

THIS JUST IN...

BY
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DEVELOPMENTS IN SPECIAL EDUCATION LAW

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NEW LAWS REGARDING SPECIAL EDUCATION

The big news coming from the Texas Legislature this year was the passage of HB 5. This lengthy piece of legislation changes our graduation requirements and curriculum mandates in ways that educators seem quite pleased with. Our lawmakers also restored some of the funding that was cut in the last session and declined to adopt any sweeping voucher plans. Texas educators count it as a good session. So let's take a look at some of the new bills that will directly impact special education and special educators.

SB 816: TIMELINE FOR FIE. Have you ever been stressed over the duty to complete an FIE (Full Individual Evaluation) over the summer when diagnostic staff may not be under contract, and kids are not in the classroom? This bill is designed to address that problem. It creates a new timeline for the completion of the initial FIE. The fundamental change shifts us from "60 calendar days" to "45 school days." Most of the time, there is not much difference. It takes nine weeks (63 days) to accumulate 45 school days. But when holidays come into play, the change will be significant. Also, the new law calls for the FIE timeline to be extended day-for-day if the student is absent for three or more days. So if the student misses a week of school during that 45-day timeframe, the deadline would be 50 school days, rather than 45. The absences do not have to be consecutive. Absences, however, are irrelevant for those students who are not attending your school, such as private school students, homeschoolers and preschoolers who are not enrolled.

What happens when "45 school days" extends from one school year to the next? Consider: it is the last day of school. Everyone

is packing up for the summer. But your secretary brings you a signed consent for the initial evaluation of a student. Under the old law, you had 60 calendar days to get the FIE done, even though those days were all in the summer. This makes it particularly difficult to conduct any observation of the student in the regular school environment.

The new law gives you more flexibility in this situation. It states that if the consent of the parent is obtained with less than 35 school days before the last day of instruction for the school year, then the FIE is due 45 *school days* after consent is obtained. This puts you well into the next school year.

If the parent gives consent for the initial FIE with more than 35, but less than 45 school days, then the deadline for the FIE is June 30th, and the ARD Committee is required to meet within 15 school days of the next school year. However, if the student is absent from school for three or more days, then the deadline reverts to the full 45 school days—in other words, it will go into the next school year.

Let's take a look at the 2014 calendar to see how this will work. Let's say that June 6 is your last instructional day. To make it simple, let's assume there are no holidays late in the year. So your 45-school day marker would be April 4. Your 35-day marker would be April 18. If the parent gives consent for the initial FIE after April 18th, the FIE is not due until sometime the next school year. If the parent gives consent after April 4th but before the 18th, then the deadline is June 30th, unless the student is absent for three or more days. Got that? Good.

THE BIG NEWS COMING FROM THE TEXAS LEGISLATURE THIS YEAR WAS THE PASSAGE OF HB 5. THIS LENGTHY PIECE OF LEGISLATION CHANGES OUR GRADUATION REQUIREMENTS AND CURRICULUM MANDATES IN WAYS THAT EDUCATORS SEEM QUITE PLEASED WITH.

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ATTORNEYS AT LAW

One other provision in this law deserves your attention. For the first time, it gives us a specific timeline for responding to a parent request for an initial FIE. The timeline is triggered only by a *written* request that is delivered either to the director of special education, or “a district administrative employee.” Thus, a casual conversation with the teacher does not suffice. If the timeline is triggered by a written request delivered to the right person, the school must—within 15 school days—give the parent an opportunity to give written consent for the evaluation; or refuse to do the evaluation and provide the parent with notice of procedural safeguards.

While this provision applies only to the parent request for the initial FIE, it would be a good idea to incorporate that 15-day timeline into your routine practices for a request for any evaluation. Three weeks seems like a reasonable amount of time for the school to review the situation and make a decision regarding an evaluation.

Some of you are thinking: “doesn’t the federal law spell out all these timelines?” It does, but it also gives the states some flexibility. Section 34 CFR 300.301(c)(1) of the IDEA regulations requires the initial FIE to be completed within 60 calendar days OR “If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.” With SB 816, Texas takes advantage of this flexibility for the first time.

SB 709: DUE PROCESS REPRESENTATION. This bill allows parents and school districts to be represented by a non-attorney in a special education due process hearing. However, if the person is not an attorney, he or she must have “special knowledge or training with respect to problems of children with disabilities” and must also satisfy standards to be established by the commissioner. Those standards must require that the individual must have knowledge of the rules and procedure that govern hearings, as well as the federal and state special education laws. Moreover, if the person is a former employee of the school district, he or she cannot serve in this capacity if the district objects. Look for rules from the T.E.A. on this, which will be enforced by the hearing officers.

SB 542: ARD FACILITATION. This bill promotes the use of ARD facilitation as a means of dispute resolution. It requires

T.E.A. to provide information about this to parents. Districts are not required to offer this method of dispute resolution, but if they choose to do so they must inform parents of its availability. ARD facilitation may be provided by a district employee or an independent contractors, but the service must be at no cost to the parent. When offered, it remains completely voluntary and cannot be used to deny or delay a parent request for a hearing or mediation or a complaint. Watch for rules from T.E.A. about this. In the meantime, the law also states that districts are free to use ARD facilitation as a routine means of conducting ARD meetings.

SB 39: VI STUDENTS. This bill outlines the “expanded core curriculum” necessary for students with visual impairments.

SB 306: RF AND ACCOUNTABILITY. This one says that any student served in a residential facility located in your district will not be included in your district’s accountability ratings.

HB 1264: DYSLEXIA. This requires the commissioner to adopt rules that will require you to report through PEIMS how many students you have identified as having dyslexia.

SB 460: MENTAL HEALTH. This bill requires schools to provide training for appropriate personnel concerning mental health risks for students. This would include students at risk of suicide or who may be targets of, or engaging in, bullying. The training is required at the elementary level only if sufficient funds are available.

SB 2: CHARTERS. This is a lengthy bill concerning charters, but for our purposes the key provision states that a charter school may be “intended primarily” to serve students eligible for special education. In fact, the cap on the number of charters the state can grant does not apply to such a school, provided that there can be no more than five of them.

AND THAT’S NOT ALL! The legislature also named Garland the Cowboy Hat Capital of Texas, which will upset some folks in Nocona, and probably elsewhere. And it declared the first full week of May as Teacher Appreciation Week. Here at Walsh Anderson, we think every week should be Teacher Appreciation Week, and we hope you are enjoying the summer.

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