

House File 2497 - Introduced

HOUSE FILE 2497
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO HSB 624)

A BILL FOR

1 An Act relating to special education rights and duties and
2 to the related duties and operations of the department of
3 education and local school boards.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 256B.2, subsection 1, paragraph a, Code
2 Supplement 2009, is amended to read as follows:

3 a. "*Children requiring special education*" means persons under
4 twenty-one years of age, including children under five years of
5 age, who have a disability in obtaining an education because
6 of a head injury, autism, behavioral disorder, or physical,
7 mental, communication, or learning disability, as defined by
8 the rules of the department of education. If a child requiring
9 special education reaches the age of twenty-one during an
10 academic year, the child may elect to receive special education
11 services until the end of the academic year.

12 Sec. 2. Section 256B.3, Code 2009, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 14A. To submit copies of all reports the
15 division provides to the United States department of education
16 under part B of the federal Individuals with Disabilities
17 Education Act, as amended, including but not limited to any
18 report concerning disproportionate representation in special
19 education based on race or ethnicity, to the general assembly
20 on the date each such report is provided to the United States
21 department of education.

22 Sec. 3. Section 256B.6, Code 2009, is amended to read as
23 follows:

24 **256B.6 Parent's or guardian's duties — review.**

25 1. When the school district or area education agency has
26 provided special education services and programs as provided
27 herein for any child requiring special education, either
28 by admission to a special class or by supportive services,
29 it shall be the duty of the parent or guardian to enroll
30 ~~said~~ the child for instruction in such special classes or
31 supportive services as may be established, except in the
32 event a doctor's certificate is filed with the secretary
33 of the school district showing that it is inadvisable for
34 medical reasons for the child requiring special education to
35 receive the special education provided; all the provisions

1 and conditions of chapter 299 ~~and amendments thereto~~ shall
2 be applicable to this section, and any violations shall be
3 punishable as provided in ~~said~~ chapter 299.

4 2. A child, or the parent or guardian of the child, or the
5 school district in which the child resides, may obtain a review
6 of an action or omission of ~~state or~~ local authorities pursuant
7 to the procedures established by the state board of education
8 on the ground that the child has been or is about to be:

9 ~~1.~~ a. Denied entry or continuance in a program of special
10 education appropriate to the child's condition and needs.

11 ~~2.~~ b. Placed in a special education program which is
12 inappropriate to the child's condition and needs.

13 ~~3.~~ c. Denied educational services because no suitable
14 program of education or related services is maintained.

15 ~~4.~~ d. Provided with special education which is insufficient
16 in quantity to satisfy the requirements of law.

17 ~~5.~~ e. Assigned to a program of special education when the
18 child does not have a disability.

19 3. When a child requiring special education attains the
20 age of majority or is incarcerated in an adult or juvenile,
21 state or local, correctional institution, all rights accorded
22 to the parent or guardian under this chapter transfer to the
23 child except as provided in this subsection. Any notice
24 required by this chapter shall be provided to both the child
25 who has reached the age of majority or is incarcerated in an
26 adult or juvenile, state or local, correctional institution,
27 and the parent or guardian. If rights under this chapter have
28 transferred to the child and the child has been determined
29 to be incompetent by a court or determined unable to provide
30 informed educational consent by a court or other competent
31 authority, then rights under this chapter shall be exercised by
32 the person who has been appointed to represent the educational
33 interest of the child. The director of the department of
34 education may establish standards for determining whether
35 a public agency, as defined in section 28E.2, is competent

1 to determine whether a child is unable to provide informed
2 educational consent, and the procedures by which such
3 determination shall be made and reviewed.

4 4. Notwithstanding section 17A.11, the state board of
5 education shall adopt rules for the appointment of an impartial
6 administrative law judge for special education appeals. The
7 rules shall comply with federal statutes and regulations.

8 Sec. 4. Section 256B.8, unnumbered paragraph 2, Code 2009,
9 is amended to read as follows:

10 An area education agency director of special education may
11 request approval from the department of education to continue
12 the special education program of a person beyond the ~~person's~~
13 ~~twenty-first birthday~~ period specified in section 256B.2,
14 subsection 1, paragraph "a", if the person had an accident or
15 prolonged illness that resulted in delays in the initiation of
16 or interruptions in that person's special education program.
17 Approval may be granted by the department to continue the
18 special education program of that person for up to three years
19 or until the person's twenty-fourth birthday.

20 Sec. 5. Section 256B.11, Code 2009, is amended to read as
21 follows:

22 **256B.11 Program plans.**

23 1. Program plans submitted to the department of education
24 pursuant to section 273.5 for approval by the director of the
25 department of education shall establish all of the following:

26 ~~1-~~ a. That there are sufficient children requiring special
27 education within the area.

28 ~~2-~~ b. That the service or program will be provided by the
29 most appropriate educational agency.

30 ~~3-~~ c. That the educational agency providing the service or
31 program has employed qualified special educational personnel.

32 ~~4-~~ d. That the instruction is a natural and normal
33 progression of a planned course of instruction.

34 ~~5-~~ e. That all revenue raised for support of special
35 education instruction and services is expended for actual

1 delivery of special education instruction or services.

2 ~~6.~~ f. Other factors as the state board may require.

3 2. Notwithstanding subsection 1 and section 273.5,
4 subsection 6, the director of the department of education may
5 authorize the area education agency to submit a statement
6 assuring that the requirements of subsection 1 are satisfied
7 in lieu of submitting a special education instructional and
8 support program plan.

9 Sec. 6. Section 256B.15, subsection 7, Code 2009, is amended
10 to read as follows:

11 7. The area education agencies shall transfer to
12 the department of ~~education~~ human services an amount
13 equal to ~~eighty-four percent~~ the nonfederal share of the
14 payments to be received from the medical assistance program
15 ~~provided~~ pursuant to chapter 249A. The nonfederal share
16 amount shall be transferred to the medical assistance account
17 prior to claims payment. This requirement does not apply to
18 medical assistance reimbursement for services provided by an
19 area education agency under part C of the federal Individuals
20 With Disabilities Education Act. Funds received under this
21 section shall not be considered or included as part of the area
22 education agencies' budgets when calculating funds that are to
23 be received by area education agencies during a fiscal year.

24 Sec. 7. Section 257.11, subsection 8, Code Supplement 2009,
25 is amended to read as follows:

26 8. *Pupils ineligible.* A pupil eligible for the weighting
27 plan provided in section 256B.9 is not eligible for
28 supplementary weighting pursuant to this section unless it
29 is determined that the course generating the supplemental
30 weighting has no relationship to the pupil's disability. A
31 pupil attending an alternative program or an at-risk pupils'
32 program, including alternative high school programs, is not
33 eligible for supplementary weighting under subsection 2.

34 Sec. 8. STATE MANDATE FUNDING SPECIFIED. In accordance
35 with section 25B.2, subsection 3, the state cost of requiring

1 compliance with any state mandate included in this Act shall
2 be paid by a school district from state school foundation aid
3 received by the school district under section 257.16. This
4 specification of the payment of the state cost shall be deemed
5 to meet all of the state funding-related requirements of
6 section 25B.2, subsection 3, and no additional state funding
7 shall be necessary for the full implementation of this Act
8 by and enforcement of this Act against all affected school
9 districts.

10

EXPLANATION

11 This bill makes Code changes related to special education
12 rights, duties, and responsibilities.

13 The bill amends Code section 256B.2 to add to the definition
14 of "children requiring special education" a provision allowing
15 such a child who reaches age 21 during an academic year to
16 elect to continue to receive special education services until
17 the academic year ends. A conforming change is made to Code
18 section 256B.8.

19 The bill also provides that when a child requiring special
20 education attains the age of majority or is incarcerated in a
21 correctional institution, the rights of the child's parent or
22 guardian transfers to the child, and any notice to that child's
23 parent or guardian must also be provided to the child. If the
24 child is determined to be incompetent, these rights shall be
25 exercised by the person appointed to represent the educational
26 interests of the child.

27 The bill authorizes the director of the department of
28 education to establish standards and procedures for determining
29 whether a public agency is competent to determine whether a
30 child is unable to provide informed educational consent, and
31 to authorize an area education agency to submit a statement
32 assuring its special education instruction and support program
33 plan meets the specific requirements established in Code
34 section 256B.11, subsection 1, rather than require the agency
35 to submit the actual plan to the department for approval.

1 The bill also directs area education agencies to transfer to
2 the department of human services, rather than the department
3 of education as provided in current law, an amount equal to
4 the nonfederal share of the payments to be received from the
5 medical assistance program, rather than 84 percent as provided
6 in current law, of payments received for medical assistance
7 services provided to children requiring special education.

8 The bill also provides that a pupil who is eligible
9 for special education weighting is not also eligible for
10 supplementary weighting unless the course generating the
11 supplementary weighting has no relationship to the pupil's
12 disability.

13 The bill requires the division of special education to
14 submit copies of all reports the department provides to the
15 U.S. department of education under part B of the federal
16 Individuals with Disabilities Education Act, including
17 but not limited to any report concerning disproportionate
18 representation in special education based on race or ethnicity.

19 The bill may include a state mandate as defined in Code
20 section 25B.3. The bill requires that the state cost of
21 any state mandate included in the bill be paid by a school
22 district from state school foundation aid received by the
23 school district under Code section 257.16. The specification
24 is deemed to constitute state compliance with any state mandate
25 funding-related requirements of Code section 25B.2. The
26 inclusion of this specification is intended to reinstate the
27 requirement of political subdivisions to comply with any state
28 mandates included in the bill.