

Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeff DeWitt
Chief Financial Officer

DATE: July 9, 2014

SUBJECT: Fiscal Impact Statement – Special Education Student Rights Act of 2014

REFERENCE: Bill 20- 723, Draft Committee Print shared with the Office of Revenue Analysis on July 3, 2014

A handwritten signature in black ink, appearing to read "Jeffery J DeWitt", is written over the printed name and title of the sender.

Conclusion

Funds are sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

Background

The bill requires local education agencies (LEAs) and the Office of the State Superintendent of Education (OSSE) to provide parents of students with disabilities additional and more timely information on their child's education program; spells out the rights of adult students with disabilities to make decisions about their educational program; and makes changes to the administration of due process hearings for students with disabilities.

Information for Parents

The bill requires LEAs and OSSE to provide parents of students with disabilities with:

- Prior written notice when an LEA must change the service location of a student (notices must include the reasons behind the change and information on the Individuals with Disabilities Education Act¹ (IDEA));
- Contact information for sources of assistance on written notices,² including information for the Parent Training and Information Center, Office of the Ombudsman for Public Education and the Office of the Student Advocate;

¹ Approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*).

The Honorable Phil Mendelson

FIS: Bill 20-723, "Special Education Student Rights Act of 2014," Draft Committee Print shared with the Office of Revenue Analysis on July 3, 2014

- Copies of relevant documents at least five business days before meetings on individualized education programs (IEPs), individualized family service plans (IFSPs), or eligibility for special education services; and
- Updated copies of IEPs or IFSPs no later than five business days after a meeting in which an IEP or IFSP is developed or changed.

Under the bill, LEAs and OSSE must also allow parents to visit and observe their child's education program.

Rights of Adult Students

At least a year before a child turns 18 LEAs will notify parents that at age 18 students with disabilities gain the right to make their own decisions about their education programs. Adult students can designate another adult to make decisions on their behalf or share decision-making responsibilities with another adult. If the student is deemed incompetent or cannot provide informed consent,³ another adult can be appointed to make decisions on their behalf; however, the student is assumed to be competent until proven otherwise.

Changes to Due Process Hearings

Starting July 1, 2016, the bill requires OSSE or an LEA to bear the burden of "production" and "persuasion" during a due process hearing for a child with disabilities⁴ (though there are some exceptions). Also beginning July 1, 2016, courts can award expert witness fees to parents who prevail in hearings.⁵ The court can also award expert witness fees to LEAs or OSSE if the attorney of a parent files a frivolous complaint or a parent files a complaint for an improper purpose.⁶ The bill limits the amount the court can award for expert witness fees to \$6,000 per hearing. Lastly, the bill requires a five-member committee to screen OSSE's hearing officer candidates. After screening the candidates, the committee will send its recommendations to the State Superintendent of Education for final selection. The committee will consist of an attorney, an educator with knowledge of special education, an LEA representative with knowledge of special education, and two parents of children currently or formerly eligible to receive special education services in D.C.

Financial Plan Impact

Funds are sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

The only component of the bill that has a cost is the one allowing courts to award expert witness fees to parents who prevail in due process hearings. The Office of Revenue Analysis (ORA) estimates that this will have an annual cost of \$196,000 for D.C. Public Schools (DCPS) and about \$137,000 for public charter schools starting in FY 2017, when the provision will be in effect for an

² Pursuant to section 625(c)(1) or 639(a)(6) of IDEA (respectively, 20 U.S.C. § 1439(a)(6) and 20 U.S. C. § 1415(c)(1)) or this legislation.

³ Pursuant to a procedure established by OSSE pursuant to IDEA (20 U.S.C. § 1415(m)(2)).

⁴ Occurring pursuant to IDEA (20 U.S.C. § 1415(f)).

⁵ Brought under Part B or Part C of IDEA.

⁶ Such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

The Honorable Phil Mendelson

FIS: Bill 20-723, "Special Education Student Rights Act of 2014," Draft Committee Print shared with the Office of Revenue Analysis on July 3, 2014

entire fiscal year. The FY 2016 costs to DCPS and charter schools will be a quarter of these amounts, since the provision will only be in effect for the last three months of FY 2016.

To cover these costs, DCPS and public charter schools will use the attorney fees the District allocates them through the Uniform Per Student Funding Formula (UPSFF).

The table below gives more details about the cost of the bill. ORA estimated the cost based on the number of special education hearings DCPS holds a year, the fraction of those hearings that parents win, DCPS's estimate of how often parents use expert witnesses, and D.C. metro area rates for special education attorneys.

Cost of Implementing the Special Education Student Rights Act of 2014, FY 2015 - FY 2018					
	FY 2015	FY 2016¹	FY 2017	FY 2018	4-Year Total
Witness Fee Costs - <i>DCPS</i> ²	\$0	\$49,000	\$196,000	\$196,000	\$441,000
Witness Fee Costs - <i>Public Charter Schools</i> ³	\$0	\$34,300	\$137,200	\$137,200	\$308,700
Total Cost	\$0	\$83,300	\$333,200	\$333,200	\$749,700

Table Notes

¹Courts can award witness fee payments to proceedings filed after July 1, 2016.

²Assumes DCPS holds 280 hearings a year, parents win 70 percent of the time, 40 percent of prevailing parents use an expert witness, and expert witnesses charge \$2,500 per hearing, on average.

³Assumes public charter schools' costs from expert witness fees are 70 percent of those of DCPS. The ratio of special education students in charters to special education students in DCPS is about 0.7.