

HOUSE BILL REPORT

HB 1305

As Reported by House Committee On:

Education
Appropriations

Title: An act relating to improving access to and provision of a free appropriate public education for students with disabilities.

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 History:

Committee Activity:

Education: 1/30/23, 2/9/23 [DPS];

Appropriations: 2/22/23, 2/24/23 [DP2S(w/o sub ED)].

Brief Summary of Second Substitute Bill

- Makes changes to requirements related to initial student evaluations for special education and to development of individualized education programs.
- Establishes, subject to appropriation, a grant program to make school psychologists and other providers available to conduct special education evaluations.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Santos, Chair; Shavers, Vice Chair; Bergquist, Callan, Eslick, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member.

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.

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; 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 Substitute 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 22 calendar days after receipt of a referral request for special education services, a school district must: (1) decide whether to conduct an initial evaluation to determine whether the student is eligible for special education services; and (2) 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, it must provide the student's parent with a document that informs the parent about the evaluation activities it plans to conduct, and that includes instructions for how and when to provide parental consent to evaluate, at the same time as it provides the other notification.
- The school district must, within 40 calendar days of receiving a parent's consent to evaluate the student, conduct an evaluation and determine whether the student is eligible for special education services. However, when the evaluation activities

- include student observations in the classroom or school setting, the 40 calendar days for conducting the evaluation following receipt of a parent's consent to evaluate may be suspended during school holidays of a week or longer. The Office of the Superintendent of Public Instruction (OSPI) must adopt a rule permitting a school district to exceed these time limits when conducting a quality evaluation warrants additional time, for example: due to the complexity of the student's diagnoses; the availability of specialists; barriers to coordination of multiple specialists; or barriers to scheduling in-person observations when these observations are an agreed to evaluation activity.
- 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 seven calendar 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.
- School district staff, including related services staff, may participate in an IEP team meeting if they have knowledge or special expertise regarding the student. 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 appropriation, the OSPI must distribute up to \$10 million 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 5 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.

Substitute Bill Compared to Original Bill:

The substitute bill makes changes to the original bill, including:

1. requiring school districts to decide whether to conduct an initial special education evaluation and notify the parent of the student of its decision within 22 calendar days (rather than 15 business days) after receipt of a special education referral request;
2. striking the definition of "business day";
3. removing provisions presuming parental consent for conducting a special education evaluation when the parent of the student requested the evaluation;
4. eliminating permission for a parent to provide oral consent to evaluate a student;
5. directing school districts to provide the student's parent with a document that informs the parent about the evaluation activities the district plans to conduct at the same time as the notification of the district's decision to evaluate the student is provided to the parent;
6. requiring school districts to conduct an evaluation within 40 calendar days (rather than 25 business days) of receiving parental consent to evaluate;
7. specifying that, when the evaluation activities include student observations, the 40 calendar day time limit may be suspended during school holidays of a week or longer;
8. directing the Office of the Superintendent of Public Instruction to adopt a rule permitting a school district to exceed these evaluation time limits when conducting a quality evaluation warrants additional time;
9. specifying that school district staff may participate in an Individualized Education Program (IEP) team meeting if they have knowledge or special expertise regarding

- the student, including related services staff (rather than barring from the meeting administrative and legal staff whose presence does not serve the educational needs of a student); and
10. requiring school districts to respond to a parent requesting an IEP team meeting within seven calendar days (rather than five business days).

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 9, 2023.

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

Staff Summary of Public Testimony:

(In support) There is a need to improve the timelines and processes for evaluating students with disabilities. Some children have waited three years to be evaluated for a disability. This impacts their lives. School districts do not have staffing to speed up the process, so a state-funded pool of experts should be available through the Educational Service Districts for school districts to contract with. There needs to be some commonsense changes.

The community needs services to help them navigate the special education process. The process is burdensome for parents who must become experts in special education law and terminology. Many parents, especially those who are not native English speakers, need help to be full partners with the school. Some parents have disabilities, such as communication disabilities, that make it difficult for them to access information about their children in school meetings.

Students with disabilities who qualify for an Individualized Education Program (IEP) face many barriers to accessing their basic education. There are significant academic and mental health impacts to students when the education and related services they need are delayed. Preschoolers who are referred for special education services or who receive special education services are not transitioned well to the regular school system.

Families and schools should determine the supports and services the student needs and resolve any disagreements without lawyers. Families want their students to feel successful. The bill will level the playing field for families, especially low-income families, to raise the legitimate concerns they have about the services that are being provided to their children. It is an insurmountable effort for certain families to raise their concerns without access to documents. This bill will make the schools responsible for presenting the documents that are appropriate to resolve any disagreements.

Many components of the bill have been asked for by advocates. The system puts too much burden on families who are already marginalized. Some students' disabilities are difficult to identify. Even when some disabilities have been identified, a student may have hidden disabilities that prevent the student from receiving an appropriate education. Failing students impacts their future. The state protects the staff and schools, but not the families and students.

(Opposed) The state should increase supports to schools, but not shorten special education timelines. Federal law specifies timelines in school days and calendar days, so changing to business days will create confusion. Evaluations take time and require input from multiple professionals. Student learning is complicated; educators must complete a full evaluation that addresses all areas of concern before they can determine whether a student is eligible for special education. Time is needed implement and track evidence-based interventions. Instead of rushing the timelines, all schools should be required to implement multi-tiered systems of support, which provides students what they need and when they need it.

Many of the changes in the bill undermine the goal of providing a free appropriate public education. Federal law requires schools to obtain informed consent from families before conducting evaluations of their children. Without a detailed assessment plan, a parent might not understand what will be assessed or a school might miss an area that was an area of concern to the parent. There are cases when additional staff can be present at individualized education program team meetings to take notes as an accommodation to parents.

(Other) Many circumstances where students were delayed in being evaluated or in receiving special education services are unacceptable. However, the timelines in the bill for beginning and completing evaluations are a concern. Many people who provide special education services are leaving the profession. The remaining providers already have workload challenges without shortening the timelines.

The use of the term "business day" is problematic for school districts. It would require school districts to provide evaluations during school holidays, which means that the district would have to contract for the evaluations to be conducted by people who do not know the student. Requiring paraeducators to attend IEP Team meetings will be a significant cost to school districts. The subjective determination of which meeting participants serve the educational needs of students could unequally bar legal representation.

Given the coordination that is required to complete evaluations, shorter timelines will result in poorer collaboration and planning. School districts will be prevented from making data-driven decisions on whether to evaluate students due to the reduced timeline. Once a student has been determined eligible, the student should be given their services as fast as possible. The way the bill is written, the IEP development timeline is shortened.

The language access provisions in the bill are good. However, it conflates limited English

proficiency with disabilities. There is concern that school districts will think that only Department of Enterprise Services contracts can be used for translation. Inclusion language should be added so that districts are required to provide timely access where there is no translation available, with instructions for making requests and district fulfillment procedures.

Persons Testifying: (In support) Representative Gerry Pollet, prime sponsor; Ramona Hattendorf and Maria Roth, The Arc of King County; Jana Parker, Seattle Special Education Parent Teacher Student Association; Samantha Fogg, Seattle Council Parent Teacher Student Association; Sebrena Burr; Karen Pillar, TeamChild; and Devony Audet.

(Opposed) Anna Casey, Washington Association of School Psychologists; and Sue Ann Bube, Mercer Island School District.

(Other) Darren Spencer, Highline Public Schools; Jared Mason-Gere, Washington Education Association; Shannon Hitch, Lake Washington School District; James Whitehead, Capitol Region Educational Service District 113; and Jen Chong Jewell, Washington State Coalition for Language Access.

Persons Signed In To Testify But Not Testifying: Melissa Spiker; Tracy Castro-Gill, Washington Ethnic Studies Now; Lisa Brodoff, Seattle University Clinical Law Program; Diana Stadden and Stacy Dym, The Arc of Washington State; Amy Moses-Lagos; Tanya Aggar, Washington State Parent Teacher Association; Emily Carlsen; April Ferguson, Washington Alliance for Special Education; Jinju Park, Office of the Education Ombuds; Romel Mackelprang; Tania May, Office of the Superintendent of Public Instruction; and Marianne Bryan, Seattle Special Education Parent Teacher Student Association.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Education. Signed by 27 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Couture, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 3 members: Representatives Chandler, Dye and Schmick.

Staff: James Mackison (786-7104).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Education:

The Appropriations Committee recommends the following changes:

- delaying to August 1, 2025, the effective date of provisions related to referral of, and initial evaluation for, special education services;
- providing 60, rather than 40, calendar days for school districts to conduct initial special education evaluations that do not meet certain exceptions;
- specifying that school district staff who have knowledge of resources or services available to the student may participate in the Individualized Education Program (IEP) team meeting;
- striking requirements that staff who provide a significant level of support to a student on a regular basis must be invited to and compensated for participation in an IEP team meeting;
- removing requirements that school districts respond by specified timelines when a parent requests that the district convene an IEP team meeting;
- striking requirements that school districts commence provision of special education services within 30 calendar days of the determination that the student is eligible the services;
- removing due process hearings provisions;
- allowing the Office of the Superintendent of Public Instruction to: (1) collect and analyze information about the implementation of the processes for pre-due process hearing resolution and mediation; and (2) develop and publish guidance on best practices for using these processes;
- striking a reference to providing "up to \$10,000,000 per biennium" in the Educational Service District grant program that is subject to appropriation;
- removing provisions related to the services of the State School for the Blind and the Center for Deaf and Hard of Hearing Youth;
- removing requirements for out-of-state private entities serving Washington students to comply with state special education laws to the same extent as school districts;
- revising citations in most amendatory sections to limit the citations to the new sections in the bill rather than to the entire special education chapter and striking two amendatory sections that do not need citations to the new sections; and
- adding a null and void clause, making the bill null and void if specific funding is not provided by June 30, 2023 in the omnibus appropriations act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) To improve access to education, evaluation is the first step. For some students, that first step is an obstacle and can take as long as three years. That is time the student can

never make up. The grant program and study in the bill to provide the staffing are noteworthy and are factored into funding tied to a related bill, House Bill 1436.

Districts control information to reduce liability, limit the ability of parents to meet the burden of proof, and limit services, forcing parents into expensive due process hearings. As an example, a parent had an accommodation to record meetings involving a student eligible for special education, and that accommodation was removed after the parent filed a state complaint. If districts have the burden of proof, it will promote transparency and reduce public expenses.

Parents contacted by the Seattle Parent Teacher Association were overwhelmingly positive about the bill, reportedly saying they felt heard, and the bill was needed. The policy centers on students and honors their civil rights. Too many children who have special needs are not being served. Timelines make a difference in student outcomes. Providing services early can result in requiring fewer services later. Improving communication with parents, including through language access, increases trust and transparency. School districts have more resources than caregivers and should have the burden of proof. This will make a difference for Washington children.

This removes barriers to children and supports the involvement of families. Children three and four years old are languishing without an evaluation after exiting the Early Support for Infants and Toddlers (ESIT) Program. Unmet needs lead to issues that become larger problems later. Individualized Education Programs (IEPs) should be timely and appropriate. Neutral to lower costs should be expected by shifting the burden of proof to the school district due process hearing. School districts have insurance and risk pools that cover their costs. The bill will lead to more settlements, rather than lengthy and costly legal battles. Having the burden of proof requires districts to perform due diligence they should already be doing in IEP development.

The Education Ombuds reduces educational opportunity gaps by helping families navigate the education system. Most complaints and questions the Education Ombuds receives are about special education, and special education evaluations are a very complex area of the law. The evaluation process is particularly difficult for families with limited English skills. It often takes three years for a student to be evaluated, even four years in one case. This bill reduces those timelines and improves parental participation.

(Opposed) This legislation is not ready and needs work. The goal of reducing barriers to a free and appropriate education is shared. However, the problems the bill is trying to solve are not clearly defined, making it difficult to estimate the fiscal impact. Stakeholders should be convened to problem-solve. This policy makes a process that many districts already do not follow more confusing and more difficult to follow.

(Other) Though there is sympathy to the expressed intent, the evaluation timeline changes present challenges. Current workloads are already difficult. Timelines that are too short

can lead to poorer evaluations, misidentification, and teacher attrition. The provision about who can participate in special education meetings is a concern and the existing language is clearer.

Persons Testifying: (In support) Representative Gerry Pollet, prime sponsor; Romel Mackelprang; Jinju Park, Office of the Education Ombuds; Samantha Fogg, Seattle Council Parent Teacher Student Association; and Ramona Hattendorf, The Arc of King County.

(Opposed) Carrie Suchy, Washington State Association of School Psychologists.

(Other) Jared Mason-Gere, Washington Education Association.

Persons Signed In To Testify But Not Testifying: None.