Attorneys For Education Rights

Attorneys for Education Rights
1037 NE 65th St., #81814
Seattle, Washington 98115
Tel. (206) 659-1898/ Fax (800) 991-2996
afer@attorneysforeducationrights.org
Web: attorneysforeducationrights.org

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VIA EMAIL TRANSMISSION ONLY
Chair Sharon Tomiko Santos and Members of the House Education Committee
P.O. Box 40600
Olympia, WA 98504-0600
sharontomiko.santos@leg.wa.gov, Clyde.Shavers@leg.wa.gov, skyler.rude@leg.wa.gov, Joel.McEntire@leg.wa.gov, steve.bergquist@leg.wa.gov, Travis.Couture@leg.wa.gov, carolyn.eslick@leg.wa.gov, paul.harris@leg.wa.gov, Stephanie.McClintock@leg.wa.gov, Greg.Nance@leg.wa.gov, lillian.ortiz-self@leg.wa.gov, gerry.pollet@leg.wa.gov, mike.steele@leg.wa.gov, monica.stonier@leg.wa.gov, Joe.Timmons@leg.wa.gov

Re: *In Support of House Bill 1914*

Dear Chair Tomiko Santos and Committee Members:

Attorneys for Education Rights (AFER) seeks to improve educational outcomes for youth with disabilities in Washington state. AFER supports House Bill 1914, most particularly Section 4(1) placing the burden of proof and production upon school districts for special education due process hearings.

This bill would protect the rights of more than 143,000 students eligible for special education services in our state, as well as those falling through the cracks in foster care and dependency systems, juvenile justice systems, and others with income and language barriers to accessing our courts.

AFER
ATTORNEYS FOR EDUCATION RIGHTS

Congress enacted the Individuals with Disabilities Education Act (IDEA) to ensure that all children with disabilities receive a free appropriate public education (FAPE), and that the rights of students and parents are protected; this is affirmed by Washington law.[1] These laws obligate the state and school districts to identify, locate, evaluate and provide a FAPE to a broad swath of students with disabilities, even those not enrolled in the public schools, and youth in prisons. An important protection afforded to parents and guardians under these laws is an impartial due process hearing procedure, in order to challenge school district decisions and enforce the rights of the student.

Currently in our state, if a parent or guardian challenges a school district decision in a due process hearing, the burden falls upon them to prove that the school district violated the law and failed to provide an appropriate education to the child. This is the "default" rule according to federal case law; however, states can and have changed the burden of proof to school districts in order to create a more fair and equitable hearing system.[2] We urge you to do the same for the benefit of Washington youth.

David v. Goliath

School districts possess all of the records, data, and evidence related to the child, and have access to educational experts such as teachers, psychologists, counselors, and therapists. School district administrators receive training in special education law and standards for the provision of special education and related services. School district employees are provided paid time off to participate in hearings. School districts large and small have taxpayer-paid insurance to pay for attorneys to represent them and prepare for due process hearings.

In contrast, parents and guardians are typically not education experts, and face many bureaucratic hurdles to access this system in the first place. They must articulate how the school district failed to follow the law, with often little to no information other than the child's poor progress or exclusion from services. They are expected to present witnesses and evidence, which all are under the control of the school district, to prove how the school district failed to meet legal standards. They must take unpaid time off work in order to participate. In order to counter the school district's credentialed witnesses, they are expected to obtain an independent expert at their own cost. Civil legal aid in this highly specialized area of law is very limited in our state.

AFER members participate in community meetings state-wide regarding special education, and hear repeatedly from parents that school districts do not have any incentive to work with them to resolve disputes, resulting in long delays in obtaining services for youth and lasting harm. The power imbalance between a parent and school district is exacerbated by poverty, race, language ability, and education level, resulting in a private enforcement system that many families simply can't access.[3]

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[1] 20 U.S.C. § 1400(d); RCW 28.155.010

[2] Connecticut, Delaware, Nevada, New Hampshire, New Jersey, and New York have passed such legislation.

[3] *Eloise Pasachoff, Special Education, Poverty, and the Limits of Private Enforcement, 86 Notre Dame L. Rev. 1413, 1417-1418 (2011)*

A Fair System Encourages Resolution of Disputes

Under the IDEA, states must offer informal dispute resolution procedures to allow parents and school districts to resolve issues without resorting to a hearing. Unfortunately, a parent cannot access mediation unless the school district agrees to it. A due process hearing has a built-in procedure called a resolution meeting, where a school district is to meet with the parent in order to attempt to resolve the dispute. In our state in 2022, there were 61 mediation requests, but only 29 mediations were held. Out of 185 due process complaints filed, only 95 resolution meetings were held, and only 25 of those meetings resulted in written settlement agreements. 159 of these due process complaints were withdrawn or dismissed without proceeding to a hearing, without insight into how many were due to a parent simply giving up.[4] Given the large number of students served by special education in Washington, it is clear that families are not accessing the systems designed to enforce special education laws. This data also suggests that out of those families who do access these systems, school districts are largely not engaging with them to resolve disputes.

Leveling the playing field motivates the party with greater power—the school district—to work directly with the parent to resolve the issues and avoid litigation. This bill fulfills the promise of the IDEA to protect the rights of the child and parents, and to improve educational results for children with disabilities.

Yours Truly,

Nicholle Mineiro, AFER Board President

[4] https://ospi.k12.wa.us/student-success/special-education/special-education-data-collection/special-education-data-collection-summaries