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AB-2580 Special education: due process hearings: extension of hearings: good cause. (2017-2018)

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Assembly Bill No. 2580

CHAPTER 874

An act to amend Section 56505 of the Education Code, relating to special education.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2580, Cunningham. Special education: due process hearings: extension of hearings: good cause.

Existing law requires local educational agencies to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program.

Existing law enumerates the requirements for state hearings regarding whether an individual with exceptional needs received a free appropriate public education, including the requirement that upon completion of the hearing, a written, reasoned decision be mailed to all parties to the hearing, as provided. Existing law authorizes either party to the hearing to request that the hearing officer grant an extension and requires the extension to be granted upon a showing of good cause.

This bill would require the hearing officer to apply a certain rule of court in making a determination of what constitutes good cause and would authorize a 2nd or subsequent extension to be granted for good cause or any other purpose at the discretion of the hearing officer.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent and the pupil.

(c) (1) The hearing shall be conducted by a person who, at a minimum, shall possess 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 (20 U.S.C. Sec. 1400 et seq.), federal regulations pertaining to the act, and legal interpretations of this part and the federal law by federal and state courts, and who has satisfactorily completed training pursuant to this subdivision. The Superintendent shall 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.

(2) The hearing officer shall possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice.

(3) The hearing officer shall possess the knowledge and ability to render and write decisions in accordance with appropriate standard legal practice.

(4) A due process hearing shall not be conducted by an individual listed in Section 1415(f)(3)(A)(i) of Title 20 of the United States Code. Pursuant to Section 300.511(c)(2) of Title 34 of the Code of Federal Regulations, a person who is qualified to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to Section 300.518(a) of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.533 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent agree otherwise. A pupil applying for initial admission to a public school, with the consent of his or her parent, shall be placed in the public school program until all proceedings have been completed. As provided in Section 300.518(d) of Title 34 of the Code of Federal Regulations, 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 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 and the parent. In accordance with Section 300.518(c) of Title 34 of the Code of Federal Regulations, if a due process hearing request involves an application for initial services from a child who is transitioning from an early education program under Chapter 4.4 (commencing with Section 56425) to a special education program serving individuals with exceptional needs between the ages of three to five years, inclusive, under Chapter 4.45 (commencing with Section 56440), and is no longer eligible for early education services because the child has turned three years of age, the local educational agency is not required to provide early education services that the child had been receiving. If the child is found eligible for special education and related services for children age three years of age and older, and the parent consents to the initial provision of special education and related services under Section 300.300(b) of Title 34 of the Code of Federal Regulations, the local educational agency shall provide those special education and related services that are not in dispute between the parent and the local educational agency.

(e) A party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of, witnesses.

(4) The right to a written, or, at the option of the parent, electronic, verbatim record of the hearing.

(5) The right to written, or, at the option of the parent, electronic, findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents in accordance with Section 300.512(c)(3) of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of Section 1417(c) of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to Section 1415(h)(4) of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days before the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days before 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. Included in the material to be disclosed to all parties at least five business days before a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to Section 300.512(a)(3) of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) (1) In accordance with Section 1415(f)(3)(E) of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(2) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a free appropriate public education only if the procedural violation did any of the following:

(A) Impeded the right of the child to a free appropriate public education.

(B) Significantly impeded the opportunity of the parent to participate in the decisionmaking process regarding the provision of a free appropriate public education to the child of the parent.

(C) Caused a deprivation of educational benefits.

(3) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for a nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for the placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing not later than 45 days after the expiration of the 30-day period pursuant to subdivision (c) of Section 56501.5. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. The hearing officer shall apply Rule 3.1332 of the California Rules of Court in making a determination of what constitutes good cause. An extension shall extend the time for rendering a final administrative decision only for a period equal to the length of the extension. A second or subsequent extension may be granted for good cause or any other purpose at the discretion of the hearing officer.

(4) This subdivision does not preclude a due process hearing officer from ordering a local educational agency to comply with procedural requirements under this chapter.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(j) In a hearing conducted pursuant to this section, the hearing officer shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent of the pupil to participate in the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party also may exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.516 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of an administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public agency and the parent of the child agree otherwise. An action brought under this subdivision shall adhere to Section 300.516(c) of Title 34 of the Code of Federal Regulations.

(l) A request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. In accordance with Section 1415(f)(3)(D) of Title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent.

(m) Pursuant to Section 300.511(c) of Title 34 of the Code of Federal Regulations, each public agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public agencies by the organization or entity under contract with the department to conduct due process hearings.

(n) A party who filed for a due process hearing before the effective date of this section is not bound by the two-year statute of limitations time period in subdivision (l) if the party filed a request within the three-year statute of limitations provision pursuant to subdivision (l), as that subdivision read before October 9, 2006.