
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 884
Author: Beall
Version: March 17, 2016
Urgency: No
Consultant: Lynn Lorber
Hearing Date: April 6, 2016
Fiscal: Yes

Subject: Special education: procedural safeguards and records

SUMMARY

This bill requires local educational agencies and special education local plan areas to collect and report specific information relative to mental health services, requires the California Department of Education to monitor and compare specific information, and expands the situations in which parents must be provided with notice of procedural safeguards and prior written notification of proposed activities.

BACKGROUND

Existing federal and state law provides that every individual with exceptional needs who is eligible to receive special education instruction and related services shall receive that instruction and those services through a free appropriate public education in the least restrictive environment. (United States Code, Title 20, § 1412; Code of Federal Regulations, Title 34, § 300.101 and § 300.114; Education Code § 56040 and § 56040.1)

Existing 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 of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes early identification and assessment of disabling conditions in children. (United States Code, Title 20 § 1401(26); Code of Federal Regulations, Title 34 § 300.34)

Individualized education program (IEP)

Existing federal and state law provides that the IEP is a written statement for each individual with exceptional needs that is developed, reviewed, and revised by the IEP team, as specified. Each IEP must include:

- a) A statement of the individual's present levels of academic achievement and functional performance.
- b) A statement of measurable annual goals, including academic and functional goals.
- c) A description of the manner in which the progress of the student toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals.
- d) A statement of the special education and related services and supplementary aids and services to be provided to the student, and a statement of the program modifications or supports for school personnel that will be provided.
- e) An explanation of the extent to which the student will not participate with non-disabled students in the regular class and activities.
- f) A statement of individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and districtwide assessments.
- g) The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.
- h) Beginning with the first individualized education program (IEP) to be in effect when the student is 16 years old, appropriate measurable postsecondary goals and transition services. (United States Code, Title 20 § 1414(d); EC § 56345)

Outcomes for students with exceptional needs

- 1) Existing federal law requires each state to:
 - a) Monitor each local educational agency (LEA), using quantifiable indicators, and qualitative indicators as needed, in each of the following priority areas:
 - b) Provision of a free appropriate public education (FAPE) in the least restrictive environment.
 - i) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services.
 - ii) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
 - c) As part of the State Performance Plan, to establish measurable and rigorous targets for the indicators for each priority area described above.

- d) Report annually to the public on the performance of each LEA on the targets in the state's performance plan. (United States Code, Title 20 § 1416; 34 Code of Federal Regulations § 300.602)
 - e) Provide assurances to the United States Secretary for Education that it has in effect policies and procedures to ensure that, among other things, the state has established goals for the performance of students with disabilities that are the same as the State's definition of adequate yearly progress, and address graduation rates and dropout rates. (United States Code, Title 20 § 1412)
- 2) Existing state law requires:
- a) 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.
 - b) 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 described in #1 above. (EC § 56600.6)

Reporting by LEAs

Existing state law requires each special education local plan area (SELPA) to submit to the SPI at least annually information in order for the SPI to carry out the evaluation responsibilities described in #2 above. (EC § 56601)

Notification

- 1) Existing federal and state law requires parents to be given a copy of their rights and procedural safeguards only one time a school year, except that a copy also must be given to the parents:
 - a) Upon initial referral or parental request for assessment.
 - b) Upon receipt of the first state complaint in a school year.
 - c) Upon receipt of the first due process hearing request in a school year.
 - d) When a decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct.
 - e) Upon request by a parent. (EC § 56301; United States Code, Title 20 § 1415(d)(1)(A); Code of Federal Regulations, Title 34, § 300.50(a))
- 2) Existing state law also requires an LEA, when convening an individualized education program team meeting, to inform the parent and student of the federal and state procedural safeguards that were provided in the notice of parent rights. (EC § 56500.1)

Prior written notice

Existing federal and state law:

- 1) Requires LEAs to provide prior written notice to parents and in a reasonable time before the local educational agency (LEA) proposes to initiate a change, or refuses to initiate or change the identification, assessment, or educational placement of the student, or the provisions of free appropriate public education (FAPE) to the student.
- 2) Requires the notice to include all of the following:
 - a) A description of the action proposed or refused by the LEA.
 - b) An explanation of why the LEA proposes or refuses to take the action.
 - c) A description of each assessment procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action.
 - d) A statement that the parents have protection under the procedural safeguards and the means by which a copy of a description of the procedural safeguards can be obtained.
 - e) Sources for parents to contact to obtain assistance in understanding laws.
 - f) A description of other options that the individualized education program (IEP) team considered and the reasons why those options were rejected.
 - g) A description of other factors that are relevant to the proposal or refusal of the LEA. (United States Code, Title 20 § 1415; Code of Federal Regulations, Title 34, § 300.503; EC § 56500.4)

ANALYSIS

This bill requires local educational agencies and special education local plan areas to collect and report specific information relative to mental health services, requires the California Department of Education to monitor and compare specific information, and expands the situations in which parents must be provided with notice of procedural safeguards and prior written notification of proposed activities. Specifically, this bill:

Contents of IEP

- 1) Expands the required components of a student's IEP by requiring each IEP to document the type of provider delivering each related service listed in the IEP.

Frequency and duration of related services

- 2) Requires the local educational agency (LEA) that is responsible for implementation of a student's individualized education program (IEP) to annually report to the California Department of Education (CDE) the *actual* frequency and duration of each related service provided to the student pursuant to the student's IEP.

Student outcomes

- 3) Requires each LEA, for each student receiving IEP related services, to annually provide the data needed to document the student's outcomes on all of the following outcome indicators that are applicable to the student:
 - a) Graduation rate.
 - b) Dropout rate.
 - c) Statewide assessment results.
 - d) Suspension and expulsion rates.
 - e) Participation in general education classes.
 - f) Post school outcomes.

CDE monitoring

- 4) Requires the CDE to monitor the number and frequency of related services reported annually by LEAs and compare year-to-year changes for each LEA. This bill requires the CDE to investigate the cause for any significant decline in service provision.
- 5) Requires the CDE, as part of its monitoring activities, to review each LEA's procedures and documents used to meet the prior written notice requirement, and require corrections to those procedures and documents if the CDE finds that the procedures or documents do not fulfill statutory requirements.

Accounting

- 6) Requires a school district or special education local plan area (SELPA) 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. This bill requires the CDE to post the information on its website.
- 7) Requires the CDE align accounting code systems to allow the CDE 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.

Prior written notice

- 8) Expands the requirement for local educational agencies (LEAs) to provide to parents “prior written notice” before the LEA initiates or changes the identification, assessment, or educational placement of a student by also requiring prior written notice regarding any changes to the planned type or level of individualized education program (IEP) services.
- 9) Modifies the information required to be included in a prior written notice by requiring a copy of the procedural safeguards to be provided to a parent rather than providing the means by which a copy can be obtained by the parent.
- 10) Expands the information required to be included in a prior written notice by adding the contact information for all family empowerment centers and parent training and information centers in the special education local plan area (SELPA) of which the LEA is a member.
- 11) Requires the LEA that is responsible for implementation of a student’s IEP to ensure that a copy of each prior written notice given to the student’s parents is included in the student’s records.

Notification to parents

- 12) Expands the situations in which LEAs are required to provide parents with a copy of their rights and procedural safeguards to include anytime that a parent receives a “prior written notice” from an LEA, which occurs upon the initial referral for assessment and before the LEA proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of a student.
- 13) Requires each SELPA to establish additional written policies and procedures that require each LEA to provide informational materials, including but not limited to, student and parent rights and information regarding family empowerment centers and parent training and information centers in their community.
- 14) Requires the information to be provided in the three most common languages used by parents served by the LEA and the SELPA, and be made available for LEAs to provide to their parents in the annual parent notification information.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “In 2011, AB 114 was signed into law, which transferred the responsibility of providing mental health services from county mental health departments to LEAs. As a result, LEAs are now responsible for ensuring that students receive mental health services. Since the transition five years ago, it has been difficult to determine if the shift in services has actually benefited students due to three glaring problems revealed by the California State Audit report release in January of this year:

- a) Insufficient record-keeping by the sampled local educational agencies (LEAs) that could shed information on student performance outcomes, making it impossible to assess the effectiveness or lack thereof regarding the mental health services that were provided.
- b) Lack of documentation on how funds were spent for mental health services, including the total amount spent and on what services.
- c) Significant changes made in a students' individualized education program (IEP) left unexplained, specifically in some cases where the school district made unilateral changes without notifying the parent.

SB 884 is a response to the audit report and seeks to address transparency and accountability issues within LEAs delivering mental health services to K-12 students.”

- 2) **Recent State audit.** The Bureau of State Audits released a report in January 2016, *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*. The audit noted key points: 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 continues to be, the local educational agency; the majority of changes to services were unrelated to AB 114.

However, the audit also noted that: local educational agencies removed mental health services from student IEPs in the two years after AB 114 took effect, yet some IEPs did not include the rationale for such changes; LEAs and the California Department of Education (CDE) do not know whether student outcomes have been affected by AB 114; LEAs could not determine their total costs to provide mental health services; some have not spent all the funding they received that is dedicated for mental health services.

This audit made several recommendations; those that are related to provisions of this bill include:

- a) Require LEAs to use six performance indicators to perform analysis annually on the subset of students receiving mental health services.
- b) 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.
- c) Require CDE to report annually regarding outcomes for students receiving mental health services in six key areas.

- d) Require California Department of Education (CDE) to collect information about the frequency of the provision of each service contained in all students' individualized education programs (IEPs). Require CDE to annually review the frequency of mental health services and follow up with special education local plan areas (SELPA's) when it observes a significant reduction in the frequency of services.
- e) Require CDE to develop, and require all local educational agencies (LEAs) to follow, an accounting methodology to track and report expenditures related to special education mental health services.
[\[http://www.bsa.ca.gov/pdfs/reports/2015-112.pdf\]](http://www.bsa.ca.gov/pdfs/reports/2015-112.pdf)

This bill attempts to implement some of the recommendations included in this audit, but does not include all the recommendations in the audit. Further, this bill also includes provisions that were not recommended by the audit.

- 3) ***How schools provide mental health services.*** Most of the mental health services provided by schools are within the context of meeting the requirements specified in a student's IEP. Federal and state law requires the instruction and related services detailed in an IEP to be provided, irrespective of the internal capacity of the school to provide the instruction and services. Schools employ qualified staff directly as well as contract with county mental health agencies or private providers.

Schools currently have the discretion to provide counseling and mental health services, or refer to county and community organizations, 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.

The CDE has issued guidance to LEAs on the transition of special education and related services formerly provided by county mental health agencies:
<http://www.cde.ca.gov/sp/se/ac/ab114twg.asp>.

- 4) ***How do schools pay for mental health services?*** Most of the mental health services provided by schools are within the context of meeting the requirements specified in a student's IEP, and therefore schools use restricted mental health funds or special education funds, or a combination of those funds, and many also use unrestricted general funds.

Schools may be reimbursed for some costs through Medi-Cal (or even private insurance) for providing some mental health services to eligible students:

- a) The Medi-Cal Local Billing Option allows schools to access federal funding for health care services (mostly used for services provided to students with IEPs).
- b) County mental health agencies are responsible for administering the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit for

children and youth from birth to age 21 who meet income eligibility and the medical necessity criteria. Schools are not currently authorized to seek reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefits; schools may be reimbursed with EPSDT funds but only upon agreement with the county mental health agency.

- c) Covering the cost of individualized education program (IEP)-based services via private insurance is only an option if the parent consents, and the school must provide prior notice to the parent about potential implications of accessing private insurance, such as how it might affect lifetime caps.

5) ***Consistent with audit recommendations.***

Student outcomes. The audit found that local educational agencies (LEAs) are unable to determine whether significant changes to services negatively affected their students. The audit recommended that LEAs use six performance indicators to perform analysis annually on the subset of the student receiving mental health services. Existing federal law requires States to establish measurable and rigorous targets, and report annually to the public on the performance of each LEA on the targets in the state's performance plan. The Special Education Annual Performance Report Measures are a series of reports by the California Department of Education to disseminate educational data. LEAs currently report to the California Department of Education (CDE) data specific to 17 indicators, but do not disaggregate data for the subset of students with IEPs who receive mental health services. This bill requires LEAs to annually provide data to document outcomes on 6 of the 17 indicators, as recommended by the recent audit. Will this data provide any clear evidence that mental health services are successfully meeting the needs of students?

Notwithstanding the question of the usefulness of this data, **staff recommends an amendment** to clarify that LEAs are to report this data to the CDE.

Frequency and duration. This bill requires LEAs to annually report to the CDE, the *actual* frequency and duration of *each* related service provided pursuant to a student's IEP. This bill requires the CDE to monitor the number and frequency of related services reported by LEAs, and compare year-to-year changes for each LEA, and requires the CDE to investigate if year-to-year services decline significantly. LEAs are not currently required to document the actual services that were provided, in contrast to what is delineated in the IEP. This bill appears to require LEAs to keep service logs to differentiate what the IEP calls for versus what is actually provided. Further, this bill requires LEAs to report on the provision of *each* related service, not just mental health services.

Will data relative to actual frequency and duration provide valuable information? Can the CDE extrapolate valid conclusions using this data? Will this data allow for consideration of other factors, such as placement into foster care, in determining whether mental health services are successfully meeting the needs of students?

Accounting. The recent State audit found that while local educational agencies (LEAs) are required to report how much of their mental health funding they spent, LEAs are not required to track the total costs to provide mental health services. This bill requires a school district or special education local plan area (SELPA) to document and report to the California Department of Education (CDE) all mental health and special education services funding allocations and expenditures, and specify the dollar amount for each service. This bill requires the CDE to align accounting code systems to allow the CDE and LEAs to accurately document the amount of funds expended for the provision of mental health and special education services from each funding source.

Staff recommends an amendment to strike reference to school districts, thereby ensuring that the entity receiving the funds (SELPAs) is the entity that reports allocations and expenditures.

- 6) ***Related to the audit but not consistent with its recommendations.*** The recent State audit found that some LEAs had not established minimum qualifications for their mental health staff to ensure staff were properly qualified when hired. The audit also found that LEAs do not always obtain and retain documentation of a contracted service provider's qualifications. This bill expands the required components of a student's individualized education program (IEP) by requiring the IEP to document the type of provider delivering *each* related service. According to the author's office, the intent is to describe the job classification/licensure of the professional who is to provide the services (i.e. school psychologist, licensed mental health provider). While it is likely that most IEPs currently indicate which type of professional will provide a related service, it is not clearly required by statute. It is unclear if requiring the IEP to specify the type of professional who will provide related services addresses the concern raised in the audit.

Staff notes that this bill requires a student's IEP to document the type of provider delivering *each* related service, not just mental health services.

- 7) ***Provisions not specifically related to the audit.***

Prior written notice. This bill expands the requirement to provide parents with written notice prior to a LEA initiating or changing the identification, assessment, or educational placement by also requiring prior written notice regarding any changes to the planned type or level of IEP services. Any changes to the type or level of services constitute a change of placement, and therefore prior written notice should already be provided.

This bill modifies the information required to be included in a prior written notice by requiring a copy of the procedural safeguards to be provided to a parent rather than providing the means by which a copy can be obtained by the parent. The procedural safeguards must be provided to parents under several scenarios. Is it necessary to also provide a copy of the procedural safeguards when given prior written notice?

Existing law requires prior written notices to include, among other things, sources for parents to contact to obtain assistance in understanding laws. This bill expands the information required to be included in a prior written notice by adding the contact information for all family empowerment centers and parent training and information centers in the special education local plan area (SELPA) of which the local educational agency (LEA) is a member. There are a limited number of these federally funded and mandated centers; it's possible that none exist within the boundaries of a SELPA. Rather than requiring prior written notice to include this information, **staff recommends an amendment** to require prior written notice to include the existing link to the California Department of Education's (CDE's) website that provides contact information for all centers, or upon the request of a parent, a printed copy of the information on CDE's website.

Notice of rights and procedural safeguards. Existing law requires LEAs to provide to parents their rights and procedural safeguards only one time a school year, except that a copy also must be given to the parents upon initial referral or parental request for assessment, upon receipt of the first state complaint in a school year, upon receipt of the first due process hearing request in a school year, when a decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct, or upon request by a parent. Parents must also be informed of the procedural safeguards at each individualized education program (IEP) team meeting. This bill expands the situations in which LEAs must provide to parents a copy of procedural safeguards to include anytime that a parent receives a "prior written notice" from an LEA. Parents may receive numerous prior written notices each year. Is it necessary to provide a copy of procedural safeguards to parents under additional scenarios?

This bill requires each SELPA to establish additional written policies and procedures that require each LEA to provide informational materials, including but not limited to, student and parent rights and information regarding family empowerment centers and parent training and information centers in their community. It is unclear why SELPAs need to establish additional policies and procedures.

This bill requires the information to be provided in the three most common languages used by parents served by the LEA in the SELPA, and be made available for LEAs to provide to their parents in the annual parent notification information. Should SELPAs be responsible for translating this information? Existing law requires, if 15% or more of the enrolled students speak a single primary language other than English, all notices, reports, statements, or records sent to the parent by the school or school district shall, in addition to being written in English, be written in the primary language.

Information specific to procedural safeguards can be found on the CDE's website: <http://www.cde.ca.gov/sp/se/qa/pseng.asp>. Information specific to parental rights can be found on the CDE's website: <http://www.cde.ca.gov/sp/se/qa/pssummary.asp>.

Information specific to parent organizations can be found on the California Department of Education's (CDE's) website:

<http://www.cde.ca.gov/sp/se/qa/caprntorg.asp>.

- 8) **Recommended in the audit but not included in the bill.** The recent State audit includes a recommendation to require local educational agencies (LEAs) to include directly in a student's individualized education program (IEP) the reasons for any changes to student placement or services. Existing law requires LEAs to provide prior written notice to parents in a reasonable time before the LEA proposes to initiate a change, or refuses to initiate or change the identification, assessment, or educational placement of the student, or the provisions of free appropriate public education to the student. The notice must include an explanation of why the LEA proposes or refuses to take the action. A proposed reduction in, or elimination of, services constitutes a change of placement. Therefore, a parent should receive a written explanation including the rationale for a proposed change; however, no such requirement exists for such rationale to be documented in the student's IEP. This bill does not propose to require a student's IEP to document the rationale for changes in placement or services. Should this bill be amended to require such documentation, or document that such rationale was provided via prior written notice pursuant to existing law?
- 9) **Mandates.** This bill creates several unfunded mandates that exceed the federal Individuals with Disabilities Education Act.
- 10) **Related legislation.** SB 1113 (Beall) authorizes LEAs to enter into partnerships, as specified, with county mental health plans for the provision of Early and Periodic Screening, Diagnosis, and Treatment mental health services and to expand the allowable uses of specified mental health funds, and requires the CDE to expand its reporting system for mental health services to include academic performance and other measures. SB 1113 is scheduled to be heard by this Committee on April 6.

AB 1644 (Bonta), the School-Based Early Mental Health Intervention and Prevention Services Support Program, establishes a four-year pilot program to encourage and support local decisions to provide funding for the eligible support services. AB 1644 is pending in the Assembly Education Committee.

- 11) **Prior legislation.** AB 1025 (Thurmond, 2015) required a designated county office of education to establish a three-year pilot program in school districts to encourage inclusive practices that integrate mental health, special education, and school climate interventions following a multi-tiered framework. AB 1025 was held in the Senate Appropriations Committee.

SB 463 (Hancock, 2015) required the California Department of Education (CDE), to the extent that funding is available in the Budget Act of 2015, to designate a county office of education to be the fiduciary agent for the Safe and Supportive Schools Train the Trainer Program. SB 463 is pending in the Assembly Education Committee.

AB 1133 (Achadjian, 2015) required the State Public Health Officer to establish a four-year pilot program to, among other things, provide free regional training and technical assistance in support services that include intervention and prevention services, use of trained staff to meet with students on a short-term weekly basis in a one-on-one setting, the potential for support services to help fulfill state priorities described by the local control funding formula and local goals described by local control and accountability plans, and state resources available to support student mental health and positive learning environments. AB 1133 was held in the Assembly Appropriations Committee.

AB 580 (O'Donnell, 2015) required the California Department of Education (CDE) to develop model referral protocols for voluntary use by schools to address the appropriate and timely referral by school staff of students with mental health concerns. AB 580 vetoed by the Governor, whose veto message read:

California does not currently have specific model referral protocols for addressing student mental health as outlined by this bill. However, the California Department of Education recently received a grant from the federal Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to identify and address critical student and family mental health needs. It's premature to impose an additional and overly prescriptive requirement until the current efforts are completed and we can strategically target resources to best address student mental health.

AB 1018 (Cooper, 2015) required the CDE and the Department of Health Care Services to convene a task force to examine the delivery of mental health services through the Early and Periodic Screening, Diagnosis, and Treatment services. AB 1018 was held in the Senate Appropriations Committee.

SB 596 (Yee, 2014) required the CDE to establish a three-year pilot program to encourage inclusive practices that integrate mental health, special education, and school climate interventions following a multi-tiered framework. SB 596 was held at the Assembly Desk.

AB 174 (Bonta, 2014) required the Department of Public Health to establish a pilot program in Alameda County, to the extent that funding is made available, to provide grants to eligible applicants for activities and services that directly address the mental health and related needs of students impacted by trauma. AB 174 was vetoed by the Governor, whose veto message read:

I support the efforts of the bill but am returning it without my signature, as Alameda County can establish such a program without state intervention and may even be able to use Mental Health Services Act funding to do so. Waiting for the state to act may cause unnecessary delays in delivering valuable mental health services to students. All counties - not just Alameda- should explore all potential funding options,

including Mental Health Services Act funds, to tailor programs that best meet local needs.

SUPPORT

California Alliance of Child and Family Services
Western Center on Law & Poverty

OPPOSITION

None received.

-- END --