

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2091

Introduced by Assembly Member Lopez

February 17, 2016

An act to amend Sections 56043 and 56341.5 of, and to add Sections 56348 and 56349 to, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2091, as amended, Lopez. Special education: individualized education programs: translation services.

(1) Existing law requires local educational agencies to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. Existing law requires a local educational agency to initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs in accordance federal law. Existing law requires the local educational agency 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.

This bill would require a local educational agency to also provide translation services for a pupil's parent, guardian, or educational rights

holder, as specified. The bill would require the local educational agency ~~agency, if requested by a pupil's parent, guardian, or educational rights holder, to provide a pupil's~~ the parent, guardian, or educational rights holder with a translated copy of the individualized education program, ~~program and any revisions to the individualized education program, program within 60 days of that meeting and any document to provide a translated copy of certain documents~~ discussed at an individualized education program team meeting in the parent's, guardian's, or educational rights holder's primary language within 30 days of ~~that the~~ the meeting. The bill would require the documents to be translated by a qualified translator, as defined, who is proficient in both the English language and the non-English language to be used. *The bill would require the department to revise its notice of procedural safeguards, in English and in the primary languages for which the department has developed translated versions, to inform parents of their right to request the translation of these documents.* By imposing additional duties on local educational agencies, the bill would impose a state-mandated local program. ~~The bill would also require the State Department of Education, on or before January 1, 2018, to post on its Internet Web site standard special education forms commonly used by local educational agencies translated into at least the 10 most commonly used non-English primary languages of the state's pupils.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 56043 of the Education Code is amended
- 2 to read:
- 3 56043. The primary timelines affecting special education
- 4 programs are as follows:
- 5 (a) A proposed assessment plan shall be developed within 15
- 6 calendar days of referral for assessment, not counting calendar

1 days between the pupil's regular school sessions or terms or
2 calendar days of school vacation in excess of five schooldays, from
3 the date of receipt of the referral, unless the parent or guardian
4 agrees in writing to an extension, pursuant to subdivision (a) of
5 Section 56321.

6 (b) A parent or guardian shall have at least 15 calendar days
7 from the receipt of the proposed assessment plan to arrive at a
8 decision, pursuant to subdivision (c) of Section 56321.

9 (c) Once a child has been referred for an initial assessment to
10 determine whether the child is an individual with exceptional needs
11 and to determine the educational needs of the child, these
12 determinations shall be made, and an individualized education
13 program team meeting shall occur within 60 days of receiving
14 parental consent for the assessment, pursuant to subdivision (a) of
15 Section 56302.1, except as specified in subdivision (b) of that
16 section, and pursuant to Section 56344.

17 (d) The individualized education program team shall review the
18 pupil's individualized education program periodically, but not less
19 frequently than annually, pursuant to subdivision (d) of Section
20 56341.1.

21 (e) A parent or guardian shall be notified of the individualized
22 education program team meeting early enough to ensure an
23 opportunity to attend, pursuant to subdivision (b) of Section
24 56341.5. In the case of an individual with exceptional needs who
25 is 16 years of age or younger, if appropriate, the meeting notice
26 shall indicate that a purpose of the meeting will be the
27 consideration of the postsecondary goals and transition services
28 for the individual with exceptional needs, and the meeting notice
29 described in this subdivision shall indicate that the individual with
30 exceptional needs is invited to attend, pursuant to subdivision (e)
31 of Section 56341.5.

32 (f) (1) An individualized education program required as a result
33 of an assessment of a pupil shall be developed within a total time
34 not to exceed 60 calendar days, not counting days between the
35 pupil's regular school sessions, terms, or days of school vacation
36 in excess of five schooldays, from the date of receipt of the parent's
37 or guardian's written consent for assessment, unless the parent or
38 guardian agrees in writing to an extension, pursuant to Section
39 56344.

(2) A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the child needs special education and related services pursuant to Section 300.323(c)(1) of Title 34 of the Code of Federal Regulations and in accordance with Section 56344.

(g) (1) Beginning not later than the first individualized education program to be in effect when the pupil is 16 years of age, or younger if determined appropriate by the individualized education program team, and updated annually thereafter, the individualized education program shall include appropriate measurable postsecondary goals and transition services needed to assist the pupil in reaching those goals, pursuant to paragraph (8) of subdivision (a) of Section 56345.

(2) The individualized education program for pupils in grades 7 to 12, inclusive, shall include any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation, pursuant to paragraph (1) of subdivision (b) of Section 56345.

(3) Beginning not later than one year before the pupil reaches 18 years of age, the individualized education program shall contain a statement that the pupil has been informed of the pupil's rights under this part, if any, that will transfer to the pupil upon reaching 18 years of age, pursuant to Section 56041.5, subdivision (g) of Section 56345, and Section 300.520 of Title 34 of the Code of Federal Regulations.

(h) Beginning at the age of 16 years or younger, and annually thereafter, a statement of needed transition services shall be included in the pupil's individualized education program, pursuant to Section 56345.1 and Section 1414(d)(1)(A)(i)(VIII) of Title 20 of the United States Code.

(i) A pupil's individualized education program shall be implemented as soon as possible following the individualized education program team meeting, pursuant to Section 300.323(c)(2) of Title 34 of the Code of Federal Regulations and in accordance with Section 56344.

(j) An individualized education program team shall meet at least annually to review a pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, the appropriateness of the placement, and to make any necessary revisions, pursuant to subdivision (d) of Section 56343.

1 The local educational agency shall maintain procedures to ensure
2 that the individualized education program team reviews the pupil's
3 individualized education program periodically, but not less
4 frequently than annually, to determine whether the annual goals
5 for the pupil are being achieved, and revises the individualized
6 education program as appropriate to address, among other matters,
7 the provisions specified in subdivision (d) of Section 56341.1,
8 pursuant to subdivision (a) of Section 56380.

9 (k) A reassessment of a pupil shall occur not more frequently
10 than once a year, unless the parent and the local educational agency
11 agree otherwise in writing, and shall occur at least once every three
12 years, unless the parent and the local educational agency agree, in
13 writing, that a reassessment is unnecessary, pursuant to Section
14 56381, and in accordance with Section 1414(a)(2) of Title 20 of
15 the United States Code.

16 (l) A meeting of an individualized education program team
17 requested by a parent or guardian to review an individualized
18 education program pursuant to subdivision (c) of Section 56343
19 shall be held within 30 calendar days, not counting days between
20 the pupil's regular school sessions, terms, or days of school
21 vacation in excess of five schooldays, from the date of receipt of
22 the parent's or guardian's written request, pursuant to Section
23 56343.5.

24 (m) If an individual with exceptional needs transfers from
25 district to district within the state, the following are applicable
26 pursuant to Section 56325:

27 (1) If the child has an individualized education program and
28 transfers into a district from a district not operating programs under
29 the same local plan in which he or she was last enrolled in a special
30 education program within the same academic year, the local
31 educational agency shall provide the pupil with a free appropriate
32 public education, including services comparable to those described
33 in the previously approved individualized education program, in
34 consultation with the parents or guardians, for a period not to
35 exceed 30 days, by which time the local educational agency shall
36 adopt the previously approved individualized education program
37 or shall develop, adopt, and implement a new individualized
38 education program that is consistent with federal and state law,
39 pursuant to paragraph (1) of subdivision (a) of Section 56325.

(2) If the child has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with state and federal law, pursuant to paragraph (2) of subdivision (a) of Section 56325.

(3) If the child has an individualized education program and transfers from an educational agency located outside the state to a district within the state within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents or guardians, until the local educational agency conducts an assessment as specified in paragraph (3) of subdivision (a) of Section 56325.

(4) In order to facilitate the transition for an individual with exceptional needs described in paragraphs (1) to (3), inclusive, the new school in which the pupil enrolls shall take reasonable steps to promptly obtain the pupil's records, as specified, pursuant to subdivision (b) of Section 56325.

(n) The parent or guardian shall have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after a request is made by the parent or guardian, either orally or in writing, and before any meeting regarding an individualized education program of his or her child or any hearing or resolution session pursuant to Chapter 5 (commencing with Section 56500), in accordance with Section 56504 and Chapter 6.5 (commencing with Section 49060) of Part 27.

(o) Upon receipt of a request from a local educational agency where an individual with exceptional needs has enrolled, a former educational agency shall send the pupil's special education records, or a copy of those records, to the new local educational agency within five working days, pursuant to subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations.

1 (p) The department shall do all of the following:

2 (1) Have a time limit of 60 calendar days after a complaint is
3 filed with the state educational agency to investigate the complaint.

4 (2) Give the complainant the opportunity to submit additional
5 information about the allegations in the complaint.

6 (3) Review all relevant information and make an independent
7 determination as to whether there is a violation of a requirement
8 of this part or Part B of the federal Individuals with Disabilities
9 Education Act (20 U.S.C. Sec. 1400 et seq.).

10 (4) Issue a written decision pursuant to Section 300.152(a)(5)
11 of Title 34 of the Code of Federal Regulations.

12 (q) A prehearing mediation conference shall be scheduled within
13 15 calendar days of receipt by the Superintendent of the request
14 for mediation, and shall be completed within 30 calendar days
15 after the request for mediation, unless both parties to the prehearing
16 mediation conference agree to extend the time for completing the
17 mediation, pursuant to Section 56500.3.

18 (r) Any request for a due process hearing arising from
19 subdivision (a) of Section 56501 shall be filed within two years
20 from the date the party initiating the request knew or had reason
21 to know of facts underlying the basis for the request, except that
22 this timeline shall not apply to a parent if the parent was prevented
23 from requesting the due process hearing, pursuant to subdivision
24 (l) of Section 56505.

25 (s) The Superintendent shall ensure that, within 45 calendar
26 days after receipt of a written due process hearing request, the
27 hearing is immediately commenced and completed, including any
28 mediation requested at any point during the hearing process, and
29 a final administrative decision is rendered, pursuant to subdivision
30 (f) of Section 56502.

31 (t) If either party to a due process hearing intends to be
32 represented by an attorney in the due process hearing, notice of
33 that intent shall be given to the other party at least 10 calendar
34 days before the hearing, pursuant to subdivision (a) of Section
35 56507.

36 (u) Any party to a due process hearing shall have the right to
37 be informed by the other parties to the hearing, at least 10 calendar
38 days before the hearing, as to what those parties believe are the
39 issues to be decided at the hearing and their proposed resolution

1 of those issues, pursuant to paragraph (6) of subdivision (e) of
2 Section 56505.

3 (v) Any party to a due process hearing shall have the right to
4 receive from other parties to the hearing, at least five business days
5 before the hearing, a copy of all documents, including all
6 assessments completed and not completed by that date, and a list
7 of all witnesses and their general area of testimony that the parties
8 intend to present at the hearing, pursuant to paragraph (7) of
9 subdivision (e) of Section 56505.

10 (w) An appeal of a due process hearing decision shall be made
11 within 90 calendar days of receipt of the hearing decision, pursuant
12 to subdivision (k) of Section 56505.

13 (x) A complaint filed with the department shall allege a violation
14 of the federal Individuals with Disabilities Education Act (20
15 U.S.C. Sec. 1400 et seq.) or a provision of this part that occurred
16 not more than one year before the date that the complaint is
17 received by the department, pursuant to Section 56500.2 and
18 Section 300.153(c) of Title 34 of the Code of Federal Regulations.

19 (y) The timeline for the production of translated copies of special
20 education-related documents shall be as specified in Section 56348.

21 SEC. 2. Section 56341.5 of the Education Code is amended to
22 read:

23 56341.5. (a) Each local educational agency convening a
24 meeting of the individualized education program team shall take
25 steps to ensure that no less than one of the parents or guardians of
26 the individual with exceptional needs are present at each
27 individualized education program team meeting or are afforded
28 the opportunity to participate.

29 (b) Parents or guardians shall be notified of the individualized
30 education program team meeting early enough to ensure an
31 opportunity to attend.

32 (c) The individualized education program team meeting shall
33 be scheduled at a mutually agreed-upon time and place. The notice
34 of the meeting under subdivision (b) shall indicate the purpose,
35 time, and location of the meeting and who shall be in attendance.
36 Parents or guardians also shall be informed in the notice of the
37 right, pursuant to Section 300.322(b)(1)(ii) of Title 34 of the Code
38 of Federal Regulations, to bring other people to the meeting who
39 have knowledge or special expertise regarding the individual with
40 exceptional needs, and inform the parents of subdivision (i) of

1 Section 56341 relating to the participation of the infants and
2 toddlers with disabilities service coordinator under Subchapter III
3 (commencing with Section 1431) of the federal Individuals with
4 Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) at the
5 initial individualized education program team meeting for a child
6 previously served under the Subchapter III program.

7 (d) As part of the participation of an individual with exceptional
8 needs in the development of an individualized education program,
9 as required by federal law, the individual with exceptional needs
10 shall be allowed to provide confidential input to any representative
11 of his or her individualized education program team.

12 (e) For an individual with exceptional needs, beginning no later
13 than the effective date of the individualized education program in
14 effect when the individual reaches the age of 16 years, or younger
15 if determined appropriate by the individualized education program
16 team, the meeting notice also shall indicate that a purpose of the
17 meeting will be the consideration of the postsecondary goals and
18 transition services for the individual, pursuant to Section 56345.1
19 and Section 1414(d)(1)(A)(i)(VIII) of Title 20 of the United States
20 Code, and the meeting notice shall indicate that the individual with
21 exceptional needs is invited to attend. If the pupil does not attend
22 the individualized education program team meeting, the local
23 educational agency shall take steps to ensure that the preferences
24 and interests of the pupil are considered in accordance with Section
25 300.321(b)(2) of Title 34 of the Code of Federal Regulations.

26 (f) The local educational agency, to the extent appropriate, with
27 the consent of the parents or individual with exceptional needs
28 who has reached the age of majority, and in accordance with
29 Section 300.321(b)(3) of Title 34 of the Code of Federal
30 Regulations, shall invite a representative of any participating
31 agency that is likely to be responsible for providing or paying for
32 transition services.

33 (g) Pursuant to Section 300.322(c) of Title 34 of the Code of
34 Federal Regulations, if no parent or guardian can attend the
35 meeting, the local educational agency shall use other methods to
36 ensure parent or guardian participation, including individual or
37 conference telephone calls, and consistent with Section 300.328
38 of Title 34 of the Code of Federal Regulations, the parent or
39 guardian and the local educational agency may agree to use
40 alternative means of meeting participation.

(h) A meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. In this event, the local educational agency shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(i) The local educational agency shall 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 and providing translation services, as specified in Section 56348.

(j) The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian, and as specified in Section 56348, if applicable.

SEC. 3. Section 56348 is added to the Education Code, to read:

56348. (a) For purposes of this part, a local educational agency shall provide translation services for a parent, guardian, or educational rights holder as follows:

(1) The local educational agency shall provide a pupil's parent, guardian, or educational rights holder with a translated copy of the pupil's completed individualized education program and any revisions to the pupil's individualized education program in the parent's, guardian's, or educational rights holder's primary language within ~~30~~ 60 days of the individualized education program team ~~meeting~~ *meeting, if requested by the pupil's parent, guardian, or educational rights holder*. Nothing in this paragraph shall be construed as to abridge any right granted to parents under state or federal law, including the right to give or withhold consent, as specified in Sections 56021.1 and 56346, to part or all of an individualized education program before receiving a translated copy of the individualized education program.

(2) (A) The local educational agency shall provide a pupil's parent, guardian, or educational rights holder with a translated

1 copy of any document *specified in subparagraph (B)* discussed at
2 an individualized education program team meeting in the parent's,
3 guardian's, or educational rights holder's primary language within
4 30 days of the individualized education program team ~~meeting.~~
5 *meeting, if requested by the pupil's parent, guardian, or*
6 *educational rights holder.*

7 (B) (i) *Documents relating to the pupil's present levels of*
8 *academic achievement and functional performance.*

9 (ii) *Documents relating to the pupil's right to a free and*
10 *appropriate public education.*

11 (iii) *Notes on items discussed at the individualized education*
12 *program team meeting.*

13 (iv) *Documents relating to the goals of the pupil.*

14 (v) *Progress reports of school staff who provide services in*
15 *accordance with the pupil's individualized education program.*

16 (b) (1) The documents required to be translated pursuant to this
17 section shall be translated by a qualified translator who is proficient
18 in both the English language and the non-English language to be
19 used.

20 (2) For purposes of this section, "qualified translator" means a
21 translator who has met the testing or certification standards for
22 outside or contract translators, as proficient in the ability to
23 communicate commonly used terms and ideas between the English
24 language and the non-English language to be used and has
25 knowledge of basic translator practices, including, but not limited
26 to, confidentiality, neutrality, accuracy, completeness, and
27 transparency.

28 (c) *The department shall revise its notice of procedural*
29 *safeguards, in English and in the primary languages for which the*
30 *department has developed translated versions, to inform parents*
31 *of their right to request the translation of documents as authorized*
32 *by this section.*

33 (e)

34 (d) Nothing in this section is intended to affect any other state
35 or federal law requirement regarding the translation of
36 education-related documents.

37 ~~SEC. 4. Section 56349 is added to the Education Code, to read:~~

38 ~~56349. On or before January 1, 2018, the department shall post~~
39 ~~on its Internet Web site standard special education forms commonly~~
40 ~~used by local educational agencies translated into at least the 10~~

1 most commonly used non-English primary languages of the state's
2 pupils. The department is encouraged to review translations created
3 by other states for this purpose and to include, in smaller type, an
4 English translation on those translated forms in order to minimize
5 the risk of error when school personnel not fluent in the parent's
6 language fill out those forms.

7 ~~SEC. 5.~~

8 *SEC. 4.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.