

Date of Hearing: March 23, 2022

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 2121 (Eduardo Garcia) – As Amended March 7, 2022

**SUBJECT:** School accountability: California Collaborative for Educational Excellence: special education resource leads.

**SUMMARY:** Establishes, subject to an appropriation, a special education resource lead project to provide training and technical assistance on family support and alternative dispute resolution (ADR) in special education. Specifically, **this bill:**

- 1) Requires, subject to an appropriation for this purpose, by the commencement of the grant cycle beginning July 1, 2023, the California Collaborative for Educational Excellence (CCEE) and the California Department of Education (CDE) to select a partnership consisting of special education local plan areas (SELPAs), county offices of education (COEs), or consortia of SELPAs and COEs, and a family support organization or a coalition thereof, from applications jointly submitted to the CDE, to serve as a special education resource lead to work with lead agencies and other COEs, local educational agencies (LEAs), and family support organizations, through capacity building, training, and technical assistance on both of the following:
  - a) Family support for families of pupils with disabilities; and
  - b) Conflict prevention and ADR in special education.
- 2) Defines, for purposes of this measure, family support organizations to include, but not be limited to, state and federally funded organizations which provide support to families of pupils with disabilities.
- 3) Permits all special education resource leads to be administered by COEs or coalitions thereof.
- 4) Requires that all special education resource leads focus on building local and regional capacity to support LEAs, instead of focusing on building SELPA capacity.

**EXISTING LAW:**

- 1) Requires the CCEE and the CDE to establish a process, administered by the CDE, to select, subject to approval by the executive director of the SBE in consultation with the DOF, SELPAs or consortia of SELPAs, to serve as special education resource leads to work with lead agencies and other COEs, to improve pupil outcomes as part of the statewide system of support (SOS).
- 2) Requires that the process to select special education resource leads ensure that no more than ten resource leads are selected to provide specific expertise on special education issues within the SOS.

- 3) Requires that at least three resource leads be selected in a manner to ensure statewide representation and focus directly on building SELPA capacity to support LEAs in achieving the goals, actions, and services identified in their local control and accountability plans (LCAPs).
- 4) Requires that special education resource leads be selected for a term not to exceed five years.
- 5) Appropriates \$100 million on a one-time basis for allocation to SELPAs for the purpose of supporting member LEAs in conducting dispute prevention and voluntary alternative dispute resolution activities to prevent and resolve special education disputes resulting from school disruptions stemming from the COVID-19 public health emergency, in a collaborative and equitable manner. Funds may be used for:
  - a) Early intervention to promote collaboration and positive relationships between families and schools and to prevent disputes;
  - b) Conducting voluntary ADR activities;
  - c) As practicable, working in partnership with FECs or other family support organizations; and
  - d) Developing and implementing plans to identify, and conduct outreach to, families who face language barriers and other challenges to participation in the special education process.
- 6) Appropriates \$450 million on a one-time basis for allocation to SELPAs for purposes of providing learning recovery support associated with impacts to learning due to school disruptions stemming from the COVID-19 public health emergency.
- 7) Appropriates, through the Budget Act of 2021, funding to develop a statewide Individualized Education Program (IEP) facilitation network.

Federal law:

- 8) Through the federal Individuals with Disabilities Education Act (IDEA), requires that a free appropriate public education (FAPE) be made available to individuals with exceptional needs.
- 9) Requires that every individual with exceptional needs who is eligible to receive special education instruction and related services receive that instruction and those services at no cost to his or her parents or, as appropriate, to him or her.
- 10) Establishes procedural safeguards, including those pertaining to the opportunity to present and resolve complaints through the due process and state complaint procedures, including:
  - a) The time period in which to file a complaint;
  - b) The opportunity for the agency to resolve the complaint;

- c) The differences between the due process complaint and state complaint procedures;
  - d) The availability of mediation;
  - e) The child's placement during the pendency of any due process complaint;
  - f) Hearings on due process complaints;
  - g) State-level appeals;
  - h) Civil actions, including the time period in which to file those actions; and
  - i) Attorneys' fees.
- 11) Authorizes a parent or an LEA to file a due process complaint relating to the identification, evaluation or educational placement of a child with a disability, or the provision FAPE.
- 12) Requires that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.
- 13) Establishes rights to appeals and civil actions related to a due process decision and includes provisions relating to the awarding of attorney's fees.
- 14) Authorizes the filing of complaints to the SEA for an alleged violation that occurred not more than one year prior, and requires the SEA to investigate and issue a written decision within 60 days.

State law:

- 15) Requires establishment of Family Empowerment Centers on Disability (FECs) and requires FEC grant recipients to, among other functions, provide training and information that meets the needs of parents of children and young adults with disabilities, and advocate for children's needs while promoting positive interactions between parents and school staff. (Education Code (EC) 56408).
- 16) Requires the CDE to include, on the sample procedural safeguards maintained on its website, a link to a webpage that lists the FECs (EC 56415).

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author, "Numerous surveys show that the COVID-19 school disruption has made special education cases more contentious and harder to resolve, pitting school districts and families against each other. California experiences more of these cases, on average, than most other states and for these cases to be prevented - or at least be minimized in a cooperative and equitable manner, more investments are needed. AB 2121 would create a statewide resource that strengthens collaboration between schools and families with the hope of

improving the outcome of special education students who are disproportionately being affected by the pandemic.”

***Special education dispute resolution.*** The IDEA requires states to make the following dispute resolution options available to parents and schools: mediation, written state complaints, and due process complaints.

When parents and schools disagree on matters such as student eligibility for services or the services to be included in a student’s IEP, parents have the right under the law to resolve their disagreements with the district using a system known as “due process.” This system provides parents and schools with a progressive series of options for resolving their complaints. At the least formal end of the spectrum, parents and districts settle their disagreements using a resolution session, which typically involves only parents and the district and may result in the production of a settlement that does not become binding until three days post-session.

If parents do not feel that their complaints can be resolved with a resolution session, or if that session does not resolve the dispute, they may request mediation, mediation and a hearing, or a hearing without mediation. In mediations, a mediator from the OAH will try to help both parties reach a binding agreement. If parents and districts cannot reach an agreement via mediation, or if the filing party does not wish to go to mediation, the case will go to a hearing. In this case, an OAH judge specializing in special education law decides the outcome of the case. The most commonly requested option is mediation and a hearing, while “hearing only” is the least common type of due process request.

In addition to these options, parents and schools may engage in less formal means of resolving conflict, through a set of practices known as ADR. According to the CDE, the ADR process is intended to maintain positive relationships between families and LEA staff by working collaboratively toward solutions. ADR is a voluntary method of resolving disputes and may not be used to delay the right to a due process hearing. Examples of ADR include facilitated IEP meetings, parent-to-parent assistance, ombudspersons, collaborative negotiation, and informal local mediation.

For a number of years the state encouraged LEAs to resolve disagreements with families collaboratively and informally whenever possible, through \$1.9 million in small grants to SELPAs and LEAs to support training in ADR. A 2018 survey of ADR grantees conducted by the Napa County Office of Education indicated that over 500 state complaints were averted by ADR activities conducted by grantees. The 2020-21 Budget, in anticipation of an increased number of disputes related to the COVID-19 pandemic, included \$8.6 million to SELPAs to assist LEAs with establishing and improving local ADR.

The 2021-22 Budget appropriated \$100 million on a one-time basis for allocation to SELPAs for the purpose of supporting member LEAs in conducting dispute prevention and ADR activities to prevent and resolve special education disputes resulting from school disruptions stemming from the COVID-19 school disruptions, in a collaborative and equitable manner. Funds may be used for:

- Early intervention to promote collaboration and positive relationships between families and schools and to prevent disputes;

- Conducting voluntary ADR activities;
- As practicable, working in partnership with FECs or other family support organizations; and
- Developing and implementing plans to identify, and conduct outreach to, families who face language barriers and other challenges to participation in the special education process.

***Statewide resource for ADR and family support needed to build full continuum of dispute prevention and resolution.***

To prevent and resolve special education disputes between families and schools in an efficient and equitable manner, California needs a full continuum of dispute resolution practices in place.

According to the Center for Appropriate Dispute Resolution in Special Education (CADRE), a federally funded organization which works with states on special education dispute resolution, a full continuum of dispute prevention and resolution begins with robust family support which prevents conflict by ensuring that families are able to participate fully in the education of their children. This continuum also supports families and schools in the use of practices like proactive communication and collaborative problem solving. When conflicts arise this continuum also includes the availability of ADR processes when appropriate.

In recent years, spurred by the COVID-19 pandemic educational disruptions, California has begun to build this continuum of special education dispute prevention and resolution through investments in family support, ADR, and the design of a statewide individualized education program facilitation network.

However, these investments have been limited-term in nature, and no state-funded resource exists to provide statewide support. As noted later in this analysis, problems with California’s dispute resolution system pre-date COVID-19, and schools and families will continue to need access to this full continuum of support for the foreseeable future.

This bill proposes to create a statewide resource, jointly operated by schools and family support organizations, to provide professional development and technical assistance on family support, conflict prevention, and ADR in special education.

CADRE Continuum of Dispute Resolution Processes & Practices																														
Stages of Conflict	Stage I			Stage II		Stage III			Stage IV		Stage V																			
Levels of Intervention	Prevention			Disagreement		Conflict			Procedural Safeguards		Legal Review																			
Assistance/ Intervention Options	Family Engagement	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent to Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third Party Opinion/Consultation	Resolution Meeting	Mediation Under IDEA	Written State Complaints	Due Process Hearing	Hearing Appeal (Two-Tier Systems)	Litigation	Legislation												
																			Third-Party Assistance						Third-Party Intervention					
																			Decision Making by Parties						Decision Making by Third-Party					
	Dimensions that help clarify placement of the options along the Continuum	Interest-Based						Rights-Based																						
		Informal & Flexible						Formal & Fixed																						

***Special education resource leads.*** This bill proposes to create a special education resource lead to provide assistance to LEAs and families on family support and ADR in special education.

Current law requires the CCEE and the CDE to establish a process, to select SELPAs to serve as special education resource leads to work with lead agencies and other COEs, to improve pupil outcomes as part of the statewide system of support.

Eight special education resource leads were chosen, and the five year contract for these projects will end at the end of the 2022-23 fiscal year. These projects are:

SELPA System Improvement Leads. According to the CDE, the purpose of the SELPA System Improvement Leads (SILs) Project is to work collaboratively within the SOS to build the capacity of SELPAs and LEAs with a common goal to improve outcomes for students with disabilities. The SILs work to build the capacity of SELPAs to support LEAs in 1) data use and governance, 2) continuous improvement, and 3) implementation of high leverage practices; with the goal of student access to cohesive and effective school systems intentionally designed to provide the necessary supports and interventions for educational and post-secondary success. The SILs chosen are:

- El Dorado County SELPA
- Riverside County SELPA
- West San Gabriel Valley SELPA

SELPA Content Leads. According to the CDE, the SELPA Content Leads develop the capacity of SELPAs to support the LEAs they serve in developing and implementing evidence-based practices for students with disabilities in particular areas of need. The SELPA Content Leads are:

- Marin County SELPA: The Marin County SELPA works in partnership with the California Autism Professional Training and Information Network (CAPTAIN) to scale up the use of evidence-based practices.
- Placer County SELPA: The Open Access Project, which focuses on Universal Design for Learning, Assistive Technology, and Augmentative and Alternative Communication strategies.
- South County SELPA: South County SELPA brings together teachers, special education providers, parents, and district administrators to address the issue of disproportionality in special education.
- Imperial County SELPA: Imperial County SELPA offers consultation services to SELPAs who have identified needs associated with improving outcomes for English learners with disabilities, and provides statewide in-person and virtual training opportunities for school personnel.

***“There are no winners in the current system.” Statewide Special Education Task Force report calls for reform of dispute resolution system.*** Calling an examination of the special education dispute resolution system “imperative,” the 2015 *One System* report by the Statewide Task Force on Special Education (comprised of the State Board of Education (SBE), the CDE, and the Commission on Teacher Credentialing (CTC)), noted “the current due process system is in need of revision in order to assist in resolving disputes in a more timely, efficient and cost effective manner.” The report noted that the current process often results in costly attorney fees for both

families and schools, may negatively impact educational benefit for the child, and can cause excessive stress and anxiety for all participants. The *One System* report cites a 2013 report by the American Association of School Administrators (AASA), *Rethinking Special Education Due Process*, which found:

- District compliance with IDEA is radically different today than when IDEA was created over three decades ago. Major changes to federal accountability and compliance monitoring system for students with disabilities...have opened the door to potential alternatives to due process hearings that would benefit all parties.
- The cost and complexity of a due process hearing hinder low- and middle-income parents from exercising the procedural protection provisions to which they are entitled.
- Numerous studies document the dissatisfaction felt by parents and schools with the current due process system. A study on the fairness of hearings found that both parents and school officials had negative experiences with hearings, regardless of who prevailed.
- Most publications point to the need for alternative ways to deal with special education disputes that could assist in resolving disputes in a more timely, efficient, and cost effective manner and that does not perpetuate adversarial relationships.

The AASA report notes that the process is emotionally taxing to all parties and can lead to qualified staff leaving the education profession. The report also notes that the process can drain resources better used serving students' needs. The report concludes: "there are no winners in the current due process system as it often results in an impairment of the trust between the parents and school agencies and often incurs many years of contentiousness while the student remains in the K-12 system."

***Current dispute resolution system highly inequitable.*** As noted above, the Statewide Special Education Task Force report noted the inequities inherent in the state's system of dispute resolution. Research on this topic has found:

- The AASA report states: "The cost and complexity of a due process hearing hinder low- and middle-income parents from exercising the procedural protection provisions to which they are entitled. Because of education, language or income barriers, the majority of low-income parents cannot obtain representation, afford to pay for it or advocate effectively for their children. Notably, it is districts composed of high populations of low-income students that are more likely to struggle to meet IDEA mandates. In addition, the parents residing in these districts file due process requests at a considerably lower rate than their wealthier counterparts. The correlation between low quality of education for students with disabilities and the low earnings of their parents means that families of children who are in dire need of improved educational services are the least able or likely to advocate and seek enforcement of IDEA's education protections through the due process system. As a result, "the rights provided by the IDEA become worthless because parents do not have true avenues to exercise them."
- Research has identified multiple barriers for culturally and linguistically diverse parents with regard to special education processes, including language barriers and inadequate

translation and interpretation, a deficit-based view of these parents within the school system, issues with cultural misinterpretations, problems advocating for appropriate services, confusion concerning special education jargon and the purpose of the IEP, and challenges with the quantity and quality of information received at home. (Burke, 2018; Buren, 2018)

- A 2019 Government Accounting Office (GAO) report on dispute resolution in selected states found that a greater proportion of very high-income school districts had dispute resolution activity as well as higher rates of dispute activity than very low-income districts in most of the states GAO reviewed.
- A 2011 analysis of due process cases in California found that 75% came from families in “wealthy white” districts, while only 19% of requests were filed by parents in “poor minority” districts. This research also found that privileged parents are much more likely than other parents to be actively involved in the hearing system and that, when they arrive at a hearing, their relatively exclusive resources are a crucial foundation for their claims. (Ong-Dean, 2011)
- A 2011 legal review of inequities in special education noted: “Children from families without financial resources are the most likely to require compensatory education, because their parents cannot afford private school tuition, tutoring, and other services if a district is not providing [a free, appropriate public education]. Yet, it is often difficult for these parents to present sufficient evidence of the need for compensatory education, owing to some of the same difficulties discussed above in accessing independent experts and private providers who can testify at a hearing.” (Hyman, 2011)

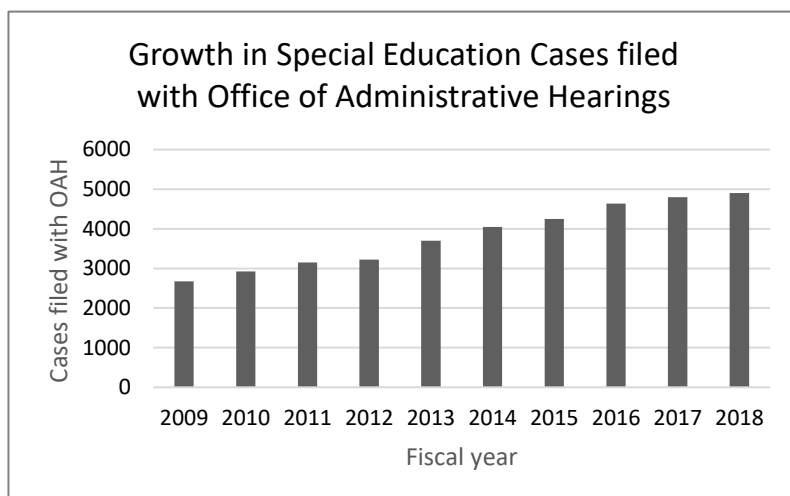
***Prior to COVID, California already had far more disputes related to special education than most other states.*** According to the federally-funded CADRE, for 2018-19:

- Mediation requests in California represented nearly half of all requests in the country.
- California’s rate of mediation requests was 4 times higher than the national average.
- California’s rate of due process complaints was 40% greater than the national average.
- California’s rate of state complaints was 30% higher than the national average.
- California had the fifth highest rate of overall special education disputes among the states, at a rate roughly double the national average.

***Special education disputes were rising steadily in California prior to COVID-19.*** The number of state complaints filed with the OAH has been steadily rising for a number of years.



Data from the OAH indicates that the total number of special education cases filed due to disputes between families and schools has increased over the past decade, from 2,677 complaints in the 2008-09 fiscal year to 4,904 complaints in the 2018-19 fiscal year, an 83% increase. Problems with the provision of services required by IEPs during the COVID-19 school disruptions are likely to accelerate this trend.



According to data reported by the CDE to the U.S. Department of Education in its Annual Performance Report for 2018-19, of 1,704 mediation agreements, only 3% were reached through non-due process hearing related mediation.

According to data collected by CADRE, special education disputes are declining nationally, while California's rate continues to increase.

***Family support helps to prevent and resolve disputes in a cost-effective and equitable manner.***

As shown in the CADRE graphic above, special education dispute resolution takes many forms along a continuum, which ranges from prevention activities such as family engagement and training, to legal activities such as due process hearings and litigation.

Investments on the informal side of the continuum prevent conflicts from escalating to more lengthy, expensive, and contentious interventions. As noted above, California has a high rate of conflicts which escalate to this legal end of the continuum, but has only a patchwork system at the informal end of the spectrum of dispute resolution.

Examples of how such an investment can help resolve conflict at the lowest level come from the regions which currently have FECs. A 2016-17 report on the FECs states that two-thirds of 232 parent respondents indicated that they had a disagreement with a school or a district about their child's IEP, 80% of whom believed that their FEC's involvement helped them resolve the disagreement. Nearly 60% of respondents indicated that they used ADR.

***Research on effectiveness of alternative dispute resolution.*** According to CADRE, well-designed, skillfully implemented and collaborative approaches, such as IEP facilitation and mediation, can mitigate the use of more adversarial dispute resolution processes. Early dispute resolution options are generally more cost effective and more expedient than other processes and may foster collaborative educator-family relationships. Research has found that ADR:

- Is viewed favorably by both parents and administrators (Forbis, 1994);
- Maintains positive working relationships between parents and schools (Scanlon, 2018);

- Results in greater parent satisfaction (Kerbeshian, 1994), lower parent emotional costs (Turnbull, 1987), and higher parent confidence to ensure that their child is well served. (Scanlon, 2018); and
- Is less costly, less legalistic, fosters more cooperation, and results in greater parent satisfaction (Lake, 1991; Daggett, 2004).

**Arguments in support.** The Alliance for Children’s Rights writes, “Our families and schools would greatly benefit from a statewide resource, jointly operated by school districts and family support organizations, to provide professional development and technical assistance on family support, conflict prevention, and alternative dispute resolution in special education. Active family engagement in program planning and dispute prevention and resolution processes strengthens child and family outcomes. AB 2121 will provide critical support for families of students with disabilities when it becomes necessary for the family to engage the providing local education agency in conflict prevention and alternative dispute resolution in special education.”

**Related legislation.** AB 130 (Committee on Budget), Chapter 44, Statutes of 2021, appropriated \$550 million for the purpose of ADR and learning recovery services related to COVID-19 school disruptions. The bill also increased funding for the FECs to cover all regions of the state and strengthened data collection requirements.

AB 1808 (Committee on Budget), Chapter 32, Statutes of 2018, requires the CCEE and the CDE to establish a process to select SELPAs to serve as special education resource leads to work with lead agencies and other county offices of education, in order to improve pupil outcomes as part of the statewide SOS.

AB 126 (Eduardo Garcia) of this Session would require the establishment of additional FECs, establishes increased funding levels awarded to each center, establish new requirements for data collection and reporting to the CDE, and state intent to provide \$20 million in one-time funding to FECs and other organizations to support families of students with disabilities whose education has been impacted by the COVID-19 pandemic.

AB 2056 (Eduardo Garcia) of the 2019-20 Session would have required the establishment of additional FECs, increased funding levels awarded to each center, and established new requirements for data collection and reporting to the CDE. This bill was held in this Committee.

AB 236 (Eduardo Garcia) of the 2019-20 Session would have required the establishment of additional FECs, established increased funding levels awarded to each center, and established new requirements for data collection and reporting to the CDE. This bill was held in the Senate Appropriations Committee.

AB 2704 (O’Donnell) of the 2017-18 Session would have required the establishment of additional FECs, established increased funding levels awarded to each center, and established new requirements for data collection and reporting to the CDE. This bill was held in the Senate Appropriations Committee.

SB 884 (Beall), Chapter 835, Statutes of 2016, requires the CDE to include in its sample procedural safeguards, maintained on its website, a link to the CDE webpage that lists FECs.

SB 511 (Alpert), Chapter 690, Statutes of 2001, required the CDE to establish FECs in each of 32 Early Start regions in the state, allocated a base grant of \$150,000 to each FEC, established an allocation mechanism based on the school enrollment of the region served, and required FECs to collect specified types of data.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Acton-Agua Dulce Unified School District  
Alliance for Children's Rights  
Antelope Valley SELPA  
Antelope Valley Union High School District  
Bonny Doon Union Elementary School District  
Briggs Elementary School District  
Butte County SELPA  
Disability Rights California  
East San Gabriel Valley SELPA  
East San Gabriel Valley SELPA Community Advisory Committee  
Family Resource Centers Network of California  
Family Soup  
Fresno County SELPA  
H.e.a.r.t.s. Connection  
Lancaster School District  
Mid-Cities SELPA  
Mono County Office of Education  
North Santa Cruz County SELPA  
Orange Unified School District Special Education Department  
Oxnard School District  
Pacific Collegiate School  
Palmdale School District  
Plumas Rural Services  
Rainbow Family Resource Center  
San Luis Obispo County SELPA District  
San Mateo County SELPA  
Santa Clara County Special Education Local Plan Areas I, II, III, IV, V  
Santa Cruz County Office of Education  
Sierra Sands Unified School District  
Solano County SELPA  
Sonoma County SELPA  
Tehama County SELPA  
Temecula Valley Unified School District  
Ventura County Office of Education  
Ventura County SELPA  
Ventura County SELPA Community Advisory Committee  
West Contra Costa Unified School District SELPA  
Westside Union School District  
Wilsona School District  
One individual

**Opposition**

None on file

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