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FIRST REPRINT

A.B. 258

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 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.

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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; 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 Department determines that the allegations of the complaint are true, **section 1** requires the Department to take any measures deemed necessary 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 2** of this bill makes a conforming change.

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



20 bill requires a pupil to participate in an alternative assessment rather than pass such  
21 an assessment to obtain an alternative diploma.

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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 or, if the pupil has attained 18 years of*  
8 *age and responsibility for his or her educational interests has been*  
9 *transferred to the pupil, the pupil may file a complaint with the*  
10 *Department pursuant to 34 C.F.R. § 300.153.*

11 *2. After investigating a complaint filed pursuant to subsection*  
12 *1 and providing the local educational agency or governing body*  
13 *with an opportunity to respond to the complaint, including,*  
14 *without limitation, any mitigating factors, the Department shall*  
15 *issue a written decision concerning the complaint. If the*  
16 *Department finds that the local educational agency or governing*  
17 *body has failed to comply with the decision or settlement*  
18 *agreement, as applicable, the Department must take:*

19 *(a) Any measures that the Department determines necessary to*  
20 *ensure that the local educational agency or governing body*  
21 *complies with the decision or settlement agreement, as applicable;*  
22 *and*

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

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

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

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

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

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



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

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

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

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

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

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

16       388.417 As used in NRS 388.417 to 388.515, inclusive **[H]**,  
17 *and section 1 of this act:*

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

23       (a) American Sign Language;

24       (b) English-based manual or sign systems;

25       (c) Oral and aural communication;

26       (d) Spoken and written English, including speech reading or lip  
27 reading; and

28       (e) Communication with assistive technology devices.

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

33       3. “Dyslexia intervention” means systematic, multisensory  
34 intervention offered in an appropriate setting that is derived from  
35 evidence-based research.

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

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

40       6. “Provider of special education” means a school within a  
41 school district or charter school that provides education or services  
42 to pupils with disabilities or any other entity that is responsible for  
43 providing education or services to a pupil with a disability for a  
44 school district or charter school.



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

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

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

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

25 **Sec. 3.** (Deleted by amendment.)

26 **Sec. 4.** (Deleted by amendment.)

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

28 390.600 1. The State Board shall adopt regulations that,  
29 except as otherwise provided in subsection 3, prescribe the criteria  
30 for a pupil to receive a standard high school diploma, which must  
31 include, without limitation, the requirement that:

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

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

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

43 3. A pupil with a disability who does not satisfy the  
44 requirements to receive a standard high school diploma prescribed  
45 by the State Board pursuant to subsection 1 may receive a standard



1 high school diploma if the pupil demonstrates, through a portfolio of  
2 the pupil's work, proficiency in the standards of content and  
3 performance established by the Council to Establish Academic  
4 Standards for Public Schools pursuant to NRS 389.520.

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

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

11 (b) Alternative diploma if the pupil:

12 (1) Has a significant cognitive disability; and

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

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

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

25 **Sec. 5.** (Deleted by amendment.)

26 **Sec. 6.** (Deleted by amendment.)

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

