

AMENDED IN ASSEMBLY APRIL 16, 2001

AMENDED IN ASSEMBLY MARCH 15, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 164

Introduced by Assembly Member Harman

January 31, 2001

An act to amend Section ~~56502~~–56500.3 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Harman. Special education: due process hearings.

Existing law provides procedural safeguards, including due process hearings for the resolution of complaints regarding alleged violations of the Individuals with Disabilities Act. *Existing law also authorizes parties to special education disputes to seek resolution through mediation prior to filing a request for a due process hearing.*

This bill would *authorize the local education agency to establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, for the purpose of encouraging the use and explaining the benefits of the mediation process to the parents, as specified.* ~~require, at least 30 days prior to filing a request for a due process hearing with the Superintendent of Public Instruction, the party initiating the request to prepare and file, by certified mail, return receipt requested, with the school district superintendent, a written notice of intent to file a request for a due process hearing, as specified.~~

~~The bill would authorize, within 10 business days of receipt of the notice, the district superintendent, at his or her discretion, to contact the party initiating the request and arrange to meet with the party, on an informal basis, to make a good faith attempt to resolve the issues.~~

~~The bill would require preparation and filing of the notice as a condition precedent to the right of the initiating party to a due process hearing.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 56502 of the Education Code is~~
2 *SECTION 1. Section 56500.3 of the Education Code is*
3 *amended to read:*
4 56500.3. (a) It is the intent of the Legislature that parties to
5 special education disputes be encouraged to seek resolution
6 through mediation prior to filing a request for a due process
7 hearing. It is also the intent of the Legislature that these voluntary
8 prehearing request mediation conferences be an informal process
9 conducted in a nonadversarial atmosphere to resolve issues
10 relating to the identification, assessment, or educational placement
11 of the child, or the provision of a free, appropriate public education
12 to the child, to the satisfaction of both parties. Therefore, attorneys
13 or other independent contractors used to provide legal advocacy
14 services shall not attend or otherwise participate in the prehearing
15 request mediation conferences.
16 (b) Nothing in this part shall preclude the parent or the public
17 education agency from being accompanied and advised by
18 nonattorney representatives in the mediation conferences and
19 consulting with an attorney prior to or following a mediation
20 conference. For purposes of this section, “attorney” means an
21 active, practicing member of the State Bar of California or another
22 independent contractor used to provide legal advocacy services,
23 but does not mean a parent of the pupil who is also an attorney.
24 (c) Requesting or participating in a mediation conference is not
25 a prerequisite to requesting a due process hearing.
26 (d) *The local education agency may, pursuant to subparagraph*
27 *(B) of paragraph (2) of subsection (e) of Section 1415 of Title 20*
28 *of the United States Code, establish procedures to require parents*



1 *who choose not to use the mediation process to meet, at a time and*
2 *location convenient to the parents, for the purpose of encouraging*
3 *the use and explaining the benefits of the mediation process to the*
4 *parents. A meeting pursuant to this subdivision shall be with a*
5 *disinterested party who is under contract with either of the*
6 *following:*

7 *(1) A parent training and information center or community*
8 *parent resource center established pursuant to Section 1482 or*
9 *1483 of Title 20 of the United States Code.*

10 *(2) An appropriate alternative dispute resolution entity.*

11 *(e) All requests for a mediation conference shall be filed with*
12 *the superintendent. The party initiating a mediation conference by*
13 *filing a written request with the superintendent shall provide the*
14 *other party to the mediation with a copy of the request at the same*
15 *time the request is filed with the superintendent. The mediation*
16 *conference shall be conducted by a person knowledgeable in the*
17 *process of reconciling differences in a nonadversarial manner and*
18 *under contract with the department pursuant to Section 56504.5.*
19 *The mediator shall be knowledgeable in the laws and regulations*
20 *governing special education.*

21 ~~*(e)*~~

22 *(f) The prehearing mediation conference shall be scheduled*
23 *within 15 days of receipt by the superintendent of the request for*
24 *mediation. The mediation conference shall be completed within*
25 *30 days after receipt of the request for mediation unless both*
26 *parties to the prehearing mediation conference agree to extend the*
27 *time for completing the mediation.*

28 ~~*(f)*~~

29 *(g) Based upon the mediation conference, the district*
30 *superintendent, the county superintendent, or the director of the*
31 *public education agency, or his or her designee, may resolve the*
32 *issue or issues. However, this resolution shall not conflict with*
33 *state or federal law and shall be to the satisfaction of both parties.*
34 *A copy of the written resolution shall be mailed to each party*
35 *within 10 days following the mediation conference.*

36 ~~*(g)*~~

37 *(h) If the mediation conference fails to resolve the issues to the*
38 *satisfaction of all parties, the party who requested the mediation*
39 *conference has the option of filing for a state-level hearing*
40 *pursuant to Section 56505. The mediator may assist the parties in*



1 specifying any unresolved issues to be included in the hearing
2 request.

3 ~~(h)~~

4 (i) Any mediation conference held pursuant to this section shall
5 be held at a time and place reasonably convenient to the parent and
6 pupil.

7 ~~(i)~~

8 (j) The mediation conference shall be conducted in accordance
9 with regulations adopted by the board.

10 ~~(j)~~

11 (k) Notwithstanding any procedure set forth in this chapter, a
12 public education agency and a parent may, if the party initiating the
13 mediation conference so chooses, meet informally to resolve any
14 issue or issues to the satisfaction of both parties prior to the
15 mediation conference.

16 ~~(k)~~

17 (l) The procedures and rights contained in this section shall be
18 included in the notice of parent rights attached to the pupil's
19 assessment plan pursuant to Section 56321.

20 ~~amended to read:~~

21 ~~56502. (a) (1) At least 30 days prior to filing a request for a~~
22 ~~due process hearing with the superintendent, the party initiating~~
23 ~~the request shall prepare and file, by certified mail, return receipt~~
24 ~~requested, with the district superintendent, a written notice stating~~
25 ~~all of the following:~~

26 ~~(A) The intention of the initiating party to file a request for a~~
27 ~~due process hearing.~~

28 ~~(B) A brief description of the issues in dispute.~~

29 ~~(C) The relief requested.~~

30 ~~(2) Within 10 business days of receipt of the notice prepared~~
31 ~~and filed pursuant to paragraph (1), the district superintendent~~
32 ~~may, at his or her discretion, contact the party initiating the request~~
33 ~~and arrange to meet with the party, on an informal basis, to make~~
34 ~~a good faith attempt to resolve the issues.~~

35 ~~(3) The preparation and filing of the notice required pursuant~~
36 ~~to paragraph (1) shall be a condition precedent to the right of the~~
37 ~~initiating party to a due process hearing. However, technical~~
38 ~~deficiencies in the manner of filing shall not deprive the initiating~~
39 ~~party of the right to a due process hearing where the district~~
40 ~~superintendent had actual notice.~~



1 ~~(b) Notwithstanding subdivision (a), filing of the written notice~~
2 ~~shall not be required if the parties have met and discussed the issues~~
3 ~~in an attempt to reach resolution.~~

4 ~~(c) All requests for a due process hearing shall be filed with the~~
5 ~~superintendent. The party initiating a due process hearing by filing~~
6 ~~a written request with the superintendent shall provide the other~~
7 ~~party to the hearing with a copy of the request at the same time as~~
8 ~~the request is filed with the superintendent. The superintendent~~
9 ~~shall take steps to ensure that within 45 days after receipt of the~~
10 ~~written hearing request the hearing is immediately commenced~~
11 ~~and completed, including, any mediation requested at any point~~
12 ~~during the hearing process pursuant to paragraph (2) of~~
13 ~~subdivision (b) of Section 56501, and a final administrative~~
14 ~~decision is rendered, unless a continuance has been granted~~
15 ~~pursuant to Section 56505.~~

16 ~~(d) Notwithstanding any procedure set forth in this chapter, a~~
17 ~~public education agency and a parent may, if the party initiating the~~
18 ~~hearing so chooses, meet informally to resolve any issue or issues~~
19 ~~relating to the identification, assessment, or education and~~
20 ~~placement of the child, or the provision of a free, appropriate~~
21 ~~public education to the child, to the satisfaction of both parties~~
22 ~~prior to the hearing. The informal meeting shall be conducted by~~
23 ~~the district superintendent, county superintendent, or director of~~
24 ~~the public education agency or his or her designee. Any designee~~
25 ~~appointed pursuant to this subdivision shall have the authority to~~
26 ~~resolve the issue or issues.~~

27 ~~(e) Upon receipt by the superintendent of a written request by~~
28 ~~the parent or public education agency, the superintendent or his or~~
29 ~~her designee or designees shall immediately notify, in writing, all~~
30 ~~parties of the request for the hearing and the scheduled date for the~~
31 ~~hearing. The notice shall advise all parties of all their rights~~
32 ~~relating to procedural safeguards. The superintendent or his or her~~
33 ~~designee shall provide both parties with a list of persons and~~
34 ~~organizations within the geographical area that can provide free or~~
35 ~~reduced cost representation or other assistance in preparing for the~~
36 ~~due process hearing. This list shall include a brief description of~~
37 ~~the requirement to qualify for the services. The superintendent or~~



- 1 ~~his or her designee shall have complete discretion in determining~~
- 2 ~~which individuals or groups shall be included on the list.~~

