
Education Committee

HB 1305

Brief Description: Improving access to and provision of a free appropriate public education for students with disabilities.

Sponsors: Representatives Pollet, Stonier, Ortiz-Self, Alvarado, Orwall, Leavitt, Senn, Bergquist, Bateman, Taylor, Reeves, Davis, Doglio, Santos, Reed, Kloba and Fosse.

Brief Summary of Bill

- Makes changes to requirements related to initial student evaluations for special education and to development and implementation of individualized education programs.
- Establishes certain special education due process hearing requirements.
- Establishes a grant program to make school psychologists and other providers available to conduct special education evaluations.
- Makes additional changes to special education laws.

Hearing Date:

Staff: Megan Wargacki (786-7194).

Background:

Special Education Law Generally.

Two of the main goals of special education law are to: (1) ensure that all children and youth with disabilities have the opportunity for a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) ensure the rights of children and youth with disabilities are protected.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Sources of special education law include the federal Individuals with Disabilities Education Act (IDEA), Part B; the federal Rehabilitation Act of 1973, Section 504; state statutes; and state administrative rules.

For individuals ages 3 through 21 (referred to as students) who are eligible for special education services, special education law applies to all political subdivisions and public institutions involved in the education of the students. This makes special education law applicable to: school districts, charter schools, state-tribal compact schools, the Washington State School for the Blind, the Washington Center for Deaf and Hard of Hearing Youth, and institutional education providers (collectively referred to as school districts). In addition, school districts are responsible for ensuring that the rights and protections under Part B of the IDEA are given to students who are referred to or placed in private facilities by the district.

Evaluation for, and Development of a Program of, Special Education Services.

School districts have an affirmative duty to identify and evaluate all students residing in the district who might need special education and related services. The process for initial special education evaluations and the process for development of a program of special education and related services are detailed and complex, so an overview of these processes is provided below.

Parents, and other people who know a student, may request that the student's resident school district evaluate the student for special education services. Within 25 school days of receiving the request, the school district must decide whether to evaluate the student.

If the school district decides to evaluate the student, it must notify the student's parent of the decision and attempt without unnecessary delay to obtain informed consent for the evaluation of the student. Once the school district receives the parent's consent, it generally has 35 school days to complete the evaluation, convene a group of qualified professionals and the student's parent to review the evaluation report, and determine whether the student is eligible for special education services.

Within 30 days of the determination that a student is eligible, a team composed of people who have knowledge or special expertise regarding the student and the student's educational needs, including the student's parent, meet to develop an individualized education program (IEP), which is a written description of the instruction and related services that will be provided to the student. Provision of special education and related services, in accordance with the student's IEP, must be made available to the student as soon as possible.

Special Education Due Process Hearings.

A due process hearing is a formal, legal proceeding conducted by an impartial administrative law judge. Parents and school districts have a right to request a due process hearing to resolve issues about the identification, evaluation, educational placement, or provision of free appropriate public education to a student with disabilities.

The IDEA and state law are silent about which party to the hearing has the burden of proving the facts at issue. In 2005, in *Schaffer v. Weast*, the United States Supreme Court held that the party requesting a due process hearing bears the burden of proof under the IDEA. The court declined to state whether states may override the default rule.

Summary of Bill:

Evaluation for Special Education Services.

There are multiple changes to the required process for initial special education evaluations, for example:

- If the parent of a student makes a request for the student to be evaluated for a disability or for eligibility for special education services, a school district must provide the parent with a document describing the referral request and initial special education evaluation processes, including relevant deadlines and parental consent requirements.
- Within 15 business days after receipt of a referral request for special education services, a school district must decide whether to conduct an initial evaluation to determine whether the student is eligible for special education services.
- Within five business days after making its evaluation decision, a school district must notify the parent of the referred student of the district's decision, using multiple communication channels. If a school district has decided to evaluate the student for special education services, the district must comply with the specified procedures and deadlines for obtaining parental consent to evaluate, for evaluating the student, and for the eligibility determination.
- When enrolling a student who has attended school in another school district and who was referred for an initial evaluation for special education services but who does not have an individualized education program (IEP), the receiving school district must continue the process of determining the student's eligibility for special education services where the transferring school district stopped.

Development of a Program for Special Education Services.

There are multiple changes to the required process for IEP development and provision of special education services, for example:

- A school district must provide prior notification to parents about the accommodations available for persons with disabilities who are in need of communication assistance or accommodations to fully participate in an IEP team meeting.
- Within five business days after receiving a request from a parent to convene an IEP team meeting, a school district must respond to a parent in writing with either an agreement to convene a meeting within 15 school days or an explanation for why a meeting is unnecessary.
- Staff who provide a significant level of support to a student on a regular basis must be invited to and compensated for participation in the student's IEP team meetings.
- Administrative and legal staff whose presence at an IEP team meeting does not serve the educational needs of a student are barred from attending the meeting.
- Within 30 calendar days of the determination that a student is eligible for special education

services, a school district must begin providing special education and related services in accordance with the student's IEP.

Special Education Due Process Hearings.

The school district has the burden of proof and the burden of production whenever it is a party to a special education due process hearing. Evidence showing that a student has not failed or been retained in a course or grade does not create the presumption that the school has provided the student with a free appropriate public education. In addition, the Superintendent of Public Instruction or the Superintendent's designee may order the IEP team to reconvene with a qualified interpreter, in circumstances where the parent was not able to fully participate in the adoption of an IEP.

Grant Program.

Subject to available funding, the Office of the Superintendent of Public Instruction (OSPI) must distribute up to \$10,000,000 per biennium to educational service districts for the purpose of making school psychologists and other providers available to conduct initial special education evaluations and reevaluations for special education. Each educational service district must submit a proposal to the OSPI describing its regional need and requesting funding to address that need. The OSPI must prioritize these proposals and may fund all or part of each proposal. This grant program expires August 1, 2029.

Additional Provisions.

Examples of additional provisions are described below:

- School districts must consult and collaborate with the Washington State School for the Blind and the Washington Center for Deaf and Hard of Hearing Youth.
- School districts must provide written translation of documents for each limited English proficient parent group that constitutes at least five percent of the school's total parent population or 1,000 persons, whichever is less.
- Specified entities providing special education or related services to Washington students must comply with state special education laws to the same extent as school districts.
- Certain special education provisions, including those authorizing the Superintendent of Public Instruction to establish sanctions for failure to comply with special education laws, are applied to the entire special education chapter.

Appropriation: None.

Fiscal Note: Requested on January 25, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.