
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: SB 217 **Hearing Date:** April 10, 2019
Author: Portantino & Roth
Version: April 1, 2019
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: Special education: individuals with exceptional needs.

SUMMARY

This bill creates the Early Intervention Grant Program to increase inclusive access to early education programs for children with exceptional needs and expands eligibility for transitional kindergarten to include children with exceptional needs turning five years old at any time during the school year.

BACKGROUND

Existing law:

- 1) Establishes a “census-based” funding system for the allocation of state special education funds, providing most funding supporting special education programs on the basis of the average daily attendance (ADA), multiplied by a funding rate unique to each Special Education Local Plan Areas.
- 2) Requires local educational agencies to provide specially defined instruction, and related services, at no cost to parents, to meet the unique needs of children with exceptional needs. These services are in addition to what a non-special education student receives and are required for children with disabilities from age 3 to 22, or until they graduate from high school.
- 3) Defines “transitional kindergarten” as the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.
- 4) Specifies that, as a condition of a school district or charter school receiving a state apportionment for transitional kindergarten students, a child shall be admitted to transitional kindergarten if their fifth birthday is between September 2 and December 2.
- 5) Allows a school district or charter school to admit a child to transitional kindergarten if their fifth birthday will be after December 2, as specified. Such children do not generate ADA for state funding purposes until they turn five years old.

ANALYSIS

This bill:

- 1) Expands eligibility for transitional kindergarten, beginning in the 2019-20 school year, by specifying that a child who will have their fifth birthday after December 2 and during the same school year and who is an individual with exceptional needs shall be admitted to transitional kindergarten, with the approval of the parent or guardian, subject to the following conditions:
 - a) The governing board of the school district or charter school determines that the admittance is in the best interests of the child to the extent permitted under a child's individualized education program (IEP).
 - b) The parent or guardian is given information regarding the advantages and disadvantages and any other explanatory information about the effect of this early admittance.
- 2) Establishes the Special Education Early Intervention Grant Program for the purpose of increasing inclusive access to early education programs and supporting young children with special needs.
- 3) Requires the Superintendent of Public Instruction (SPI), subject to an appropriation in the annual Budget Act, to allocate \$4,000 per child within a school district of residence meeting the following criteria:
 - a) Is three or four years old.
 - b) Meets the definition of an individual with exceptional needs.
 - c) Is receiving a majority of special education and related services in the regular education program, except that a child enrolled in transitional kindergarten must meet the eligibility criteria for transitional kindergarten outlined above.
- 4) Prohibits any school district from admitting a child meeting the definition of an individual with exceptional needs into a regular education program if that admittance would violate the child's IEP, as required by Section 1414(d) of Title 20 of the United States Code.
- 5) Specifies that grant funding apportioned to school districts must be used solely to provide services for individuals with exceptional needs pursuant to an IEP.
- 6) Requires, as a condition of receiving funds, a school district to coordinate with its special education local plan area to provide data to the SPI on the number of children with an IEP in each type of care setting, the percentage of children who received a majority of special education and related services in the regular education program, the expenditure of grant funds, and other outcome-related measures as determined by the SPI.
- 7) Requires the SPI to report the aforementioned data to the appropriate fiscal and policy committees of the Legislature, the Department of Finance, the state board, and the Legislative Analyst's Office by March 1 of each year.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "...approximately 50,000 children age 3 and 4 have been identified as having a disability. State Preschool and Head Start serve approximately 15,000 of these children. Of the 15,000, state preschool's serve less than 3,000 of these students. California does not do enough to support students with disabilities, which detrimentally affects this already marginalized group."

"Current law requires Special Education Local Plan Areas (SELPA's) to serve children with disabilities from age 3 or older. The AB 602 formula for Special Education funding provides SELPA's with funding based on a census model and uses the count of K-12 attendance including Transitional Kindergarten (TK). Children not included in TK are not included in the attendance count for purposes of generating funding."

"Research supports the importance of quality early education programs for children with disabilities both for the potential to improve outcomes for children at earlier ages and to result in financial savings to school districts over the long-term."

- 2) ***Special education funding history.*** In 1975, California developed its Master Plan for Special Education, which expanded the types of services schools were required to provide students with disabilities. In that same year, Congress passed the Individuals with Disabilities Education Act. The Master Plan also required all districts to join SELPA's responsible for coordinating special education among its member districts. Lastly, the Master Plan introduced a simplified funding system (J-50 system) based on the following three types of special education services: (1) special day classes attended only by students with disabilities, (2) resource specialists providing pull-out instructional support, and (3) designated instruction and services supplementing general instruction.

Under the J-50 funding system, schools received one rate for each special day class they operated, another rate for each resource specialist, and another for each employee providing designated instruction and services. Each SELPA's rates were set based on a statewide survey of special education costs in 1979-80, which no longer reflected the full range of services offered by the mid-1990s. In response, the state adopted a new special education system based on overall attendance (AB 602 system) which is still used today.

- 3) ***Current special education funding system.*** Since the enactment of AB 602 in 1998, the state has funded SELPA's based on their overall attendance of students in kindergarten through grade 12, regardless of how many of these students are eligible for special education services, the specific disabilities of those students, or what types of services those students receive. This census-based approach was intended to eliminate the complexity and perverse incentives of the previous system.

When the AB 602 system was first introduced, the state set each SELPA's per-student funding rate equal to its total funding in the last year under the previous

system divided by its total student population in that year. Because funding rates varied notably under the previous system, the new rates established under AB 602 also varied notably.

Although funding rates remain unequal, AB 602 has largely achieved the state's original goals of simplifying funding and encouraging instructional innovation. Regarding simplicity, schools no longer complete complicated paperwork based on intricate formulas before they receive state funding. Regarding innovation, the proportion of students with severe disabilities being served in mainstream settings has doubled since the late 1990s (from 15 to 30 percent).

4) ***Inclusive educational settings for preschool-age children with disabilities.***

Research confirms that most 3- to 5-year-olds with disabilities learn best when they attend preschools alongside their peers without disabilities to the greatest extent possible. These inclusive settings provide language and behavioral models that assist in children's development and help all children learn to be productively engaged with diverse peers. However, only one in five preschool-aged children with identified disabilities is enrolled in such settings as general education preschools are not available in every part of the state. The result is that, in many cases, students with disabilities are only offered more restrictive, isolated, and costly program settings. By not being educated with their nondisabled peers, these children often fail to attain the skills they need to succeed in school, and the schools incur a greater expense because of the additional services these students will require later.

State and federal laws require local educational agencies (LEAs) to provide services for three- and four-year-olds with exceptional needs. While some federal and local funds are available to assist with the costs for providing special education services for preschool-age children, no state funding is specifically provided through AB 602 for this purpose. It is estimated that LEAs spent approximately \$500 million in 2014-15 for special education preschool services.

This bill would establish an early intervention grant program, providing \$4,000 per preschool-age child and requiring school districts, as a condition of receiving funding, to provide inclusive and flexible preschool programs.

5) ***Transitional kindergarten.*** Transitional kindergarten is the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate. Transitional kindergarten currently serves "older" four-year-olds and "young" five-year-olds who have their fifth birthday after the cut-off date for kindergarten (between September 2 and December 2). Eligibility for transitional kindergarten is limited to this cohort of students because they would have been eligible for kindergarten under the previous entry-age.

Most local educational agencies provide a four-hour or longer Transitional Kindergarten program. A report submitted by the California Department of Education, "*Kindergarten in California: Implementation Evaluation of Transitional Kindergarten and Kindergarten Public School Programs in California*" reported that approximately 70 percent of children eligible for transitional kindergarten attended a program in the 2015-16 school year. Of these attendees, 57 percent

were from socioeconomically-disadvantaged families and 36 percent were learning English. Unlike preschool or other early education programs, transitional kindergarten teachers must meet the same requirements as kindergarten teachers, including being fully credentialed.

This bill would expand eligibility for transitional kindergarten to all four year olds identified for special education services, expanding the array of preschool programs available to these children and increasing average daily attendance (ADA) for districts. This increase in ADA would generate additional funding for districts through all of the attendance-based state funding programs, including the Local Control Funding Formula (LCFF) and the special education program (AB 602) discussed above.

- 6) ***Governor's special education concentration grant proposal.*** The 2019-20 Governor's Budget includes a proposal to create special education concentration grants for local educational agencies (LEAs) with high percentages of students that are both disabled and low-income, in foster care, or learning English. Eligible LEAs can use these grants to fund services not currently included in an individualized education program.

This bill differs from the Governor's proposal by providing funding to school districts based on the number of preschool-age children with disabilities they serve, with the goal of intensifying early interventions so fewer special education services will be needed later. The Governor's proposal, on the other hand, would target funding to those districts already receiving additional funding under the LCFF (those serving low-income, foster, and English learning students) and those that identify a higher than average proportion of students with disabilities.

Would the Governor's proposal create a disincentive for LEAs to provide early interventions aimed at reducing special education services long-term given that a reduction in special education students would result in a reduction in funding? Would the Governor's lack of restricting the use of grant funds to special education services only result in districts supplanting school readiness programs that they were already planning to offer? Lastly, is the correlation between low-income, foster, and English-learning students and special education identification strong enough to warrant these factors being tied together in a funding formula?

SUPPORT

AVID Center
 California Association of Private Special Education Schools
 California Association of School Psychologists
 California Association of Suburban School Districts
 California School Employees Association
 California State PTA
 Central Valley Education Coalition
 Disability Rights California
 Fresno County Office of Education
 Riverside County Superintendent of Schools
 Pasadena Unified School District

Placer County Office of Education
San Bernardino County District Advocates for Better Schools
Simi Valley Unified School District
Small School Districts Association

OPPOSITION

None received

-- END --