

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: SB 652

STATUS: Original

SUBJECT: Proof of burden relating to the determination of school districts regarding the identification, evaluation, individualized education program, education placement or the provision of a free appropriate education to a child

GOVERNMENT UNIT AFFECTED: Department of Education, local education agencies (school districts)

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DATE: April 24, 2009

2009-2011

2011-2013

EXPENDITURES:

See analysis

EFFECTIVE DATE: January 1, 2010

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: The measure places the burden of proof on school districts related to a determination of the school district concerning the identification, evaluation, individualized education program, education placement or the provision of a free appropriate education to a child of the school district. The measure places the burden of proof related to the parent's request for tuition reimbursement for special education and related services under certain conditions on the parent.

There is an indeterminate, but likely minimal fiscal impact to the Department of Education (ODE) and school districts. Currently the burden of proof is placed on the party that files the hearing request. The Department of Education reports that the majority of hearing requests have been filed by parents. Over the last four years there have been on average a total of twenty-seven special education due process hearing requests per year. The majority of these hearings were withdrawn by the parents who filed the hearing requests. ODE anticipates that placing the burden of proof on school districts will increase the costs that ODE and the school districts incur to prepare for and conduct the due process hearings. Under the current process, a school district can request that the hearing officer dismiss the case; in the last year 3 out of a total of 9 cases that were not withdrawn by the parent were dismissed by motion of the district. Under the measure, the school district would be required to present a full defense to each allegation, increasing the preparation required on the district's part. The school district contacted by the Legislative Fiscal Office (LFO) reported that in addition to increased legal costs, the costs associated with a "full defense" could potentially include costs to consult with outside resources, including experts and specialists in a wide variety of subjects, and costs associated with shifting staff away from their normal duties to focus on the case. ODE anticipates that there may be an increase in the number of complaints filed due to the shift to districts of the burden of proof; however ODE does not anticipate a more than minimal increase in litigation costs. It is not anticipated that each school district will have a significant number of cases.