instruction and programs) in Utah rule at the request of stakeholders to provide clarification. Incidental benefit has been considered in case law, and the Utah definition is based on that case law, and technical assistance provide by US Dept of Education Centers. The definition was meant to make it simpler and clearer for fiscal monitors, auditors, and LEAs. They wanted to let stakeholders know what was allowable. They wanted to clarify rather than restrict.

This bill is opposed by Utah PTA, USSA, USBA, USBE, the Utah Parent Center, multiple charter schools, and many special education and disability advocacy groups. Please contact your senator and ask them to protect special education funding.