

PUBLIC CHAPTER NO. 598

SENATE BILL NO. 907

By Ketron, Marrero

Substituted for: House Bill No. 374

By Briley, DuBois, Harwell, Moore, Gresham, Brown, Harry Brooks, Cooper

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 10, Part 6, relative to special education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 10, Part 6, is amended by adding Sections 2 through 7 of this act as new, appropriately designated sections.

SECTION 2. The Department of Education shall enforce the Individuals with Disabilities Act and Tennessee special education laws.

SECTION 3. The Department of Education shall promptly investigate complaints filed regarding services to disabled students and shall enforce the Individuals with Disabilities Education Act and Tennessee special education laws. The department shall carry out its obligation to enforce such laws through the administrative complaint process in the following manner:

(1) The department shall make available a complaint form on the departmental Internet site. In addition, the department shall supply any individual a written copy of the complaint form via the United States mail when so requested. The department shall facilitate the submission of complaint forms via the Internet. If a complaint is filed via the Internet, the complaint shall be deemed signed so long as the name of the filer is indicated in the complaint. Anonymous complaints shall not be accepted for investigative purposes.

(2) If the complaint alleges that a school system has committed a procedural violation of the applicable laws, the department shall determine whether the allegation has basis in fact. If determined to have a basis in fact, the department shall issue, within ten (10) regular school business days of the finding, a written finding to the school system and the person making the complaint confirming the violation. The response shall state whether or not the department has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education.

(3) If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the department shall, within ten (10) regular school business days of the finding, issue a written finding to the school district and the person making

the complaint confirming the violation and shall require the school system to take corrective action, including compensatory education where appropriate.

(4) The department shall require a school system that has committed a procedural violation of applicable law to correct the violation within ten (10) regular school business days.

(5) The department shall require a school system that has committed a violation that is determined to constitute a violation of a free, appropriate public education to correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it shall be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation.

(6) Any school system receiving notice from the department that measures are required to correct procedural or substantive violations of applicable law shall provide written notice of such corrective measures to the department and to the person making the complaint. The department shall determine whether the measures taken by the school system have resulted in compliance with the law and the regulations. The department shall provide written notice to the school system of its determination within ten (10) regular school business days.

(7) Within thirty (30) business days after closing the investigation, the department shall publish all confirmed violations and determinations of findings of violations of statutes or regulations on its official state web site. Such publication shall include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures proposed by the school system, and the final determination of the department. The department shall publish confirmed violations and determinations in a manner that protects the identity of the student.

SECTION 4. (a) All special education mediations shall be conducted by Tennessee Supreme Court Rule 31 certified mediators employed by or contracted by the secretary of state.

(b) The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations.

(c) All parties shall participate in mediation in good faith.

SECTION 5. (a) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. In addition, the secretary of state may contract with no more than three (3) administrative law judges who are currently serving under an appointment by the Department of Education to hear special education due process cases, to serve as part-time administrative law judges to hear special education due process cases. Administrative law judges shall have jurisdiction to hear complaints arising under

the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., as from time to time amended, and Tennessee special education laws.

(b) The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.

(c) The school system shall provide a photocopy of all of the education records of the student in question within its control according to orders issued by the administrative law judges but in no case later than ten (10) regular school business days following the failure to resolve the dispute following the federal resolution process or mediation between the parties.

(d) Final orders in special education cases shall include detailed findings of fact and conclusions of law. The findings of fact shall include a determination by the administrative law judge regarding meaningful participation by the parent in the development of the individualized education plan for the student.

(e) Final orders include a determination of prevailing party status on an issue by issue basis.

(f) Administrative law judges shall provide a written final order signed by the judge. Final orders shall also be provided on electronic data disc or via electronic mail at the request of any party.

(g) An administrative law judge shall render a decision within the timelines established by federal law, as from time to time amended, unless the parties request an extension of time to attempt mediation or in the event of extraordinary circumstances determined acceptable by the administrative law judge.

(h) All decisions regarding special education due process hearings shall be published on the official state web site of the Department of Education. All student identifying information shall be excised from the publication.

SECTION 6. Neither a local education agency attorney nor parent attorney shall be considered a member of an individualized education program team.

SECTION 7. (a) The Department of Education, the State Board of Education, local boards of education and LEAs are prohibited from hiring any individual who the Department of Children's Services has found to have committed abuse against a child pursuant to Title 37, except that no such employee or individual shall be reported as a perpetrator by the Department of Children's Services unless it has determined that the due process rights of each employee or individual were either offered but not accepted, or were fully concluded, pursuant to its rules and regulations and state and federal law.

(b) The Department of Education, the State Board of Education and the Department of Children's Services in consultation shall develop a procedure whereby the names of all potential employees of the Department of Education, any local board of education or any LEA shall be submitted to the Department of

Children's Services prior to employment to determine if such potential employees were found by that department to have committed child abuse pursuant to (a).

(c) The Department of Education and all LEAs shall not hire any individual who has been found to have abused a child or an adult and whose name has been placed on the state's vulnerable person's registry or the state's sex offender registry.

SECTION 8. The State Board of Education is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Tennessee Uniform Administrative Procedures Act.

SECTION 9. This act shall take effect July 1, 2007, the public welfare requiring it.

PASSED: June 11, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of June 2007



PHIL BREDESEN, GOVERNOR