

Legislative Analysis



RESTORE STATE BOARD OF EDUCATION'S AUTHORITY OVER SPECIAL EDUCATION RULES

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House Bill 5323 (Substitute H-2)

Sponsor: Rep. Fred Miller

Committee: Education

First Analysis (6-4-08)

BRIEF SUMMARY: The bill would restore the State Board of Education's rulemaking authority and certain administrative powers, duties, and functions related to special education services that had been transferred to the state superintendent of instruction by two governors' executive orders in 1996.

FISCAL IMPACT: The bill would have no fiscal impact.

THE APPARENT PROBLEM:

In 1996, then-Governor John Engler removed much of the authority of the State Board of Education, by transferring its rulemaking power and administrative responsibilities to the state superintendent of public instruction. He did so by issuing executive orders. The shift in authority strengthened the executive branch of the government and weakened the elected state board of education.

The reorganizing orders—specifically, Executive Orders 1996-11 and 1996-12—transferred from the State Board of Education to the state school superintendent all of the administrative and rulemaking statutory powers, duties, functions, and responsibilities set forth in over 175 provisions of the Michigan Compiled Laws—nearly all located in the Revised School Code and the State School Aid Act.

The two orders were embodied in the State School Aid Act of that year, where they are called Executive Reorganization Order 1996-7 (ERO No. 1996-7).

Among the many responsibilities transferred to the state superintendent was the rulemaking authority for special education services, authority that is found in seven sections of the Revised School Code.

The code requires both state and regional special education plans. The regional plans are developed by local officials in the state's intermediate school districts, who then submit them to the state superintendent for approval. Regional plans must comply with the state plan.

In the summer of 2007, officials at the Wayne Regional Education Services Administration (the intermediate school district serving Wayne County) proposed changes in their regional special education services plan. Among the proposed changes are two that would substantially increase the class sizes, and also the student-teacher

ratios, for severely multiply impaired and for cognitively impaired students. Officials proposed that class sizes grow from 12 students with one teacher and two paraprofessionals to 30 students with one teacher and three paraprofessionals. Special education teachers and parents opposed the plan at a well-attended public hearing. Consequently, this change and others were tabled by the Wayne RESA intermediate school board. Had the proposed rule changes not been tabled, the special education advocates in Wayne County would have had no recourse to appeal the decision to the members of the State Board of Education.

To better ensure transparency for and accountability to special education parents and teachers, legislation has been offered to restore the special education rulemaking authority to the State Board of Education whose members are elected statewide.

THE CONTENT OF THE BILL:

House Bill 5323 would amend the Revised School Code (MCL 380.1701 et al.) to restore the State Board of Education's rulemaking authority and certain administrative powers, duties, and functions related to special education services that had been transferred to the state superintendent of instruction.

The bill specifies, in its enacting section, that it "is intended to transfer back to the State Board of Education certain powers, duties, and functions that were transferred to the superintendent of public instruction by Executive Reorganization Order No. 1996-7, [found in the State School Aid Act at] MCL 388.994." Under the ERO, the State Board retained its policy making authority, but rulemaking authority and certain other powers, duties, and functions were transferred to the state superintendent.

Specifically, House Bill 5323 would amend seven sections of the Revised School Code referred to in the ERO—sections 1701, 1702, 1703, 1711, 1741, 1751, and 1761, all of which deal with special education programs and services. The bill also would make complementary amendments to Section 1704, which was added to the code in 2000 and is known as the Blind Pupil's Braille Literacy Law.

Section 1701 currently requires intermediate school districts to submit a plan for state approval in accordance with special education rules. Under the bill, this approval would be the responsibility of the State Board of Education rather than the superintendent of public instruction.

Section 1702 addresses the requirement that local school districts provide special education services or explain to the state board their non-compliance if they are financially unable to do so.

Section 1703 deals with the rules governing the qualifications and requirements of special education personnel, as well as those rules governing, among other things, the curriculum, size of classes, quantity and quality of equipment, adequacy of methods of instruction, and the length and content of the school day. Section 1703 also concerns, among other things, rules pertaining to the need to eliminate unnecessary separation and

duplication between regular education and special education facilities, staff, programs, services, and students.

Section 1711 deals with administrative rules for special education personnel; the approval of intermediate school district special education plans; the receipt of reports from ISD's of the failure of constituent districts to comply with special education rules; and the approval of ISD special education contracts.

Section 1741 concerns administrative rules for special education membership for State Aid purposes.

Section 1751 addresses rules for the local school district contribution of special education funds.

Section 1761 deals with rules for reimbursement of special education boarding costs.

Further, currently under *Section 1704*, the superintendent of public instruction in the Department of Education has the authority to adopt Braille reading and writing standards for teachers of blind and visually impaired students, and to disseminate those standards to all school districts and to all teacher preparation programs in Michigan. The law also requires that the standards be included in the rules governing special education programs and services, and that when establishing the standards, the Department of Education consider the standards adopted by the National Library Service for the Blind and Physically Handicapped of the U.S. Library of Congress. House Bill 5323 would retain these provisions of the law, but transfer the authority for these functions from the Department of Education to the State Board of Education.

Executive Reorganization Order No. 1996-7: The statutory Executive Reorganization Order in the State School Aid Act is based on Executive Orders 1996-11 and 1996-12. The orders, executed by Governor John Engler in 1996, transferred from the State Board of Education to the state school superintendent all of the administrative and rule-making statutory powers, duties, functions, and responsibilities set forth in over 175 provisions of the Michigan Compiled Laws—nearly all located in the Revised School Code and the State School Aid Act.

ARGUMENTS:

For:

This legislation restores a balance of authority between the elected members of State Board of Education, and the appointed officials of the Department of Education, all of whom bear the responsibility to develop and implement special education policy. Since 1996, that authority has favored the state school superintendent over the state board. Special education advocates argue that special education policy-making and rule-making processes should be broadly participatory and transparent, since new rules and policies alter and can disrupt the lives of very vulnerable children, and their struggling families. Further, advocates note that elected officials such as those serving on school boards often hold themselves more accountable to voting citizens than do appointed officials such as

school superintendents. Generally, elected officials have and take more time to listen to advocates.

Against:

Although the members of the State Board of Education are elected statewide and are arguably more accountable to Michigan citizens than are appointed education officials, the candidates for the state board are selected at highly partisan nominating conventions. Consequently, partisan political squabbling is sometimes apparent in the board members' deliberations. To thwart this possibility, the state superintendent (who now chairs the board of education) should retain the special education rule-making authority vested in that office by the executive orders issued more than a decade ago, in 1996.

POSITIONS:

The Macomb Intermediate School District supports the bill. (6-3-08)

The Michigan Education Association supports the bill. (6-3-08)

The American Federation of Teachers - Michigan supports the bill. (6-3-08)

The Macomb Federation of Teachers supports the bill. (6-3-08)

Lake Orion School District supports the bill. (6-3-08)

Old Village and Cooke School Parents support the bill. (6-3-08)

Wayne Regional Education Services Administration (RESA) opposes the bill. (6-3-08)

Several parents and teachers of special education students testified in support of the bill. (6-3-08)

The Small and Rural Schools Association opposes the bill. (6-3-08)

Oakland Schools opposes the bill. (6-3-08)

The Michigan Department of Education has no position on the bill. (6-3-08)

The State Board of Education has no position on the bill. (6-3-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.