

AMENDED IN SENATE APRIL 13, 2016
AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 884

Introduced by Senator Beall

January 19, 2016

An act to amend Sections 56301, 56345, and 56500.4 of, and to add Sections 56600.7, 56607, 56608, and 56609 to, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 884, as amended, Beall. Special education: procedural safeguards and records.

(1) Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and ensure provision of, and supervise, education and related services to individuals with exceptional needs, as required pursuant to the federal Individuals with Disabilities Education Act.

Existing law establishes certain rights and procedural safeguards for parents and pupils of individuals with disabilities, and requires a public agency to give prior written notice to parents or guardians of an individual with exceptional needs when certain actions are taken with respect his or her placement, identification, and assessment or the provision of a free and appropriate education.

This bill would require prior written notice also to be given when there are any changes to the planned type or level of individualized education program services, would require a copy of the parent and pupil's rights and procedural safeguards to be given each time prior written notice is given, and would require a local educational agency responsible for a pupil's individualized education program to ensure a

copy of each prior written notice is included in the pupil's records. The bill would require each special education local plan area to establish additional written policies and procedures requiring local educational agencies to provide certain information to parents in their annual parent notification information, including information regarding family empowerment centers and parent training and information centers. The bill would require a pupil's individualized education program to include the type of provider delivering each related service listed. By imposing new duties on local educational agencies, the bill would impose a state-mandated local program.

(2) Existing law requires the Superintendent to ensure that pupil and program performance results are monitored, and requires special education local plan areas to submit certain data to the Superintendent to evaluate special education programs, as specified.

The bill would require a ~~school district or~~ special education local plan area to document and report to the ~~department~~ *State Department of Education* funding allocations and expenditures for all mental health and special education services, and would require the department to post the information on the department's Internet Web site. The bill would require the department to align accounting code systems, as specified. The bill would also require a local educational agency responsible for a pupil's individualized education program to annually report to the department the *actual* frequency and duration of related services provided, and to annually report *to the department* certain data needed to document pupil outcomes on 6 outcome indicators, as specified. The bill would require the department to monitor the related services reported annually by local educational agencies, and to review and require corrections to each local educational agency's procedures and documents. *By imposing new duties on local educational agencies, the bill would impose a state-mandated local program.*

(3) 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 56301 of the Education Code is amended
2 to read:

3 56301. (a) All children with disabilities residing in the state,
4 including children with disabilities who are homeless children or
5 are wards of the state and children with disabilities attending
6 private, including religious, elementary and secondary schools,
7 regardless of the severity of their disabilities, and who are in need
8 of special education and related services, shall be identified,
9 located, and assessed and a practical method shall be developed
10 and implemented to determine which children with disabilities are
11 currently receiving needed special education and related services
12 as required by Section 1412(a)(3) and (10)(A)(ii) of Title 20 of
13 the United States Code. A child is not required to be classified by
14 his or her disability so long as each child who has a disability listed
15 in Section 1401(3) of Title 20 of the United States Code and who,
16 by reason of that disability, needs special education and related
17 services as an individual with exceptional needs defined in Section
18 56026.

19 (b) (1) In accordance with Section 300.111(c) of Title 34 of
20 the Code of Federal Regulations, the requirements of this section
21 also apply to highly mobile individuals with exceptional needs,
22 including migrant children, and children who are suspected of
23 being an individual with exceptional needs pursuant to Section
24 56026 and in need of special education, even though they are
25 advancing from grade to grade.

26 (2) In accordance with Section 300.213 of Title 34 of the Code
27 of Federal Regulations, the local educational agency shall cooperate
28 in the efforts of the federal Secretary of Education, under Section
29 6398 of Title 20 of the United States Code, to ensure the linkage
30 of records pertaining to migratory children with disabilities for the
31 purpose of electronically exchanging, among other states, health
32 and educational information regarding those children.

33 (c) (1) The child find process shall ensure the equitable
34 participation in special education and related services of parentally
35 placed private schoolchildren with disabilities and an accurate
36 count of those children. Child find activities conducted by local
37 educational agencies, or where applicable, the department, shall

1 be similar to those activities undertaken for pupils in public
2 schools.

3 (2) In accordance with Section 1412(a)(10)(A)(ii)(IV) of Title
4 20 of the United States Code, the cost of the child find activities
5 in private, including religious, elementary and secondary schools,
6 may not be considered in determining whether a local educational
7 agency has met its obligations under the proportionate funding
8 provisions for children enrolled in private, including religious,
9 elementary and secondary schools.

10 (3) The child find process described in paragraph (1) shall be
11 completed in a time period comparable to that for other pupils
12 attending public schools in the local educational agency.

13 (d) (1) Each special education local plan area shall establish
14 written policies and procedures pursuant to Section 56205 for use
15 by its constituent local agencies for a continuous child find system
16 that addresses the relationships among identification, screening,
17 referral, assessment, planning, implementation, review, and the
18 triennial assessment. The policies and procedures shall include,
19 but need not be limited to, written notification of all parents of
20 their rights under this chapter, and the procedure for initiating a
21 referral for assessment to identify individuals with exceptional
22 needs.

23 (2) In accordance with Section 1415(d)(1)(A) of Title 20 of the
24 United States Code, and Section 300.504(a) of Title 34 of the Code
25 of Federal Regulations, parents shall be given a copy of their rights
26 and procedural safeguards only one time a school year, except that
27 a copy also shall be given to the parents:

28 (A) Upon initial referral or parental request for assessment.

29 (B) Upon receipt of the first state complaint under Section
30 56500.2 in a school year.

31 (C) Upon receipt of the first due process hearing request under
32 Section 56502 in a school year.

33 (D) When a decision is made to make a removal that constitutes
34 a change of placement of an individual with exceptional needs
35 because of a violation of a code of pupil conduct in accordance
36 with Section 300.530(h) of Title 34 of the Code of Federal
37 Regulations.

38 (E) Upon request by a parent.

39 (F) When a prior written notice is required pursuant to Section
40 56500.4.

1 (3) A local educational agency may place a current copy of the
2 procedural safeguards notice on its Internet Web site, if such Web
3 site exists, pursuant to Section 1415(d)(1)(B) of Title 20 of the
4 United States Code.

5 (4) The contents of the procedural safeguards notice shall
6 contain the requirements listed in Section 1415(d)(2) of Title 20
7 of the United States Code and Section 300.504(c) of Title 34 of
8 the Code of Federal Regulations.

9 (5) Each special education local plan area shall establish
10 additional written policies and procedures that require each local
11 educational agency to provide informational materials, including,
12 but not limited to, pupil and parent rights provided under the federal
13 Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400
14 et seq.), and information regarding family empowerment centers
15 and parent training and information centers in their community.
16 The materials shall be provided in the three most common
17 languages used by parents served by the local educational agency
18 in the special education local plan area, and shall be made available
19 for local educational agencies to provide to their parents in their
20 annual parent notification information.

21 (e) Child find data collected pursuant to this chapter, or collected
22 pursuant to a regulation or an interagency agreement, are subject
23 to the confidentiality requirements of Sections 300.611 to 300.627,
24 inclusive, of Title 34 of the Code of Federal Regulations.

25 SEC. 2. Section 56345 of the Education Code is amended to
26 read:

27 56345. (a) The individualized education program is a written
28 statement for each individual with exceptional needs that is
29 developed, reviewed, and revised in accordance with this section,
30 as required by Section 1414(d) of Title 20 of the United States
31 Code, and that includes the following:

32 (1) A statement of the individual's present levels of academic
33 achievement and functional performance, including the following:

34 (A) The manner in which the disability of the individual affects
35 his or her involvement and progress in the general education
36 curriculum.

37 (B) For preschool children, as appropriate, the manner in which
38 the disability affects his or her participation in appropriate
39 activities.

1 (C) For individuals with exceptional needs who take alternate
2 assessments aligned to alternate achievement standards, a
3 description of benchmarks or short-term objectives.

4 (2) A statement of measurable annual goals, including academic
5 and functional goals, designed to do the following:

6 (A) Meet the needs of the individual that result from the
7 disability of the individual to enable the pupil to be involved in
8 and make progress in the general education curriculum.

9 (B) Meet each of the other educational needs of the pupil that
10 result from the disability of the individual.

11 (3) A description of the manner in which the progress of the
12 pupil toward meeting the annual goals described in paragraph (2)
13 will be measured and when periodic reports on the progress the
14 pupil is making toward meeting the annual goals, such as through
15 the use of quarterly or other periodic reports, concurrent with the
16 issuance of report cards, will be provided.

17 (4) A statement of the special education and related services
18 and supplementary aids and services, based on peer-reviewed
19 research to the extent practicable, to be provided to the pupil, or
20 on behalf of the pupil, and a statement of the program modifications
21 or supports for school personnel that will be provided to enable
22 the pupil to do the following:

23 (A) To advance appropriately toward attaining the annual goals.

24 (B) To be involved in and make progress in the general
25 education curriculum in accordance with paragraph (1) and to
26 participate in extracurricular and other nonacademic activities.

27 (C) To be educated and participate with other individuals with
28 exceptional needs and nondisabled pupils in the activities described
29 in this subdivision.

30 (5) An explanation of the extent, if any, to which the pupil will
31 not participate with nondisabled pupils in the regular class and in
32 the activities described in subparagraph (C) of paragraph (4).

33 (6) (A) A statement of individual appropriate accommodations
34 that are necessary to measure the academic achievement and
35 functional performance of the pupil on state and districtwide
36 assessments consistent with Section 1412(a)(16)(A) of Title 20 of
37 the United States Code.

38 (B) If the individualized education program team determines
39 that the pupil shall take an alternate assessment instead of a

1 particular state or districtwide assessment of pupil achievement,
2 a statement of the following:

3 (i) The reason why the pupil cannot participate in the regular
4 assessment.

5 (ii) The reason why the particular alternate assessment selected
6 is appropriate for the pupil.

7 (7) The projected date for the beginning of the services and
8 modifications described in paragraph (4), and the anticipated
9 frequency, location, and duration of those services and
10 modifications. For each related service listed in the individualized
11 education program, the individualized education program shall
12 document the type of provider delivering the service pursuant to
13 paragraph (3) of subdivision (a) of Section 3051 of Title 5 of the
14 California Code of Regulations.

15 (8) Beginning not later than the first individualized education
16 program to be in effect when the pupil is 16 years of age, or
17 younger if determined appropriate by the individualized education
18 program team, and updated annually thereafter, the following shall
19 be included:

20 (A) Appropriate measurable postsecondary goals based upon
21 age-appropriate transition assessments related to training,
22 education, employment, and where appropriate, independent living
23 skills.

24 (B) The transition services, as defined in Section 56345.1,
25 including courses of study, needed to assist the pupil in reaching
26 those goals.

27 (b) If appropriate, the individualized education program shall
28 also include, but not be limited to, all of the following:

29 (1) For pupils in grades 7 to 12, inclusive, any alternative means
30 and modes necessary for the pupil to complete the prescribed
31 course of study of the district and to meet or exceed proficiency
32 standards for graduation.

33 (2) For individuals whose native language is other than English,
34 linguistically appropriate goals, objectives, programs, and services.

35 (3) Pursuant to Section 300.106 of Title 34 of the Code of
36 Federal Regulations, extended school year services shall be
37 included in the individualized education program and provided to
38 the pupil if the individualized education program team of the pupil
39 determines, on an individual basis, that the services are necessary
40 for the provision of a free appropriate public education to the pupil.

(4) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(5) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs, that the local educational agency is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the individualized education program of the pupil.

(d) Consistent with Section 56000.5 and Section 1414(d)(3)(B)(iv) of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of the services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with “Deaf Students Education Services Policy Guidance” (57 Fed. Reg. 49274 (October 1992)), including all of the following:

(1) The pupil’s primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities, which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

1 (3) Appropriate, direct, and ongoing language access to special
2 education teachers and other specialists who are proficient in the
3 pupil's primary language mode and language consistent with
4 existing law regarding teacher training requirements.

5 (4) Services necessary to ensure communication-accessible
6 academic instructions, school services, and extracurricular activities
7 consistent with the federal Vocational Rehabilitation Act of 1973
8 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with
9 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

10 (5) In accordance with Section 300.113 of Title 34 of the Code
11 of Federal Regulations, each public agency shall ensure that hearing
12 aids worn in school by children with hearing impairments,
13 including deafness, are functioning properly.

14 (6) Subject to paragraph (7), each public agency, pursuant to
15 Section 300.113(b) of Title 34 of the Code of Federal Regulations,
16 shall ensure that external components of surgically implanted
17 medical devices are functioning properly.

18 (7) For a child with a surgically implanted medical device who
19 is receiving special education and a service under Section 56363,
20 a public agency is not responsible for the postsurgical maintenance,
21 programming, or replacement of the medical device that has been
22 surgically implanted, or of an external component of the surgically
23 implanted medical device.

24 (e) State moneys appropriated to districts or local educational
25 agencies may not be used for any additional responsibilities and
26 services associated with paragraphs (1) and (2) of subdivision (d),
27 including the training of special education teachers and other
28 specialists, even if those additional responsibilities or services are
29 required pursuant to a judicial or state agency determination. Those
30 responsibilities and services shall only be funded by a local
31 educational agency as follows:

32 (1) The costs of those activities shall be funded from existing
33 programs and funding sources.

34 (2) Those activities shall be supported by the resources otherwise
35 made available to those programs.

36 (3) Those activities shall be consistent with Sections 56240 to
37 56243, inclusive.

38 (f) It is the intent of the Legislature that the communication
39 skills of teachers who work with hard-of-hearing and deaf children
40 be improved. This section does not remove the discretionary

1 authority of the local educational agency in regard to in-service
2 activities.

3 (g) Beginning not later than one year before the pupil reaches
4 the age of 18 years, a statement that the pupil has been informed
5 of the pupil's rights under this part, if any, that will transfer to the
6 pupil upon reaching the age of 18 years pursuant to Section
7 56041.5.

8 (h) The individualized education program team is not required
9 to include information under one component of a pupil's
10 individualized education program that is already contained under
11 another component of the individualized education program.

12 (i) This section does not require that additional information,
13 beyond that explicitly required by Section 1414 of Title 20 of the
14 United States Code and this part, be included in the individualized
15 education program of a pupil.

16 SEC. 3. Section 56500.4 of the Education Code is amended to
17 read:

18 56500.4. (a) Pursuant to Section 1415(b)(3) and (4) and (c)(1)
19 of Title 20 of the United States Code, and in accordance with
20 Section 300.503 of Title 34 of the Code of Federal Regulations,
21 prior written notice shall be given by the public agency to the
22 parents or guardians of an individual with exceptional needs, or
23 to the parents or guardians of a child upon initial referral for
24 assessment, and a reasonable time before the public agency
25 proposes to initiate or change, or refuses to initiate or change, the
26 identification, assessment, or educational placement of the child,
27 including any changes to the planned type or level of individualized
28 education program services, or the provision of a free appropriate
29 public education to the child. In accordance with Sections 300.304
30 and 300.503 of Title 34 of the Code of Federal Regulations, the
31 public agency shall provide a description of any assessment
32 procedures the agency proposes to conduct.

33 (b) The notice required under subdivision (a) shall, in accordance
34 with Section 300.503(b) of Title 34 of the Code of Federal
35 Regulations, include all of the following:

36 (1) A description of the action proposed or refused by the public
37 agency.

38 (2) An explanation of why the public agency proposes or refuses
39 to take the action.

1 (3) A description of each assessment procedure, assessment,
2 record, or report the public agency used as a basis for the proposed
3 or refused action.

4 (4) A statement that the parents of an individual with exceptional
5 needs have protection under the procedural safeguards of this part
6 and a copy of the procedural safeguards.

7 (5) Sources for parents to contact to obtain assistance in
8 understanding the provisions of this part, including, but not limited
9 to, *the link on the department's Internet Web site that provides the*
10 *contact information for all family empowerment centers and parent*
11 *training and information centers in the special education local plan*
12 *area of which the local educational agency is a*~~member~~ *member;*
13 *or, upon the request of a parent, a printed copy of that information.*

14 (6) A description of other options that the individualized
15 education program team considered and the reasons why those
16 options were rejected.

17 (7) A description of other factors that are relevant to the proposal
18 or refusal of the agency.

19 (c) The local educational agency responsible for implementation
20 of a pupil's individualized education program shall ensure that a
21 copy of each prior written notice given pursuant to this section is
22 included in the pupil's records.

23 SEC. 4. Section 56600.7 is added to the Education Code, to
24 read:

25 56600.7. The local educational agency responsible for
26 implementation of a pupil's individualized education program
27 shall annually report to the department the actual frequency and
28 duration of each related service provided to the pupil pursuant to
29 the pupil's individualized education program.

30 SEC. 5. Section 56607 is added to the Education Code, to read:

31 ~~56607. (a) A school district or~~ special education local plan
32 area shall document and report to the department all mental health
33 and special education services funding allocations and expenditures
34 and specify the dollar amount for each service.

35 (b) The department shall post the information on the
36 department's Internet Web site.

37 (c) The department shall align accounting code systems to allow
38 the department and school districts or special education local plan
39 areas to accurately document the amount of funds expended for

1 the provision of mental health and special education services from
2 each funding source.

3 SEC. 6. Section 56608 is added to the Education Code, to read:

4 56608. For each pupil receiving individualized education
5 program related services, each local educational agency shall
6 annually provide *to the department* the data needed to document
7 the pupil's outcomes on all of the following outcome indicators
8 that are applicable to the pupil:

- 9 (a) Graduation rate.
- 10 (b) Dropout rate.
- 11 (c) Statewide assessment results.
- 12 (d) Suspension and expulsion rates.
- 13 (e) Participation in general education classes.
- 14 (f) Postschool outcomes.

15 SEC. 7. Section 56609 is added to the Education Code, to read:

16 56609. (a) The department shall monitor the number and
17 frequency of related services reported annually by local educational
18 agencies and shall compare year-to-year changes for each local
19 educational agency. If year-to-year services decline significantly,
20 then the department shall investigate the cause for the decline in
21 service provision.

22 (b) As part of its monitoring activities, the department shall
23 review each local educational agency's procedures and documents
24 used to meet the prior written notice requirement in Section
25 56500.4, and shall require corrections to those procedures and
26 documents if the department finds that the procedures or documents
27 do not fulfill statutory requirements.

28 SEC. 8. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.

33 SEC. 9. It is the intent of the Legislature to enact legislation
34 relating to the provision of mental health services to pupils with
35 exceptional needs.