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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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<b>Bill No:</b>	AB 2580	<b>Hearing Date:</b>	June 27, 2018
<b>Author:</b>	Cunningham		
<b>Version:</b>	May 7, 2018		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Lynn Lorber		

**Subject:** Special education: due process hearings: extension of hearings.

**NOTE:** This bill was previously heard by this Committee on June 13, 2018. Testimony was taken but a vote was not taken.

### SUMMARY

This bill requires a hearing officer, in a due process hearing related to special education, to grant an extension of the decision once for good cause (as specified) and authorizes subsequent extensions at the discretion of the hearing officer.

### BACKGROUND

Existing federal law provides for procedural safeguards, pursuant to the federal Individuals with Disabilities Education Act (IDEA), which govern rights, responsibilities, and the complaint process related to the education of individuals with exceptional needs. (United State Code, Title 20, Chapter 33, Subchapter II, § 1415)

Existing state law:

- 1) Requires parents to be provided with written notice of their rights, and a written explanation of all the procedural safeguards under the federal IDEA and the rights and procedures in state law, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing. (Education Code § 56321)
- 2) Provides for a process of mediation to resolve disputes related to special education; requires the mediation conference to be scheduled within 15 days of receipt of the request for mediation, and requires the conference to be completed within 30 days after receipt of the request for mediation. (EC § 56500.3)
- 3) Sets forth procedures for a state-level due process hearing, and authorizes a parent or guardian and the public agency to initiate the due process hearing procedures under specified circumstances. (EC § 56501, § 56502, and § 56504)
- 4) Requires local educational agencies to convene a resolution meeting prior to the opportunity for an impartial due process hearing, and requires the meeting to be convened within 15 days of receiving notice of the due process hearing request. (EC § 56501.5)

- 5) Requires the California Department of Education to enter into an interagency agreement with another state agency or contract with a non-profit organization or entity to conduct mediation conferences and due process hearings. (EC § 56504.5)
- 6) Provides for a process of due process hearings, including:
  - a) A requirement that the hearing be held at a time and place reasonably convenient to the parent or guardian.
  - b) Qualifications of a hearing officer.
  - c) A requirement that the student remain in his or her current placement pending the outcome of the hearing.
  - d) The provision of specified rights afforded to a party to the hearing.
  - e) A requirement that the decision of a due process hearing officer be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
  - f) A requirement that the hearing be completed and a written, reasoned decision to be mailed to all parties to the hearing not later than 45 days after the expiration of the 30-day period afforded for mediation.
  - g) The authority for either party to request the hearing officer to grant an extension. Existing law requires the extension to be granted upon a showing of good cause, and for an extension to extend the time for rendering a final decision for a period only equal to the length of the extension. (EC § 56505)

**ANALYSIS**

This bill:

- 1) Requires a hearing officer, in a due process hearing related to special education, to grant an extension of the decision only once for good cause, as described in # 3.
- 2) Authorizes a hearing officer to grant a second or subsequent extension for good cause (as described in # 3), at the discretion of the hearing officer.
- 3) Provides that “good cause” includes but is not limited to either of the following:
  - a) When all parties submit a stipulation to the hearing office that an extension is necessary to resolve the matter by settlement.
  - b) When a material witness is absent due to the hearing date being set on a day when the witness is unavailable.

## STAFF COMMENTS

- 1) **Need for the bill.** According to the author, “This bill will facilitate continuances for good cause for special education due process hearings. This will encourage settlements and resolution on the merits. We should provide every opportunity to ensure resources are going to schools and students, not to billable hours for attorneys.”
- 2) **Special education due process.** Parents and local educational agencies (LEA), when they disagree on matters relating to special education (such as eligibility for services or the content of a student’s individualized education program), have the right to resolve their disagreements using a system called “due process,” which is intended to allow both parties to reach resolution without the need for legal representation. This system provides a progressive series of options for resolving complaints.

The federal Individual with Disabilities Education Act requires states to make the following dispute resolution options available: mediation (which does not require a decision by a judge and is also referred to as “alternative dispute resolution”), a written state complaint, and a due process hearing.

In mediations, a mediator from the Office of Administrative Hearings (OAH), which operates under a contract with the California Department of Education, will try to help both parties reach a binding agreement. If a parent and LEA cannot reach an agreement via mediation, or if the filing party does not wish to go to mediation, the case will go to hearing. In this scenario, an OAH judge specializing in special education law will decide the outcome of the case. OAH describes due process hearings as “a more formal, trial-like legal proceeding in which all parties are given a chance to present evidence and arguments before an impartial Administrative Law Judge (ALJ). The ALJ then issues a written decision, which is the final administrative decision resolving the matter.”

- 3) **Scope of “good cause.”** This bill establishes a standard for “good cause” for an extension of a special education due process hearing, but does not limit it to the two circumstances specified in this bill. This bill prohibits a hearing officer from being able to deny a request for a continuance under those two circumstances, but would also not be prohibited from issuing a continuance for other reasons which are not specified in this bill.

Should the Legislature require a hearing officer to grant extensions in due process hearing decisions only for a very narrow set of rationale (while still allowing but not requiring granting of extensions for other reasons)? Should the Legislature codify narrow parameters of what constitutes good cause (while allowing for other reasons of good cause)?

- 4) **Author’s amendments.** The author wishes to amend this bill as follows, which addresses concerns raised in the June 13, 2018, hearing. On page 5, lines 16-39:

(3) (A) The hearing conducted pursuant to this section shall be completed and a

written, reasoned decision, including the reasons for a nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for the placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing not later than 45 days after the expiration of the 30-day period pursuant to subdivision (c) of Section 56501.5. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. **The hearing officer shall apply Rule 3.1332 of the California Rules of Court in making a determination of what constitutes good cause.** An extension shall extend the time for rendering a final administrative decision only for a period equal to the length of the extension.

(B) For purposes of this paragraph, good cause includes **when all parties submit a stipulation to the hearing officer that an extension is necessary to resolve the matter by settlement.** ~~, but is not limited to, either of the following:~~

~~(i) When all parties submit a stipulation to the hearing officer that an extension is necessary to resolve the matter by settlement.~~

~~(ii) When a material witness is absent due to the hearing date being set on a day when the witness is unavailable.~~

(C) A hearing officer shall only be required to grant an extension once for each of the purposes **the purpose** set forth in clause (i) or (ii) of subparagraph (B). A second or subsequent extension may be granted for ~~either of those purposes~~ **this or any other purpose,** at the discretion of the hearing officer.

- 5) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill would impose:
- a) Ongoing General Fund (GF) costs, likely in the hundreds of thousands of dollars annually, for the California Department of Education (CDE) to pay increased costs for continuances for special education due process procedures conducted by the Office of Administrative Hearings. Estimate assumes continuances increase by 10 percent at a cost of about \$900 per continuance.
  - b) One-time GF costs of \$60,000 for CDE to develop regulations around "good cause" and requests for continuances.

## SUPPORT

Disability Rights California  
Empower Family California

## OPPOSITION

None received