

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 709
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Education
4/10/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 709 specifically allows lay advocates, rather than just attorneys, to assist parents in resolving special education disputes in special education due process hearings. This bill is intended to encourage resolution at the earliest possible stage and fairly resolve disputes between parents of children with disabilities and school districts regarding the provision of a free appropriate public education.

The Individuals with Disabilities Education Act (IDEA) authorizes a due process hearing to resolve disputes between parents of a disabled child and that child's educators. According to disability rights advocates, parents rarely win these due process hearings, at least in part because they often cannot afford to have an attorney represent them and must therefore represent themselves. This places parents at a disadvantage since school districts are almost always represented by legal counsel. Due process hearings would be improved if parents were permitted representation by non-attorney lay advocates, i.e. individuals who bring additional knowledge and expertise to a hearing that a parent would not otherwise have.

Currently, there is confusion regarding the extent to which lay advocates can assist parents during due process hearings. 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 leaves the question of whether a parent can be accompanied by a non-attorney up to state law. The Texas Attorney General published an opinion in 2012, which stated that because the legislature had not enacted a provision specifically authorizing a non-attorney to represent another in a special education due process hearing, the state's general prohibition against the unauthorized practice of law prohibited lay representation. This opinion set forth, however, that should the legislature expressly allow a non-attorney to act on behalf of another in a special education due process hearing, the Texas Education Agency could adopt conforming rules qualifying such lay advocates.

Accordingly, C.S.S.B. 709 adds language to the Education Code to allow a parent in a due process hearing to be represented either by an attorney or "an individual with special knowledge or training with respect to problems of children with disabilities."

C.S.S.B. 709 amends current law relating to representation of a person in a special education impartial due process hearing.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Section 29.0162, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 29, Education Code, by adding Section 29.0162, as follows:

Sec. 29.0162. REPRESENTATION IN SPECIAL EDUCATION DUE PROCESS HEARING. (a) Authorizes a person in an impartial due process hearing brought under 20 U.S.C. Section 1415 to be represented by an attorney who is licensed in this state or 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) Requires the commissioner of education by rule to adopt additional qualifications required of a representative for purposes of Subsection (a)(2). Requires that the rules include requirements that the representative have knowledge of special education due process rules, hearings, and procedure, and federal and state special education laws.

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

(d) Provides that the Texas Education 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. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2013.