

Amendment No. 246

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| Assembly Amendment to Assembly Bill No. 258 | (BDR 34-760) |
| Proposed by: Assembly Committee on Education | |
| Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

Adoption of this amendment will REMOVE the unfunded mandate from A.B. 258.

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/15/2019

A.B. No. 258—Makes various changes relating to the provision of special education in public schools. (BDR 34-760)



ASSEMBLY BILL NO. 258—ASSEMBLYMEN THOMPSON, DURAN, ASSEFA; GORELOW,
MARTINEZ, TORRES AND YEAGER

MARCH 13, 2019

JOINT SPONSOR: SENATOR DONDERO LOOP

Referred to Committee on Education

SUMMARY—Makes ~~various~~ changes relating to the provision of special education in public schools. (BDR 34-760)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~~{CONTAINS UNFUNDED MANDATE (§ 4)
(Not Requested by Affected Local Government)}~~

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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; providing for the enforcement of the decision of a hearing officer or a settlement agreement resulting from a due process hearing; ~~{prohibiting the imposition of certain eligibility requirements for programs of instruction and special services for pupils with multiple impairments in public schools;}~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law requires a due process hearing to be held concerning a complaint relating to the identification of a pupil as a pupil with or without a disability or the sufficiency of services provided to such a pupil. (20 U.S.C. § 1415) Existing Nevada law: (1) provides for the selection of a hearing officer; (2) requires the local educational agency or governing body of a charter school involved in the complaint to pay the cost of the hearing; and (3) authorizes an aggrieved party to appeal the decision of a hearing officer to the Department of Education. (NRS 388.463) **Section 1** of this bill authorizes the parent or guardian of a pupil who is the subject of a decision or settlement agreement resulting from a due process hearing , or the pupil under certain circumstances, to submit a complaint to the Department if the local educational agency or charter school has failed to comply with the decision or settlement agreement. If the ~~{hearing officer}~~ **Department** determines that the allegations of the complaint are true, **section 1** requires the ~~{hearing officer}~~ **Department** to ~~{order the local educational agency or charter school to: (1) comply with the terms of the complaint or agreement; (2) pay the reasonable expenses of the complainant; and (3)}~~ take any ~~{additional}~~ measures deemed necessary ~~{by the hearing officer}~~ to ensure that : (1) the local educational agency or governing body of the charter school complies with the decision or settlement agreement; and (2) the pupil receives a free appropriate public education. ~~{Section 1 provides for the enforcement of such an order by the Department.}~~ **Section 2** of this bill makes a conforming change. ~~{Section 4 of this bill requires the local educational agency or charter~~

school that is the subject of the complaint to pay the cost of the hearing. Section 4 also authorizes an aggrieved party to appeal the decision of the hearing officer to the Department. Existing law requires the State Board of Education to prescribe standards for programs of instruction or special services maintained for the purposes of serving pupils with multiple impairments. (NRS 388.419) Existing regulations require a pupil to have an intellectual disability and at least one other impairment to be eligible for such programs or services. (NAC 388.425) Section 3 of this bill prohibits the Board from adopting standards that require a pupil to have any specific impairment, such as an intellectual disability, to be eligible for such programs or services. Section 5 of this bill voids any regulations that conflict with section 3.]

Existing law establishes the requirement for a pupil with a disability to obtain an adjusted diploma or an alternative diploma. (NRS 390.600) Section 4.5 of this bill requires a pupil to participate in an alternative assessment rather than pass such an assessment to obtain an alternative diploma.

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

Section 1. Chapter 388 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a local educational agency or the governing body of a charter school fails to comply with the decision of a hearing officer or a settlement agreement resulting from a due process hearing, the parent or guardian of the pupil who is the subject of the decision or agreement or, if the pupil has attained 18 years of age and responsibility for his or her educational interests has been transferred to the pupil, the pupil may file a complaint with the Department [Such a complaint must be heard by the hearing officer who issued the decision or approved the agreement unless that hearing officer is not available. If that hearing officer is not available, the Department must select another hearing officer who meets the qualifications prescribed pursuant to 20 U.S.C. § 1415(f)(3)(A) to hear the complaint.] pursuant to 34 C.F.R. § 300.153.

2. After investigating a complaint filed pursuant to subsection 1 and providing the local educational agency or governing body with an opportunity to respond to the complaint, including, without limitation, any mitigating factors, the Department shall issue a written decision concerning the complaint. If [after a hearing conducted pursuant to subsection 1, the hearing officer] the Department finds that the local educational agency or governing body has failed to comply with the decision or settlement agreement, as applicable, the [hearing officer] Department must [:

(a) Order the local educational agency or governing body, as applicable, to:

(1) Comply with the decision or agreement;

(2) Pay any reasonable expenses, including, without limitation, attorney's fees, incurred by the complainant to file the complaint and have it heard;

(3) Take any additional measures deemed necessary by the hearing officer to ensure that the pupil receives a free appropriate public education; and

(b) Provide a copy of the order to the Department.

3. Upon receiving a copy of an order pursuant to subsection 2, the Department shall take [any] :

(a) Any measures that the Department determines necessary to ensure that the local educational agency or governing body complies with the [order. Such measures] decision or settlement agreement, as applicable; and

(b) Any additional measures that the Department determines are necessary to ensure that the pupil receives a free appropriate public education.

3. Measures taken pursuant to subsection 2 may include, without limitation:

(a) Issuing a written order to the local educational agency or governing body to take specific action;

(b) Monitoring the actions taken by the local educational agency or governing body to comply with the order;

~~(c)~~ (c) Withholding federal or state money that would otherwise be provided to the local educational agency or governing body for the purpose of providing educational services to the pupil and using that money to directly arrange and pay for the provision of such services to the pupil; and

~~(d)~~ (d) Referring the matter to the Attorney General to bring an action in a court of competent jurisdiction to enforce the order.

4. The Department shall provide a copy of any decision issued pursuant to subsection 2 and any order issued pursuant to paragraph (a) of subsection 3 to:

(a) The complainant and the local educational agency or governing body, as applicable; and

(b) If applicable, the superintendent of the local educational agency and any person or office responsible for compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., at the local educational agency or charter school.

5. Nothing in this section shall be deemed to preclude a parent or guardian of a pupil from seeking any other remedy available at law or in equity.

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

Sec. 2. NRS 388.417 is hereby amended to read as follows:

388.417 As used in NRS 388.417 to 388.515, inclusive ~~H~~, and section 1 of this act:

1. "Communication mode" means any system or method of communication used by a person with a disability, including, without limitation, 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. "Dyslexia" means a neurological learning disability characterized by difficulties with accurate and fluent word recognition and poor spelling and decoding abilities that typically result from a deficit in the phonological component of language.

3. "Dyslexia intervention" means systematic, multisensory intervention offered in an appropriate setting that is derived from evidence-based research.

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

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

6. "Provider of special education" means a school within a school district or charter school that provides education or services to pupils with disabilities or any other entity that is responsible for providing education or services to a pupil with a disability for a school district or charter school.

7. "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.

8. "Pupil with a disability" means a "child with a disability," as that term is defined in 20 U.S.C. § 1401(3)(A), who is under 22 years of age.

9. "Response to scientific, research-based intervention" means a collaborative process which assesses a pupil's response to scientific, research-based intervention that is matched to the needs of a pupil and that systematically monitors the level of performance and rate of learning of the pupil over time for the purpose of making data-based decisions concerning the need of the pupil for increasingly intensified services.

10. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is not primarily the result of a visual, hearing or motor impairment, intellectual disability, serious emotional disturbance, or an environmental, cultural or economic disadvantage. Such a disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. The term includes, without limitation, perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

Sec. 3. ~~NRS 388.419 is hereby amended to read as follows:~~

~~388.419 1. The Department shall:~~

~~(a) Prescribe a form that contains the basic information necessary for the uniform development, review and revision of an individualized education program for a pupil with a disability in accordance with 20 U.S.C. § 1414(d); and~~

~~(b) Make the form available on a computer disc for use by school districts and, upon request, in any other manner deemed reasonable by the Department.~~

~~2. Except as otherwise provided in this subsection, each school district shall ensure that the form prescribed by the Department is used for the development, review and revision of an individualized education program for each pupil with a disability who receives special education in the school district. A school district may use an expanded form that contains additions to the form prescribed by the Department if the basic information contained in the expanded form complies with the form prescribed by the Department.~~

~~3. The State Board:~~

~~(a) Shall prescribe minimum standards for the special education of pupils with disabilities.~~

~~(b) May prescribe minimum standards for the provision of early intervening services.~~

~~4. The minimum standards prescribed by the State Board must include standards for programs of instruction or special services maintained for the purpose of serving pupils with:~~

~~(a) Hearing impairments, including, but not limited to, deafness.~~

~~(b) Visual impairments, including, but not limited to, blindness.~~

~~(c) Orthopedic impairments.~~

~~(d) Speech and language impairments.~~

~~(e) Intellectual disabilities.~~

~~(f) Multiple impairments.~~

~~(g) Emotional disturbances.~~

~~(h) Other health impairments.~~

~~(i) Specific learning disabilities.~~

~~(j) Autism spectrum disorders.~~

~~(k) Traumatic brain injuries.~~

~~(l) Developmental delays;~~
~~5. The minimum standards prescribed by the State Board for pupils with hearing impairments, including, without limitation, deafness, pursuant to paragraph (a) of subsection 4 must comply with:~~
~~(a) The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and the regulations adopted pursuant thereto;~~
~~(b) The effective communication requirement of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12121 et seq., and the regulations adopted pursuant thereto; and~~
~~(c) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations adopted pursuant thereto;~~
~~6. The minimum standards prescribed by the State Board for pupils with dyslexia pursuant to paragraph (i) of subsection 4 must include, without limitation, standards for instruction on:~~
~~(a) Phonemic awareness to enable a pupil to detect, segment, blend and manipulate sounds in spoken language;~~
~~(b) Graphonomic knowledge for teaching the sounds associated with letters in the English language;~~
~~(c) The structure of the English language, including, without limitation, morphology, semantics, syntax and pragmatics;~~
~~(d) Linguistic instruction directed toward proficiency and fluency with the patterns of language so that words and sentences are carriers of meaning; and~~
~~(e) Strategies that a pupil may use for decoding, encoding, word recognition, fluency and comprehension.~~
~~7. The standards prescribed by the State Board for programs of instruction or special services for pupils with multiple impairments pursuant to paragraph (f) of subsection 4 must not include a requirement that a pupil have any specific impairment to be eligible to participate in such programs or to receive such services.~~
~~8. No apportionment of state money may be made to any school district or charter school for the instruction of pupils with disabilities until the program of instruction maintained therein for such pupils is approved by the Superintendent of Public Instruction as meeting the minimum standards prescribed by the State Board.~~
~~[8.] 9. The Department shall, upon the request of the board of trustees of a school district, provide information to the board of trustees concerning the identification and evaluation of pupils with disabilities in accordance with the standards prescribed by the State Board.~~
~~[9.] 10. The Department shall post on the Internet website maintained by the Department the data that is submitted to the United States Secretary of Education pursuant to 20 U.S.C. § 1418 within 30 days after submission of the data to the Secretary in a manner that does not result in the disclosure of data that is identifiable to an individual pupil.] (Deleted by amendment.)~~
Sec. 4. [NRS 388.463 is hereby amended to read as follows:]
~~388.463 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~~

1 ~~hearing officers must be made on a random, rotational or other impartial basis and,~~
2 ~~in a school district in which more than 50,000 pupils are enrolled, the place of~~
3 ~~business of the hearing officer must, to the extent practicable, be located in the~~
4 ~~school district.~~

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

15 ~~4. If a due process hearing is required to be expedited pursuant to 20 U.S.C. §~~
16 ~~1415(k)(4), the Superintendent of Public Instruction must select a hearing officer to~~
17 ~~preside over the hearing from the list maintained by the Department pursuant to~~
18 ~~subsection 1. The selection of the hearing officer must be made on a random,~~
19 ~~rotational or other impartial basis and, in a school district in which more than~~
20 ~~50,000 pupils are enrolled, the place of business of the hearing officer must, to the~~
21 ~~extent practicable, be located in the school district.~~

22 ~~5. The local educational agency or governing body of a charter school, as~~
23 ~~applicable, involved in [the] a complaint [, as applicable.] submitted pursuant to~~
24 ~~this section or section 1 of this act shall pay the cost of the hearing, including,~~
25 ~~without limitation, any compensation to which the hearing officer is entitled.~~

26 ~~6. [The] Any decision of a hearing officer pursuant to this section or section~~
27 ~~1 of this act may be appealed by any aggrieved party to the Department.~~

28 ~~7. As used in this section, "local educational agency" has the meaning~~
29 ~~ascribed to it in 20 U.S.C. § 1401(19).] (Deleted by amendment.)~~

30 **Sec. 4.5. NRS 390.600 is hereby amended to read as follows:**

31 390.600 1. The State Board shall adopt regulations that, except as otherwise
32 provided in subsection 3, prescribe the criteria for a pupil to receive a standard high
33 school diploma, which must include, without limitation, the requirement that:

34 (a) A pupil enrolled in grade 11 take the college and career readiness
35 assessment administered pursuant to NRS 390.610; and

36 (b) Commencing with the graduating class of 2022 and each graduating class
37 thereafter, a pupil successfully complete a course of study designed to prepare the
38 pupil for graduation from high school and for readiness for college and career.

39 2. The criteria prescribed by the State Board pursuant to subsection 1 for a
40 pupil to receive a standard high school diploma must not include the results of the
41 pupil on the college and career readiness assessment administered to the pupil in
42 grade 11 pursuant to NRS 390.610.

43 3. A pupil with a disability who does not satisfy the requirements to receive a
44 standard high school diploma prescribed by the State Board pursuant to subsection
45 1 may receive a standard high school diploma if the pupil demonstrates, through a
46 portfolio of the pupil's work, proficiency in the standards of content and
47 performance established by the Council to Establish Academic Standards for Public
48 Schools pursuant to NRS 389.520.

49 4. A pupil with a disability who does not satisfy the requirements for receipt
50 of a standard high school diploma prescribed in subsection 3 or by the State Board
51 pursuant to subsection 1 may receive a diploma designated as an:

52 (a) Adjusted diploma if the pupil satisfies the requirements set forth in his or
53 her individualized education program; or

1 (b) Alternative diploma if the pupil:

2 (1) Has a significant cognitive disability; and

3 (2) ~~Passes~~ Participates in an alternate assessment prescribed by the State
4 Board.

5 5. If a pupil does not satisfy the requirements to receive a standard high
6 school diploma prescribed by subsection 3 or by the State Board pursuant to
7 subsection 1, the pupil must not be issued a certificate of attendance or any other
8 document indicating that the pupil attended high school but did not satisfy the
9 requirements for such a diploma. The provisions of this subsection do not apply to a
10 pupil who receives an adjusted diploma or an alternative diploma pursuant to
11 subsection 4.

12 6. As used in this section, "individualized education program" has the
13 meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

14 **Sec. 5.** ~~[Any regulations that conflict with NRS 388.419, as amended by~~
15 ~~section 3 of this act, are void and unenforceable.] (Deleted by amendment.)~~

16 **Sec. 6.** ~~[The provisions of NRS 354.599 do not apply to any additional~~
17 ~~expenses of a local government that are related to the provisions of this act.]~~
18 ~~(Deleted by amendment.)~~

19 **Sec. 7.** This act becomes effective on July 1, 2019.