



|      |                  |                |              |                 |                  |              |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|
| Home | Bill Information | California Law | Publications | Other Resources | My Subscriptions | My Favorites |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|

**AB-1938 Special education: inclusion and universal design for learning.** (2023-2024)

SHARE THIS:  

Date Published: 09/30/2024 09:00 PM

**Assembly Bill No. 1938**

**CHAPTER 903**

An act to add Section 56040.6 to the Education Code, relating to special education.

[ Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1938, Gallagher. Special education: inclusion and universal design for learning.

Existing law finds and declares that all individuals with exceptional needs have a right to participate in free appropriate public education and special educational instruction and services for these persons are needed in order to ensure the right to an appropriate educational opportunity to meet their unique needs. Existing law provides that it is the intent of the Legislature that education programs are provided under an approved local plan for special education, as provided.

This bill would require, consistent with state and federal law, a school district, county office of education, and charter school, when implementing inclusion and universal design for learning initiatives, to consider specified things with respect to the full language access needs of pupils who are deaf, hard of hearing, or deaf-blind, as provided. The bill would require individualized family service plan teams and individualized education program teams, when determining the least restrictive environment for a deaf, hard of hearing, or deaf-blind pupil 0 to 22 years of age, inclusive, to consider the language needs of the pupil, as provided, and to consider reviewing placements and services available to the pupil. By imposing additional duties on school districts, county offices of education, and charter schools, the bill would impose a state-mandated local program. The bill would require the State Department of Education, on or before July 1, 2025, to communicate these requirements to all school districts, county offices of education, and charter schools, as well as notify nonpublic, nonsectarian schools or agencies certified by the state, the special education local plan areas, the California School for the Deaf, and the California School for the Blind of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 56040.6 is added to the Education Code, to read:

**56040.6.** (a) Consistent with state and federal law, implementing inclusion and universal design for learning initiatives for pupils 0 to 22 years of age, inclusive, a local educational agency shall consider all of the following with respect to the full language access

needs of pupils who are deaf, hard of hearing, or deaf-blind, as described in paragraph (2) of subdivision (a) of Section 56326.5 and subdivision (d) of Section 56345:

(1) The legislative findings and declarations in subdivision (b) of Section 56000.5.

(2) Section 300.114(a)(2)(ii) of Title 34 of the Code of Federal Regulations, which requires each public agency to ensure that special classes, separate schooling, or other removal of pupils with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Section 300.324(a)(2)(iv) of Title 34 of the Code of Federal Regulations, and paragraph (4) of subdivision (b) of Section 56341.1, which requires an individualized family service plan and individualized education program teams in the case of a pupil who is deaf, hard of hearing, or deaf-blind, to consider the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the pupil's language and communication mode.

(4) Section 300.324(a)(2)(iii) of Title 34 of the Code of Federal Regulations, which requires in the case of a pupil who is blind or visually impaired, to provide for instruction in braille and the use of braille unless the individualized education program team determines, after an evaluation of the pupil's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the pupil's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the pupil.

(5) Federal guidance, as set forth in 57 Federal Register 49274 (October 30, 1992), which states that meeting the unique communication and related needs of a pupil who is deaf, hard of hearing, or deaf-blind is a fundamental part of providing a free appropriate public education to the pupil.

(6) Federal guidance, as set forth in 57 Federal Register 49274 (October 30, 1992), which states that the decision as to what placement will provide a free appropriate public education for an individual pupil who is deaf, hard of hearing, or deaf-blind, includes a determination as to the least restrictive environment in which appropriate services can be made available to the pupil, must be made only after a full and complete individualized family service plan or individualized education program has been developed that addresses the full range of the pupil's needs.

(7) Subdivision (c) of Section 56341.1, which requires an individualized education program team to, if the team determines that a pupil needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the pupil to receive a free appropriate public education, include a statement to that effect in the pupil's individualized education program.

(8) The importance of obtaining stakeholder input from deaf, hard of hearing, or deaf-blind individuals and experts from nonprofit organizations serving deaf and hard of hearing individuals.

(9) The importance of actively involving and respecting the input and choices of the parents or guardians of pupils, by including all of the following:

(A) Considering a pupil's language development as specified in in paragraph (2) of subdivision (a) of Section 56326.5 and subdivision (d) of Section 56345.

(B) Considering a pupil's academic progress.

(C) Considering a parent's or guardian's knowledge and understanding of their child's unique needs, including their insights into the child's language and communication preferences.

(D) Facilitating meaningful participation of a parent or guardian in all team meetings and decisionmaking processes, ensuring their choices are documented and considered in the development and review of the individualized family service plan or the individualized education program.

(b) When an individualized family service plan or individualized education program team is determining the least restrictive environment for a deaf, hard of hearing, or deaf-blind pupil 0 to 22 years of age, inclusive, the individualized family service plan and individualized education program team shall do both of the following:

(1) Consider the language needs, as described in paragraph (2) of subdivision (a) of Section 56326.5 and subdivision (d) of Section 56345, of the pupil, including the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the pupil's language and communication mode consistent with, but not limited to, the requirements of Section 56341.1 and the findings and declarations in Section 56000.5.

(2) Consider reviewing placements and services available to the pupil, including those provided by a school district, a county office of education, a regional program, a nonpublic, nonsectarian school or an agency certified by the state, and the California School for the Deaf.

(c) The department shall, on or before July 1, 2025, communicate the requirements of this section to all local educational agencies and charter schools, as well as notify nonpublic, nonsectarian schools or agencies certified by the state, special education local plan areas, the California School for the Deaf, and the California School for the Blind regarding this section.

(d) Nothing in this section shall be construed as modifying or otherwise affecting the right of pupils with disabilities, including pupils who are deaf, hard of hearing, blind, visually impaired, or deaf-blind, to a free and appropriate public education pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the development of an individualized education program, as defined in Section 56032, or the individualized education program team's determination of placement pursuant to Sections 300.320 to 300.328, inclusive, of Title 34 of the Code of Federal Regulations, and Section 56345, aids to ensure effective communication pursuant to Section 35.160 of Title 28 of the Code of Federal Regulations, or the continuum of program options that shall be made available as required by Sections 56000.5, 56360, and 56361.

(e) For purposes of this section, "local educational agency" means a school district, county office of education, or charter school.

**SEC. 2.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.