

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 87 (Quirk-Silva) – As Introduced January 4, 2023

SUBJECT: Special education: Section 504 plans: team meetings

SUMMARY: Establishes a right of parents, guardians, and local educational agencies (LEAs) to audio record the proceedings of a Section 504 team meeting. Specifically, **this bill:**

- 1) Establishes a right of parents, guardians, and LEAs to audio record the proceedings of team meetings held pursuant to Section 504 of the federal Rehabilitation Act of 1973.

EXISTING LAW:

- 1) In federal law, establishes the Individuals with Disabilities Education Act (IDEA), in order to ensure that all children with disabilities have a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, among other purposes. (20 U.S.C. Section 1400)
- 2) In federal law, the Rehabilitation Act of 1973, prohibits an individual with a disability, as defined, from, solely by reason of his or her disability, being excluded from the participation in, being denied the benefits of, or being subjected to discrimination under any program or activity receiving federal financial assistance. (29 U.S.C. Section 794)
- 3) Establishes a right of parents, guardians, and LEAs to audio record the proceedings of individualized education program (IEP) team meetings. (Education Code (EC) 56341.1)
- 4) Requires an LEA to notify the members of the IEP team of its intent to audio record a meeting at least 24 hours prior to the meeting. (EC 53641)
- 5) Prohibits an LEA from recording an IEP team meeting if the parent or guardian objects or refuses to attend the meeting because it will be audio recorded. (EC 53641)
- 6) Finds and declares that:
 - a) Under federal law, audio recordings made by an LEA are subject to the federal Family Educational Rights and Privacy Act of 1974 (FERPA) and are subject to the specified federal confidentiality requirements.
 - b) Parents or guardians have the right, pursuant to federal regulations, to do all of the following:
 - i) Inspect and review the audio recordings;
 - ii) Request that the audio recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs; and

iii) Challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights. (EC 53641.1)

7) Defines LEA for purposes of special education law to mean a school district, a county office of education (COE), a nonprofit charter school participating as a member of a special education local plan area (SELPA) or a SELPA. (EC 56026.3)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, "As a teacher for over 30 years, I understand how information provided to parents can be overwhelming. AB 87 provides parity for the right of parents, guardians and local school districts to record 504 planning meetings as is currently allowed in Individual Education Plan (IEP) meetings. The right for parents, guardians, and local school districts to record 504 Plan meetings is important due to the amount of information presented about the student and their needs. As a parent/guardian, it can be challenging to pay attention, take notes, and formulate questions based on what is discussed. This is especially true because parents and guardians may not be familiar with many of the 'education' terms 504 team members use during 504 meetings."

What are 504 plans? Section 504 of the Rehabilitation Act of 1973 prohibits an individual with a disability in the United States, as defined, from, solely by reason of his or her disability, being excluded from the participation in, being denied the benefits of, or being subjected to discrimination under any program or activity receiving federal financial assistance. This requirement applies to public schools.

Section 504 regulations require that public schools provide a FAPE to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

To be protected under Section 504, a student must be determined to 1) have a physical or mental impairment that substantially limits one or more major life activities, 2) have a record of such an impairment; or 3) be regarded as having such an impairment. Major life activities include activities such as walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Unlike under IDEA, students do not need to have one of a list of specified disabling conditions. Some students who do not qualify for an IEP under the IDEA may qualify for a 504 plan. Process requirements for the development of 504 plans are less specific than IEPs in several ways.

The determination that a student has a "substantial limitation" must be made on an individualized basis. Section 504 requires that a group of knowledgeable persons (sometimes constituted as a team) draw upon information from a variety of sources in making this determination. Unlike under the IDEA, the composition of group is not specified. This team develops a 504 plan which delineates the services and/or changes to the learning environment required to meet the needs of the child as adequately as other students.

Existing law allows IEP team meetings to be recorded, but is silent on Section 504 team meetings. Current state law establishes a right of parents, guardians, and LEAs to audio record the proceedings of IEP team meetings. It also requires LEAs to notify the members of the IEP team of its intent to audio record a meeting at least 24 hours prior to the meeting and allows a parent or guardian to prevent an LEA from audio recording a meeting under specified conditions. State and federal law is silent on the right of parents, guardian, and LEAs to audio record team Section 504 team meetings.

How many California students have 504 plans? According to the U.S. Department of Education's (USDOE) Office for Civil Rights, in 2017-18 85, 127 students in California had 504 plans. In the same year, 774,665 California students had IEPs, according to the California Department of Education (CDE).

Recommended amendments. In order to clarify that the proposed right is specific to Section 504 processes, which are distinct from IDEA processes, ***staff recommends that the bill be amended*** to move the requirement to a separate section outside of special education law, and make the language mirror rights afforded under current law to parents and LEAs in the IEP team meeting process.

Arguments in support. Disability Rights California writes, "The California Education Code already permits the audio recording of Individual Education Program (IEP) team meetings in this manner. Cal. Educ. Code § 56341.1(g). But it does not extend this important right to 504 plan meetings. As a result, parents and guardians have no recourse when districts deny their requests to audio record their children's 504 meetings.

AB 87 will close this arbitrary loophole and grant parents and guardians the right to record 504 meetings. 504 meetings often cover important topics affecting the rights of qualified students with disabilities, for example the provision of healthcare-related accommodations or whether the school district can pursue expulsion or other disciplinary proceedings. The right to record these proceedings will create a record and give them more time to process the complicated information conveyed, review the proposed 504 Plan with family, or even consult an educational advocate."

Related legislation. SB 176 (Silva), Chapter 88, Statutes of 2009, changed "audiotape" to "audio recording" with regard to the right to make audio recordings of IEP team meetings.

AB 1105 (Margett), Chapter 405, Statutes of 2001, established a right of parents, guardians, and LEAs to audiotape record IEP team meetings.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California (sponsor)
California Alliance of Child and Family Services
California Association for Health, Physical Education, Recreation & Dance
Educate. Advocate.
Epilepsy Foundation Los Angeles

Opposition

None on file

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