

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Education

This measure may be considered for action during today's work session.

ASSEMBLY BILL 258

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

Sponsored by: Assembly Members Thompson, Duran, and Assefa, et al.
Date Heard: March 26, 2019
Fiscal Impact: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.
Contains Unfunded Mandate

Assembly Bill 258 authorizes a parent or guardian of a pupil who is the subject of a decision or a settlement agreement resulting from a due process hearing to submit a complaint to Nevada's Department of Education (NDE) if a local educational agency or charter school has failed to comply with the decision or settlement agreement. If the hearing officer finds merit in the allegations, the local educational agency or charter school is required to: (1) comply with the terms of the agreement; (2) pay the reasonable expenses of the claimant; and (3) take any additional measures deemed necessary by the hearing officer to ensure the pupil receives a free and appropriate public education. The order is to be enforced by NDE, which is authorized to monitor compliance, withhold funding, and refer the matter to the attorney general to enforce the order. The bill further requires a local education agency or charter school subject to the complaint of the hearing to pay for the cost of the hearing and allows an aggrieved party to appeal the decision of the hearing officer to NDE.

The bill also prohibits the State Board of Education from adopting standards that require a pupil who has multiple impairments to have any specific impairment, such as an intellectual disability, to be eligible for such individualized education programs or services.

Amendments: Bailey Bortolin, representing the Legal Aid Center of Southern Nevada, submitted the attached amendment, which proposes to:

1. Clarify who may file a complaint;
2. Modify the review process to require NDE to investigate the complaint; issue a written decision; and determine any measures necessary to ensure compliance;
3. Remove provisions related to the payment of expenses; and
4. Remove provisions related to multiple impairments.

Nevada's Department of Education has also submitted an amendment to add a new section to the bill to modify the requirements for receipt of an alternative diploma pursuant to *Nevada Revised Statutes* 390.600. This would allow a student with a disability who participates in an alternate assessment prescribed

by the State Board to receive an alternative diploma, rather than being required to pass the examination.

NRS 390.600 State Board required to prescribe criteria for standard high school diploma; college and career readiness assessment; exception for certain pupils with disabilities; criteria for receipt of adjusted diploma or alternative diploma; prohibition to issue certificate of attendance.

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

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

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

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

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

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

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

(b) Alternative diploma if the pupil:

(1) Has a significant cognitive disability; and

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

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

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

The intent is to ensure compliance with the existing State Complaint Process with the Department of Education, to remove the use of hearing officers due to the school district's concern with additional costs, and other clarifying amendments as worked through with stakeholders.

- 1 **Section 1.** Chapter 388 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 **1.** *If a local educational agency or the governing body of a*
4 *charter school fails to comply with the decision of a hearing*
5 *officer or a settlement agreement resulting from a due process*
6 *hearing, the parent or guardian of the pupil who is the subject of*
7 *the decision or agreement, the pupil subject to the decision or*
8 *agreement who has attained the transfer of rights pursuant to*
9 *NRS 388.459 may file a complaint with the*
10 *State Department of Education pursuant to 34 C.F.R. § 300.153.*
11 ~~*Such a complaint must be heard by the hearing*~~
12 ~~*officer who issued the decision or approved the agreement unless*~~
13 ~~*that hearing officer is not available. If that hearing officer is not*~~
14 ~~*available, the Department must select another hearing officer who*~~
15 ~~*meets the qualifications prescribed pursuant to 20 U.S.C. §*~~
16 ~~*1415(f)(3)(A) to hear the complaint.*~~
17 **2.** *After the investigation of the complaint conducted pursuant*
18 *to subsection 1 and 34 C.F.R. §300.152, including the*
19 *opportunity of the local educational agency or governing body*
20 *to respond to the complaint which may include mitigating*
21 *factors, the Department shall issue a written decision to the*
22 *complainant and the local educational agency or governing*
body, as applicable, with a copy of the order to the super
intendent and the Compliance office of the local educational
agency, if applicable.
23 **3.** ~~*If, after a hearing conducted pursuant to the subsection 1,*~~
24 ~~*the*~~
25 ~~*hearing officer*~~ *Department finds that the local educational*
26 *agency* ~~*or*~~
27 ~~*governing body has failed to comply with the decision*~~ ~~*or*~~
28 ~~*settlement agreement, as applicable, the hearing officer must*~~ ~~*the*~~
29 ~~*written agreement shall include any measures that the Department*~~
30 ~~*determines necessary to ensure that the local educational agency*~~
31 ~~*or governing body complies with the settlement agreement. Such*~~
32 ~~*measures may include, without limitation:*~~
33 **(a)** *Order the local educational agency or governing body, as*
34 *applicable, to:*
35 **(1)** *Comply with the decision or agreement;*
36 **(2)** ~~*Pay any reasonable expenses, including, without*~~
37 ~~*limitation, attorney's fees, incurred by the complainant to file the*~~

~~23 complaint and have it heard;~~

24 (3) Take any additional measures deemed necessary by the
25 ~~hearing officer~~ Department to ensure that the pupil receives a free
appropriate

26 public education; and

27 (b) Provide a copy of the order to the ~~Department~~ Compliance
office of the local education agency, if applicable.

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~~5 3. Upon receiving a copy of an order pursuant to subsection
6 2, the Department shall take any measures that the Department
7 determines necessary to ensure that the local educational agency
8 or governing body complies with the order. Such measures may
9 include, without limitation:~~

6 ~~(a)~~ (c) Monitoring the actions taken by the local educational
7 agency or governing body to comply with the order;

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

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

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

17 5. Nothing herein precludes a party from initiating a civil action in a court of
18 competent jurisdiction pursuant to applicable provisions of the Individuals
19 with Disabilities Education Act.

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

21 388.417 As used in NRS 388.417 to 388.515, inclusive ~~H~~,
22 **and section 1 of this act:**

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

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

31 2. "Dyslexia" means a neurological learning disability
32 characterized by difficulties with accurate and fluent word
33 recognition and poor spelling and decoding abilities that typically
34 result from a deficit in the phonological component of language.

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

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

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

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

1 providing education or services to a pupil with a disability for a
2 school district or charter school.

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

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

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

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

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

28 388.419 1. The Department shall:

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

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

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

44 3. The State Board:

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

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

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

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

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

10 (c) Orthopedic impairments.

11 (d) Speech and language impairments.

12 (e) Intellectual disabilities.

13 (f) Multiple impairments.

14 (g) Emotional disturbances.

15 (h) Other health impairments.

16 (i) Specific learning disabilities.

17 (j) Autism spectrum disorders.

18 (k) Traumatic brain injuries.

19 (l) Developmental delays.

20 5. The minimum standards prescribed by the State Board for
21 pupils with hearing impairments, including, without limitation,
22 deafness, pursuant to paragraph (a) of subsection 4 must comply
23 with:

24 (a) The Individuals with Disabilities Education Act, 20 U.S.C.
25 §§ 1400 et seq., and the regulations adopted pursuant thereto;

26 (b) The effective communication requirement of Title II of the
27 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 et
28 seq., and the regulations adopted pursuant thereto; and

29 (c) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §
30 794, and the regulations adopted pursuant thereto.

31 6. The minimum standards prescribed by the State Board for
32 pupils with dyslexia pursuant to paragraph (i) of subsection 4 must
33 include, without limitation, standards for instruction on:

34 (a) Phonemic awareness to enable a pupil to detect, segment,
35 blend and manipulate sounds in spoken language;

36 (b) Graphonomic knowledge for teaching the sounds associated
37 with letters in the English language;

38 (c) The structure of the English language, including, without
39 limitation, morphology, semantics, syntax and pragmatics;

40 (d) Linguistic instruction directed toward proficiency and
41 fluency with the patterns of language so that words and sentences
42 are carriers of meaning; and

43 (e) Strategies that a pupil may use for decoding, encoding, word
44 recognition, fluency and comprehension.

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~~1 7. The standards prescribed by the State Board for programs 2 of instruction or special services for
3 pupils with multiple
4 impairments pursuant to paragraph (f) of subsection 4 must not
5 include a requirement that a pupil have any specific impairment to
6 be eligible to participate in such programs or to receive such
7 services.~~

8 8. No apportionment of state money may be made to any
9 school district or charter school for the instruction of pupils with
10 disabilities until the program of instruction maintained therein for
11 such pupils is approved by the Superintendent of Public Instruction
12 as meeting the minimum standards prescribed by the State Board.

13 ~~18.1~~ 9. The Department shall, upon the request of the board of
14 trustees of a school district, provide information to the board of
15 trustees concerning the identification and evaluation of pupils with
16 disabilities in accordance with the standards prescribed by the State
17 Board.

18 ~~19.1~~ 10. The Department shall post on the Internet website
19 maintained by the Department the data that is submitted to the
20 United States Secretary of Education pursuant to 20 U.S.C. § 1418
21 within 30 days after submission of the data to the Secretary in a
22 manner that does not result in the disclosure of data that is
23 identifiable to an individual pupil.

24 **Sec. 4.** NRS 388.463 is hereby amended to read as follows:

25 388.463 1. The Department shall maintain a list of hearing
26 officers who meet the qualifications prescribed pursuant to 20
27 U.S.C. § 1415(f)(3)(A) to conduct a due process hearing pursuant to
28 the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400
29 et seq., regarding the identification, evaluation, reevaluation,
30 classification, educational placement or disciplinary action of or
31 provision of a free appropriate public education to a pupil with a
32 disability.

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

42 3. The Superintendent of Public Instruction shall provide the
43 names of the three hearing officers selected pursuant to subsection 2
44 to the complainant and request the complainant to return to the
45 Superintendent a list which places the three names in the order of
46 preference of the complainant. The complainant must return the list

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1 within 2 days. If the complainant returns the list, the Superintendent
2 must request the first hearing officer on the list to preside over the
3 hearing and if he or she is unavailable, the next person, until there
4 are no more hearing officers on the list. If the complainant does not
5 return the list within 2 days, the Superintendent must appoint a
6 hearing officer and may determine the order in which to request a
7 hearing officer to preside over the hearing.

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

17 5. The local educational agency or governing body of a charter
18 school, *as applicable*, involved in ~~the~~ a complaint ~~is~~ *as*
19 *applicable,* ~~submitted pursuant to this section or section 1 of this~~
20 *act* shall pay the cost of the hearing, including, without limitation,
21 any compensation to which the hearing officer is entitled.

22 6. ~~The~~ Any decision of a hearing officer *pursuant to this*
23 *section or section 1 of this act* may be appealed by any aggrieved
24 party to the Department.

*****This is no longer necessary given the amendment to section 1 - remove changes in language and restore all of this to original language*****

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

27 **Sec. 5.** Any regulations that conflict with NRS 388.419, as
28 amended by section 3 of this act, are void and unenforceable.

29 **Sec. 6.** The provisions of NRS 354.599 do not apply to any
30 additional expenses of a local government that are related to the
31 provisions of this act.

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

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