

Department of Planning and Budget

2020 Fiscal Impact Statement

1. **Bill Number:** HB1381

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. **Patron:** Leftwich

3. **Committee:** Courts of Justice

4. **Title:** Special education; due process hearings; nonattorney representatives.

5. **Summary:** Permits a school division and the parents of a child with a disability in the school division to be accompanied and advised by any nonattorney with special knowledge or training with respect to the needs of children with disabilities in any due process hearing before a hearing officer. The bill declares that it constitutes the practice of law without being authorized or licensed to do so as prohibited by law when any such nonattorney drafts or submits pleadings, motions, or briefs; presents evidence; makes any argument, including any argument relating to any law or regulation; or questions witnesses on behalf of any parent or student. The bill requires the Board of Education to adopt regulations to establish (i) licensure requirements, including minimum training and qualification requirements, (ii) a code of professional conduct, and (iii) a mechanism for the review and resolution of complaints for such nonattorneys. Current law permits the school division and the parents of a child with a disability to be represented by any individual, regardless of special knowledge or training, in any due process hearing before a hearing officer and declares that such representation does not constitute the practice of law without being authorized or licensed to do so.

6. **Budget Amendment Necessary:** Yes, Item 138 and Item 57.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

7a. Expenditure Impact:

Department of Education			
<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	\$380,106	2.5	General
2022	\$345,106	2.5	General
2023	\$345,106	2.5	General
2024	\$345,106	2.5	General
2025	\$345,106	2.5	General
2026	\$345,106	2.5	General

Office of the Attorney General

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	\$526,614	4.0	General
2022	\$526,614	4.0	General
2023	\$526,614	4.0	General
2024	\$526,614	4.0	General
2025	\$526,614	4.0	General
2026	\$526,614	4.0	General

- 8. Fiscal Implications:** This bill requires the Board of Education (Board) to license and regulate the nonattorneys who accompany and advise parents and school divisions in special education due process hearings. Currently, while nonattorney advocates are permitted to represent parties in such hearings, these individuals are not licensed or regulated by any entity. The bill also requires the Board to establish a mechanism for reviewing and resolving complaints made against such nonattorneys. To meet the provisions of this bill, the Department of Education (DOE) will need to establish another team within the due process office to include two full-time-equivalent pay band five positions with total estimated annual salary and benefits of \$240,600 and a 0.5 full-time-equivalent pay band three position with estimated annual salary and benefits of \$41,506. In addition DOE estimates an annual cost of \$23,000 to support technology, travel, and professional development costs for these positions.

Additionally, DOE would need to hold stakeholder meetings to develop the new regulations and would need ongoing funding to support training and certification. DOE estimates a one-time cost of \$35,000 for stakeholder review and vetting of the training curriculum to ensure it complies with federal and state regulations for special education law, as well as the development and associated costs (printing or digital badging) for a certification/licensure database system. An additional \$40,000 would be needed to support annual training on the requirements of this bill.

Because this bill requires the Board to license these nonattorneys, the Board also will be required to provide by regulation a mechanism by which due process is afforded to those who are denied licenses or whose licenses are suspended or revoked, in addition to a mechanism for reviewing and resolving complaints made against such nonattorneys by the parties they advise. The Board will require legal advice and the presence of legal counsel during these licensure hearings and complaint review and resolution. The Office of the Attorney General (OAG) anticipates the need for at least one additional Assistant Attorney General position to provide legal advice to the Board and to participate in the hearings on license denials, revocations, and suspensions and two Assistant Attorney General positions to assist the Board in reviewing and resolving complaints made against these nonattorneys by the parties whom they advise in special education due process hearings. Additionally, one administrative position will be required. The OAG estimates an annual state cost of \$526,614 for salaries, benefits, and support costs for these positions.

9. Specific Agency or Political Subdivisions Affected: Department of Education, Board of Education, Office of the Attorney General, local school divisions

10. Technical Amendment Necessary: No

11. Other Comments: None