

ASSEMBLY BILL NO. 328—ASSEMBLYMAN ELLIOT ANDERSON

MARCH 16, 2015

Referred to Committee on Education

SUMMARY—Revises provisions relating to certain hearings concerning pupils with disabilities. (BDR 34-620)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; prescribing procedures for the selection of a hearing officer to administer certain hearings relating to pupils with disabilities; requiring a local educational agency involved in a complaint to pay the cost of a hearing; requiring the Department of Education to adopt regulations prescribing certain procedures relating to hearing officers; authorizing the appeal of the decision of a hearing officer to the Department; requiring the Department to post certain information relating to such hearings on its Internet website; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Federal law requires each state to provide a parent or guardian of a pupil with the opportunity to challenge at a due process hearing: (1) the pupil's identification as a pupil with a disability; (2) the pupil's identification as a pupil without a disability; or (3) the placement of such a pupil. (20 U.S.C. § 1415) **Section 2.3** of this bill requires the Superintendent of Public Instruction to provide the names of three hearing officers selected on an impartial basis from a list maintained by the Department of Education to a complainant for a due process hearing held pursuant to federal law. **Section 2.3** requires the complainant to return to the Superintendent a list which places the three names in order of preference within 2 days. If the preferred hearing officer is not available, the next person on the list will be selected. **Section 2.3** requires the Superintendent to select a hearing officer on an impartial basis from the list maintained by the Department if the complainant does not return the list within 2 days or a due process hearing is required to be expedited pursuant to federal law. **Section 2.3** also provides that the: (1) local educational agency involved in the complaint or the governing body of a charter school, as



applicable, must pay the cost of the hearing; and (2) decision of a hearing officer may be appealed to the Department.

**Section 2.7** of this bill requires the State Board of Education to prescribe by regulation: (1) the procedures for requesting the recusal of a hearing officer; (2) the qualifications necessary to remain on the list of hearing officers maintained by the Department and (3) the procedures to compensate a hearing officer. **Section 2.7** also requires the Department to post certain information relating to due process hearings on its Internet website.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 387.1221 is hereby amended to read as follows:

387.1221 1. The basic support guarantee for any special education program unit maintained and operated during a period of less than 9 school months is in the same proportion to the amount established by law for that school year as the period during which the program unit actually was maintained and operated is to 9 school months.

2. Any unused allocations for special education program units may be reallocated to other school districts, charter schools or university schools for profoundly gifted pupils by the Superintendent of Public Instruction. In such a reallocation, first priority must be given to special education programs with statewide implications, and second priority must be given to special education programs maintained and operated within counties whose allocation is less than or equal to the amount provided by law. If there are more unused allocations than necessary to cover programs of first and second priority but not enough to cover all remaining special education programs eligible for payment from reallocations, then payment for the remaining programs must be prorated. If there are more unused allocations than necessary to cover programs of first priority but not enough to cover all programs of second priority, then payment for programs of second priority must be prorated. If unused allocations are not enough to cover all programs of first priority, then payment for programs of first priority must be prorated.

3. A school district, a charter school or a university school for profoundly gifted pupils may, after receiving the approval of the Superintendent of Public Instruction, contract with any person, state agency or legal entity to provide a special education program unit for pupils of the district pursuant to NRS 388.440 to 388.520, inclusive **H**, and sections 2.3 and 2.7 of this act.



4. A school district in a county whose population is less than 700,000, a charter school or a university school for profoundly gifted pupils that receives an allocation for special education program units may use not more than 15 percent of its allocation to provide early intervening services.

**Sec. 2.** Chapter 388 of NRS is hereby amended by adding thereto the provisions set forth as sections 2.3 and 2.7 of this act.

**Sec. 2.3. 1.** *The Department shall maintain a list of hearing officers who meet the qualifications prescribed pursuant to 20 U.S.C. § 1415(f)(3)(A) to conduct a due process hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., regarding the identification, evaluation, reevaluation, classification, educational placement or disciplinary action of or provision of a free appropriate public education to a pupil with a disability.*

*2. Except as otherwise provided in subsection 4, upon the filing of a complaint requiring a due process hearing described in subsection 1, the Superintendent of Public Instruction shall select three hearing officers from the list maintained by the Department pursuant to subsection 1. The selection of the hearing officers must be made on a random, rotational or other impartial basis and, in a school district in which more than 50,000 pupils are enrolled, the place of business of the hearing officer must, to the extent practicable, be located in the school district.*

*3. The Superintendent of Public Instruction shall provide the names of the three hearing officers selected pursuant to subsection 2 to the complainant and request the complainant to return to the Superintendent a list which places the three names in the order of preference of the complainant. The complainant must return the list within 2 days. If the complainant returns the list, the Superintendent must request the first hearing officer on the list to preside over the hearing and if he or she is unavailable, the next person, until there are no more hearing officers on the list. If the complainant does not return the list within 2 days, the Superintendent must appoint a hearing officer and may determine the order in which to request a hearing officer to preside over the hearing.*

*4. If a due process hearing is required to be expedited pursuant to 20 U.S.C. § 1415(k)(4), the Superintendent of Public Instruction must select a hearing officer to preside over the hearing from the list maintained by the Department pursuant to subsection 1. The selection of the hearing officer must be made on a random, rotational or other impartial basis and, in a school district in which more than 50,000 pupils are enrolled, the place of*



business of the hearing officer must, to the extent practicable, be located in the school district.

5. The local educational agency or governing body of a charter school involved in the complaint, as applicable, shall pay the cost of the hearing, including, without limitation, any compensation to which the hearing officer is entitled.

6. The decision of a hearing officer may be appealed by any aggrieved party to the Department.

7. As used in this section, "local educational agency" has the meaning ascribed to it in 20 U.S.C. § 1401(19).

**Sec. 2.7. 1.** The State Board shall prescribe by regulation:

(a) The procedures for requesting the recusal of a hearing officer on the basis of bias or a conflict of interest.

(b) The qualifications to remain on the list of hearing officers maintained pursuant to subsection 1 of section 1 of this act. Such qualifications must include, without limitation, requiring that a hearing officer:

(1) Must complete, within the first year that the name of the hearing officer appears on the list maintained by the Department pursuant to subsection 1 of section 1 of this act, a minimum of 40 hours of training, which must include, without limitation, 24 hours of training in laws relating to special education; and

(2) Must complete annual training arranged by the Department. The training must include, without limitation, training concerning laws relating to special education, the procedure for conducting a hearing and rendering and writing a decision.

(c) The procedures for compensating a hearing officer which must be established to avoid a conflict of interest for the hearing officer or the appearance of such a conflict.

2. The Department of Education shall post information as prescribed by the State Board relating to due process hearings held pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., on its Internet website. Such information must include, without limitation:

(a) A model form that may be used to request such a hearing;

(b) Decisions from such hearings after the names and other personally identifiable information of the pupils who were the subject of such hearings have been removed;

(c) Decisions from the appeals of such hearings after the names and any other personally identifiable information of the pupils who were the subject of the hearings have been removed; and

(d) Timelines and procedures for conducting such hearings.



**Sec. 3.** NRS 388.440 is hereby amended to read as follows:

388.440 As used in NRS 388.440 to 388.5317, inclusive **H**,  
*and sections 2.3 and 2.7 of this act:*

1. "Communication mode" means any system or method of communication used by a person who is deaf or whose hearing is impaired to facilitate communication which may include, without limitation:

- (a) American Sign Language;
- (b) English-based manual or sign systems;
- (c) Oral and aural communication;
- (d) Spoken and written English, including speech reading or lip reading; and
- (e) Communication with assistive technology devices.

2. "Gifted and talented pupil" means a person under the age of 18 years who demonstrates such outstanding academic skills or aptitudes that the person cannot progress effectively in a regular school program and therefore needs special instruction or special services.

3. "Individualized education program" has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

4. "Individualized education program team" has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(B).

5. "Pupil who receives early intervening services" means a person enrolled in kindergarten or grades 1 to 12, inclusive, who is not a pupil with a disability but who needs additional academic and behavioral support to succeed in a regular school program.

6. "Pupil with a disability" means a person under the age of 22 years who deviates either educationally, physically, socially or emotionally so markedly from normal patterns that the person cannot progress effectively in a regular school program and therefore needs special instruction or special services.

**Sec. 4.** This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2016, for all other purposes.

