
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: SB 695 **Hearing Date:** September 11, 2019
Author: Portantino
Version: June 10, 2019
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: Special education: individualized education programs: translation services.

NOTE: This bill was amended in the Assembly to replace its contents and this is the first time the bill is being heard by this Committee in its current form.

SUMMARY

This bill requires a local educational agency (LEA), upon a parent's request, to translate the student's individualized education program (IEP) and other related documents in the native language of the parent within 30 calendar days of the IEP team meeting.

BACKGROUND

Existing law:

- 1) Requires LEAs to take any action necessary to ensure that, in an IEP team meeting, the parent or guardian understands the proceeding, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English. (Education Code § 56341.5)
- 2) Requires proposed special education assessment plans to 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. (EC § 56321)
- 3) Requires LEAs to give the parent or guardian a copy of the IEP, at no cost to the parent or guardian. (EC § 56341.5)
- 4) Requires, through 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. (California Code of Regulations, Title 5, § 3040)
- 5) Provides that it is a due process right for parents to receive written notice of his or her rights in language easily understood by the general public and in the native language of the parent, or other mode of communication used by the parent, unless to do so is clearly not feasible. (EC § 56506)
- 6) Defines "consent" in special education proceedings to include 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. (EC § 56021.1)

- 7) Requires schools and school districts, if 15 percent or more of the students enrolled in a public school speak a single primary language other than English, to send all notices, reports, statements, or records to the parent or guardian in the primary language, in addition to English. Existing law authorizes the response from the parent or guardian to be in English or their primary language. (EC § 48985)
- 8) Provides that no person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. (Government Code §11135)
- 9) Defines a “recipient,” for purposes of non-discrimination in state-supported programs and activities, as any contractor, *local agency*, or person who regularly employs five or more persons and who receives state support in an amount in excess of \$10,000 in the aggregate per state fiscal year or in an amount in excess of \$1,000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the state support. (California Code of Regulations, Title 2, § 11150)
- 10) Provides that it is a discriminatory practice for a recipient to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries, except where the state agency determines that such a requirement would place an undue hardship on the recipient. (2 CCR § 11162)
- 11) Defines “alternative communication services” as the method used or available for purposes of communicating with a person unable to read or speak or write in the English language, including but not limited to the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English. (2 CCR § 11161)

ANALYSIS

This bill:

- 1) Requires LEAs, upon the parent’s request, to translate the following documents in the native language of the parent, or in another mode of communication used by the parent:
 - a) A copy of the student’s completed IEP and any revisions to the 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.

- 2) Requires the documents described in 1) above to be translated within 30 calendar days of the IEP team meeting, or within 30 calendar days of a later request by the parent, for a parent whose native language is one of the eight most commonly spoken languages, excluding English, in a LEA, as determined by the California Department of Education (CDE) and reported through DataQuest or any successor system.
- 3) Provides that, if the list of the eight most commonly spoken languages in an LEA includes an “other” category of multiple non-English languages, that category is not be included in the top eight most commonly spoken languages.
- 4) Requires the documents described in 1) above to be translated by a qualified translator.
- 5) Provides that nothing is to 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.
- 6) Modifies the existing requirement for LEAs to ensure that parents understand proceedings at a meeting to specify that:
 - a) The LEA is to ensure that parents understand the proceeding during the planning process for the IEP, including during the IEP team meeting.
 - b) The action required is to include, as applicable:
 - i) Communicating in the parent’s native language or in another mode of communication used by the parent.
 - ii) Providing translation services as required by this bill and providing alternative communication services as required by existing law.
- 7) Requires the CDE to revise its notice of procedural safeguards, in English and in the primary languages for which the CDE has developed translated versions, to inform parents of their right to request the translation of documents.
- 8) Provides that this bill is not intended to affect any state or federal law requirement regarding the translation of education-related documents, including but not limited to the right to alternative communication services pursuant to existing requirements in the Government Code and implementing regulations.
- 9) Defines “qualified translator” as 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.
- 10) Expands the definition of “parent” to include a conservator of a child and a surrogate parent, 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.

STAFF COMMENTS

- 1) ***Expansion of translated documents and creation of new timeline.*** This bill requires LEAs to translate a student's IEP and related documents in the parent's native language within a 30 day timeline. Existing law and regulations requires LEAs to:
 - a) Take any action necessary to ensure that parents understand the proceedings of an IEP team meeting, including providing an interpreter.
 - b) Provide proposed special education assessment plans 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.
 - c) Provide to a parent or guardian a copy of a student's IEP in his or her primary language at the parent's request.
 - d) Send all notices, reports, statements, or records to the parent or guardian in the primary language, in addition to English, if 15 percent or more of the students enrolled in a public school speak a single primary language other than English (not specific to documents related to special education).

This bill codifies existing regulations that require LEAs to give parents a copy of a student's IEP in the parent's primary language at his or her request, requires translated copies of any evaluation, assessment or progress data used in relation to an IEP, and imposes a timeline of within 30 days of the IEP team meeting. This bill limits the requirements of this bill to apply only for the top eight languages, other than English, in each school district as determined by the CDE.

- 2) ***Clearinghouse for Multilingual Documents.*** The CDE maintains a Clearinghouse for Multilingual Documents, an online resource that helps LEAs find pre-existing, locally-created translations of parental notification documents (related to the requirement to provide notices in the primary language if at least 15 percent of the school's students speak a language other than English; not specifically related to special education). Access to these documents is limited to registered users. The Clearinghouse provides free access to numerous translated documents that other LEAs are willing to make available. LEAs may find translations, review them, and revise them to suit local needs.

According to the CDE, the database of multilingual documents contains some documents that would inform IEP development, but that 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.

- 3) ***Need for qualified translators.*** This bill requires translators to be qualified, defined as 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.

In a joint letter from the United States Department of Education and the United States 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 LEP 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.”

- 4) ***Fiscal Impact.*** According to the Assembly Appropriations Committee, this bill could create:
 - a) Ongoing Proposition 98 General Fund cost pressures to LEAs, potentially in the low millions of dollars, to translate special education documents. Costs would vary depending on the availability and cost of a qualified translator, the length of the IEP and the frequency of requests. Assuming a short IEP of 10 pages at a cost of \$30 to \$80 per page to translate, costs could range between \$6 million and \$16 million statewide if 10 percent of the special education and English-learner population requests a translation. If the Commission on State Mandates determines the bill’s requirements to be a reimbursable state mandate, the state would need to reimburse these costs to LEAs or provide funding through the K-12 Mandate Block Grant.
 - b) Ongoing General Fund costs to CDE, potentially in the low hundreds of thousands of dollars, to inform parents of their right to request translation. The CDE indicates it also would be necessary to monitor LEA compliance, process complaints and implement corrective actions for noncompliance.

- 5) **Arguments in support.** According to Disability Rights California, the sponsor of this bill, “the IEP, through the identification of individual goals, objectives and services, is the cornerstone of ensuring that students with disabilities have access to a free and appropriate education. Because educational agencies have an existing state law obligation to provide translation, the required timelines in the bill are a reasonable way for districts to meet this existing obligation. SB 354 does much to level the playing field by ensuring that parents whose native language is not English have timely access to a translation of their child’s IEP and key documents to allow for meaningful involvement in their child’s education.”
- 6) **Prior legislation.**

SB 354 (Portantino) of the 2017-18 Session was substantially similar to this bill. This bill was vetoed by the Governor, who stated:

“I cannot support this bill. Current law requires that non-English speaking parents understand their child's IEP, and in fact gives parents the right to have an interpreter present at their child's IEP meetings. To the extent that this is not sufficient, I think the remedy is best handled at the local school district.”

SUPPORT

Disability Rights California (sponsor)
 Alliance for Children’s Rights
 California Council of the Blind
 California Council of Community Behavioral Health Agencies
 California State PTA
 California Teachers Association
 City of Burbank
 Coalition for Humane Immigrant Rights
 Coalition of California Welfare Rights Organizations
 Disability Voices United
 Educate. Advocate.
 Learning Rights Law Center
 National Association of Social Workers
 Public Advocates
 Public Counsel

OPPOSITION

None received

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