

HB197 INTRODUCED



1 HB197
2 9Y4ABPP-1
3 By Representatives Faulkner, Lee, Whorton
4 RFD: Judiciary
5 First Read: 05-Feb-25



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SYNOPSIS:

Under existing law, the Individuals with Disabilities Education Act (IDEA) provides for an impartial due process hearing following an allegation that a local board of education has violated the IDEA as it relates to the education provided to a child with a disability.

This bill would require a person with an allegation to notify the State Department of Education of the allegation before formally requesting an impartial due process hearing and, following the notification, would provide certain procedures to attempt to resolve the resolution, including a response from the local board of education and, in some cases, an investigation by the department.

This bill would require the department to offer voluntary mediation to resolve the allegation at no cost to the person who filed the allegation or the parent of the child who is the subject of the allegation.

This bill would provide for the possible initiation of an impartial due process hearing if attempts to resolve the allegation through notification and voluntary mediation are unsuccessful.

This bill would provide for the calculation of



HB197 INTRODUCED

29 attorney fees for an action or proceeding under the due
30 process hearing provisions of the IDEA.

31 This bill would also require the State Board of
32 Education to adopt rules.

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35 A BILL

36 TO BE ENTITLED

37 AN ACT

38

39 Relating to public K-12 education; to add Article 3,
40 commencing with Section 16-39-50, to Chapter 39 of Title 16,
41 Code of Alabama 1975; to require parties to notify the State
42 Department of Education of potential violations of the
43 Individuals with Disabilities Education Act (IDEA) before
44 formally requesting an impartial due process hearing; to
45 provide for the notification process; to require the
46 department to offer mediation to resolve allegations of
47 violations of the IDEA as an alternative or precursor to an
48 impartial due process hearing; to provide for the calculation
49 of attorney fees; and to require the State Board of Education
50 to adopt rules.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52 Section 1. Article 3, commencing with Section 16-39-50,
53 is added to Chapter 39 of Title 16, Code of Alabama 1975, to
54 read as follows:

55 Article 3

56 §16-39-50



HB197 INTRODUCED

57 For the purposes of this article, the following terms
58 have the following meanings:

59 (1) ALLEGATION. An allegation of a violation of the
60 IDEA relating to the identification, evaluation, educational
61 placement of a child with a disability, or the provision of a
62 free appropriate education to a child.

63 (2) DEPARTMENT. The State Department of Education.

64 (3) FREE APPROPRIATE PUBLIC EDUCATION or FAPE. Special
65 education and related services that:

66 a. Are provided at public expense, under public
67 supervision and direction, and without charge;

68 b. Meet the standards of the State Board of Education;

69 c. Include an appropriate preschool, elementary school,
70 or secondary school education in the state; and

71 d. Are provided in conformity with an individualized
72 education program and its requirements.

73 (4) IDEA. The Individuals with Disabilities Education
74 Act, 20 U.S.C. § 1400 et seq. and its implementing
75 regulations, 34 C.F.R. Part 300.

76 (5) IMPARTIAL DUE PROCESS HEARING or HEARING. A hearing
77 in accordance with the IDEA, 20 U.S.C. § 1415, to resolve a
78 complaint relating to the provision of free appropriate public
79 education to children with disabilities.

80 (6) INDIVIDUALIZED EDUCATION PROGRAM or IEP. A written
81 statement for each child with a disability that is developed,
82 reviewed, and revised in accordance with the IDEA, 20 U.S.C. §
83 1414.

84 (7) PARENT. A student's parent or legal guardian.



HB197 INTRODUCED

85 §16-39-51

86 (a) Before a person may request an impartial due
87 process hearing, he or she must file a signed, written
88 complaint regarding the allegation with the department. At the
89 time of filing, the complainant must also forward a copy of
90 the complaint to the relevant local board of education and
91 local superintendent of education. The complaint shall be
92 submitted on a form developed by the department and shall
93 include, at a minimum, the facts on which the allegation is
94 based and a proposed resolution for the issue.

95 (b) A complaint may not allege a violation that
96 occurred more than one year before the date the complaint is
97 filed.

98 (c) Following the receipt of a complaint, the
99 department shall:

100 (1) Send a written confirmation of receipt to the
101 complainant. The confirmation must also notify the complainant
102 that monetary awards are not available to resolve complaints
103 alleging a violation of the IDEA, as the only permissible
104 remedies under the IDEA are education services for the
105 student.

106 (2) Notify the relevant local board of education of the
107 complaint and provide the local board of education with the
108 opportunity to address and resolve the issue. No later than 10
109 days after the receipt of notification from the department,
110 the local board of education shall respond in writing to the
111 department, providing an explanation for the allegations and
112 describing any actions taken to resolve the issue.



HB197 INTRODUCED

113 (d) (1) The department shall review the response of the
114 local board of education and, if the issue has been resolved,
115 proceed with the letter of notification provided in subsection
116 (e).

117 (2) If the issue has not been resolved, the department:

118 a. May carry out an independent investigation and an
119 on-site visit to gather further information to determine
120 whether there has been a violation of the IDEA; and

121 b. Shall inform the complainant and, if the complainant
122 is not the parent, the parent of the child who is the subject
123 of the complaint, of the opportunity to mediate pursuant to
124 Section 16-39-52.

125 (e) (1) After the local board of education's response
126 and, if necessary, further investigation and an on-site visit,
127 the department shall review all relevant information and make
128 an independent determination as to whether the local board of
129 education is violating a requirement of the IDEA.

130 (2) The department shall issue a written letter of
131 notification to the relevant local board of education and the
132 complainant that addresses each allegation in the complaint
133 and includes, at a minimum, findings of fact relating to the
134 allegation, a final decision, and the reasoning for the final
135 decision.

136 §16-39-52

137 (a) The department shall make mediation available at
138 the request of either party to resolve allegations. The
139 department shall bear the cost of the mediation process.

140 (b) The department shall adopt rules and each local



HB197 INTRODUCED

141 board of education shall adopt policies to establish and
142 implement a mediation program that allows parties to resolve
143 allegations. The procedures shall ensure, at a minimum, that
144 the mediation process:

145 (1) Is voluntary on the part of the parties and the
146 parent of the child who is the subject of the allegation;

147 (2) Is not used to deny or delay a parent's right to an
148 impartial due process hearing or any other rights afforded
149 under the IDEA; and

150 (3) Is conducted by a qualified and impartial mediator
151 who is trained in effective mediation techniques.

152 (c) If any party chooses not to use the mediation
153 process, the applicable local board of education may offer an
154 opportunity to meet with an appropriate disinterested party.
155 The disinterested party shall explain the benefits of the
156 mediation process and encourage the parents to use mediation
157 to resolve the dispute. The opportunity shall be offered at a
158 time and location convenient to the parent.

159 (d) If the parties resolve an allegation through the
160 mediation process, they shall execute a legally binding
161 agreement that sets forth the resolution and:

162 (1) States that discussions that occur during the
163 mediation process are confidential;

164 (2) States that the signed mediation agreement is
165 enforceable; and

166 (3) Is signed by both the parent and a legal
167 representative of the relevant local board of education.

168 (e) Discussions that occur during the mediation process



HB197 INTRODUCED

169 are confidential and may not be used as evidence in any
170 subsequent due process hearing or civil proceeding.

171 (f) A written, signed mediation agreement is
172 enforceable in any state court of competent jurisdiction and
173 the district court of the United States.

174 §16-39-53

175 (a) Copies of all correspondence relating to the
176 complaint and mediation shall be provided to all parties
177 involved including, but not limited to, the department, the
178 relevant local board of education, and the complainant, except
179 as provided in subsection (b).

180 (b) If the parent of the child who is the subject of
181 the complaint is not the complainant, he or she shall also be
182 provided all correspondence, and the complainant may only
183 receive copies of information that contains personally
184 identifiable information about the child if the parent
185 consents to the release of such information.

186 §16-39-54

187 The complainant or the parent may proceed with an
188 impartial due process hearing request pursuant to the IDEA if:

189 (1) The allegation has not been resolved after the
190 complaint procedures in Section 16-39-51;

191 (2) The parties do not resolve the allegation through
192 the mediation procedures in Section 16-39-54, either because
193 the parties chose not to participate in mediation or because,
194 after agreeing to mediation, the parties could not come to an
195 agreement; or

196 (3) The parties agreed to a written, signed mediation



HB197 INTRODUCED

197 agreement, but after a reasonable amount of time, the local
198 board of education has not properly implemented the
199 requirements of the mediation agreement. If a complainant or a
200 parent requests a due process hearing under this subdivision,
201 the department shall determine whether a reasonable amount of
202 time has passed to warrant the filing of a due process hearing
203 request, based on the specific facts and circumstances of the
204 agreement.

205 §16-39-55

206 (a) In any action or proceeding brought under the due
207 process hearing provisions of the IDEA, the court may award
208 reasonable attorney fees as part of the costs to each of the
209 following:

210 (1) The prevailing party who is the parent of a child
211 with a disability.

212 (2) If the prevailing party is the department or a
213 local board of education, to the prevailing party:

214 a. Against the attorney of a parent who files a
215 complaint or subsequent cause of action that is frivolous,
216 unreasonable, or without foundation, or against the attorney
217 of a parent who continued to litigate after the litigation
218 clearly became frivolous, unreasonable, or without foundation;
219 or

220 b. Against the attorney of a parent, or against the
221 parent, if the parent's request for a due process hearing or
222 subsequent cause of action was presented for any improper
223 purpose, such as to harass, to cause unnecessary delay, or to
224 needlessly increase the cost of litigation.



HB197 INTRODUCED

225 (b) Funds under Part B of the IDEA may not be used to
226 pay attorney fees or costs of a party related to any action or
227 proceeding under the due process hearing provisions of the
228 IDEA. This subsection does not preclude a public agency from
229 using funds under Part B of the IDEA for conducting an action
230 or proceeding under Section 615 of the IDEA.

231 (c) If a court awards reasonable attorney fees, the
232 fees must be based on rates prevailing in the community in
233 which the action or proceeding arose for the kind and quality
234 of services furnished. No bonus or multiplier may be used in
235 calculating the fees awarded under this subsection.

236 (d) Attorney fees may not be awarded and related costs
237 may not be reimbursed in any action or proceeding under the
238 due process hearing provisions of the IDEA for services
239 performed subsequent to the time of a written offer of
240 settlement to a parent if:

241 (1) The offer is made within the time prescribed by
242 Rule 68 of the Federal Rules of Civil Procedure or, in the
243 case of an administrative proceeding, at any time more than 10
244 days before the proceeding begins;

245 (2) The offer is not accepted within 10 days; and

246 (3) The court or administrative hearing officer finds
247 that the relief finally obtained by the parents is not more
248 favorable to the parents than the offer of settlement.

249 (e) An award of attorney fees and related costs may be
250 made to a parent who is the prevailing party and who was
251 substantially justified in rejecting the settlement offer.

252 (f) (1) Except as provided in subdivision (2), attorney



HB197 INTRODUCED

253 fees may not be awarded relating to any meeting of the IEP
254 team unless the meeting is convened as a result of an
255 administrative proceeding or judicial action, or at the
256 discretion of the state, for mediation.

257 (2) Subdivision (1) does not apply if the court finds
258 that the state or local board of education unreasonably
259 protracted the final resolution of the action or proceeding or
260 there was a violation of Section 615 of the IDEA.

261 (g) A meeting conducted pursuant to the resolution
262 process shall not be considered:

263 (1) A meeting convened as a result of an administrative
264 hearing or judicial action; or

265 (2) An administrative hearing or judicial action for
266 purposes of this section.

267 (h) The court may reduce the amount of the attorney
268 fees awarded, if the court finds that:

269 (1) During the course of the action or proceeding, the
270 parent or the parent's attorney unreasonably protracted the
271 final resolution of the controversy;

272 (2) The amount of attorney fees otherwise authorized to
273 be awarded unreasonably exceeds the hourly rate prevailing in
274 the community for similar services by attorneys of reasonably
275 comparable skill, reputation, and experience;

276 (3) The time spent and legal services furnished were
277 excessive considering the nature of the action or proceeding;
278 or

279 (4) The attorney representing the parent did not
280 provide the appropriate information to the local board of



HB197 INTRODUCED

281 education in the due process hearing request notice.

282 §16-39-56

283 (a) This article shall apply beginning with the
284 2026-2027 school year.

285 (b) The State Board of Education shall adopt rules to
286 implement this act.

287 Section 2. This act shall become effective on October
288 1, 2025.