

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 967 (Frazier) – As Amended March 18, 2021

**SUBJECT:** Special education: COVID-19 Special Education Fund

**SUMMARY:** Establishes the COVID-19 Special Education Fund, for purposes of providing matching funds, on a one-to-one basis, to support local educational agencies (LEAs) in conducting activities to prevent and intervene early in conflicts, conduct voluntary alternative dispute resolution, and provide services to pupils with disabilities relating to impacts to learning associated with COVID-19 school disruptions. Specifically, **this bill:**

- 1) Establishes in the State Treasury the COVID-19 Special Education Fund.
- 2) Requires that the fund be used by the California Department of Education (CDE), upon appropriation, by the Legislature, for purposes of providing matching funds, on a one-to-one basis, to support LEAs in conducting activities to prevent and intervene early in conflicts, conduct voluntary alternative dispute resolution, and provide services to pupils with disabilities relating to individually determined impacts to learning associated with COVID-19 school disruptions.
- 3) Authorizes funds to be expended by the CDE to support an LEA for the purposes of:
  - a) Prevention of, and early intervention to resolve, conflict, including parent education regarding special education processes and rights under the federal Individuals with Disabilities Education Act (IDEA) parent peer support, language access provided as a supplement to that required to be provided by LEAs pursuant to state and federal law, and collaboration with family empowerment centers (FECs) and other family support organizations;
  - b) Developing a plan to identify, and conducting outreach to, families who face language barriers and other challenges to participation in the special education process;
  - c) Conducting informal conflict resolution and voluntary alternative dispute resolution processes; and
  - d) Services related to COVID-19 school disruptions that are agreed to through the individualized education program (IEP) process or through settlement agreements reached through voluntary alternative dispute resolution.
- 4) Prohibits one-time funds expended pursuant to the Act from being used to supplant existing expenditures or obligations of the LEA, and restricts them to expenditures that will not be included in the LEA's ongoing maintenance of effort requirement for purposes of the federal IDEA.
- 5) Requires that an appropriation made for purposes of the Act be available for expenditure by LEAs subject to the expenditure deadlines established for these funds.

- 6) Requires that, in order to access these funds, a LEA submit an application for funding to its special education local plan area (SELPA). Requires the SELPA to verify that the conditions below have been met and submit the application to the CDE on behalf of an LEA.
- 7) Requires that, to be eligible for funding, the LEA provide evidence to the SELPA that all of the following conditions have been met:
  - a) A plan to identify families who face language barriers and other challenges to participation in special education processes and whose pupils have experienced significant disruption to their education as a result of the COVID-19 pandemic;
  - b) Efforts to conduct outreach to parents identified in the plan;
  - c) Efforts to ensure that parents are provided notice of procedural safeguards established in state and federal law and are informed that alternative dispute resolution is a voluntary process;
  - d) A good faith effort to resolve any conflict through the IEP process using informal conflict resolution strategies;
  - e) For conflicts that are not resolved through the IEP process, voluntary alternative dispute resolution strategies to resolve a dispute;
  - f) Good faith efforts to reach an agreement through voluntary alternative dispute resolution within 60 calendar days at no cost to the parent, with the goal of reaching agreement in an efficient manner that allows services to commence at the earliest possible date. This subdivision does not affect any other timelines for the resolution of disputes in state or federal law;
  - g) Individualized analyses to determine pupil needs using all available evidence of pupil needs and services provided;
  - h) Any dispute and any agreed upon services are related to COVID-19 school disruptions;
  - i) Involvement of a special SELPA, FEC, or other organization acting as a neutral facilitator or mediator during the dispute and resolution process; and
  - j) Local funding spent for eligible purposes.
- 8) Requires the CDE to, on or before an unspecified date, issue guidance to assist LEAs in identifying factors to consider when conducting individualized analyses of the need to address impacts to learning or for services related to COVID-19 school disruptions, consistent with state and federal law.
- 9) States that this article shall not be construed to do any of the following:
  - a) Abridge any right granted to a parent under state or federal law;

- b) Require that alternative dispute resolution be used to resolve a dispute; or
  - c) Imply that conflicts should not be resolved in the IEP process.
- 10) States that the requirements of the act shall not be implemented by the CDE until an appropriation is made in the annual Budget Act or another statute for these purposes.
- 11) States the intent of the Legislature to appropriate an unspecified sum to the CDE for purposes of the act.
- 12) Establishes the following definitions:
- a) “COVID-19 school disruptions” means the period of time, commencing on or after March 13, 2020, during which normal school operations were disrupted by the COVID-19 pandemic in the LEA in which the pupil was enrolled;
  - b) “Local educational agency” means a school district, county office of education, or charter school;
  - c) “Parent” means the parent, guardian, or other education rights holder of a pupil. If a pupil is 18 years of age or older, “parent” means the pupil; and
  - d) “Pupil” means an individual who had an IEP during the COVID-19 school disruptions.
- 13) States the intent of the Legislature that all of the following occur:
- a) Pupils with disabilities receive timely access to instruction and services required pursuant to state and federal law, in order to make continued progress in light of the disruptions to public education caused by the COVID-19 pandemic.
  - b) Assistance is provided to LEAs to ensure that pupils receive support in a timely, efficient, and equitable manner, with a focus on the prevention of disputes through:
    - i. Proactive communication, collaborative problem solving, and family support;
    - ii. The resolution of any disputes in a timely and low-cost manner, and the use of voluntary informal dispute resolution processes when appropriate; and
    - iii. Efforts to engage families who face language barriers and other challenges to participation in the process described in this subdivision, including dependent children, non-minor dependents, and youth who are under the jurisdiction of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code and are subject to an order for out-of-home placement.
  - c) The State have a coherent, efficient, and equitable continuum of special education dispute prevention and resolution grounded in the common goal of success for all pupils, and with an emphasis on, and investments in, the prevention and lowest level resolution of conflicts.

**EXISTING LAW:**

## Federal law:

- 1) Through the IDEA, requires that a free appropriate public education (FAPE) be made available to individuals with exceptional needs.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) Requires that within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a resolution meeting with the parties for the purpose of discussing the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. The meeting need not be held if the parties agree to waive the meeting or agree to mediation.
- 7) Provides that if the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the hearing may occur.

- 8) Requires that the 45-day timeline for the due process hearing starts the day after both parties agree in writing to waive the resolution meeting or under other specified conditions.
- 9) Requires that if a resolution to the dispute is reached at the meeting the parties must execute a legally binding agreement, and that a party may void the agreement within three business days of the agreement's execution.
- 10) Requires that whenever a due process complaint is received by the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing with an impartial hearing officer, conducted by the state education agency (SEA) or the public agency directly responsible for the education of the child.
- 11) Requires that the LEA ensure that not later than 45 days after the expiration of the 30 day period, a final decision is reached in the hearing;
- 12) Requires that the state educational agency ensure that not later than 30 days after the receipt of a request for a review, a final decision is reached.
- 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 FECs in 32 Early Start regions across the state 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 FECs (EC 56415).
- 17) Requires that IEPs include a description of the means by which the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than ten school days. (EC 56345)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author, "According to early surveys and research efforts, students with disabilities have been especially impacted by the COVID-19 pandemic. Students and parents have reported higher levels of anxiety and depression, the loss of IEP services and supports, and poor results from distance learning. Compared to the general student population,

these families are more likely to express concern for their child's mental health and more likely to be experiencing little to no remote learning.

The current due process system results in high costs, complexity, parent dissatisfaction, and other barriers to families and schools. An expected influx of cases related to the COVID-19 school disruptions would likely overwhelm the system, creating additional delays to services, more negative educational impacts, and provide little recourse for low-income families or those facing language barriers.

AB 967 will deliver historic investments in dispute resolution processes with a proven track record of preventing and resolving disputes in an equitable and cost-effective manner. AB 967 requires LEAs to confront inequity by conducting outreach to families who are typically left out of the process and unable to access their due process rights. AB 967 also creates accountability and enhances family supports by including SELPAs, CDE, and Family Empowerment Centers throughout the process.”

***Many schools in California closed for in-person instruction as a result of COVID-19.*** On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of the COVID-19 virus. An Executive Order (EO) issued on March 13, 2020 authorized, but did not require, LEAs to close schools for in-person instruction as a result of the threat of COVID-19. The state subsequently began using a color-coded tiered system to determine when schools could reopen for in-person instruction. Except for LEAs located in the highest tier of virus spread, the decision regarding whether to close or re-open schools was left to each LEA, in consultation with local public health officials.

The vast majority of California public schools were closed for in-person instruction through the end of the 2019-20 school year, and many also began the 2020-21 school year by offering only or mostly remote instruction. As of January 2021, due to increasing surges in the rates of COVID-19, many schools throughout the state, including those in the largest school districts, remained closed for in-person instruction. As of this writing most school districts have either begun to return students to some form of in-person instruction, or have plans to do so soon.

***Delivery of special education services significantly challenged by COVID-19 related school disruptions.*** A November, 2020 report by the Government Accountability Office (GAO) on the provision of services to English learners and students with disabilities found that of a variety of factors complicated the delivery of special education services during distance learning, particularly the delivery of related services. Such factors included the wide range of needs of students, the services specified in IEPs, and the capacity of parents or caregivers to assist teachers and service providers in delivering general education, specialized instruction, and related services to their children.

The GAO found that delivering related services, such as occupational therapy, physical therapy, or speech therapy, for students with complex needs was particularly difficult to do remotely. Students' access at home to the technology and equipment used to implement their IEPs (for example, Braille readers) was also limited in some cases.

Many of the school districts included in the GAO's review of distance learning plans had shortened their school day during distance learning for all students, sometimes to only a few hours, and often had limited live communication time with the teacher. Some school and

advocacy organizations noted that the shorter school days made it especially difficult to find time to provide the specialized instruction and related services required by students' IEPs, on top of regular general education. For example, one school official described a student's IEP that called for 4 hours of individualized special education instruction per day, but as the school day during distance learning was less than 4 hours, the student did not receive the full 4 hours of individualized instruction, much less participate in the general education class time.

The GAO report also highlighted the role parents assumed during the school disruptions, trying in some cases to meet their children's educational and other support needs which are ordinarily served by multiple teachers, aides, therapists and other professionals. The report noted, "we heard from school district officials, researchers, and national associations of service providers, that parents were overwhelmed with the number of roles they were being asked to assume."

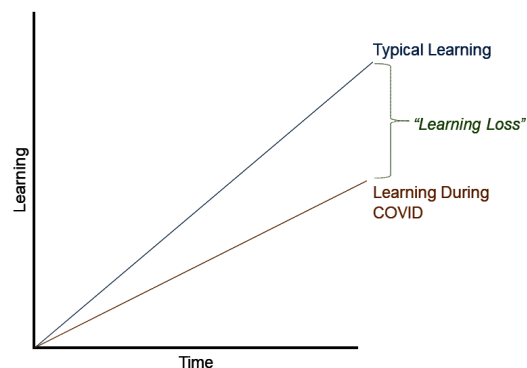
The American Institutes for Research (AIR) reported in October, 2020 on challenges serving students with disabilities during the pandemic, based on survey data collected from 2,500 school leaders. AIR found:

- 82% said that providing hands-on instructional accommodations and services was more or substantially more difficult.
- 73% of districts reported that it was more or substantially more difficult to provide appropriate instructional accommodations.
- 61% reported that providing speech therapy was more or substantially more difficult during remote instruction.
- 58% of districts said it was more or substantially more challenging to comply with IDEA requirements to provide instructional accommodations and specially designed instruction.
- 57% of districts said that it was more or substantially more difficult to engage with families for help with IEP requirements during remote instruction.
- 55% reported that collaborating with social service or other agency partners was more difficult during the school closures.
- 52% of districts reported that complying with the IDEA requirement to provide the least restrictive environment (LRE) and to provide support in the LRE was more or substantially more challenging during remote instruction.
- Engaging with families and collaborating with agency partners was also more challenging for districts during remote instruction.

***Students with disabilities significantly affected by COVID-19 school disruptions.*** The first California data representing a large number of students, released in January by Policy Analysis for California Education (PACE), shows significant impacts to learning, with the largest effect among low income and English learner students. Researchers compared growth from 2019 to 2020, compared to typical growth, based on the prior three school years. The analysis found that:

- There has been significant learning loss in both ELA and math, with students in earlier grades most impacted.
- The equity impact is severe – certain student groups, especially low-income students and English Learners, are falling behind more compared to others.

While the PACE data is not yet disaggregated by disability status, there is little doubt that the education of many students with disabilities was highly disrupted by the COVID-19 related school closures. Research indicates that the “summer slide” in achievement is particularly significant for low income students with disabilities (Gershenson, 2016), suggesting that the disruptions to schooling during the pandemic may have disproportionately significant impacts for these students.



A review of the available research on the effects of the pandemic for these students and their families (Brandenburg, 2020) found:

- During the COVID-19 pandemic, parents became responsible for in-person learning for their children. However, parents were and continue to be ill equipped for this role as they have no training or education in the specialized learning plans used in school...Parents and their students with disabilities reported high levels of anxiety and depressed moods.
- Parents of children with disabilities experienced a loss of their general and community support networks, loss of support from education and therapy specialists, and loss of routine, which continues with the ongoing pandemic.
- For many children, the stress of this sudden transition and loss of the typical school routine resulted in depressive symptoms, acting out, and changes in behavior.
- Parents were overwhelmed by the increased demands on them to provide for their children’s schooling, maintain a home routine, and continue their own work responsibilities without opportunity for a break or respite.

Reflecting the nationwide implementation concerns raised above, and not unique to this district, a survey conducted in September and October of 2020 of over 300 parents with students enrolled in the Los Angeles Unified School District (LAUSD), conducted by SpeakUp and the State Council on Developmental Disabilities, among others, reflects parent concerns regarding the effect of the school disruptions on their students’ progress. The survey found that 76% of parents viewed their children with disabilities as not learning effectively, with students in preschool through first grade more than twice as likely as high school students to be reported as struggling significantly with distance learning. 74% reported regressive behaviors and continuous loss of skills associated with the all-digital environment, and 57% of parents shared that their children’s services were being delivered in a format that was not suitable to their needs.

School districts across the country report lower levels of engagement in distance learning among students with disabilities. The LAUSD Independent Analysis Unit reported in 2021 that during



the 2020-21 school year, though improved compared to the spring of 2020, students with disabilities had lower rates of active and passive engagement in distance learning than their peers in the district. Elementary school students with disabilities were the most affected, with an average daily engagement rate for active participation (logging in or viewing content) of 51%, and 19% for passive participation (submitting assignments or posting messages). A public radio analysis of the demographics of “unreachable” students in the Sacramento City Unified School District in the spring of 2020 also found a disproportionate number of students with disabilities were not participating in distance learning. School districts around the country also report disproportionately high numbers of “D” and “F” grades among students with disabilities in the 2020-21 school year.

While conditions have improved since the early days of the pandemic, these findings are consistent with national survey data conducted in the spring of 2020. A survey of 1,500 parents conducted by ParentsTogether found then that parents of students with disabilities were twice as likely as their peers to be doing little or no remote learning (35% vs. 17%), and twice as likely to say that distance learning is going poorly (40% vs. 19%). Parents were also almost twice as concerned about their children’s mental health (40% vs. 23%).

***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 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 request 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 Alternative Dispute Resolution (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

SELPAAs 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, includes \$8.6 million to SELPAAs to assist LEAs with establishing and improving local ADR. SELPAAs are required to develop and submit a plan describing the ADR process to be enhanced, augmented, or developed, and how the agency will offer and use the ADR process to address special education complaints filed by families related to COVID-19 and distance learning. SELPAAs are also required to submit reports to the CDE including information about cases mediated through ADR, cases totally resolved by agreement, cases refusing ADR and requesting due process, a list of the issues that generated the request for dispute resolution services, and any recommendations for the workgroup developing the statewide IEP template under development.

***“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, 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 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 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 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)

***Compensatory services related to COVID-19 school disruptions.*** While the IDEA does not specifically address it by name, case law has established that “compensatory services” can be

awarded based on a finding of denial of FAPE. Compensatory services awards require additional services to be provided in order to address deficits caused by delay or failure to offer appropriate services required by an IEP. Compensatory services may be agreed to or ordered in different venues, including the IEP process, alternative dispute resolution, mediation, due process hearings, state complaints, and through litigation.

The nature of compensatory services order varies, as discussed in the article *Compensatory Education for IDEA Violations: The Silly Putty of Remedies?* (Seligmann, 2013):

While courts have recognized the theoretical need for compensatory education awards for some time, hearing officers or judges have had little to guide them in shaping these awards. Neither the IDEA nor its regulations address the issue. While the courts agree that the remedy is equitable and flexible, they have adopted approaches that differ in their emphases.

Some courts have calculated awards primarily on a time-lost basis, which has been called a "quantitative approach." Others have tried more consciously to define the nature of the deficits that flowed from the violation and the scope of services required to remedy them. This has been labeled the "qualitative approach." Still other hearing officers and courts have confined compensatory awards to the well-established area of tuition reimbursement, or made awards with little or no expressed rationale. Little in the literature offers prescriptive guidance for compensatory education remedies under the IDEA.

In March, 2020, the U.S. Department of Education (USDOE) issued a Questions and Answers document outlining states' responsibilities to infants, toddlers, and children with disabilities and their families, and to the staff serving these children. The USDOE stated that "if a child does not receive services during a closure, a child's IEP team (or appropriate personnel under Section 504) must make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost."

In September, 2020, the CDE issued guidance on special education during the COVID-19 pandemic which stated in part:

- Given the unprecedented situation created by the threat of COVID-19, exceptional circumstances may affect how a particular service is provided under a student's IEP. In such a situation, the IEP team will need to make individualized decisions regarding whether compensatory services are required when the regular provision of services resumes.
- Once the regular school session resumes, LEAs should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory education and services may be needed for a student. Educational need can be measured by assessing whether or not the student continued making progress in the general education curriculum, or alternative course of study specified in their IEP, or toward meeting their individualized IEP goals and/or if any regression occurred during the period of school site closure.

***Dispute resolution during and after COVID – what comes next?*** In October, 2020, the Center for Appropriate Dispute Resolution in Special Education published a report titled *Due Process*

*Hearing and Written State Complaint Activity for COVID-19 Issues: A Six-Month Snapshot.* This report provides data on complaint activity at the six-month mark of the pandemic, collected as survey data from approximately 40 states, not including California.

The report found that the largest category of disputes were regarding failure to provide FAPE, and showed that number of due process hearings and written state complaints related to COVID-19 is significantly lower than in previous years. The report notes that the statute of limitations of (two years for due process hearings and one year for written state complaints) means that some of the complaints specific to the initial pandemic period will not be filed until a later time. This lower than normal number of complaints mirrors the trend reported by the Department of General Services, which reports 1,807 disputes filed during the first two quarters of the 2020-21 fiscal year compared to 2,478 disputes for the same quarters of the 2019-20 fiscal year.

There are a number of possible explanations for this finding. Some suggest that special education processes, including IEP meetings and assessments, have been disrupted and that when schools re-open in the fall and normal processes resume disputes will resume and increase. Some note that parents have little incentive to initiate a dispute while schools are closed for in-person instruction, as any remedy would likely be via a distance learning modality that has not been effective for their children. Others point to the two-year statute of limitations for due process hearings. Some suggest that parents' focus has simply been on getting schools re-opened for in-person instruction. Finally, some have speculated that despite parents and students' frustration, the burden of meeting more pressing basic needs has (temporarily) deferred these concerns.

The actions of states and school districts suggest that an increase in disputes may be on the horizon. As noted below, multiple states have initiated efforts to try to mitigate the effects of the broad-scale IEP implementation problems. Some school districts report taking unusual steps to try to resolve disputes early to prevent them from escalating.

School districts that have remained largely open in the current school year may provide a preview of what is to come. One small SELPA writes in support of this bill:

As our SELPA has a strong foundation in ADR, we have low rates of special education litigation. With that said, since the COVID-19 crisis we have seen an exponential rise in these filings. Since March of 2020 we have experienced a 400% increase in special education filings and this has been with our school districts being fully reopened since the fall of 2020. Our LEAs continue to use foundational ADR skills and tools, however, we are at critical tipping point and need additional resources.

A November, 2020 *Education Week* article reported on the “bare cold calculus,” of special education disputes related to COVID-19 school disruptions, noting that “millions of students with disabilities across the country likely suffered learning loss and skill regression during the school closures brought on by the COVID-19 pandemic, but there is not enough money to go around to help them all make up for lost time.”

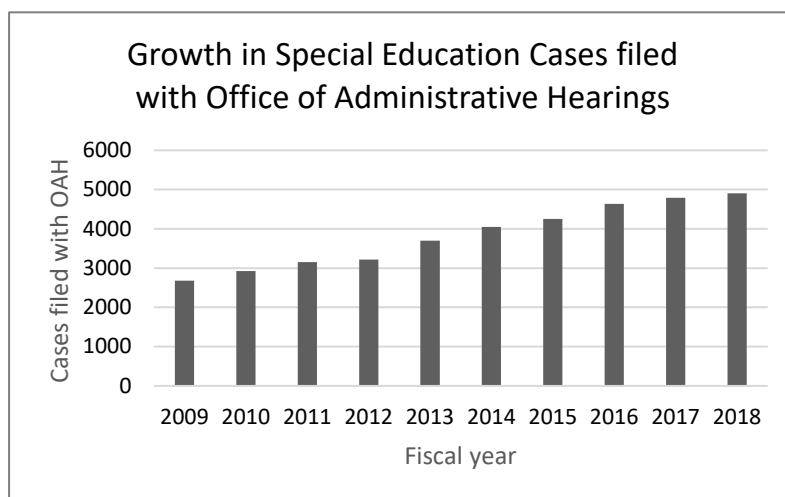
***Prior to COVID, California already had far more disputes related to special education than most other states.*** According to the federally-funded Consortium for Appropriate Dispute Resolution in Special Education (CADRE), for 2018-19:

- 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 already rising steadily in California, are expected to increase dramatically due to COVID-19 school disruptions.*** The number of state complaints filed with the Office of Administrative Hearings (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 USDOE 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 the Center for Appropriate Dispute Resolution in Special Education (CADRE), a federally funded organization which provides technical assistance to states, special education disputes are declining nationally, while California’s rate continues to increase.

***What are other states doing about compensatory services related to COVID-19?*** Other states have begun to implement strategies to mitigate the effect of the COVID-19 school disruptions on students with disabilities and to manage the anticipated rise in due process cases.

In Texas, the state has established “Supplemental Special Education Services” accounts of \$1,500 for parents of students with disabilities who have been impacted by COVID-19 school closures. Only families of students with significant and complex needs are eligible. The accounts can be used to obtain special educational resources and supplies and/or services such as additional speech therapy or other specific services.

In Massachusetts, the state’s Department of Elementary and Secondary Education directed school districts, by December 15, 2020, to determine which students will be eligible for compensatory services, and recommended that parents and the IEP team work together to make

decisions about compensatory services for these students. The state directed districts to prioritize specific groups of students, including students with complex and significant needs, students who unable to engage in remote learning, preschool-age children whose eligibility evaluations were delayed, and students who are homeless, in foster care, or are English learners. Massachusetts also communicated to parents that for students who are not in the high priority groups, school staff should observe, review data, and communicate about students’ needs in the fall.

Many other states are issuing guidance to the field regarding dispute resolution and compensatory services. This bill requires the CDE to issue guidance to assist LEAs in identifying factors to consider when conducting individualized analyses of impacts to learning or for services related to COVID-19 school disruptions, consistent with state and federal law.

***Family support helps to prevent and resolve disputes in a cost effective and more equitable manner, but the State has not adequately invested in it.***

As shown in the graphic adjacent graphic, published by CADRE, dispute resolution takes many forms along a continuum, which ranges from prevention activities such as family engagement and training, to legal activities such as hearings and litigation.

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											
	Interest-Based						Rights-Based											
Dimensions that help clarify placement of the options along the Continuum	Informal & Flexible						Formal & Fixed											

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).
- 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, “In March 2020, the worldwide COVID-19 pandemic forced California’s public schools to make an abrupt and unprecedented shift to virtual distance learning. The challenges of the pandemic have widened the education gap facing the most vulnerable students, particularly those with special education needs. Students needing special education services have especially struggled to learn without the one-on-one support and specialized services required by their IEPs. During the pandemic, many districts struggled to provide students with all of their required IEP services. AB 967 seeks to aid families and school in achieving resolution to speed the access to IEP services and supports for students as districts move from distance learning to in person instruction. The goal of AB 967 is to provide resources to schools to efficiently and effectively engage with families to resolve disputes speeding the availability of education aids, resources and services for students. For the reasons stated, we support AB 967.”

**Recommended Committee amendments.** *Staff recommends that this bill be amended to:*

- Add to the definition of “pupil,” individuals whose determination of eligibility for an IEP was delayed due to the COVID-19 school disruptions.
- Replace the unspecified date for CDE to issue guidance with no later than 60 days after enactment, and require that the guidance include examples of progress monitoring strategies.
- Permit funding to be used for agreements (not just settlement agreements) reached through ADR.
- Add a definition of ADR.
- Clarify that eligible services to be funded are IEP services.
- Clarify that applications may be submitted for multiple cases at the same time.
- Direct the CDE to notify LEAs of an amount of funding they are eligible to apply for based on the funding appropriated for this purpose divided by their enrollment of students with disabilities.
- Specify intent to use federal COVID-19-relief funds for this purpose.
- Include adults with disabilities under the age of 22 in intent language.
- Add a non-exclusive reference to procedural safeguards in the requirement that nothing in the measure may abridge any right under state or federal law.
- Technical and clarifying changes.

**Related legislation.** AB 126 (E. Garcia) of this Session requires the establishment of additional FECs, establishes increased funding levels awarded to each center, establishes new requirements for data collection and reporting to the CDE, and states 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 695 (Portantino) of the 2019-20 Session would have required LEAs to communicate in the native language of a parent during the planning process for an IEP, and provide a 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. This bill was vetoed by Governor Newsom, who stated:

Current law already requires that non-English speaking parents and guardians understand their child's IEP, and LEAs must take any action needed to ensure that pupil's non-English speaking parent understands the IEP process and LEAs must also provide any materials used to assess or place a student with exceptional needs in the parent's native language.

By establishing more prescriptive requirements, particularly specifying a 30-day timeline within which those documents must be translated, the bill would exceed the requirements of federal law (the Individuals with Disabilities Act), thereby creating a costly reimbursable state mandate that will reduce funding available to support broader educational programs for these students. If a California school district's practices of providing translation services are inadequate, avenues already exist to remedy these problems.

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**

Alliance for Children's Rights (co-sponsor)  
Coalition for Adequate Funding for Special Education (co-sponsor)  
SELPA Administrators of California (co-sponsor)  
Achieve Kids

Alameda Unified School District  
Alta Public Schools  
Antelope Valley Union High School District  
Atascadero Unified School District  
Bakersfield City Elementary SELPA  
Beaumont Unified School District  
Beverly Hills Unified School District  
Big Sur Charter School  
Bonsall Unified School District  
Butte County SELPA  
Cabrillo Unified School District  
California Association of Private Special Education Schools  
California Association of School Business Officials  
California Charter Schools Association  
California Retired Teachers Association  
California School Funding Coalition  
Cardiff School District  
Castro Valley Unified School District  
Antelope Elementary School District  
Carlsbad Unified School District  
Cayucos Elementary School District  
Central Valley Education Coalition  
Children Now  
Clovis Unified School District  
Coast Unified School District  
Community Advisory Committee Leadership Collaborative for Special Education  
Corona Norco Unified School District  
Cuddeback Union Elementary School District  
Culver City Unified School District  
Del Mar Union School District  
Dixon Unified School District  
East San Gabriel Valley SELPA  
East San Gabriel Valley SELPA Community Advisory Committee  
East Valley SELPA  
Encinitas Union School District  
Evergreen Union School District  
Fairfield-Suisun Unified School District  
Family Resource Navigators  
Fieldbrook Elementary School District  
Foothill SELPA  
Fortuna Elementary School District  
Fortuna Union High School District  
Freshwater School District  
Fresno County SELPA  
Gerber Union Elementary School  
Greater Anaheim SELPA  
Griffin Technology Academies  
Hawthorne School District  
Horicon Elementary School District

Humboldt - Del Norte SELPA  
Humboldt County Office of Education  
Inglewood Unified School District  
Irvine Unified School District  
Jacoby Creek School District  
Jurupa Unified School District  
King City Union School District  
Lammersville Unified School District  
Lancaster School District  
Las Virgenes Unified School District  
Lassen View Union Elementary School District  
Lompoc Unified School District  
Long Beach Unified School District  
Los Angeles County Charter SELPA  
Los Angeles County Superintendent of Schools  
Mid-Alameda County SELPA  
Mid-cities SELPA  
Moreno Valley Unified School District  
North Coastal SELPA  
North Orange County SELPA  
North Region SELPA  
Oceanside Unified School District  
Orange Unified School District  
Pacific Union School District  
Pacific View Charter School 2.0  
Palmdale School District  
Palo Verde Unified School District  
Pathways Charter School  
Perris Union High School District  
Red Bluff Joint Union High School District  
Red Bluff Union Elementary School District  
Reeds Creek Elementary School District  
Riverside County Public K-12 School District Superintendents  
Riverside County SELPA  
Riverside County Superintendent of Schools  
Romoland School District  
Saheli Arbitration/Mediation  
San Diego Unified School District  
San Joaquin County SELPA  
San Lucas Union Elementary School District  
San Luis Obispo County Office of Education  
San Luis Obispo County SELPA District  
San Marcos Unified School District  
San Mateo County SELPA  
San Mateo Foster City School District  
Santa Barbara County SELPA  
Santa Clarita Valley SELPA  
Santa Cruz County Office of Education

Santa Rosa City Schools  
Scotia Union School District  
Sequoia Union High School District  
Shandon Joint Unified School District  
Solano County SELPA  
Sonoma County Office of Education  
Sonoma County SELPA  
Sonoma SELPA Community Advisory Committee  
Soquel Union Elementary School District  
South East Consortium SELPA  
Southwest SELPA  
SELPA 1 of Santa Clara County Community Advisory Committee  
Stockton City Unified SELPA  
Tehama County Department of Education  
Tehama County SELPA  
Torrance Unified School District  
Travis Unified School District  
Tri-city SELPA  
Tustin Unified School District  
Vacaville Unified School District  
Vallejo City Unified School District  
Ventura County SELPA  
Voices College Bound Language Academies  
West Contra Costa Unified School District SELPA  
Westside Union School District  
Wilmar Union School District  
Wiseburn Unified School District  
Yolo County SELPA  
Yuba County SELPA  
Several individuals

**Opposition**

None on file

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