

HOUSE BILL REPORT

HB 1914

As Reported by House Committee On: Education

Title: An act relating to improving the education of students with varying abilities by enhancing special education services.

Brief Description: Improving the education of students with varying abilities by enhancing special education services.

Sponsors: Representatives Couture, McClintock, Schmidt, Waters, Barkis, Rude, Klicker, Chambers, Eslick, Reed, Graham, Jacobsen, Cheney, Sandlin, Caldier, Hutchins, Corry, Pollet and Griffey.

Brief History:

Committee Activity:

Education: 1/11/24, 1/18/24 [DPS].

Brief Summary of Substitute Bill

- Requires school districts to provide specified information to parents with special education services correspondence and materials.
- Directs school districts to make a report about the quantity and method of special education services delivered to a student during the prior quarter available to the student's parent upon request.
- Directs, subject to appropriation, educational service districts to employ or contract for certain professional services to assist school districts.
- Establishes special education due process hearing requirements.
- Modifies special education ombuds requirements.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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.

Signed by 13 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; Bergquist, Couture, Harris, McClintock, Nance, Ortiz-Self, Pollet, Steele, Stonier and Timmons.

Minority Report: Without recommendation. Signed by 1 member: Representative 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), Section 504 of the federal Rehabilitation Act of 1973, 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 education 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 IDEA are given to students who are referred to or placed in authorized entities by a school district.

Provision 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.

Special education and related services are provided to eligible students according to an individualized education program (IEP), which is a written statement that guides a student's learning while receiving special education. For example, an IEP describes the amount of time that a student will spend receiving special education, any related or supplementary services the student will receive, and the student's academic and behavioral goals and expectations for the year.

Office of the Superintendent of Public Instruction.

The Office of the Superintendent of Public Instruction (OSPI) has the duty and authority to: assist school districts in the formation of programs to meet the needs of students with

disabilities; provide information about special education programs to parents of students with disabilities; administer administrative hearings and other procedures to ensure procedural safeguards of students with disabilities; and promulgate rules necessary to implement the IDEA and related state laws.

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 a 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.

Office of the Education Ombuds.

In 2006 the Office of the Education Ombuds (OEO) was created within the Office of the Governor to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system and to advocate on behalf of students.

Training and experience requirements for the Governor-appointed Education Ombuds and any regional education ombuds are specified. In addition, neither the Education Ombuds nor any regional education ombuds may be an employee or contractor of specified entities.

All matters are treated as confidential by the OEO, except as necessary to perform the duties of the office.

Special Education Ombuds.

In 2023 legislation was enacted that added to the duties of the OEO. Subject to appropriation, the Education Ombuds must delegate and certify at least one special education ombuds to serve each educational service district (ESD) region. The Education Ombuds must ensure that the special education ombuds selected are appropriate to the community in which they serve and hold the same qualifications the Education Ombuds. The Education Ombuds may not contract with specified entities or employees of those entities for the provision of special education ombuds services.

Special education ombuds must serve as a resource for students eligible for special education services and their parents, including: (a) advocating on behalf of the student for a free appropriate public education; and (b) assisting students and parents with IEP development, including attending an IEP meeting to assist in writing an appropriate program when a parent opts out or otherwise cannot attend. However, appropriations were not made for these activities in the 2023 Legislative Session.

Summary of Substitute Bill:

Notification about the Office of the Education Ombuds' Services.

With all correspondence and materials related to evaluation for and provision of special education services, each school district must provide the parent of a student who is or may be eligible for special education services with the following:

1. a description of the services available through the Office of the Education Ombuds (OEO) and the contact information for the OEO;
2. information about accessing special education guidance and other resources for parents available through the Office of the Superintendent of Public Instruction (OSPI); and
3. a notification that parents have a right to information about their child's education in a language that they can understand and in accordance with the school district's language access policy and procedures.

Quantitative Special Education Service Report.

For each student whose individualized education program (IEP) includes provision of a related or supplementary special education service that is quantifiable, such as hours, minutes, or units, each school district must notify the parents of the student that a quarterly quantitative service report is available upon request. A quarterly quantitative service report must indicate the quantity of each service delivered to the student during the prior quarter and the method in which the service was delivered. When the quantity of a service delivered to the student in the prior quarter is less than the quarterly quantity of that service required under the student's IEP, the report must include a plan to provide the student with additional services in the following quarter. The report must be made available to a parent in writing within 10 business days of the parent's request. However, the school district is not required to provide a parent with the report more than once per quarter.

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 OSPI 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.

Office of the Superintendent of Public Instruction.

The OSPI must promulgate rules necessary to implement the provisions of the bill described above. The OSPI is also authorized to sanction school districts that fail to comply with these provisions.

Contracted Special Education Services.

Subject to appropriation, each educational service district (ESD) must employ, or contract for, one or more speech language pathologist, audiologist, psychologist, physical therapist,

orientation and mobility specialist, occupational therapist, and behavior analyst for the purpose of providing services to local school districts to assist the districts with implementing the federal Individuals with Disabilities Education Act.

Special Education Ombuds.

Provisions directing the Education Ombuds to delegate and certify at least one special education ombuds to serve each ESD region, subject to appropriation, are removed. In addition, provisions related to special education ombuds selection and qualifications, as well as prohibitions against contracting with certain entities for provision of special education ombuds services, are removed.

Language requiring the Education Ombuds to serve as a resource for students eligible for special education services and their parents, including the list of specified duties, is largely maintained. However, the requirement for the OEO to attend an IEP meeting to assist in writing an appropriate program when a parent opts out or otherwise cannot attend is removed.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill adds that, along with correspondence and materials related to special education services, school districts must provide: (a) information about accessing special education guidance and other resources for parents available through the Office of the Superintendent of Public Instruction; and (b) a notification that parents have a right to information about their child's education in a language that they can understand and in accordance with the school district's language access policy and procedures.

The substitute bill changes requirements related to the quantitative service report as follows: (a) provides that the report be quarterly, rather than monthly; (b) directs a school district to notify parents that the report is available upon request; (c) specifies that the report must be made available no more than once per quarter per parent (rather provided to each parent monthly); (d) allows 10, rather than five, business days for the district to make the report available to the parent; and (e) adds that, when the quantity of service delivered to the student in the prior quarter is less than the quarterly quantity required under the student's individualized education program (IEP), the report must include a plan to provide the student with additional services in the following quarter.

As compared to the original bill, the substitute bill adds that the educational service districts may employ (rather than only contract for) certain professional staff, subject to appropriation, and specifies that the purpose of the professional staff is to provide services to local school districts to assist the districts with implementing federal special education law (rather than for the purpose of providing services to local students eligible for special education services).

The substitute bill also modifies the duties of the Office of the Education Ombuds (OEO) with regard to serving as a resource for students eligible for special education services and their parents as follows: (a) requires the OEO to support eligible students to receive (rather than advocate on behalf of students for) a free appropriate public education; (b) adds that OEO attendance at IEP meetings is "as available"; and (c) removes the requirement for the OEO to attend an IEP meeting to assist in writing an appropriate program when a parent opts out or otherwise cannot attend.

Appropriation: None.

Fiscal Note: Requested on January 18, 2024.

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) Basic education is the state's paramount duty and special education is basic education. All students must be valued, even with those of varying abilities. The state is fulfilling its promise to provide additional special education funding and should match this with a promise to create a better special education system.

There are many special education families across the state and these families struggle with a variety of things. They may have more health care appointments than other families and they are also involved in special education meetings with the school districts. Special education laws and procedures can be confusing, and it is not always clear to parents what their rights are.

The bill helps school districts by providing services that can be difficult to get in rural communities. It helps parents understand whether their students' individualized education programs (IEPs) are being followed.

Parents face a lot of barriers to navigate an administrative due process hearing, including having to speak, read, and write in English, taking time off work, and cross examining witnesses. This bill would shift one of these many barriers to school districts by making it the responsibility of the district to produce the records that they have. Under the current structure, only families with wealth or the few who are able to access free services can afford someone to represent their interests. School districts do not have much motivation to settle with parents because the deck is stacked in their favor.

(Opposed) None.

(Other) The state should support schools in providing a free appropriate public education

rather than creating more administrative burden. Special education staff are already stretched thin and burdened with completing evaluations, writing quarterly progress reports, consulting with parents and staff, etc. Parents are supposed to be partners in the IEP process, but they are not always given the information that they need.

The quantitative reports required in the bill could divert staff time away from student instruction. The state should look for ways to increase efficiencies while increasing transparency and accountability.

There is a common data system used by school districts and 84 percent of IEPs are written through this data system. It may be possible for this data system to be used to mitigate the impact of preparing the quantitative reports while supporting the goals of the bill.

When school districts cannot directly hire for positions, they turn to contractors. Contracting and subcontracting costs add to the costs of providing services to school districts.

The changes to the duties of the Office of the Education Ombuds could change the way the office operates.

States that have placed the burden of proof on school districts have had prompter resolution of disputes.

Persons Testifying: (In support) Representative Travis Couture, prime sponsor; and Karen Pillar, TeamChild.

(Other) Dana Anderson, Washington School Information Processing Cooperative; Ramona Hattendorf, The Arc of King County; Katie Howell, Chehalis School District; Tania May, Office of the Superintendent of Public Instruction; and Erin Okuno, Office of Education Ombuds.

Persons Signed In To Testify But Not Testifying: Preston Dwoskin; Shelly Burt; Sue Ann Bube, Mercer Island School District; Jared Mason-Gere, Washington Education Association; Abigail Westbrook, Washington State School Directors' Association; and Jen Chong Jewell, Special Education Advisory Council for the Office of the Superintendent of Public Instruction.