

1 S.253

2 Introduced by Senator Giard

3 Referred to Committee on

4 Date:

5 Subject: Education; special education; administrative hearings; mediation;
6 judicial proceedings

7 Statement of purpose: This bill proposes to:

8 (1) permit the parent of a child with a disability to request mediation for
9 individualized education plan (“IEP”) meetings to be paid for by the
10 department of education if the parent believes the IEP team is not giving
11 appropriate weight to the opinions and recommendations of the parent or the
12 parent’s independent experts or if the parent believes that the team’s decisions
13 are not in the best interest of the child;

14 (2) prohibit a school from restricting access to a parent of a child with a
15 disability unless a hearing officer or judge has temporarily prohibited access
16 after the school demonstrated by clear and convincing evidence that the parent
17 has threatened and is a physical danger to persons at the school;

18 (3) require a school district of residence to pay an independent provider
19 for special education services required under the most recently agreed-upon
20 IEP when a parent has decided to enroll a child with a disability in a home
21 study program;

1 (4) require the school district, supervisory union, and department of
2 education to bear the burden of proof in any action relating to providing a free
3 and appropriate education to a child with a disability;

4 (5) identify the parent as the prevailing party in an action and entitled to
5 costs and attorney's fees if the district voluntarily began to provide a
6 significant benefit sought by the action; and

7 (6) require a parent to engage in mediation before beginning any
8 administrative or judicial action regarding the provision of special education
9 services to a child with a disability.

10 An act relating to promoting parental rights within the special education
11 process

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 16 V.S.A. § 2946 is added to read:

14 § 2946. PARENTAL RIGHTS

15 (a) Development of an individualized education plan ("IEP") is a
16 collaborative effort to meet the unique needs of a child with a disability.

17 Therefore, parents, legal guardians, and their independent experts are essential
18 members of the team that develops the plan and determines placement of the
19 child.

1 (b) At any time during the development or implementation of an IEP for a
2 child with a disability, if the child's parents or legal guardian ("parent")
3 believes the IEP team is not giving appropriate weight to the opinions and
4 recommendations of the parent or the parent's independent experts or if the
5 parent believes that the team's decisions are not in the best interest of the child,
6 then the parent may request that all future IEP meetings be mediated by a
7 person not employed by the district or supervisory union and, pursuant to
8 subsection 2959(b) of this subchapter, the commissioner shall ensure the
9 mediator's presence at no cost to the parent.

10 (c) A school district shall not prohibit the parent of a child with a disability
11 from entering the school building in which the child is located and observing
12 the child's program unless:

13 (1) The district establishes by clear and convincing evidence at an
14 administrative hearing or before a court of competent jurisdiction that the
15 parent has threatened a district or supervisory union employee, a school
16 volunteer, or a student and is a physical danger to persons present at the
17 school; and

18 (2) The hearing officer or court issues an order that temporarily
19 prohibits the parent from entering the school building and includes a process
20 by which the parent may obtain dismissal of the order.

1 Sec. 2. 16 V.S.A. § 2948(o) is added to read:

2 (o) Notwithstanding any law to the contrary, if the parent or legal guardian
3 of a child with a disability chooses to enroll the child in a home study program
4 under section 166b of this title because the parent has been unable to reach an
5 agreement with the school district regarding the child's individualized
6 education plan or placement, the parent may arrange for one or more qualified
7 independent providers to deliver the services included in the child's most
8 recently agreed-upon plan, and the district of residence shall be responsible for
9 all payment due to the provider.

10 Sec. 3. 16 V.S.A. § 2957 is amended to read:

11 § 2957. SPECIAL EDUCATION ADMINISTRATIVE AND JUDICIAL
12 APPEALS; LIMITATIONS

13 (a) An administrative action against a local, intermediate, or state education
14 agency seeking enforcement of special education rights under state or federal
15 law shall be commenced ~~by an administrative due process hearing~~ within two
16 years of the alleged violation or within two years of the date the alleged
17 violation is or reasonably should have been discovered, and not after.

18 (b) Subsection (a) of this section notwithstanding, the parent, legal
19 guardian, or surrogate parent ("parent") of a child with a disability shall file an
20 administrative action against a local, intermediate, or state education agency
21 for reimbursement of the costs of a unilateral special education placement ~~shall~~

1 ~~be commenced by an administrative due process hearing~~ within 90 140 days of
2 the unilateral placement, and not after.

3 (c) ~~Where~~ If the parent, legal guardian or surrogate parent has not been
4 given proper notice of special education rights under state and federal law,
5 including notice of the limitations in this section, such limitations shall run
6 from the time notice of those rights is properly given.

7 (d) An appeal from a final administrative decision in a special education
8 due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C.
9 § 1415(i)(2) shall be commenced within 90 days from the notice of the final
10 administrative decision, and not after.

11 (e) Except as provided in 20 U.S.C. § 1412(a)(10)(C) or unless a court or
12 hearing officer determines otherwise, ~~where~~ if a unilateral placement has been
13 made without the school district of residence being offered a reasonable
14 opportunity to evaluate the child and to develop an individualized education
15 plan, then the parent may not seek reimbursement ~~may not be sought~~ for any
16 costs incurred before the school district is offered such an opportunity.

17 (f) In any action under this section, the school district, the supervisory
18 union, or the department of education, as appropriate, shall bear the burden of
19 proof regarding any issue related to providing the child with an appropriate
20 public education pursuant to section 2941 of this subchapter.

1 (g) In any action under this section, the parent shall be considered the
2 prevailing party entitled to costs and reasonable attorneys' fees if:

3 (1) After the parent initiated legal action, the district voluntarily began
4 to provide, fully or partially, a significant benefit sought by the action;

5 (2) The parent proves that the district's action in subdivision (1) of this
6 subsection was substantially caused by initiation of the legal action; and

7 (3) Awarding attorneys' fees is consistent with the award of attorneys'
8 fees under 20 U.S.C. § 1415(i)(3).

9 (h) A parent or a school district shall request and engage in mediation
10 pursuant to subsection 2959(b) of this subchapter prior to initiating an action
11 under this section and, upon requesting mediation, all time limitations imposed
12 by this section are suspended until the conclusion of the mediation.

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on passage.