

SENATE AMENDMENTS TO SENATE BILL 72

By COMMITTEE ON EDUCATION AND GENERAL GOVERNMENT

April 29

1 On page 1 of the printed bill, line 2, delete “and 343.065” and insert “, 343.065, 343.164, 343.165
2 and 343.177”.

3 On page 4, after line 31, insert:

4 “**SECTION 4.** ORS 343.164 is amended to read:

5 “343.164. (1) A school district shall obtain informed written parental consent before the school
6 district conducts [*a preplacement*] **an initial evaluation or a reevaluation** and before **the initial**
7 **provision of special education and related services for** a child with a disability [*is initially placed*
8 *in a program providing special education and related services*].

9 “[*(2) A school district shall obtain informed written parental consent before the school district*
10 *conducts a reevaluation of a child with a disability.*]

11 “[*(3) Notwithstanding subsection (2) of this section, written parental consent need not be obtained*
12 *if the school district can demonstrate that it has taken reasonable measures to obtain consent and that*
13 *the child’s parent has failed to respond.*]

14 “**(2)(a) At any time, the parent of a child may revoke, in writing, consent for:**

15 “**(A) An initial evaluation;**

16 “**(B) The initial provision and the continuing provision of special education and related**
17 **services; and**

18 “**(C) A reevaluation.**

19 “**(b) If a parent revokes consent as provided in paragraph (a) of this subsection, the re-**
20 **vocation is not retroactive and does not invalidate an action that was based on the consent**
21 **and that occurred after the consent was given and before the consent was revoked.**

22 “[*(4)*] **(3)** The school district shall follow procedures prescribed in rules of the State Board of
23 Education when necessary consent is not obtained.

24 “**SECTION 5.** ORS 343.165 is amended to read:

25 “343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

26 “(a) The parent requests a hearing to contest the determination of the school district concerning
27 the identification, evaluation, individualized education program, educational placement or the pro-
28 vision of a free appropriate public education to the child; or

29 “(b) The school district requests a hearing to obtain a decision regarding whether its identifi-
30 cation, evaluation, individualized education program or educational placement of the child is ap-
31 propriate or whether the district’s proposed action is necessary to provide the child with a free
32 appropriate public education.

33 “(2) Notwithstanding subsection (1)(b) of this section, a school district may not request a hearing
34 if a parent refuses **or revokes** consent for placement in a program providing special education and
35 related services.

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

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

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

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

10 “(4) The State Board of Education shall adopt rules that establish when a school district is ob-
11 ligated to initiate a contested case hearing to ensure that a student with a disability is provided
12 with a free appropriate public education.

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

16 “(a) Any party to a hearing has the right to prohibit the introduction of any evidence that has
17 not been disclosed to that party at least five business days before the hearing; and

18 “(b) The hearing officer may prohibit the introduction of any evidence regarding evaluations and
19 recommendations based on those evaluations that a party intends to use at the hearing, if the evi-
20 dence has not been disclosed to the other party at least five business days before the hearing, unless
21 the other party consents to the introduction of the evidence.

22 “(6) Notwithstanding subsection (5) of this section, in an expedited hearing the evidence must
23 be disclosed to the other party not later than two business days before the hearing.

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

26 “(8) An expedited hearing shall be held if:

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

30 “(b) The school district believes that maintaining the current placement for the child is sub-
31 stantially likely to result in injury to the child or others.

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

34 “(a) Shall not be:

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

36 “(B) An employee of the Department of Education; or

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

39 “(b) Shall possess:

40 “(A) Knowledge of, and the ability to understand, the provisions of state and federal special
41 education laws, regulations and legal interpretations by federal and state courts;

42 “(B) The knowledge and ability to conduct hearings in accordance with appropriate standard
43 legal practice; and

44 “(C) The knowledge and ability to render and write decisions in accordance with standard legal
45 practice.

1 “**SECTION 6.** ORS 343.177 is amended to read:

2 “343.177. (1) During the pendency of any administrative or judicial proceedings concerning the
3 identification, evaluation or educational placement of the child or the provision of a free appropriate
4 public education to the child, the child shall remain in the then current educational program
5 placement.

6 “(2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:

7 “(a) The parent consents to placement in a program provided or selected by the district at the
8 district’s expense until **the parent provides a written revocation of consent or until** the pro-
9 ceedings referred to in subsection (1) of this section are completed if applying for initial admission
10 to a public school;

11 “(b) The parent and the school district agree to temporary placement in some other program;

12 “(c) The school district orders a change in placement to an appropriate interim alternative ed-
13 ucational setting for up to 45 school days without regard to whether the behavior is determined to
14 be a manifestation of the child’s disability:

15 “(A) Due to a weapon, illegal drug or controlled substance incident; or

16 “(B) Because the child has inflicted serious bodily injury upon another person while at school,
17 on school premises or at a school function under the jurisdiction of the Department of Education
18 or school district;

19 “(d) A hearing officer orders a change in placement to an appropriate interim alternative edu-
20 cational setting for up to 45 school days due to the substantial likelihood of injurious behavior,
21 pursuant to rules of the State Board of Education; or

22 “(e) School personnel order a change in placement to an interim alternative educational setting
23 for more than 10 school days for a child with a disability who violates a code of student conduct
24 and the behavior that gave rise to the violation is determined not to be a manifestation of the child’s
25 disability.

26 “(3) If the placement of a child with a disability is changed under subsection (2)(e) of this sec-
27 tion:

28 “(a) The relevant disciplinary procedures applicable to children without disabilities may be ap-
29 plied to the child in the same manner and for the same duration as the disciplinary procedures
30 would be applied to children without disabilities;

31 “(b) The child continues to be entitled to a free appropriate public education under ORS 339.252,
32 although the education may be provided in an interim alternative educational setting; and

33 “(c) The child shall remain in the interim alternative educational setting pending the decision
34 of a hearing officer or until the expiration of the school district’s determination of duration of the
35 change in placement under paragraph (a) of this subsection, whichever occurs first.

36 “(4) For the purposes of subsection (2)(b) of this section, a decision of a hearing officer under
37 ORS 343.165 that agrees with the child’s parents that a change of placement is appropriate shall be
38 treated as an agreement between the school district and the parents.

39 “**SECTION 7. The amendments to ORS 343.164, 343.165 and 343.177 by sections 4 to 6 of**
40 **this 2009 Act first apply to special education and related services that are provided on or**
41 **after December 31, 2008.”.**

42 In line 32, delete “4” and insert “8”.