

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 462

Introduced by Senator Blakeslee

February 16, 2011

~~An act relating to special education.~~ *An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.*

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. ~~Special education: litigation: costs: special education advocates: certification.~~

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would require special education local plan areas, collectively, and in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education

program team, or, upon the invitation of a parent, in a mediation conference, as specified. The bill would require special education local plan areas to provide alternative dispute resolution training, and the Office of Administrative Hearings to administer a test, to persons seeking certification, as specified. The bill would also require the Office of Administrative Hearings to certify, and maintain a registry of, persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would delete the provision providing that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list and instead provide that the Superintendent or his or her designee shall certify that the listed persons or organizations provide services for free or at a reduced cost.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Existing law requires all children with disabilities residing in the state, regardless of the severity of their disabilities, and who are in need of special education and related services, to be identified, located, and assessed. Existing law requires a local educational agency to provide for the identification and assessment of the exceptional needs of an individual, and the planning of an instructional program to meet the assessed needs.

This bill would state the intent of the Legislature to enact legislation that would address litigation fees incurred by school districts, special education local plan areas, and parents concerning special education disagreements.

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

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

1 SECTION 1. Chapter 4.2 (commencing with Section 56395)
2 is added to Part 30 of Division 4 of Title 2 of the Education Code,
3 to read:

4
5 CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES

6
7 56395. It is the intent of the Legislature to protect families of
8 individuals with exceptional needs and to improve the relationship
9 between special education advocates and school districts by
10 providing a voluntary special advocate certification program.

11 56395.1. For the purpose of this chapter:

12 (a) "Alternative dispute resolution" means nonadversarial
13 techniques used to reduce conflict and to come to a mutually
14 beneficial agreement.

15 (b) "Certified special education advocate" means any
16 nonattorney person, paid or unpaid, who speaks, writes, or works
17 on behalf of a pupil who qualifies as an individual with exceptional
18 needs, as defined in Section 56026, and who has been certified
19 pursuant to the provisions of this chapter.

20 56395.2. Special education local plan areas, in collaboration
21 with the department, shall do all of the following:

22 (a) Collectively, and in consultation with the Office of
23 Administrative Hearings, develop a voluntary special education
24 advocate certification program that includes a test, which shall

1 *be administered by the Office of Administrative Hearings, to certify*
2 *that the person has sufficient knowledge and understanding of the*
3 *process for resolving special education disputes.*

4 *(b) Determine the yearly fee to be charged by a special*
5 *education local plan area to a person seeking certification as a*
6 *special education advocate that shall not exceed the reasonable*
7 *costs of providing training pursuant to subdivision (c).*

8 *(c) Provide alternative dispute resolution training at least twice*
9 *per year for persons seeking certification as a special education*
10 *advocate. This training also may be offered by an entity approved*
11 *by a special education local plan area. The training shall consist*
12 *of all of the following.*

13 *(1) At least four hours of alternative dispute resolution training.*

14 *(2) Relevant ethics training.*

15 *(3) Review of relevant special education laws.*

16 *(d) Notify the Office of Administrative Hearings whether a*
17 *person seeking certification has completed the alternative dispute*
18 *resolution training.*

19 *56395.3. The Office of Administrative Hearings shall do all of*
20 *the following:*

21 *(a) Administer a test, either online or in person, to a person*
22 *seeking certification as a special education advocate. The test*
23 *shall be offered in the native language of the person seeking*
24 *certification as a special education advocate.*

25 *(b) Certify a person who has successfully passed the test*
26 *described in subdivision (a) and who has fulfilled the training*
27 *requirements listed in subdivision (c) of Section 56395.2.*
28 *Certification may be granted for a period not to exceed five years.*

29 *(c) Post a registry of certified special education advocates on*
30 *its Internet Web site consistent with subdivision (h) of Section*
31 *56502.*

32 *(d) Charge a fee to a person seeking certification as a special*
33 *education advocate that shall not exceed the reasonable costs of*
34 *administering the test pursuant to subdivision (a) and maintaining*
35 *the registry pursuant to subdivision (c).*

36 *56395.4. (a) A certified special education advocate shall do*
37 *all of the following:*

38 *(1) Upon the invitation of a parent, speak, write, or work on*
39 *behalf of a pupil who qualifies as an individual with exceptional*

1 *needs pursuant to paragraph (1) of subdivision (b) of Section*
2 *56341, or subdivision (b) of Section 56500.3.*

3 *(2) Register with the Office of Administrative Hearings and*
4 *renew their certification every five years. Registrants shall indicate*
5 *whether they are a paid or an unpaid advocate. If a person*
6 *registers as a paid advocate, and he or she is referred by an*
7 *attorney, he or she shall be required to report the identity of the*
8 *person who employs him or her.*

9 *(3) Have a report, available upon request by parents, special*
10 *education local plan area staff, a school district, or the department,*
11 *regarding the frequency of their advocacy activities, the subject*
12 *matter of the issues upon which he or she has worked, the fees, if*
13 *any, he or she has received for his or her advocacy, and the length*
14 *of time he or she took to resolve each case.*

15 *(4) Disclose at the beginning of a mediation session, in writing,*
16 *his or her relationship to the pupil or his or her parents and*
17 *indicate whether he or she is receiving payment of any kind for*
18 *his or her services.*

19 *(b) A certified special education advocate may not be*
20 *reimbursed by parents, organizations, advocacy groups, or school*
21 *districts for the certification fee imposed pursuant to subdivision*
22 *(b) of Section 56395.2 or subdivision (d) of Section 56395.3.*

23 *56395.5. (a) A parent, as defined in Section 56028, is not*
24 *required to be certified pursuant to the provisions of this chapter*
25 *in order to represent his or her child.*

26 *(b) A mediator, as described in subdivision (d) of Section*
27 *56500.3, shall require nonparent participants in a mediation*
28 *session to disclose their relationship to the pupil and their status*
29 *as an advocate.*

30 *SEC. 2. Section 56502 of the Education Code is amended to*
31 *read:*

32 *56502. (a) All requests for a due process hearing shall be filed*
33 *with the Superintendent in accordance with Section 300.508(a)*
34 *and (b) of Title 34 of the Code of Federal Regulations.*

35 *(b) The Superintendent shall develop a model form to assist*
36 *parents and guardians in filing a request for due process that is in*
37 *accordance with Section 300.509 of Title 34 of the Code of Federal*
38 *Regulations.*

39 *(c) (1) The party, or the attorney representing the party,*
40 *initiating a due process hearing by filing a written request with the*

1 Superintendent shall provide the other party to the hearing with a
2 copy of the request at the same time as the request is filed with the
3 Superintendent. The due process hearing request notice shall
4 remain confidential. In accordance with Section 1415(b)(7)(A) of
5 Title 20 of the United States Code, the request shall include the
6 following:

7 (A) The name of the child, the address of the residence of the
8 child, or available contact information in the case of a homeless
9 child, and the name of the school the child is attending.

10 (B) In the case of a homeless child or youth within the meaning
11 of paragraph (2) of Section 725 of the federal McKinney-Vento
12 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available
13 contact information for the child and the name of the school the
14 child is attending.

15 (C) A description of the nature of the problem of the child
16 relating to the proposed initiation or change, including facts relating
17 to the problem.

18 (D) A proposed resolution of the problem to the extent known
19 and available to the party at the time.

20 (2) A party may not have a due process hearing until the party,
21 or the attorney representing the party, files a request that meets
22 the requirements listed in this subdivision.

23 (d) (1) The due process hearing request notice required by
24 Section 1415(b)(7)(A) of Title 20 of the United States Code shall
25 be deemed to be sufficient unless the party receiving the notice
26 notifies the due process hearing officer and the other party in
27 writing that the receiving party believes the due process hearing
28 request notice has not met the notice requirements. The party
29 providing a hearing officer notification shall provide the
30 notification within 15 days of receiving the due process hearing
31 request notice. Within five days of receipt of the notification, the
32 hearing officer shall make a determination on the face of the notice
33 of whether the notification meets the requirements of Section
34 1415(b)(7)(A) of Title 20 of the United States Code, and shall
35 immediately notify the parties in writing of the determination.

36 (2) (A) The response to the due process hearing request notice
37 shall be made within 10 days of receiving the request notice in
38 accordance with Section 1415(c)(2)(B) of Title 20 of the United
39 States Code.

1 (B) In accordance with Section 300.508(e)(1) of Title 34 of the
2 Code of Federal Regulations, if the local educational agency has
3 not sent a prior written notice under Section 56500.4 and Section
4 300.503 of Title 34 of the Code of Federal Regulations to the parent
5 regarding the subject matter contained in the due process hearing
6 request of the parent, the response from the local educational
7 agency to the parent shall include all of the following:

8 (i) An explanation of why the agency proposed or refused to
9 take the action raised in the due process hearing request.

10 (ii) A description of other options that the individualized
11 education program team considered and the reasons why those
12 options were rejected.

13 (iii) A description of each assessment procedure, assessment,
14 record, or report the agency used as the basis for the proposed or
15 refused action.

16 (iv) A description of other factors that are relevant to the
17 proposed or refused action of the agency.

18 (C) A response by a local educational agency under
19 subparagraph (B) shall not be construed to preclude the local
20 educational agency from asserting that the due process request of
21 the parent was insufficient, where appropriate.

22 (D) Except as provided under subparagraph (B), the party
23 receiving a due process hearing request notice, within 10 days of
24 receiving the notice, shall send to the other party, in accordance
25 with Section 300.508(f) of Title 34 of the Code of Federal
26 Regulations, a response that specifically addresses the issues raised
27 in the due process hearing request notice.

28 (e) A party may amend a due process hearing request notice
29 only if the other party consents in writing to the amendment and
30 is given the opportunity to resolve the hearing issue through a
31 meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the
32 United States Code, or the due process hearing officer grants
33 permission, except that the hearing officer may only grant
34 permission at any time not later than five days before a due process
35 hearing occurs. The applicable timeline for a due process hearing
36 under this chapter shall recommence at the time the party files an
37 amended notice, including the timeline under Section 1415(f)(1)(B)
38 of Title 20 of the United States Code.

39 (f) The Superintendent shall take steps to ensure that within 45
40 days after receipt of the written hearing request the hearing is

1 immediately commenced and completed, including, any mediation
2 requested at any point during the hearing process pursuant to
3 paragraph (2) of subdivision (b) of Section 56501, and a final
4 administrative decision is rendered, unless a continuance has been
5 granted pursuant to Section 56505.

6 (g) Notwithstanding any procedure set forth in this chapter, a
7 public agency and a parent ~~or guardian~~, if the party initiating the
8 hearing so chooses, may meet informally to resolve an issue or
9 issues relating to the identification, assessment, or education and
10 placement of the child, or the provision of a free appropriate public
11 education to the child, to the satisfaction of both parties prior to
12 the hearing. The informal meeting shall be conducted by the district
13 superintendent, county superintendent, or director of the public
14 agency or his or her designee. A designee appointed pursuant to
15 this subdivision shall have the authority to resolve the issue or
16 issues.

17 (h) Upon receipt by the Superintendent of a written request by
18 the parent ~~or guardian~~ or public agency, the Superintendent or his
19 or her designee or designees immediately shall notify, in writing,
20 all parties of the request for the hearing and the scheduled date for
21 the hearing. The notice shall advise all parties of all their rights
22 relating to procedural safeguards. The Superintendent or his or her
23 designee shall provide both parties with a list of persons and
24 organizations within the geographical area that can provide free
25 or reduced cost representation or other assistance in preparing for
26 the due process hearing. This list shall include a brief description
27 of the requirement to qualify for the services. The Superintendent
28 or his or her designee shall ~~have complete discretion in determining~~
29 ~~which individuals or groups shall be included on the list~~ *certify*
30 *that the listed persons or organizations provide services for free*
31 *or at a reduced cost.*

32 (i) In accordance with Section 1415(f)(3)(B) of Title 20 of the
33 United States Code, the party requesting the due process hearing
34 shall not be allowed to raise issues at the due process hearing that
35 were not raised in the notice filed under this section, unless the
36 other party agrees otherwise.

37 *SEC. 3. If the Commission on State Mandates determines that*
38 *this act contains costs mandated by the state, reimbursement to*
39 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*
2 *4 of Title 2 of the Government Code.*
3 ~~SECTION 1. It is the intent of the Legislature to enact~~
4 ~~legislation that would address litigation fees incurred by school~~
5 ~~districts, special education local plan areas, and parents concerning~~
6 ~~special education disagreements.~~

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