
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: SB 354 **Hearing Date:** April 19, 2017
Author: Portantino
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Urgency: No **Fiscal:** Yes
Consultant: Lynn Lorber

Subject: Special education: individualized education programs: translation services

SUMMARY

This bill requires a local educational agency (LEA) to communicate in the native language of a parent during the planning process for an individualized education program (IEP), requires a LEA to provide a student's parent with a copy of the completed IEP other related documents in the native language of the parent within 30 days of the IEP team meeting.

BACKGROUND

Existing law:

- 1) Requires LEAs to take any action necessary to ensure that, in an IEP team meeting, the parent or guardian understands the proceeding, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English. (Education Code § 56341.5)
- 2) Requires proposed special education assessment plans to be provided to parents in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (EC § 56321)
- 3) Requires LEAs to give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian. (EC § 56341.5)
- 4) Requires, through regulations, LEAs to give a parent or guardian a copy of a student's IEP in his or her primary language at his or her request. (California Code of Regulations, Title 5, § 3040)
- 5) Provides that it is a due process right for parents to receive written notice of his or her rights in language easily understood by the general public and in the native language of the parent, or other mode of communication used by the parent, unless to do so is clearly not feasible. (EC § 56506)
- 6) Defines "consent" in special education proceedings to include situations in which the parent or guardian has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication. (EC § 56021.1)

- 7) Requires schools and school districts, if 15 percent or more of the students enrolled in a public school speak a single primary language other than English, to send all notices, reports, statements, or records to the parent or guardian in the primary language, in addition to English. Existing law authorizes the response from the parent or guardian to be in English or their primary language. (EC § 48985)
- 8) Provides that no person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. (Government Code §11135)
- 9) Defines a “recipient,” for purposes of non-discrimination in State-supported programs and activities, as any contractor, *local agency*, or person who regularly employs five or more persons and who receives State support in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the State support. (California Code of Regulations, Title 2, § 11150)
- 10) Provides that it is a discriminatory practice for a recipient to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries, except where the State agency determines that such a requirement would place an undue hardship on the recipient. (2 CCR § 11162)
- 11) Defines “alternative communication services” as the method used or available for purposes of communicating with a person unable to read or speak or write in the English language, including but not limited to the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English. (2 CCR § 11161)

ANALYSIS

This bill requires a local educational agency (LEA) to communicate in the native language of a parent during the planning process for an individualized education program (IEP), requires a LEA to provide a student’s parent with a copy of the completed IEP other related documents in the native language of the parent within 30 days of the IEP team meeting. Specifically, this bill:

- 1) Requires LEAs to communicate in the native language of the parent, or in another mode of communication used by the parent, during the planning process for the IEP, including during the IEP team meeting, and provide alternative communication services including by providing translation services for a parent.

- 2) Requires local educational agency (LEAs) to provide a student's parent with a copy of the student's completed individualized education program (IEP) and any revisions to the IEP in the native language of the parent, or in another mode of communication used by the parent, within 30 days of the IEP team meeting if requested by the parent, or within 30 days of a later request by the parent. This bill states that this provision shall not be construed to abridge any right of a parent, including the right to give or withhold consent to part or all of an IEP.
- 3) Requires LEAs to provide a student's parent with a copy in the native language of the parent, or in another mode of communication used by the parent, of any evaluation, assessment, or progress data used to determine eligibility or to develop the IEP that is discussed at an IEP team meeting within 30 days of the IEP team meeting if requested by the parent.
- 4) Requires the documents to be translated by a qualified translator who is proficient in both the English language and the non-English language to be used.
- 5) Requires the California Department of Education (CDE) to revise its notice of procedural safeguards, in English and in the primary languages for which the CDE has developed translated versions, to inform parents of their right to request the translation of documents.
- 6) Modifies the ability of LEAs to determine that it "is clearly not feasible" to provide written notice of procedural safeguards to parents in the native language to instead use the standard of creating an "undue hardship" pursuant to existing state regulations.
- 7) Expands the statutory timelines affecting special education program to include the timeline for the production of translated copies of special education-related documents as specified by this bill (within 30 days of the IEP team meeting).
- 8) Provides that this bill is not intended to affect any state or federal law requirement regarding the translation of education-related documents, including but not limited to the right to alternative communication services pursuant to existing requirements in the Government Code and implementing regulations.
- 9) Defines "qualified translator" as a translator who has met the testing or certification standards for outside or contract translators, is proficient in the ability to communicate commonly used terms and ideas between the English language and the non-English language to be used, and has knowledge of basic translator practices, including but not limited to confidentiality, neutrality, accuracy, completeness, and transparency.
- 10) Expands the definition of "parent" to include a conservator of a child, and clarifies that a person who holds the right to make educational decisions for a student may not necessarily be the guardian, for purposes of existing statutes related to special education

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Existing law requires local educational agencies (LEAs) to initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program (IEP) of each individual with exceptional needs in accordance with federal law. Existing law requires the LEA to take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English. However, existing law does not set a timeline for when documents must be translated. For parents/guardians/educational rights holder, the IEP process can be very overwhelming and intimidating for someone who is not familiar with the process or terminology. Especially if that person’s primary language is not English. Although verbal translators are made available to parents/guardians/educational rights holders during IEP meetings, some terms in documents or processes may be lost in translation. LEAs are required to provide translated copies of the IEP, if requested. The problem occurs when the LEA does not provide the IEP in a timely manner and when the translated IEP is provided, in some cases, the document has not been translated accurately.”

- 2) ***Expansion of translated documents and creation of new timeline.*** This bill requires LEAs to translate a student’s IEP and related documents in the parent’s native language within a 30 day timeline. Existing law and regulations requires LEAs to:
 - a) Take any action necessary to ensure that parent understands the proceedings of an IEP team meeting, including providing an interpreter.
 - b) Provide proposed special education assessment plans to parents in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - c) Provide to a parent or guardian a copy of a student’s IEP in his or her primary language at the parent’s request.
 - d) Send all notices, reports, statements, or records to the parent or guardian in the primary language, in addition to English, if 15 percent or more of the students enrolled in a public school speak a single primary language other than English (not specific to documents related to special education).

This bill codifies existing regulations that require LEAs to give parents a copy of a student’s IEP in the parent’s primary language at his or her request, requires translated copies of any evaluation, assessment or progress data used in relation to an IEP, and imposes a timeline of within 30 days of the IEP team meeting. It is likely that some LEAs will find it difficult to meet the 30-day timeline. **Staff recommends** an amendment to lengthen the timeline from 30 days to 45 days, except as otherwise determined by a consent decree.

- 3) ***Are LEAs subject to requirements of the Government Code and related regulations?*** This bill requires LEAs to communicate in the native language of

the parent, or in another mode of communication used by the parent, during the planning process for the individualized education program (IEP), and to provide alternative communication services (translation services) pursuant to specified sections of the Government Code and related regulations. The Government Code and related regulations relate to non-discrimination in state-supported programs and activities. Those provisions prohibit any person from being discriminated against or denied full and equal access to the benefits of any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Regulations define “recipients” of state programs or activities as any contractor, *local agency*, as specified.

Regulations also provide that it is a due process right for parents to receive written notice of his or her rights in language easily understood by the general public and in the native language of the parent, or other mode of communication used by the parent, unless it is *clearly not feasible* to do so. This bill instead requires the written notice to be in the native language or other mode or communication unless doing so *creates an undue hardship*.

- 4) ***How many languages?*** According to the California Department of Education (CDE), 2.7 million students speak a language other than English in their homes. That number of students represents approximately 43 percent of students in California public schools. The CDE collects data on 60 languages that are spoken by students; 94 percent speak one of the top ten languages in the State. Spanish is by far the most widely-used primary language (other than English), spoken by 84 percent of all English learners. **Staff recommends** an amendment to limit the scope of this bill to translations to the top eight languages in each school district, other than English, as determined by the CDE and reported on Dataquest.
- 5) ***Clearinghouse for Multilingual Documents.*** The CDE maintains a Clearinghouse for Multilingual Documents, an online resource that helps local educational agency (LEAs) find pre-existing, locally-created translations of parental notification documents (related to the requirement to provide notices in the primary language if at least 15 percent of the school’s students speak a language other than English; not specifically related to special education). Access to these documents is limited to registered users. The Clearinghouse provides free access to numerous translated documents that other LEAs are willing to make available. LEAs may find translations, review them, and revise them to suit local needs.

According to the CDE, the database of multilingual documents contains some documents that would inform individualized education program (IEP) development, but that since this project is a Title III service (federal English learner statute) and the IEP is not a Title III obligation, it does not include special education forms.

- 6) ***Need for qualified translators.*** This bill requires translators to be qualified, defined as a translator who has met the testing or certification standards for outside or contract translators, proficient in the ability to communicate commonly

used terms and ideas between the English language and the non-English language to be used, and has knowledge of basic translator practices, including but not limited to, confidentiality, neutrality, accuracy, completeness, and transparency. Will some local educational agencies have a difficult time finding qualified translators in certain languages and as a result miss the 30-day timeline?

In a joint letter from the United States Department of Education and the United States Department of Justice dated January 7, 2015, the departments raised several issues with regard to the use of web-based translation of special education documents:

“Some school districts have used web-based automated translation to translate documents. Utilization of such services is appropriate only if the translated document accurately conveys the meaning of the source document, including accurately translating technical vocabulary. The Departments caution against the use of web-based automated translations; translations that are inaccurate are inconsistent with the school district’s obligation to communicate effectively with LEP parents. Thus, to ensure that essential information has been accurately translated and conveys the meaning of the source document, the school district would need to have a machine translation reviewed, and edited as needed, by an individual qualified to do so. Additionally, the confidentiality of documents may be lost when documents are uploaded without sufficient controls to a web-based translation service and stored in their databases. School districts using any web-based automated translation services for documents containing personally identifiable information from a student’s education record must ensure that disclosure to the web-based service complies with the requirements of the Family Educational Rights and Privacy Act.”

[<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>]

- 7) ***Some local educational agencies (LEAs) currently meeting timeline for individualized education program (IEP) translation.*** The Los Angeles Unified School District is required to translate IEPs, but not related documents, pursuant to a modified consent decree as a result of a lawsuit. The San Diego Unified School District, by choice, has an “expected timeline” of 30 days for the initial IEP but does not provide a timeline for the translation of related documents.
- 8) ***Fiscal impact.*** According to the Senate Appropriations Committee analysis of prior legislation (AB 2091, 2016) would have imposed “unknown reimbursable state mandate costs, but potentially in the millions to translate special-education documents within 60 days of a request. Federal special education law does not require that all IEP related documents to be translated but there are existing provisions requiring informed consent and parental notification in a parent’s native language related to providing special education services. The Commission on State Mandates may determine additional translation requirements to be a reimbursable state mandate. Costs would vary depending

upon a number of factors including the availability and cost of a qualified translator, how common the language is, how many pages each document is that is requested to be translated, and the frequency of these requests.”

- 9) **Prior legislation.** AB 2091 (Lopez, 2016) was similar to this bill but imposed a 60-day, rather than 30-day, timeline. AB 2091 was held in the Senate Appropriations Committee.

AB 1876 (Lopez, 2016) prohibited the California Department of Education from approving or renewing approval of a contractor or testing center to administer tests for a high school equivalency certificate unless the contractor or testing center provides the tests in English, Spanish, and Vietnamese, and provided that an examinee shall be permitted to take the test in any of these three languages. AB 1876 was referred to but never heard by this Committee.

SUPPORT

Disability Rights California (sponsor)
 Ability Now Bay Area
 All Children Matter
 American Academy of Pediatrics
 Apoyo de Padres Para Padres
 California Association for Bilingual Education
 California Federation of Teachers
 California State PTA
 Coalition for Humane Immigrant Rights
 Coalition of California Welfare Rights Organization, Inc.
 Disability Rights Education & Defense Fund
 National Association of Social Workers, California Chapter
 Public Advocates
 Public Counsel
 State Council on Developmental Disabilities
 The Arc and United Cerebral Palsy California Collaboration
 Western Center on Law and Poverty
 An individual

OPPOSITION

California Right to Life Committee

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