

## **BILL ANALYSIS**

C.S.S.B. 709  
By: Lucio  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The federal Individuals with Disabilities Education Act provides for a special education due process hearing to resolve disputes between the parents of a disabled child and that child's educators. According to disability rights advocates, parents often cannot afford to have an attorney represent them and therefore must represent themselves, placing them at a disadvantage relative to the school districts, which almost always have legal counsel to represent them at such hearings. The advocates assert that due process hearings would be improved and more balanced if parents were permitted representation by qualified non-attorney lay advocates who would bring additional knowledge and expertise to a hearing that a parent would not otherwise have.

Interested parties note, however, that there is some confusion regarding the extent to which lay advocates can assist parents during due process hearings. The parties note that federal rules state that parents may be accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities but leave the question of whether a parent can be represented by a non-attorney up to state law. The parties also note that a recent Texas attorney general opinion stated that because the legislature had not enacted a provision specifically authorizing a non-attorney to represent a person in a special education due process hearing, the state's general prohibition against the unauthorized practice of law prohibited lay representation. This opinion, however, provided that if the legislature expressly allowed a non-attorney to act on behalf of a person in a special education due process hearing, the Texas Education Agency could adopt rules regarding the qualification of such lay advocates.

C.S.S.B. 709 seeks to encourage the timely and fair resolution of disputes between parents of children with disabilities and school districts by providing for non-attorney representation at special education due process hearings.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 709 amends the Education Code to authorize a person in an impartial special education due process hearing brought under federal law to be represented either by an attorney who is licensed in Texas or by an individual who is not an attorney licensed in Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications prescribed by commissioner of education rule. The bill requires the commissioner to adopt by rule additional qualifications required of a representative who is not an attorney licensed in Texas for purposes of providing representation in a special education due process hearing and requires the rules to prohibit an individual from being such a representative opposing a school district if the individual has prior employment experience with the district and to include requirements that the representative have knowledge of special education due process rules, hearings, and procedure and federal and state special education laws. The bill requires a

special education due process hearing officer to determine whether an individual satisfies those qualifications and establishes that the Texas Education Agency is not required to license or in any way other than by commissioner rule regulate representatives in a special education impartial due process hearing who are not attorneys licensed in Texas. The bill's provisions apply to representation at an impartial special education due process hearing that begins on or after the bill's effective date.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 709 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### **SENATE ENGROSSED**

SECTION 1. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0162 to read as follows:

Sec. 29.0162. REPRESENTATION IN SPECIAL EDUCATION DUE PROCESS HEARING. (a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by: (1) an attorney who is licensed in this state; or

(2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies requirements under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications required of a representative for purposes of Subsection (a)(2). The rules must

include requirements that the representative have knowledge of:

(1) special education due process rules, hearings, and procedure; and

(2) federal and state special education laws.

(c) A special education due process hearing officer shall determine whether an individual satisfies requirements under Subsections (a)(2) and (b).

(d) The agency is not required to license or

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0162 to read as follows:

Sec. 29.0162. REPRESENTATION IN SPECIAL EDUCATION DUE PROCESS HEARING. (a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by: (1) an attorney who is licensed in this state; or

(2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications required of a representative for purposes of Subsection (a)(2). The rules must:

(1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if the individual has prior employment experience with the district; and

(2) include requirements that the representative have knowledge of:

(A) special education due process rules, hearings, and procedure; and

(B) federal and state special education laws.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or

in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

SECTION 2. Section 29.0162, Education Code, as added by this Act, applies only to representation at an impartial due process hearing brought under 20 U.S.C. Section 1415 that begins on or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

SECTION 2. Substantially the same as engrossed version.

SECTION 3. Same as engrossed version.