

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
SB 354 (Portantino) – As Amended January 3, 2018

SENATE VOTE: 33-6

SUBJECT: Special education: individualized education programs: translation services

SUMMARY: Requires local educational agencies (LEAs) to provide most students' parents with a translation, upon parental request, of the student's individualized education program (IEP) and other related documents in the native language of the parent within 30 days of the IEP team meeting, and requires translations to be conducted by a qualified translator. Specifically, **this bill:**

- 1) Requires, during the planning process for the IEP, an LEA to communicate in the native language of the parent, as defined, or in another mode of communication used by the parent, including during IEP team meeting, including by providing translation services for a parent.
- 2) Requires LEAs to translate the following documents in the native language of the parent, or in another mode of communication used by the parent:
 - a) the pupil's completed IEP, and any revisions to the pupil's IEP
 - b) any evaluation, assessment, or progress data used to determine eligibility or to develop the IEP that is discussed at an IEP team meeting.
- 3) Requires that, for a parent whose native language is one of the eight most commonly spoken languages, excluding English, in an LEA, as determined by the California Department of Education (CDE) and reported through DataQuest or any successor system, the student's completed IEP and any revisions to the pupil's IEP be translated within 30 calendar days of the IEP team meeting, or within 30 calendar days of a later request by the parent.
- 4) States that nothing in the above requirement shall be construed to abridge any right granted to a parent under state or federal law, including the right to give or withhold consent to part or all of the IEP.
- 5) Requires the documents to be translated by a qualified translator.
- 6) Defines "qualified translator" to mean a translator who is proficient in and literate in English and the non-English language to be used, and has the ability to communicate terms and ideas between the English language and the non-English language to be used, considering regional language variations, and has knowledge of basic translator practices, including, but not limited to, privacy, neutrality, accuracy, completeness, and transparency.
- 7) Defines native language to mean the language normally used by that individual, as defined in federal law.

- 8) States that nothing in these new requirements is intended to affect any other state or federal law requirement regarding the translation of education-related documents, including the right to alternative communication services.
- 9) Requires the CDE 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 documents as required by this bill.
- 10) Modifies the ability of LEAs to determine that it “is clearly not feasible” to provide written notice of procedural safeguards to parents in the native language, to instead use the standard of creating an “undue hardship” pursuant to existing state regulations.
- 11) Expands the definition of “parent” to include a conservator of a child, and clarifies that a person who holds the right to make educational decisions for a student may not necessarily be the guardian, for purposes of existing statutes related to special education.
- 12) Clarifies that “local educational agency,” for purposes of special education, includes all charter schools participating as members of a SELPA, irrespective of profit status.

EXISTING LAW:

- 1) Requires LEAs to take any action necessary to ensure that in an IEP team meeting 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.
- 2) Requires LEAs to give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.
- 3) Requires, in 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 (CCR 5, Sec. 3040).
- 4) Defines “consent” in special education proceedings as 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.
- 5) Requires that, if 15 percent or more of the students enrolled in a public school that provides instruction in kindergarten or any of grades 1 to 12, inclusive, speak a single primary language other than English, all notices, reports, statements, or records sent to the parent or guardian of any such student by the school or school district shall, in addition to being written in English, be written in the primary language, and may be responded to either in English or the primary language.
- 6) Requires that proposed assessment plans 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.”
- 7) Title VI of the federal Civil Rights Act of 1964 prohibits recipients of federal financial assistance, including school districts, from discriminating on the basis of race, color, or

national origin. Title VI's prohibition on national origin discrimination requires school districts to take "affirmative steps" to address language barriers so that EL students may participate meaningfully in schools' educational programs.

FISCAL EFFECT: According to the Senate Appropriations Committee, on a prior version of this bill:

- Unknown reimbursable state mandated costs, potentially in the low millions in Proposition 98 General Fund, to translate special education documents within 45 days of a request. Costs would vary depending upon a number of factors including the availability and cost of a qualified translator, how common the language is, how many pages to be translated, and the frequency of these requests.
- Minor costs to the CDE to revise its notice of procedural safeguards in multiple languages to notify parents of their right to request the translation of documents as provided in this bill.

COMMENTS:

Need for the bill. The author's office states, "Existing law requires LEAs to initiate and conduct meetings for the purposes of developing, reviewing, and revising the IEP of each individual with exceptional needs in accordance with federal law. Existing law requires the LEA 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. However, existing law does not set a timeline for when documents must be translated.

For parents/guardians/educational rights holders, the IEP process can be very overwhelming and intimidating for someone 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/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."

History of federal compliance issues around interpretation and translation in special education proceedings. A 2015 joint letter from the U.S. Department of Education and the U.S. Department of Justice highlighted a number of compliance problems related to English learners and rights established by under Title VI of the Civil Rights Act of 1964. The departments noted a history of compliance problems around "fail[ure] to provide translation or an interpreter at IEP meetings."

Translation scope and timeline. Current state and federal law require that school districts take any action necessary to ensure that parents understand the proceedings at an IEP meeting. Current state regulations further require LEAs to give parents a copy of a student's IEP in his or her primary language at his or her request. No timeframe is specified.

Some LEAs currently meet the 30 day timeline for individualized education program (IEP) translation. The Los Angeles Unified School District is required to translate IEPs, but not related documents, pursuant to a modified consent decree as a result of a lawsuit. The San Diego Unified School District has an “expected timeline” of 30 days for the initial IEP but does not provide a timeline for the translation of related documents.

This bill exceeds current requirements for translation as shown in the table below:

Requirement	Current law: All parents whose native language is not English	SB 354: Native language <u>is</u> one of the top eight languages in the LEA	SB 354: Native language <u>is not</u> among the top eight languages in the LEA
Translation of IEP and revisions	Must be translated but no timeline specified	Must be translated within 30 days	Must be translated but no timeline specified.
Translation of related documents	No requirement to translate	Must be translated but no timeline specified.	Must be translated but no timeline specified.
Qualifications of translator	No qualifications specified	Must meet definition of qualified translator	Must meet definition of qualified translator

Which documents would need to be translated within 30 days? This bill requires that, for students whose parents speak one of the top eight languages within an LEA, certain documents be translated within 30 calendar days. These documents are contained in the student’s IEP, and include:

- A statement of the individual’s present levels of academic achievement and functional performance
- A statement of measurable annual goals, including academic and functional goals,
- A description of the manner in which progress toward meeting the annual goals will be measured
- A statement of the special education and related services and supplementary aids and services, to be provided to the student
- An explanation of the extent, if any, to which the student will not participate with nondisabled pupils in the regular class and activities
- A statement of individual appropriate accommodations on assessments
- The projected date for the beginning of, and the anticipated frequency, location, and duration of services and modifications
- For students 16 years and older, transition plans

Top eight languages spoken in each LEA will comprise high percentage of target population. According to the CDE, 2.7 million students speak a language other than English in their homes. This may mean that up to 43% of the parents of public school students speak a language other than English as their primary language. The CDE collects data on 60 languages spoken by the state’s public school students, but 94% speak one of the top ten languages in the state.

Spanish is by far the most common primary language, spoken by 84% of all English learners. It is likely that many more students with disabilities who are not classified as English learners have parents whose primary language is not English.

This bill requires that specified documents be translated within 30 calendar days for the eight most commonly spoken languages in the district. While the top eight languages will vary by district, the following example, using DataQuest data for San Diego Unified School District in the 2017-18 school year, shows that the top eight languages are likely to represent a high percentage of total enrollment of pupils whose parents speak a language other than English:

Eight most commonly spoken languages in San Diego Unified School District, 2017-18	Enrollment	Percentage of English learner enrollment
Spanish	20,885	73.17%
Vietnamese	1,388	4.86%
Other non-English languages	1,103	3.86%
Filipino (Pilipino or Tagalog)	981	3.44%
Somali	815	2.86%
Arabic	476	1.67%
Mandarin (Putonghua)	299	1.05%
Japanese	271	0.95%
Total for top eight languages	26,218	
Total for all (58+) languages spoken in the district	28,544	

English learners significantly overrepresented in special education. Also according to the CDE, about 14.4% of California's English learners qualify for special education, compared to 9.1% of non-English learners. According to data provided by the CDE for the 2014-15 academic year, students with disabilities who are English learners are significantly overrepresented in the higher grades, as shown in the table below:

	K	1	2	3	4	5	6	7	8	9	10	11	12
ELs in Special Education	6.3%	7.7%	8.6%	10.3%	14.3%	17.4%	21.5%	23.0%	23.9%	21.1%	22.4%	22.7%	26.2%
Non-ELs in Special Education	6.4%	7.9%	9.0%	9.9%	10.3%	10.3%	9.5%	9.1%	9.1%	8.4%	8.7%	8.5%	9.9%

California also has an above average percentage of English learners in special education compared to other states. Data reported by the U.S. Department of Education's Office of Civil Rights (OCR) indicate that in 2011-12 California identified 13.3% of English learners, compared to a national average rate of 11.9%. OCR data also show that California enrolls 35% of all English learners in special education in the country.

Pursuant to AB 2785 (O'Donnell) Chapter 579, Statutes of 2016 the CDE is currently working on the development of a manual to provide guidance to LEAs on the identification, assessment, services, and reclassification for English learners with disabilities, with the goal of reducing the over and under representation of English learners with disabilities.

Other states with far fewer English learners have translated forms on department of education websites; California does not. Translating special education documents would be easier for LEAs if they had access to standard forms already translated into commonly spoken languages.

Other state departments of education (including a number with a far smaller population of non-native English speakers) share such translated forms in various languages through their websites:

- Massachusetts: all forms available in 16 languages
- Minnesota: several forms available in 10 languages
- Oregon: standard IEP form available in 4 languages
- Washington: all forms available 7 languages
- Iowa: standard IEP form in 6 languages
- New York: all forms available in 5 languages
- Colorado, Rhode Island, Illinois, Utah, Texas: forms available in 1-3 languages

California, which has the largest population of English learners in the country (and one in three English learners nationally), does not maintain such translated forms (apart from the notice of procedural safeguards, which is translated into five languages). Such a resource would make it easier for LEAs to meet the requirements of both this bill and of other provisions of state and federal law, and ensure that translations are of sufficient quality.

The CDE does not maintain these forms because the state does not publish standard special education forms. Many LEAs use forms that they either obtain from the Special Education Information System operated by the San Joaquin County Office of Education, or produce their own. Without standard forms, it is unlikely that there will be translated forms of those documents, as are provided in other states.

The CDE maintains a Clearinghouse for Multilingual Documents, an online resource that helps LEAs find pre-existing, locally-created translations of parental notification documents. This database of multilingual documents contains some documents that would inform IEP development, but according to the CDE, 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.

Bill appears to eliminate automated translations of IEPs. By requiring that special education documents be translated by a qualified translator who has met the testing or certification standards for outside or contract translators, it appears that this bill would effectively prohibit the use of web-based translation of documents using services such as Google Translate. Proponents of this measure have noted problems with the accuracy of translation of special education documents using such services.

Concerns have also been raised about the privacy of student information using these translation services. In a joint letter from the U.S. Department of Education and the U.S. 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 [limited English proficient] 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.”

How are parents informed of their rights to interpretation and translation? This bill requires that CDE revise its Notice of Procedural Safeguards, which is required to be provided by current law, to include the translation rights established by the bill.

The Notice of Procedural Safeguards explains all of the rights afforded to students and parents under IDEA and state law. The CDE provides a model Notice of Procedural Safeguards on their website, translated into four languages.

Parents may also learn about their rights by consulting with one of the Family Empowerment Centers on Disability (FECs) established by state law to help parents navigate the special education process through peer support. The FEC statute requires a center in each of the 32 regions of the state established under the Early Start Family Resource Centers. There are currently fourteen such centers, though pending legislation proposes to fund the intended 32 centers. Additionally, there are two types of federally-funded parent resources: Parent Training Information Centers and California Community Parent Resource Centers.

Related and prior legislation. AB 2704 (O’Donnell) of this Session, would require establishment of new Family Empowerment Centers (FECs) with priority given to high need regions, establish increased funding levels awarded to each center, and establish new requirements for data collection and reporting to improve coordination between the California CDE and FECs.

AB 1264 (Eduardo Garcia) of this Session would have required that parents be offered copies of any available completed school records related to the pupil’s current levels of performance, and any assessment reports, prior to a meeting regarding a student’s IEP. This bill was vetoed by the Governor, who stated:

This bill is unnecessary. The Notice of Procedural Safeguards, which is required under the Individuals with Disabilities Act, highlights parents' rights to request copies of relevant

school records and reports and receive them within five business days of the request.

This document is provided to parents the first time their child is referred for a special education assessment, when they ask for a copy, each time they are given an assessment plan to evaluate their child, upon receipt of their first state or due process complaint in a school year, and when the decision is made to make a removal that constitutes a change of placement.

As a result, parents who wish to review these records and reports before an Individualized Education Program meeting can already do so.

AB 2785 (O'Donnell) Chapter 579, Statutes of 2016 requires the CDE to develop a manual providing guidance to LEAs on identifying and supporting English learners with disabilities.

AB 2091 (Lopez) of the 2015-16 Session would have required LEAs to provide parents with a translated copy of an IEP and other specified documents within 60 days, upon request, and required that the IEP and related documents be translated by a qualified translator. AB 2091 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Humane Immigrant Rights (co-sponsor)
Disability Rights California (co-sponsor)
Alliance for Children's Rights
California Association for Bilingual Education
California Federation of Teachers
California Immigrant Policy Center
Disability Rights Education and Defense Fund
Families in Schools
National Association of Social Workers – California Chapter
Public Advocates
Western Center on Law and Poverty

Opposition

None on file

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