
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 2091
Author: Lopez
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Urgency: No
Consultant: Lynn Lorber
Hearing Date: June 15, 2016
Fiscal: Yes

Subject: Special education: individualized education programs: translation services

SUMMARY

This bill requires local educational agencies (LEAs) to provide parents with a translated copy of an individualized education program (IEP) and other specified documents, upon request, and requires that the IEP and related documents be translated by a qualified translator.

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) 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)
- 6) Requires schools and school districts, if 15% 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 the primary language. (EC § 48985)

ANALYSIS

This bill expands the existing requirement for local educational agencies (LEAs) to ensure that the parent or guardian understands the proceedings of an individualized education program (IEP) team meeting to include the provision of translation services (in addition to the existing requirement to arrange for an interpreter), as follows:

- 1) Requires a local educational agency (LEA) to provide a student's parent, guardian, or educational rights holder, upon request, with a translated copy of the student's completed IEP and any revisions to the IEP in the primary language of the parent, guardian or educational rights holder within 60 days of the IEP team meeting.
- 2) Prohibits this from being construed to abridge any right granted to parents under state or federal law, including the right to give or withhold consent to part or all of an IEP before receiving a translated copy of the IEP.
- 3) Requires the LEA to provide a student's parent, guardian, or educational rights holder, upon request, with a translated copy of any document specified below discussed at an IEP team meeting in the primary language of the parent, guardian, or educational rights holder within 30 days of the IEP team meeting.
 - a) Documents relating to the student's present levels of academic achievement and functional performance.
 - b) Documents relating to the student's right to a free and appropriate public education.
 - c) Notes on items discussed at the IEP team meeting.
 - d) Documents relating to the goals of the student.
 - e) Progress reports of school staff who provide services in accordance with the student's IEP.
- 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. This bill defines "qualified translator" 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.
- 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 pursuant to this bill.

- 6) Provides that nothing in the provisions requiring the translation of documents is intended to affect any other state or federal law requirement regarding the translation of education-related documents.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The IEP process has many steps and can be very overwhelming and intimidating for a parent, guardian, or educational rights holder 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, or 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) ***Author’s amendment.*** The author wishes to amend this bill to conform the timeline for the provision of translated individualized education program (IEP)-related documents, from 30 to 60 days, with the 60 day timeline for the provision of a translated IEP. **Staff recommends** this amendment be adopted.
- 3) ***Expansion of translated documents.*** This bill requires local educational agency (LEAs) to translate a student’s IEP and certain related documents in the parent’s primary language. Existing law 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% 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).

Existing regulations require LEAs to provide a translated copy of a student’s IEP to the parent in the parent’s primarily language upon request by the parent. This bill codifies that requirement but does not condition it on parental request.

This bill also requires LEAs to provide a student’s parent, guardian, or educational rights holder, upon request, with a translated copy of specific documents that are discussed at an IEP team meeting in the primary language of the parent. This bill provides LEAs with 30 days to translate and provide the documents (the author’s amendments change this to a 60 day timeline). Not one

local educational agency or special education local plan area has expressed concerns over the expansion of the requirement to translate documents pursuant to this bill.

- 4) **Clearinghouse for Multilingual Documents.** The California Department of Education (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% 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.

- 5) **How many languages?** According to the CDE, 2.7 million students speak a language other than English in their homes. That number of students represents approximately 43% of students in California public schools. The CDE collects data on 60 languages that are spoken by students; 94% speak one of the top ten languages in the State. Spanish is by far the most widely-used primary language, spoken by 84% of all English learners.

Also according to the CDE, about 14% of California's English learners qualify for special education, and likely many more students with disabilities who are not classified as English learners have parents whose primary language is not English. (See AB 2785 in comment #8.)

- 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. The Special Education Local Plan Area (SELPA) Administrators have expressed concerns over the potential lack of availability of qualified translators, and suggest an amendment to provide an opportunity for LEAs that miss the 60 day timeline to explain the efforts made to find a qualified translator within the 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.”
[\[http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf\]](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf)

- 7) **Fiscal impact.** According to the Assembly Appropriations Committee, this bill would impose Proposition 98/General Fund state mandated costs, potentially in the millions of dollars, to translate individualized education program (IEP) documents. There are several variables that will affect local costs, including what kinds of translation services local educational agency (LEAs) may already be providing, the fees each LEA charges according to contractual agreements, and whether an LEA has access to translators for languages less frequently used. Translation of documents can range from \$30 to \$80 per page. If 1% of English learners that qualify for special education request documents, statewide costs would range from \$580,000 to \$1.5 million.
- 8) **Related legislation.** SB 884 (Beall) requires LEAs, among other things, to provide specified informational materials to parents in the three most common languages used by parents served by the LEA. SB 884 is pending referral in the Assembly.

AB 1876 (Lopez, 2016) prohibits 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 provides that an examinee shall be permitted to take the test in any of these three languages. AB 1876 is pending in this Committee.

AB 2785 (O’Donnell) requires the California Department of Education to develop a manual providing guidance to LEAs on identifying and supporting English learners with disabilities. AB 2785 is pending in this Committee.

SUPPORT

California Association for Bilingual Education
 California State PTA
 Californians Together

State Council on Developmental Disabilities
The Arc and United Cerebral Palsy California Collaboration

OPPOSITION

None received.

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