
Education Committee

HB 1914

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

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

Brief Summary of Bill

- Requires school districts to provide to parents information about the Office of the Education Ombuds, with special education materials.
- Directs districts to provide parents with a monthly report about the quantity and method of special education services delivered to their students.
- Directs, subject to appropriation, each educational service district (ESD) to contract for certain professional services for local students eligible for special education services.
- Establishes special education due process hearing requirements.
- Modifies special education ombuds requirements.

Hearing Date: 1/11/24

Staff: Megan Wargacki (786-7194).

Background:

Special Education Law Generally.

Two of the main goals of special education law are to: (1) ensure that all children and youth

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with disabilities have the opportunity for a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) ensure the rights of children and youth with disabilities are protected. Sources of special education law include Part B of the federal Individuals with Disabilities Education Act (IDEA), Section 504 of the federal Rehabilitation Act of 1973, state statutes, and state administrative rules.

For individuals ages 3 through 21 (referred to as students) who are eligible for special education services, special education law applies to all political subdivisions and public institutions involved in the education of the students. This makes special education law applicable to: school districts, charter schools, state-tribal education compact schools, the Washington State School for the Blind, the Washington Center for Deaf and Hard of Hearing Youth, and institutional education providers (collectively referred to as school districts). In addition, school districts are responsible for ensuring that the rights and protections under Part B of IDEA are given to students who are referred to or placed in authorized entities by a school district.

Provision of Special Education Services.

School districts have an affirmative duty to identify and evaluate all students residing in the district who might need special education and related services.

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

Office of the Superintendent of Public Instruction.

The Office of the Superintendent of Public Instruction (OSPI) has the duty and authority to: assist school districts in the formation of programs to meet the needs of students with disabilities; provide information about special education programs to parents of students with disabilities; administer impartial hearings and other procedures to ensure procedural safeguards of students with disabilities; and promulgate rules to implement IDEA and related state laws.

Office of the Education Ombuds.

In 2006 the Office of the Education Ombuds (OEO) was created within the Office of the Governor to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system and to advocate on behalf of students. It is the lead agency for providing resources to families about public school antiharassment policies and strategies. All matters are treated as confidential by the OEO, except as necessary to perform the duties of the office.

The OEO describes its role as: listening to concerns and addressing questions about the public education system; using informal conflict resolution tools to support collaborative problem solving and promote education justice; providing coaching, facilitation, training about family and

community engagement, and systems advocacy; and collecting data and identifying trends to guide its education policy recommendations.

Special Education Ombuds.

In 2023 legislation was enacted that added duties to the OEO. Subject to appropriation, the Education Ombuds must delegate and certify at least one special education ombuds to serve each educational service district (ESD) region. The Education Ombuds must ensure that the special education ombuds selected are appropriate to their community and hold the same qualifications as the Education Ombuds. The Education Ombuds may not contract with the OSPI, or any school, school district, ESD, or current employee of a school, school district, ESD, or the OSPI for the provision of special education ombuds services.

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

Special Education Due Process Hearings.

A due process hearing is a formal, legal proceeding conducted by an impartial administrative law judge. Parents and school districts have a right to request a due process hearing to resolve issues about the identification, evaluation, educational placement, or provision of a free appropriate public education to a student with disabilities.

The IDEA and state law are silent about which party to the hearing has the burden of proving the facts at issue. In 2005, in *Schaffer v. Weast*, the United States Supreme Court held that the party requesting a due process hearing bears the burden of proof under IDEA. The court declined to state whether states may override the default rule.

Summary of Bill:

Notification about the Office of the Education Ombuds' Services.

With all correspondence and materials related to evaluation for and provision of special education services, each school district must provide the parent of a student who is or may be eligible for special education services a description of the services available through the Office of the Education Ombuds (OEO) and the contact information for the OEO.

Quantitative Special Education Service Report.

For each student whose individualized education program (IEP) includes provision of a related or supplementary special education service that is quantifiable, each school district must provide a monthly report, in writing, to the parent of the student that indicates the quantity of each service delivered to the student and the method in which the service was delivered. The report must be made available within five business days of a parent's request.

Special Education Due Process Hearings.

The school district has the burden of proof and the burden of production whenever it is a party to a special education due process hearing. Evidence showing that a student has not failed or been retained in a course or grade does not create the presumption that the school has provided the student with a free appropriate public education. In addition, the Office of the Superintendent of Public Instruction (OSPI) may order the IEP team to reconvene with a qualified interpreter, in circumstances where the parent was not able to fully participate in the adoption of an IEP.

Office of the Superintendent of Public Instruction.

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

Contracted Special Education Services.

Subject to appropriation, each educational service district (ESD) must contract for speech language pathologists, audiologists, psychologists, physical therapists, orientation and mobility specialists, occupational therapists, and behavior analysts for the purpose of providing services to local students eligible for special education services.

Special Education Ombuds.

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

Language requiring the Education Ombuds to serve as a resource for students eligible for special education services and their parents, including the list of specified duties, is maintained.

Appropriation: None.

Fiscal Note: Requested on January 4, 2024.

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