

Senate Bill 652

Sponsored by Senator MORRISETTE (at the request of Peter Burger, Molli Brown)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Places on school district burden of proof related to school district's determination for child who may require or does require special education and related services.

Places on parent burden of proof related to parent's request for tuition reimbursement for certain special education and related services provided to child by private entity.

A BILL FOR AN ACT

1
2 Relating to special education hearings; creating new provisions; and amending ORS 343.165.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 343.165 is amended to read:

5 343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

6 (a) *[The]* **A parent of a child** requests a hearing to contest the determination of the school dis-
7 trict concerning the identification, evaluation, individualized education program, educational place-
8 ment or the provision of a free appropriate public education to the child; or

9 (b) *[The]* **A school district** requests a hearing to obtain a decision regarding whether its iden-
10 tification, evaluation, individualized education program or educational placement of the child is ap-
11 propriate or whether the district's proposed action is necessary to provide the child with a free
12 appropriate public education.

13 (2) Notwithstanding subsection (1)(b) of this section, a school district may not request a hearing
14 if a parent refuses consent for placement in a program providing special education and related ser-
15 vices.

16 (3)(a) Except as provided in paragraph (b) of this subsection, a hearing described in subsection
17 (1) of this section must be requested within two years after the date of the act or omission that gives
18 rise to the right to request a hearing under subsection (1) of this section.

19 (b) The timeline described in paragraph (a) of this subsection does not apply to a parent if the
20 parent was prevented from requesting the hearing due to:

21 (A) Specific misrepresentations by the school district that it had resolved the problem forming
22 the basis of the complaint; or

23 (B) The school district withholding from the parent information that the district was required
24 to provide under this chapter.

25 (4) The State Board of Education shall adopt rules that establish when a school district is obli-
26 gated to initiate a contested case hearing to ensure that a student with a disability is provided with
27 a free appropriate public education.

28 (5) The board's rules in subsection (1) of this section shall be as consistent as possible with the
29 procedures applicable to a contested case under ORS chapter 183. However, the board's rules shall
30 provide that:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (a) Any party to a hearing has the right to prohibit the introduction of any evidence that has
 2 not been disclosed to that party at least five business days before the hearing; *[and]*

3 (b) The hearing officer may prohibit the introduction of any evidence regarding evaluations and
 4 recommendations based on those evaluations that a party intends to use at the hearing, if the evi-
 5 dence has not been disclosed to the other party at least five business days before the hearing, unless
 6 the other party consents to the introduction of the evidence[.];

7 **(c) The school district has the burden of proof related to a determination of the school**
 8 **district concerning the identification, evaluation, individualized education program, educa-**
 9 **tional placement or the provision of a free appropriate public education to a child; and**

10 **(d) The parent of a child has the burden of proof related to the parent’s request for tui-**
 11 **tion reimbursement for special education and related services if:**

12 **(A) The special education and related services are provided to the child by a private en-**
 13 **tity; and**

14 **(B) The school district or another public agency did not place the child in the special**
 15 **education and related services or did not refer the child to the private entity for special ed-**
 16 **ucation and related services.**

17 (6) Notwithstanding subsection (5)(a) and (b) of this section, in an expedited hearing the evi-
 18 dence must be disclosed to the other party not later than two business days before the hearing.

19 (7) The parent shall be entitled to have the child who is the subject of the hearing present at
 20 the hearing and to have the hearing open to the public.

21 (8) An expedited hearing shall be held if:

22 (a) In a dispute over a disciplinary action for a child with a disability, the child’s parent disa-
 23 grees with a determination that the child’s behavior was not a manifestation of the child’s disability
 24 or with any decision regarding the child’s educational placement; or

25 (b) The school district believes that maintaining the current placement for the child is substan-
 26 tially likely to result in injury to the child or others.

27 (9) The hearing shall be conducted by an independent hearing officer appointed by the Super-
 28 intendent of Public Instruction. The hearing officer:

29 (a) Shall not be:

30 (A) An employee of a school district involved in the education or care of the child;

31 (B) An employee of the Department of Education; or

32 (C) A person having any personal or professional interest that would conflict with the person’s
 33 objectivity in the hearing.

34 (b) Shall possess:

35 (A) Knowledge of, and the ability to understand, the provisions of state and federal special ed-
 36 ucation laws, regulations and legal interpretations by federal and state courts;

37 (B) The knowledge and ability to conduct hearings in accordance with appropriate standard le-
 38 gal practice; and

39 (C) The knowledge and ability to render and write decisions in accordance with standard legal
 40 practice.

41 **SECTION 2. The amendments to ORS 343.165 by section 1 of this 2009 Act first apply to**
 42 **hearings commenced on or after the effective date of this 2009 Act.**