

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 884 (Beall) – As Amended May 31, 2016

SENATE VOTE: 39-0

SUBJECT: Special education: procedural safeguards and records: mental health services

SUMMARY: Requires local educational agencies (LEAs) and special education local plan areas (SELPA) to collect and report specific information relative to mental health services, requires the California Department of Education (CDE) to monitor and compare specific information relative to mental health services, and requires LEAs to provide specified informational materials to parents. Specifically, **this bill:**

- 1) Requires each SELPA to require each LEA to provide parents with informational materials, including procedural safeguards, information regarding family empowerment centers, and parent training and information centers in their community.
- 2) Requires that this information be provided in the three most common languages used by parents locally, and be made available for LEAs to provide to parents in their annual parent notification.
- 3) Requires LEAs to ensure that a copy of each prior written notice is included in the pupil's records.
- 4) Requires each LEA to annually report to the CDE the actual frequency and duration of each mental health service provided to each student as required by their IEP.
- 5) Requires SELPAs to document and report to the CDE all mental health and special education services funding allocations and expenditures and specify the dollar amount for each service.
- 6) Requires the CDE to post this information on its website.
- 7) Requires the CDE to align accounting code systems to allow the department and school districts or SELPAs to accurately document the amount of funds expended for the provision of mental health and special education services from each funding source.
- 8) Requires each LEA to annually provide to the CDE data needed to document specified outcomes for each student receiving mental health services through their IEPs:
 - a) graduation rate
 - b) dropout rate
 - c) statewide assessment results
 - d) suspension and expulsion rates

- e) participation in general education classes
 - f) postschool outcomes
- 9) Requires the CDE to monitor the number and frequency of mental health services reported annually by LEAs and compare year-to-year changes for each LEA. Requires that if year-to-year services decline significantly, the CDE investigate the cause for the decline in service provision.
 - 10) Requires, as part of its monitoring activities, the CDE to review each LEA's procedures and documents used to meet the prior written notice requirements and requires that CDE require corrections to those procedures and documents if the department finds that the procedures or documents do not fulfill statutory requirements.

EXISTING LAW:

- 1) Federal and state law requires that every individual with exceptional needs who is eligible to receive special education instruction and related services receive that instruction and those services through a free appropriate public education in the least restrictive environment.
- 2) Federal law provides that related services means transportation, and developmental, corrective, and other supportive services, including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program (IEP) of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services.
- 3) Requires the Superintendent of Public Instruction (SPI) to ensure that student and program performance results are monitored at the state and local levels by evaluating student performance against key performance indicators.
- 4) Requires the SPI, as part of state monitoring and enforcement, to use quantifiable indicators, and qualitative indicators as needed, to adequately measure performance in the indicators established by the United States Secretary of Education in the priority areas, as described.
- 5) Requires each SELPA to submit to the SPI at least annually information in order for the SPI to carry out the evaluation responsibilities described above.

FISCAL EFFECT:

According to the Senate Appropriations Committee:

- **Mandate costs:** This bill imposes several mandated activities that would drive unknown but likely significant costs to the state, potentially in the millions to low tens of millions, if the Commission on State Mandates determines these activities to be reimbursable. If

so, this could also result in pressure to increase the K-12 mandate block grant. (Proposition 98)

- Administrative costs: The CDE estimates one-time costs of \$300,000 and ongoing costs of \$400,000 to implement this bill. One-time activities include making changes to the school accounting manual and software that collects financial data. (General Fund)

COMMENTS:

Recent state audit. AB 114 (Chapter 43, Statutes of 2011), which took effect in July 2011, transferred funding and responsibility for providing mental health services for students with IEPs from county mental health departments to LEAs.

In January, 2016, the Bureau of State Audits released a report, requested by the author and other members of the Legislature, on the effect of AB 114 on mental health services for students. The report, titled *Student Mental Health Services: Some Students' Services Were Affected by a New State Law, and the State Needs to Analyze Student Outcomes and Track Service Costs*, found that:

- The most commonly offered types of mental health services and the providers of those services generally did not change.
- The number of students who received these mental health services remained steady or grew.
- The provider of the most common mental health services generally had already been, and continued to be, the LEA.
- The majority of changes to services were unrelated to AB 114.

The audit also found that for individual student records reviewed:

- Although the most common types of mental health services offered and the service providers generally did not change, LEAs removed mental health services from student IEPs in the two years after AB 114 took effect.
- Although most service reductions were not related to AB 114, such as those prompted by a student graduating, IEP teams did not always record in the IEP document their rationale of why a service was removed.
- For 40 percent of the students who had a change to their mental health services or their educational placement within two years of AB 114's implementation, the IEP teams did not document the rationale for the changes.
- For 13 of the 44 students reviewed who had a mental health service removed from their IEPs, either the LEAs could not satisfactorily explain why the services were removed or the removal was related to AB 114. In three cases, the LEA had no assurance that removing services would not adversely affect access to education.

Audit recommendations regarding data collection and monitoring. The audit made several recommendations related to data collection and monitoring of student mental health services:

- Require LEAs to use six performance indicators to perform analysis annually on the subset of students receiving mental health services.
- Require CDE to analyze and report on the outcomes for students receiving mental health services, including outcomes across six performance indicators, in order to demonstrate whether those services are effective.
- Require CDE to collect information about the frequency of the provision of each service contained in all students' IEPs.
- Require CDE to annually review the frequency of mental health services and follow up with SELPAs when it observes a significant reduction in the frequency of services.
- Require CDE to develop, and require all LEAs to follow, an accounting methodology to track and report expenditures related to special education mental health services.

This bill includes some, but not all, of the recommendations in the audit, and also includes requirements that were not recommended by the audit.

How schools provide mental health services? Most of the mental health services provided by schools are related to services required by a student's IEP. Schools may employ staff directly as well as contract with county mental health agencies or private providers.

Schools also have the discretion to provide counseling and mental health services, or refer to outside providers, to students who do not have an IEP. These services may be provided by a school counselor, psychologist or social worker, or other qualified personnel employed by an outside entity.

LEAs may use multiple sources of funding to meet the mental health needs of their students, including AB 114 funds, state or federal special education funds, Local Control Funding Formula revenue, local tax revenue, Medi-Cal funds through the Medi-Cal LEA billing option program, Early and Periodic Screening Diagnostic and Treatment (EPSDT) program funds through partnership with county mental health agencies, and private insurance. The state audit referenced above found that LEAs do indeed combine multiple funding sources to provide these services.

How do the requirements of this bill compare to current practice? This bill establishes a number of requirements on LEAs and CDE. Some of these activities are already conducted, or are conducted in a different manner, by those agencies, and some of them constitute new activities. Below is a comparison between key provisions of this bill and current requirements:

- Reporting on mental health services. This bill requires each LEA to annually report to the CDE the actual frequency and duration of each mental health service provided to each student as required by their IEP. LEAs are currently required by federal law to report services offered. According to the SELPA Administrators Association, this provision

could mean that LEAs would be required to create service logs to track the required information. This would require significant time and financial resources.

- Reporting on expenditures for mental health for all students. This bill requires SELPAs to document and report to the CDE all mental health and special education services funding allocations and expenditures and specify the dollar amount for each service. LEAs are currently required to report on their expenditures of AB 114 funds to the CDE.
- Reporting on student outcomes. This bill requires each LEA to annually provide to the CDE data needed to document specified outcomes for each student receiving mental health services, including data on graduation rates, dropout rates, statewide assessment results, suspension and expulsion rates, participation in general education classes, and post-school outcomes. According to the CDE, this data is already reported to the state and maintained in either the CASEMIS or CALPADS data systems.
- State monitoring of mental health services. This bill requires the CDE to monitor the number and frequency of mental health services reported annually by LEAs and compare year-to-year changes for each LEA. Requires that if year-to-year services decline significantly, then the CDE investigate the cause for the decline in service provision. The CDE does not conduct verification reviews (to monitor whether services planned in IEPs are being provided) in all school districts, but does conduct them in approximately 30-50 targeted districts per year, chosen based on indications of compliance problems. Expanding verification reviews to all students with mental health services indicated in their IEPs would be a significant expansion of the department's monitoring role. Opponents of this bill also note that a year-to-year decline in services can have many causes (such as natural enrollment trends or early intervention programming which reduces enrollment in special education). It is unclear what is envisioned by the requirement that CDE "investigate" such a decline in services, but if this were interpreted to extend beyond current monitoring practices it too would likely significantly expand the state's monitoring function.
- Family empowerment centers information. This bill requires each SELPA to require each LEA to provide parents with informational materials, including procedural safeguards, information regarding family empowerment centers, and parent training and information centers in their community. The bill also requires this information to be provided in the three most common languages used by parents locally, and be made available for LEAs to provide to parents in their annual parent notification. The CDE maintains translated versions of the procedural safeguards on its website in four languages, and LEAs are currently required to provide copies of procedural safeguards to parents at times specified in the law.

Arguments in support. The California Council of Community Behavioral Health Agencies writes that since the enactment of AB 114 it is now "impossible to determine if the shift in services has actually benefitted students," and that "SB 884 would institute stringent standards for accountability, transparency, and monitoring of services and spending, so the state can accurately assess whether students' needs are being met. The bill also strengthens students' and parents' rights by requiring schools to give them written notification of impending changes to IEPs and to provide informational materials regarding their rights."

The Western Center on Law and Poverty writes, “There is simply too little data to determine whether the LEAs are meeting their responsibility to provide necessary mental health services to school children in special education,” and supports SB 884 because it would strengthen requirements for accountability, transparency, and monitoring of services and spending.

Arguments in opposition. The Coalition for Adequate Funding for Special Education writes, “The Coalition believes this bill will result in significant new unfunded state mandates to LEAs by requiring greater levels of administrative reporting by teachers and administrators that will take critical time away from the classroom and our most vulnerable at-risk children. Additionally, new unfunded special education service requirements will place additional fiscal pressures on an LEA’s local budget and result in the diversion of Local Control Funding Formula funding to backfill the cost of these new mandates.”

The California Teachers Association writes, “CTA believes implementation of this bill would divert funding from Proposition 98 and limited special education funding, unnecessarily burden service providers which would impact the quality and delivery of individual instruction, inappropriately increase the workload for special education teachers regarding duplicative data reporting, and impact the local priorities in each LEA’s Local Control and Accountability Plan, which is developed with community stakeholders and teachers to meet the educational needs of all students, including pupils with disabilities.”

Recommended amendments. To addressing the author’s interest in improved fiscal and programmatic accountability for student mental health services, while also addressing the above concerns about mandated costs, duplicative requirements, and the diversion of resources away from instruction and delivery of services, *staff recommends the following amendments:*

Delete the current contents of the bill and replace with the following:

- 1) Require that the K-12 education audit guide include an audit procedure that reviews whether the funding received by an LEA for educationally related mental health services required by an IEP (AB 114 funds) was used for its intended purpose.
- 2) Require that the CDE create a report to the Legislature on its compliance findings and corrective action plans related to the provision of mental health services for students with IEPs, based on the data they currently collect through their verification reviews of a subset of districts.
- 3) Require CDE create a report to the Legislature on the student outcomes for which data is currently available for students receiving mental health services through their IEPs.
- 4) Require the CDE to include a link to the page on its website which lists family empowerment centers on its sample procedural safeguards, in all languages for which it maintains a translation.

Related legislation. SB 1113 (Beall) of this Session authorizes LEAs to enter into partnerships, as specified, with county mental health plans for the provision of EPSDT mental health services. That bill was approved by this Committee on April 15th and is pending in the Assembly Health Committee.

AB 2091 (Lopez) of this Session requires LEAs to provide parents with a translated copy of an IEP and other specified documents, upon request, and requires that the IEP and related documents be translated by a qualified translator. This bill is pending in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council of Community Behavioral Health Agencies (sponsor)
California State PTA
California Youth Empowerment Network
Community Health Partnership
National Alliance on Mental Illness, California
Steinberg Institute
Western Center on Law and Poverty
One individual

Opposition

Alta Loma School District
Association of California School Administrators
California Association of School Business Officials
California Teachers Association
Clovis Unified School District
Coalinga-Huron Unified School District
Coalition for Adequate Funding for Special Education
Dinuba Unified School District
Glendora Unified School District
Kern County Superintendent of Schools
Sacramento City Unified School District
Special Education Local Plan Area Administrators

Analysis Prepared by: Tanya Lieberman / ED. / (916) 319-2087