Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2580 (Cunningham) – As Amended March 15, 2018

SUBJECT: Special education: due process hearings: extension of hearings

SUMMARY: Defines "good cause" for the purposes of determining whether an extension should be granted in a special education due process hearing. Specifically, **this bill**:

1) Defines "good cause" for the purposes of determining whether an extension should be granted in a special education due process, as including, but not limited to:

    a) When all parties submit a stipulation to the hearing officer that an extension is necessary to resolve the matter by settlement.

    b) When a material witness is absent due to the hearing date being set on a day that the relevant school is not in session.

2) States that a hearing officer shall only be required to grant an extension once for each of the purposes set above. Authorizes a second or subsequent extension may be granted for either of those purposes at the discretion of the hearing officer.

EXISTING LAW:

1) Requires that special education due process hearings be held at a time and place reasonably convenient to the parent or guardian and the pupil.

2) Requires that a hearing be conducted by a person who, at a minimum, possesses knowledge of, and the ability to understand, the provisions of this part and related state statutes and implementing regulations, the federal Individuals with Disabilities Education Act (IDEA), federal regulations, and legal interpretations of federal law by federal and state courts, and who has satisfactorily completed training.

3) Requires the Superintendent to establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate.

4) Establishes standards and prohibitions regarding individuals who may conduct hearings.

5) Requires that, during the pendency of the hearing proceedings, the pupil remain in his or her present placement, unless the public agency and the parent or guardian agree otherwise.

6) Requires that a pupil applying for initial admission to a public school, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed.

7) Requires that, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the parent or guardian of the pupil that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local educational agency (LEA) and the parent or guardian.

8) Requires that a party to the hearing be afforded specified rights, including the right to be accompanied and advised by counsel, the right to present evidence, written arguments, and oral arguments, and the right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing.

9) Requires that the decision of a due process hearing officer be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

10) Establishes grounds for a determination that a procedural violation occurred.

11) Requires that, prior to the opportunity for a due process hearing, the LEA convene a resolution meeting with the parents and the relevant member or members of the IEP program team who have specific knowledge of the facts identified in the due process hearing request, and requires that the meeting be convened within 15 days of receiving notice of the due process hearing request of the parent.

12) Requires that, if the LEA has not resolved the due process hearing issue to the satisfaction of the parents within 30 days of the receipt of the due process hearing request notice, the due process hearing may occur.

13) Requires that a hearing be completed and a written, reasoned decision, be mailed to all parties to the hearing not later than 45 days after the expiration of the 30-day resolution period.

14) Authorizes either party to the hearing to request the hearing officer to grant an extension, which may be granted upon a showing of good cause.

15) States that an extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author's office states, "AB 2580 will clarify the standard for 'good cause' under special education hearings to ensure continuances are granted when all parties involved submit a stipulation that an extension is necessary to resolve the matter by settlement.

In the course of a due process hearing, either party may request a continuance which shall be granted upon showing of 'good cause.' The standard for 'good cause' is undefined and left to the discretion of the presiding hearing officer. Unfortunately, there are at least two instances where a failure of a hearing officer to grant a continuance has caused unintended harm and prolonged matters that could be settled:

1) In certain cases, both parties come to an agreement that a settlement is appropriate but require more time to prepare the proper documents. By rejecting a continuance for a settlement agreement, the department is unnecessarily prolonging the hearing process and costing parents and school districts more legal fees.

2) Teachers, school psychologists, and other school employees cannot be compelled to appear before a due process hearing but often provide critical testimony to the hearing officer. This means if a hearing is scheduled during a spring break, a school employee may not appear to testify. In some cases, requests for a continuance to allow a material witness from the relevant school is available have been deemed insufficient to meet the 'good cause' standard.

The bill will further ensure extensions are granted when a material witness is absent due the hearing date being set on a day school is not in session."

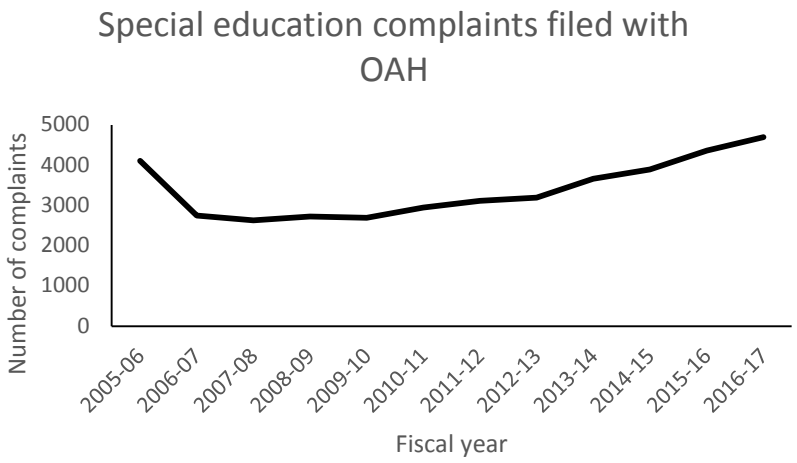
Defining, but not limiting, the definition of "good cause." This bill establishes a standard for "good cause" for a continuance of a special education due process hearing, but does not limit it to the two specified circumstances. A hearing officer would not be able to deny a request for a continuance under those two circumstances, but would also not be prohibited from issuing a continuance for other reasons which are not specified in the bill. The bill also states that a hearing officer shall only be required to grant an extension once for each of the purposes set above, and also authorizes a second or subsequent extension to be granted for either of those purposes at the discretion of the hearing officer.

Special education due process. The federal IDEA requires states to make the following dispute resolution options available to consumers of federally-funded special education services: mediation (which does not require a decision by a judge and is also referred to as "alternative dispute resolution"), a written state complaint, and a due process complaint.

When parents and districts disagree on matters relating to special education, including student eligibility for services or the design of a student's IEP, parents have the right to resolve their disagreements with the district using a system called "due process," which is intended to allow both parties to reach resolution without the need for legal representation. This system provides parents with a progressive series of options for resolving their complaints. At the least intensive 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, they may request mediation, mediation and a hearing, or a hearing without mediation. In mediations, a mediator from the Office of Administrative Hearings (OAH), which operates under a contract with the California Department of Education, 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 hearing. In this scenario, an OAH judge specializing in special education law will decide the outcome of the case. OAH describes due process hearings as "a more formal, trial-like legal proceeding in which all parties are given a chance to present evidence and arguments before an impartial Administrative Law Judge (ALJ). The ALJ then issues a written decision, which is the final administrative decision resolving the matter."

According to OAH, parents most commonly request mediation and a hearing, while "hearing only" is the least common type of due process request.



Special education complaints increasing. Data from 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 2,748 complaints in the 2006-07 fiscal year to 4,694 complaints in the 2016-17 fiscal year.

In 2017, the Center for Appropriate Dispute Resolution in Special Education reported that between 2004-05 and 2014-15, California was among seven states that accounted for 82 percent of all special education due process complaints filed in the nation.

What are due process hearings about? National research on due process hearings in 41 states between 2005 and 2006 found that "specific learning disabilities and autism were the most common disabilities in the examined hearings (46.5%), followed by other health impairments and emotional disturbance (28.3%)." The most common sources of dispute were placement (25%), and IEP and program appropriateness (24%). Parents initiated 85% of the hearings, but school districts prevailed in 59%. The author noted a lack of uniformity and reliability within and across states in terms of IDEA hearing data, and suggested that a way to solve litigation may be to have facilitated IEPs.

Statewide Special Education Task Force report recommendations on due process hearings. In 2015, the Statewide Special Education Task Force, convened by the Superintendent of Public Instruction, the State Board of Education, and the Commission on Teacher Credentialing issued a report titled "One System: Reforming Education to Serve ALL Students."

With respect to special education due process, the report concluded: "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. Currently there are inadequate numbers of alternative dispute resolution options like facilitated IEP meetings which promote more positive working relationships for families and LEAs." The Task Force also noted:

> Formal due process hearing decisions determine who prevails in a dispute, but the process often results in costly attorney fees for both families and school agencies, and may negatively impact educational benefit for the child during the long legal process. Some California school districts experience prolonged litigation, inflated legal fees from prevailing parties, non-meritorious and frivolous claims. These practices cause excessive stress and anxiety for all participants.

According to data from the California Department of Education (CDE), there were 3,194 due process hearings filed in 2012-2013. While the majority of these disputes were resolved prior to the hearing, costs to school agencies for attorneys, staff time to prepare, and stress is exorbitant. In 2013, 96 percent of cases were resolved without the need for a due process hearing.

Unresolved disputes, when decided by a hearing officer, often extend over weeks and result in significant legal costs. Districts are required to reimburse legal fees incurred by families when the family has prevailed in any portion of the hearing officer's decision that was raised in a due process hearing. Appeals prolong the legal process, cause further stress, expense, and potential for further loss of education benefit for the student. 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.

The Task force recommended the following with respect to due process hearings:

- "Provide funding to all SELPAs to support training and implementation of alternative dispute resolution programs, facilitated IEPs and a collaborative IEP process in every LEA. Funding should be at least $15,000 per SELPA consistent with the 20 ADR grants that are currently funded." This recommendation was implemented, and all SELPAs now receive ADR grants.
- "Review data from the current ADR pilots in California and research dispute information from states that currently have an ADR process and/or have placed a cap on attorney fees in order to remove the incentive to prolong the dispute process. Where possible, consider replication of those processes in California."

Related and prior legislation. AB 2704 (O'Donnell) of this Session would fully fund the Family Empowerment Centers (FECs) with priority given to high need regions, establish increased funding levels awarded to each center, and establish new requirements for data collection and reporting to improve coordination between the CDE and FECs.

AB 3136 (O'Donnell) of this Session requires that special education funding rates be equalized to the 95th percentile after the Local Control Funding Formula (LCFF) is fully funded, creates a funding mechanism for state support of special education preschool, establishes a high cost service allowance to provide supplemental funding on the basis of the number of students with severe disabilities, and changes the calculation of the declining enrollment adjustment so that it is based on school district, rather than Special Education Local Plan Area (SELPA), enrollment.

AB 1264 (Eduardo Garcia) of this Session would have required that a parent be offered copies of relevant school records and assessment reports at least five business days prior to a meeting regarding an IEP. This bill was vetoed by the Governor.

SB 354 (Portantino) of this Session would require LEAs to communicate in the native language of a parent during the planning process for an IEP, and provide a student's parent with a copy of the completed IEP and other related documents in the native language of the parent within 30 days of the IEP team meeting.

AB 312 (O'Donnell) of this Session would have required that special education funding rates be equalized to the 90th percentile and created a funding mechanism for state support of special education preschool, after the LCFF is fully funded.

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

AB 2091 (Lopez) of the 2015-16 Session would have required that LEAs provide parents with translated copies of a student's IEP and related documents within 30 days of an IEP meeting, and required that the documents be translated by a qualified interpreter. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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