

AMENDED IN SENATE MAY 4, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 462

Introduced by Senator Blakeslee
(Coauthor: Senator Runner)

February 16, 2011

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: 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~~ *authorize* special education local plan areas to provide alternative dispute resolution training, and *require* 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 require 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~~ *to certify that the listed persons, including special education advocates, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 education advocate certification
11 program.

12 56395.1. For the purpose of this chapter:

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

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

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

23 ~~(a)~~

24 (1) Collectively, and in consultation with the Office of
25 Administrative Hearings, develop a voluntary special education
26 advocate certification program that includes a test, which shall be
27 administered by the Office of Administrative Hearings, to certify
28 that the person has sufficient knowledge and understanding of the
29 process for resolving special education disputes.

30 ~~(b)~~

31 (2) Determine the yearly fee to be charged by a special education
32 local plan area to a person seeking certification as a special

1 education advocate that shall not exceed the reasonable costs of
2 providing training pursuant to subdivision ~~(e)~~ (b).

3 (3) *Notify the Office of Administrative Hearings whether a*
4 *person seeking certification has completed alternative dispute*
5 *resolution training.*

6 ~~(e) Provide~~

7 (b) *Special education local plan areas are authorized to provide*
8 *alternative dispute resolution training at least twice per year for*
9 *persons seeking certification as a special education advocate. This*
10 *training also may be offered by an entity ~~approved by~~ pursuant to*
11 *a contract with a special education local plan area. The training*
12 *shall may consist 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
20 of 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 shall
23 be offered in the native language of the person seeking certification
24 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 ~~(e)~~ (b) 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 *by successfully passing*
5 *the test described in subdivision (a) of Section 56395.3. Additional*
6 *training shall not be required in order to renew certification.*
7 Registrants shall indicate whether they are a paid or an unpaid
8 advocate. If a person registers as a paid advocate, and he or she is
9 referred by an attorney, he or she shall be required to report the
10 identity of the person who employs him or her.

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

17 (4) Disclose at the beginning of *an individualized education*
18 *program team meeting and at the beginning of* a mediation session,
19 in writing, his or her relationship to the pupil or his or her parents
20 and indicate whether he or she is receiving payment of any kind
21 for his or her services.

22 (b) A certified special education advocate ~~may~~ *shall* not be
23 reimbursed by a parent, organization, advocacy group, or school
24 district for the certification fee imposed pursuant to ~~subdivision~~
25 ~~(b) paragraph (2) of subdivision (a) of Section 56395.2 or~~
26 subdivision (d) of Section 56395.3.

27 (c) Nothing in this section shall be construed to allow fees ~~and~~
28 *or* costs awarded to a prevailing party pursuant to the federal
29 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
30 et seq.) to be awarded to a special education advocate.

31 56395.5. (a) A parent, as defined in Section 56028, is not
32 required to be certified pursuant to the provisions of this chapter
33 in order to represent his or her child.

34 (b) A mediator, as described in subdivision (d) of Section
35 56500.3, shall require nonparent participants in a mediation session
36 to disclose their relationship to the pupil and their status as an
37 advocate.

38 SEC. 2. Section 56502 of the Education Code is amended to
39 read:

1 56502. (a) All requests for a due process hearing shall be filed
2 with the Superintendent in accordance with Section 300.508(a)
3 and (b) of Title 34 of the Code of Federal Regulations.

4 (b) The Superintendent shall develop a model form to assist
5 parents in filing a request for due process that is in accordance
6 with Section 300.509 of Title 34 of the Code of Federal
7 Regulations.

8 (c) (1) The party, or the attorney representing the party,
9 initiating a due process hearing by filing a written request with the
10 Superintendent shall provide the other party to the hearing with a
11 copy of the request at the same time as the request is filed with the
12 Superintendent. The due process hearing request notice shall
13 remain confidential. In accordance with Section 1415(b)(7)(A) of
14 Title 20 of the United States Code, the request shall include the
15 following:

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

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

24 (C) A description of the nature of the problem of the child
25 relating to the proposed initiation or change, including facts relating
26 to the problem.

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

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

32 (d) (1) The due process hearing request notice required by
33 Section 1415(b)(7)(A) of Title 20 of the United States Code shall
34 be deemed to be sufficient unless the party receiving the notice
35 notifies the due process hearing officer and the other party in
36 writing that the receiving party believes the due process hearing
37 request notice has not met the notice requirements. The party
38 providing a hearing officer notification shall provide the
39 notification within 15 days of receiving the due process hearing
40 request notice. Within five days of receipt of the notification, the

1 hearing officer shall make a determination on the face of the notice
2 of whether the notification meets the requirements of Section
3 1415(b)(7)(A) of Title 20 of the United States Code, and shall
4 immediately notify the parties in writing of the determination.

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

9 (B) In accordance with Section 300.508(e)(1) of Title 34 of the
10 Code of Federal Regulations, if the local educational agency has
11 not sent a prior written notice under Section 56500.4 and Section
12 300.503 of Title 34 of the Code of Federal Regulations to the parent
13 regarding the subject matter contained in the due process hearing
14 request of the parent, the response from the local educational
15 agency to the parent shall include all of the following:

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

18 (ii) A description of other options that the individualized
19 education program team considered and the reasons why those
20 options were rejected.

21 (iii) A description of each assessment procedure, assessment,
22 record, or report the agency used as the basis for the proposed or
23 refused action.

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

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

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

36 (e) A party may amend a due process hearing request notice
37 only if the other party consents in writing to the amendment and
38 is given the opportunity to resolve the hearing issue through a
39 meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the
40 United States Code, or the due process hearing officer grants

1 permission, except that the hearing officer may only grant
2 permission at any time not later than five days before a due process
3 hearing occurs. The applicable timeline for a due process hearing
4 under this chapter shall recommence at the time the party files an
5 amended notice, including the timeline under Section 1415(f)(1)(B)
6 of Title 20 of the United States Code.

7 (f) The Superintendent shall take steps to ensure that within 45
8 days after receipt of the written hearing request the hearing is
9 immediately commenced and completed, including, any mediation
10 requested at any point during the hearing process pursuant to
11 paragraph (2) of subdivision (b) of Section 56501, and a final
12 administrative decision is rendered, unless a continuance has been
13 granted pursuant to Section 56505.

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

25 (h) Upon receipt by the Superintendent of a written request by
26 the parent or public agency, the Superintendent or his or her
27 designee or designees immediately shall notify, in writing, all
28 parties of the request for the hearing and the scheduled date for
29 the hearing. The notice shall advise all parties of all their rights
30 relating to procedural safeguards. The Superintendent or his or her
31 designee shall provide both parties with a list of persons, *including*
32 *special education advocates*, and organizations within the
33 geographical area that can provide free or reduced cost
34 representation or other assistance in preparing for the due process
35 hearing. This list shall include a brief description of the requirement
36 to qualify for the services. The Superintendent or his or her
37 designee shall certify that the listed persons or organizations
38 provide services for free or at a reduced cost, *but shall otherwise*
39 *have complete discretion in determining which individuals or*
40 *groups shall be included on the list.*

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

6 SEC. 3. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

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