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

MARCH 13, 2019

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JOINT SPONSOR: SENATOR DONDERO LOOP

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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.

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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:**

1 Existing federal law requires a due process hearing to be held concerning a  
2 complaint relating to the identification of a pupil as a pupil with or without a  
3 disability or the sufficiency of services provided to such a pupil. (20 U.S.C. § 1415)  
4 Existing Nevada law: (1) provides for the selection of a hearing officer; (2) requires  
5 the local educational agency or governing body of a charter school involved in the  
6 complaint to pay the cost of the hearing; and (3) authorizes an aggrieved party to  
7 appeal the decision of a hearing officer to the Department of Education. (NRS  
8 388.463) **Section 1** of this bill authorizes the parent or guardian of a pupil who is  
9 the subject of a decision or settlement agreement resulting from a due process  
10 hearing to submit a complaint to the Department if the local educational agency or  
11 charter school has failed to comply with the decision or settlement agreement. If the  
12 hearing officer determines that the allegations of the complaint are true, **section 1**  
13 requires the hearing officer to order the local educational agency or charter school  
14 to: (1) comply with the terms of the complaint or agreement; (2) pay the reasonable



15 expenses of the complainant; and (3) take any additional measures deemed  
16 necessary by the hearing officer to ensure that the pupil receives a free appropriate  
17 public education. **Section 1** provides for the enforcement of such an order by the  
18 Department. **Section 2** of this bill makes a conforming change. **Section 4** of this  
19 bill requires the local educational agency or charter school that is the subject of the  
20 complaint to pay the cost of the hearing. **Section 4** also authorizes an aggrieved  
21 party to appeal the decision of the hearing officer to the Department.

22 Existing law requires the State Board of Education to prescribe standards for  
23 programs of instruction or special services maintained for the purposes of serving  
24 pupils with multiple impairments. (NRS 388.419) Existing regulations require a  
25 pupil to have an intellectual disability and at least one other impairment to be  
26 eligible for such programs or services. (NAC 388.425) **Section 3** of this bill  
27 prohibits the Board from adopting standards that require a pupil to have any  
28 specific impairment, such as an intellectual disability, to be eligible for such  
29 programs or services. **Section 5** of this bill voids any regulations that conflict with  
30 **section 3**.

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

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 may file a complaint with the*  
8 *Department. Such a complaint must be heard by the hearing*  
9 *officer who issued the decision or approved the agreement unless*  
10 *that hearing officer is not available. If that hearing officer is not*  
11 *available, the Department must select another hearing officer who*  
12 *meets the qualifications prescribed pursuant to 20 U.S.C. §*  
13 *1415(f)(3)(A) to hear the complaint.*

14 *2. If, after a hearing conducted pursuant to subsection 1, the*  
15 *hearing officer finds that the local educational agency or*  
16 *governing body has failed to comply with the decision or*  
17 *settlement agreement, as applicable, the hearing officer must:*

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

20 *(1) Comply with the decision or agreement;*

21 *(2) Pay any reasonable expenses, including, without*  
22 *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 to ensure that the pupil receives a free appropriate*  
26 *public education; and*

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



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


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

8       (b) 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       (c) 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       **Sec. 2.** NRS 388.417 is hereby amended to read as follows:

18       388.417 As used in NRS 388.417 to 388.515, inclusive ,  
19 and section 1 of this act:

20       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:



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.



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

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

12 ~~8.9~~ 9. The Department shall, upon the request of the board of  
13 trustees of a school district, provide information to the board of  
14 trustees concerning the identification and evaluation of pupils with  
15 disabilities in accordance with the standards prescribed by the State  
16 Board.

17 ~~9.10~~ 10. The Department shall post on the Internet website  
18 maintained by the Department the data that is submitted to the  
19 United States Secretary of Education pursuant to 20 U.S.C. § 1418  
20 within 30 days after submission of the data to the Secretary in a  
21 manner that does not result in the disclosure of data that is  
22 identifiable to an individual pupil.

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

24 388.463 1. The Department shall maintain a list of hearing  
25 officers who meet the qualifications prescribed pursuant to 20  
26 U.S.C. § 1415(f)(3)(A) to conduct a due process hearing pursuant to  
27 the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400  
28 et seq., regarding the identification, evaluation, reevaluation,  
29 classification, educational placement or disciplinary action of or  
30 provision of a free appropriate public education to a pupil with a  
31 disability.

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

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



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 ~~[-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.

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.

