

ASSEMBLY BILL

No. 2116

Introduced by Assembly Member Wagner

February 20, 2014

An act to amend Section 56507 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, as introduced, Wagner. Special education.

Existing law requires that every individual with exceptional needs, as defined, who is eligible, be provided with educational instruction, services, or both, at no cost to his or her parent or guardian or, as appropriate, to him or her. A free appropriate public education is required to be made available to individuals with exceptional needs in accordance with the federal Individuals with Disabilities Education Act and regulations adopted pursuant to that act. The federal Individuals with Disabilities Education Act authorizes a United States district court, in its discretion, to award reasonable attorney's fees as part of costs to a prevailing party who is the parent of a child with a disability in certain actions or proceedings, or to a prevailing state educational agency or local educational agency against the attorney of a parent in certain circumstances. State law references the attorney's fees provisions of the federal Individuals with Disabilities Education Act.

This bill would make nonsubstantive changes to the state law reference to the attorney's fees provisions of the federal Individuals with Disabilities Education Act.

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

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

1 SECTION 1. Section 56507 of the Education Code is amended
2 to read:

3 56507. (a) If either party to a due process hearing intends to
4 be represented by an attorney in the state hearing, notice of that
5 intent shall be given to the other party at least 10 days ~~prior to~~
6 *before* the hearing. The failure to provide that notice shall constitute
7 good cause for a continuance.

8 (b) (1) An award of reasonable attorney's fees to the prevailing
9 parent, guardian, or pupil, as the case may be, may only be made
10 either with the agreement of the parties following the conclusion
11 of the administrative hearing process or by a court of competent
12 jurisdiction pursuant to Section 1415(i)(3) of Title 20 of the United
13 States Code.

14 (2) In accordance with Section 1415(i)(3) of Title 20 of the
15 United States Code, the court, in its discretion, may award
16 reasonable attorney's fees as part of the costs to a prevailing party
17 who is a state educational agency or local educational agency in
18 *any of* the following circumstances:

19 (A) Against the attorney of a parent who files a due process
20 hearing request or subsequent cause of action that is frivolous,
21 unreasonable, or without foundation, or against the attorney of a
22 parent who continued to litigate after the litigation clearly became
23 frivolous, unreasonable, or without foundation.

24 (B) Against the attorney of a parent, or against the parent, if the
25 parent's due process hearing request or subsequent cause of action
26 was presented for any improper purpose, such as to harass, to cause
27 unnecessary delay, or to needlessly increase the cost of litigation.

28 (c) Public agencies shall not use federal funds distributed under
29 Part B of the federal Individuals with Disabilities Education Act
30 (20 U.S.C. Sec. 1400 et seq.), or other federal special education
31 funds, for the agency's own legal counsel or other advocacy costs,
32 that may include, but are not limited to, a private attorney or
33 employee of an attorney, legal paraprofessional, or other paid
34 advocate, related to a due process hearing or the appeal of a hearing
35 decision to the courts. Funds shall not be used to reimburse parents
36 who prevail and are awarded attorney's fees, pursuant to
37 subdivision (b), as part of the judgment. ~~Nothing in this~~ *This*
38 ~~subdivision shall~~ *does not* preclude public agencies from using

1 these funds for attorney services related to the establishment of
2 policy and programs, or responsibilities, under Part B of the federal
3 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
4 et seq.) and the program administration of these programs. This
5 subdivision does not apply to attorneys and others hired under
6 contract to conduct administrative hearings pursuant to subdivision
7 (a) of Section 56505.

8 (d) The hearing decision shall indicate the extent to which each
9 party has prevailed on each issue heard and decided, including
10 issues involving other public agencies named as parties to the
11 hearing.

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