

California Assembly Bill 1663

Assembly Bill 1663 (Evans) was signed into law by the Governor on October 10, 2007. The bill made various revisions generally conforming state law to federal requirements relating to, among others, pupil identification, assessment and eligibility; individualized education program development including notice, implementation, and review; procedural safeguards including due process hearing procedures and requirements; and pupil information confidentiality.

Listed below are the five key changes to the Education Code pursuant to AB 1663:

1. **Definition of Parent (EC 56028)** – The definition of a “parent” has been broadened to now include any of the following: biological and adoptive parent of a child, a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child, any person who is legally responsible for the child’s welfare, or an appointed surrogate parent.
2. **Least Restrictive Environment Requirements (EC 56040.1)** – Added a new section to the Education Code that sets forth what each public agency must ensure to address least restrictive environment for individuals with exceptional needs.
3. **Hearing Aids and Surgically Implanted Medical Devices (EC 56345)** – Clarified that a local educational agency must ensure that hearing aids and the external components of surgically implanted medical devices are functioning properly. However, a local education agency is not responsible for the maintenance, programming, or replacement of a surgically implanted device or the external components of such a device.
4. **Nonacademic Settings (EC 56345.2)** – Added a new section to the Education Code that sets forth the local educational agency’s responsibilities in providing nonacademic and extracurricular activities to students.
5. **Due Process Hearings (EC 56502 & 56505)** – Clarified that the party receiving a due process hearing request is required to send a response, within 10 days of receiving the request, addressing the issues raised in the complaint. If the due process hearing involves a student transitioning from Part C to a preschool program, the local educational agency is not required to continue providing the Part C services during the due process hearing. In addition, the 45-day timeline for a due process decision begins after the expiration of the 30-day resolution meeting period.

Below is a detailed description of all the changes to the Education Code, including those listed above:

EC 56000 - Legislative Intent

- Added subsection (b) and (c), which state that special education is an integral part of the public education system that should provide education in a manner that promotes maximum interaction between children with disabilities and those without.

- The section now declares that special education provide a full continuum of program options to meet the educational and service needs in the least restrictive environment.
- Minor technical changes were also made.

EC 56026.1 - Regular High School Diploma

- A “regular high school diploma” is now defined as a diploma conferred on a pupil who has met all local and state high school graduation requirements.
- Added subsection (c) that states that a “regular high school diploma” does not include an alternative degree that is not fully aligned with California academic standards, such as a GED.
- Minor technical changes were also made.

EC 56028 - Definition of “Parent” - previous section repealed

- Added new language clarifying the definition of “parent” to now include the biological and adoptive parent of a child, a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child, any person who is legally responsible for the child’s welfare, or a surrogate parent appointed pursuant to Section 7579.5 or 7579.6 of the Government Code and in accordance with 34 C.F.R. 300.519 and 20 U.S.C. 1439(a)(5).
- Added subsections (b)(1) and (2), which state that except for those persons who have been identified as the “parent” by judicial decree or order pursuant to (a)(1)(4), the biological or adoptive parent shall be presumed the parent when more than one party qualifies to act as such, unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.
- Added subsection (d), which states “parent” does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

EC 56028.5 - Definition of “Public Agency”

- Clarified the definition of “public agency” by stating that a charter school will be deemed a public agency only when it is a nonprofit public charter school that is not otherwise included as a local educational agency and is not a school within a local educational agency.

- Minor technical changes were also made.

EC 56031 - Definition of “Special Education”

- Removed most of the language defining “special education” and added reference to 20 U.S.C. 140I (29).
- Added subsection (b), which states that in accordance with 34 C.F.R. 300.39, special education includes speech and language pathology services, or any other designated instruction and service or related service, pursuant to EC 56363, if the service is considered special education rather than a designated instruction and service or related service under state standards, travel training, and vocational training, as long as these services meet the requirements of subdivision (a).
- Added subsection (c), which states that transitional services may be considered special education if provided as specially designed instruction or a related service, if required to assist an individual with exceptional needs to benefit from special education.
- Minor technical changes were also made.

EC 56033.5 - Definition of “Supplementary Aids and Services”

- Added reference to 34 C.F.R. 300.42 and 300.114 - 300.116. Added “extracurricular and nonacademic settings” as applicable locations within the definition of “supplementary aids and services.”
- Minor technical changes were also made.

EC 56040.1- Least Restrictive Environment Requirements - New Section

- Sets forth what each public agency must ensure to address least restrictive environment for individuals with exceptional needs in accordance with 20 U.S.C. 1412(a)(5) and 34 C.F.R. 300.114.

EC 56058 – “Highly Qualified” Requirements for Special Education Teachers

- Added reference to 34 C.F.R. 300.18 and 300.156, which sets forth the “highly qualified” special education teacher requirements.
- Minor technical changes were also made.

EC 56059 – Parent’s Right to File a Complaint Regarding Staff Qualifications

- Added subsection (b), which states that a parent, in accordance with 34 C.F.R. 300.156(e), is not prevented from filing a complaint with the department under Education Code section 56500.2 and 34 C.F.R. 300.151 - 300.153.

EC 56070 – Qualifications for DIS Personnel, Related Services Personnel and Paraprofessionals - New Section

- Sets forth qualifications for designated instruction and services personnel, related services personnel, and paraprofessionals. Requires such professionals to have state-approved or state-recognized certification, licensing, or registration; that no certification or licensure requirements be waived for emergency, temporary or provisional basis; and paraprofessionals and assistants who are appropriately trained and supervised be used to assist in the provision of special education, designated instruction and services, and related services to individuals with exceptional needs. Local educational agencies shall take measurable steps to recruit, hire, train, and retain highly qualified personnel pursuant to this section.

EC 56171 - Child Find for Parentally-Placed Private School Children

- Added reference to 34 C.F.R. 300.131.
- Specified that local educational agencies shall locate, identify and assess all private school children who have disabilities and are in need of special education and related services who are attending private school in the service area of the local educational agencies where the private school is located.
- Minor technical changes were also made.

EC 56173 - Cost of Carrying Out Child Find for Parentally Placed Private School Children

- Clarified that in accordance with 34 C.F.R. 300.131, the cost of carrying out the child find requirements in Education Code section 56171 cannot come from the proportional share of federal grant funds received pursuant to this section and 34 C.F.R. 300.133, since those funds are required to be spent on the provision of services to the pupils with disabilities enrolled by a parent in private elementary and secondary schools.
- Minor technical changes were also made.

EC 56205 - Local Plan Requirements

- Added reference to Education Code sections 56058 and 56070 under subsection (a)(13), which requires each special education local plan to have policies, procedures and programs that are consistent with state laws, regulations, and

policies governing personnel qualifications to ensure that personnel are appropriately and adequately prepared and trained.

- Minor technical changes were also made.

EC 56301- Records Regarding Migratory Children with Disabilities/Copy of Parental Rights and Procedural Safeguards

- Modified subsection (b)(1) to reference only migrant children as those individuals who fall within the “highly mobile individuals with exceptional needs” category.
- Added subsection (b)(2), which states that in accordance with 34 C.F.R. 300.213, the local educational agency shall cooperate in the efforts of the federal Secretary of Education to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among other states, health and educational information regarding those children.
- Modified subsection (d)(2) by adding reference to 34 C.F.R. 300.504(a) and by requiring that parents be given a copy of their rights and procedural safeguards on receipt of the first complaint under Education Code section 56500.2 in a school year, on receipt of the first due process hearing request under Education Code section 56502 in a school year, and when a decision is made to make a removal that constitutes a change of placement of an individual with exceptional needs because of a violation of a code of pupil conduct in accordance with 34 C.F.R. 300.530(h).
- Under subsection (d)(4), the contents of the procedural safeguards notice shall now contain the requirements listed in both 20 U.S.C. 1415(d)(2) and 34 C.F.R. 300.504(c).
- Minor technical changes were also made.

EC 56321 - Parental Consent to Conduct an Initial Assessment

- Modified subsection (c)(1), which states that the local educational agency proposing to conduct an initial assessment to determine if the child qualifies as an individual with exceptional needs must now only have to make reasonable efforts to obtain informed consent from the parent of the child before conducting the assessment.
- Modified subsection (c)(2), which states that if the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the local educational agency may, but is not required to, pursue the initial assessment.

- Added subsection (c)(3), which states that in accordance with 34 C.F.R. 300.300(a)(3)(ii), the local educational agency does not violate its obligation under 34 C.F.R. section 300.111 and section 300.301 to 300.311 if it declines to pursue the assessment.
- Removed the previous subsection (d), which set forth the three circumstances in which informed consent from the parent was not required for an initial assessment.
- Added subsection (g), which states that, in accordance with 34 C.F.R. 300.300(d)(5), to meet the reasonable efforts requirement in subdivision (c), the local educational agency shall document its attempt to obtain parental consent using the procedures in subdivision (h) of Education Code section 56341.5.
- Minor technical changes were also made.

EC 56329 - Eligibility Determination / Independent Educational Assessment

- Modified subsection (a)(2) by adding reference to 34 C.F.R. 300.306(b) and stating that in making a determination of eligibility, the pupil shall not be determined to be an individual with exceptional needs if the determinant factor for the determination is one of the factors set forth in subparagraphs (A) to (C), inclusive, plus subparagraph (D).
- Added subsection (a)(2)(D), which states that if the pupil does not otherwise meet the eligibility criteria under 34 C.F.R. 300.8(a) then they shall not be deemed an individual with exceptional needs.
- Modified subsection (b) by clarifying that a parent or guardian is entitled to only one independent educational assessment at public expense each time the public education agency conducts an assessment with which the parent or guardian disagrees.
- Minor technical changes were also made.

EC 56341 - Observation of Pupils Suspected of Having a Specific Learning Disability / Participation in Transition IEP Meetings / Excusal of IEP Team Members

- Modified subsection (c) by now requiring that at least one team member shall observe the pupil's academic performance and behavior in the areas of difficulty in the pupil's learning environment, including the regular classroom setting. The subsection no longer excludes the regular education teacher as such a team member and the observation has been specified to the student's academic performance and behavior in the areas of difficulty in not only the regular classroom but also the pupil's learning environment.

- Modified subsection (d)(1) by removing the language, “In the case of transition services” at the beginning of the section. The subsection now requires that the local education agency shall invite an individual with exceptional needs to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the individual and the needed transition services for the individual to assist the individual in reaching those goals under Education Code section 56345(a)(8)(A) & (B).
- Removed the previous subsection (3) and added language that now requires the local educational agency, to the extent appropriate, to obtain consent of the parents or an individual with exceptional needs who has reached the age of majority, before inviting a representative of a participating agency that is likely to be responsible for providing or paying for transition services.
- Added reference to subsection (b)(2) to (5), inclusive, in subsection (1) as defining the member of the individualized education program team.
- Added reference to subsection (1) in subsection (g) as defining a member of the individualized education program team.
- Modified subsection (g)(l) to now require that the parent consent to the excusal of an individualized education program member be in writing.
- Added reference to 20 U.S.C. 1431 et seq. in subsection (i).
- Minor technical changes were also made.

EC 56341.5 - Notice of Parent Request to Invite Part C Coordinator to the Initial IEP Meeting / Participation of Transition Services Agency Representative / Alternative Means of IEP Team Meeting Participation

- Modified subsection (c) by requiring the local educational agency to inform parents about their right to request that an invitation be sent to the Part C coordinator or other representatives at the initial IEP team meeting for a child previously served under Part C.
- Modified subsection (f) by deleting the requirement that the IEP team meeting notice identify all other local agency representatives likely to be responsible for providing or paying for transition services. The subsection now requires that the local educational agency shall invite such an agency representative, to the extent appropriate, upon obtaining consent of the parents or the individual with exceptional needs who has reached the age of majority.
- Modified subsection (g) by adding reference to 34 C.F.R. 300.322(c) and now allowing the parent or guardian and the local educational agency to agree to use

alternative means of IEP team meeting participation as long as it is consistent with 34 C.F.R 300.328.

- Modified subsection (h) by clarifying that the documentation requirements for a local educational agency of its attempts to arrange a mutually agreed upon time and place are suggestions, not requirements.

EC 56344 - Timelines for Development of IEPs / Provision of Services After Development of IEP

- Modified subsection (a) by now requiring that an IEP required as a result of an assessment shall be developed within 30 days after the commencement of the subsequent school year when the referral is made 30 days or less prior to the end of the regular school year.
- Added a new subsection (b), which requires that pursuant to 34 C.F.R. 300.323(c)(2), as soon as possible following development of the IEP, special education and related services shall be made available to the individual with exceptional needs in accordance with the individual's IEP.
- Minor technical changes were also made.

EC 56345 - IEP Goals / Timelines for Inclusion of Transition Language in IEP / Hearing Aids and Surgically Implanted Medical Devices

- Revised subsection (a)(2)(A) to clarify that the statement of measurable annual goals should be designed to meet the needs of the individual that result from the disability of the individual to enable the pupil to be involved in and make progress in the general education curriculum.
- Modified subsection (a)(8) by adding that the inclusion of postsecondary goals and transition services on the IEP can occur before the pupil turns 16 if determined appropriate by the IEP team.
- Modified subsection (c) by deleting the requirement that local educational agencies make a good faith effort to assist each individual with exceptional needs to achieve the IEP goals and objectives or benchmarks listed in the IEP.
- Added subsections (d)(5)-(7), which require that each public agency shall ensure that hearing aids worn in school by children with hearing impairments are functioning properly and that external components of surgically implanted medical devices are functioning properly. A public agency is not responsible for the postsurgical maintenance, programming, or replacement of the surgically implanted medical device or an external component of the device.
- Minor technical changes were also made.

EC 56345.1 - Definition of "Transition Services"

- Modified subsection (a) by adding that transition services are focused on improving the academic and functional achievement of the individual with exceptional needs. Clarified that the strengths of the pupil need to be taken into account, in addition to the preferences and interests of the pupil.
- Added a new subsection (b), which clarifies that transition services for individuals with exceptional needs may be special education, if provided as specially designed instruction, or a designated instruction and service, if required to assist a pupil to benefit from special education.

EC 56345.2 - Nonacademic Settings - New Section

- Sets forth the public agency's responsibility, pursuant to 34 C.F.R. 300.107 to provide supplementary aids and services determined appropriate and necessary by the IEP team to provide nonacademic and extracurricular services, and activities in the manner necessary to afford the individual with exceptional needs an equal opportunity for participation in those services and activities.
- Sets forth the type of activities and services included in nonacademic and extracurricular activities.
- Requires that public agencies, pursuant to 34 C.F.R. 300.107 ensure that each individual with exceptional needs participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate to the needs of that individual.

EC 56346 - Parental Consent for Initial Provisions of Special Education and Related Services

- Added language to now require the local educational agency to make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services pursuant to 34 C.F.R. 300.300(b)(2).
- Clarified that the local educational agency may not utilize the due process procedures to provide special education and related services to an individual if the parent either fails to respond or refuses to consent to the initiation of services.
- Clarified that the consent referenced in this section refers to the initial provision of special education and related services.
- Added subsection (g) to now require that if the parents of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial assessment or the reassessment, or the parent fails to respond to a request for such, the local educational agency may not use the due process procedures to override their non-consent pursuant to 34 C.F.R.

300.300(a)(3), (c)(I) and (d)(4)(i). The local educational agency is not required to consider the child as eligible for services under Education Code 56170.

- Minor technical changes were also made.

EC 56363 - Designated Instructional Services and Related Services Regarding Surgically Implanted Medical Devices

- Clarified that “designated instructional services” and “related services” do not include a medical device that is surgically implanted, the optimization of the functioning of a medical device, maintenance of that device or the replacement of that device pursuant to 34 C.F.R. 300.34(b).
- Added language to now require that nothing in this subdivision shall do any of the following: 1) limit the right of an individual with exceptional needs with a surgically implanted device to receive related services or designated instructional services that are determined by the IEP team to be necessary; 2) limit the responsibility of a local educational agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the individual; and 3) prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.
- Minor technical changes were also made.

EC 56380.1 - IEP Changes After an Annual IEP Meeting

- Clarified that changes to the IEP may be made either by the entire team at an IEP team meeting or by amending rather than redrafting the entire IEP.
- Added subsection (c) to now require that if changes are made to the pupil’s IEP after the annual IEP team meeting, the local educational agency shall ensure that the IEP team is informed of those changes pursuant to 34 C.F.R. 00.324(a)(4)(ii).
- Minor technical changes were also made.

EC 56381 - Parental Consent for Reassessment of the Pupil

- Added subsection (f)(3) to now require that if the parent refuses to consent to the reassessment, the local educational agency may, but is not required to, pursue the reassessment by using the due process procedures to override the consent.
- Added subsection (f)(4) to now require that the local educational agency does not violate its child find and assessment obligations if it declines to pursue the reassessment.
- Minor technical changes were also made.

EC 56500.2 - Complaint Requirements

- Added language to now require a written decision regarding a complaint to be issued within the 60-day time limit pursuant to 34 C.F.R. 300.152.
- Added subsection (a)(2) to now require that the party filing the complaint shall forward a copy of the complaint to the local educational agency or public agency serving the child as the same time the party files the complaint with the state department pursuant to 34 C.F.R. 300.153(d).
- Added subsection (c) to set forth the required components for a complaint.
- Added subsection (d) to now require that the Superintendent shall develop a model form, pursuant to 34 C.F.R. 300.509, to assist parents and public agencies in filing a state complaint.
- Minor technical changes were also made.

EC 56500.3 - Mediation and Dispute Resolution

- Added subsection (j)(2), which states that a public agency may establish procedures to offer to parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who either is under a contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center or someone who would explain the benefits and encourage the use of the mediation process to the parents.
- Minor technical changes were also made.

EC 56500.4 - Prior Written Notice

- Added language to require the local educational agency to provide prior written notice within a reasonable time before the public agency proposes to make any changes to the individual's identification, assessment or educational placement. In addition, the local educational agency is now required to provide to the parents a description of any assessment procedures the agency proposes to conduct.
- Added subsection (b), which sets forth the required contents of the prior written notice pursuant to 34 C.F.R. 300.304 and 300.503.

EC 56501.5 - Resolution Meeting

- Clarified that prior to the opportunity for a due process hearing the local educational agency shall convene a resolution meeting with the parents and the

relevant members of the IEP team pursuant to 34 C.F.R. 300.510. The parent and local educational agency shall determine the relevant members of the IEP team to attend the meeting.

- Clarified that the resolution process applies when the parents file for a due process hearing.
- Clarified that the purpose of a resolution meeting is for the parent to discuss the due process hearing issue and the underlying facts so that the local educational agency has the opportunity to resolve the dispute that is the basis for the hearing.
- Added new language to clarify the timelines for the resolution meeting and the due process hearing.
- Added new language that states if the local educational agency is unable to obtain the participation of a parent in the resolution meeting after reasonable efforts have been made and documented, the local educational agency may request that a hearing officer dismiss the due process hearing request at the conclusion of the 30-day period. In addition, if the local educational agency fails to hold the resolution meeting within 15 days of receiving notice of a due process hearing request of a parent or fails to participate in the resolution meeting, the parent may seek intervention of a hearing officer to begin the due process hearing timeline.
- Minor technical changes were also made.

EC 56502 - Due Process Hearing Complaint

- Added new language requiring that if the local educational agency has not sent a prior written notice previously to the parent regarding the subject matter contained in the due process hearing request of the parent, the response from the local educational agency to the parent must include certain provisions as set forth.
- Added new language to clarify that a response by the local educational agency to the parent's request for a due process hearing does not preclude the local educational agency from asserting that the parent's request is insufficient.
- Added new language stating that the party receiving a due process hearing request is required to send to the other party, within 10 days of receiving the notice, a response that specifically addresses the issues raised in the due process request.
- Minor technical changes were also made.

EC 56505 - Due Process Hearing for Transition from Part C to Preschool Program

- Added new language stating that if a due process hearing request involves an application for initial services from a child who is transitioning from Part C to a

special education preschool program, the local educational agency is not required to provide early education services that the child had been receiving during the due process hearing. If the child is found eligible for special education under the preschool program and the parent or guardian consents to the initial provision of special education and related services, the local educational agency shall provide those services that are not in dispute between the parent and the local educational agency.

- Added new language clarifying that the 45-day timeline for a due process hearing decision begins after the expiration of the 30-day period for a resolution meeting.
- Minor technical changes were also made.

EC 56515 - Confidentiality of Pupil Information and Parent Consent

- Added new language to subsection (c) stating that parental consent shall be obtained before personally identifiable information can be disclosed to parties, other than officials of participating agencies, unless the information is contained in the education records and the disclosure is authorized without parental consent pursuant to 34 C.F.R. Part 99. Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement set forth in 34 C.F.R. Part 300. In addition, parental consent shall be obtained before personally identifiable information is released to official of participating agencies providing or paying for transition services. Further, if a child is enrolled in a private school that is not located in the local educational agency of the parent's residence, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located and officials in the local educational agency of the parent's residence.
- Minor technical changes were also made.

EC 56600.6 - State's Monitoring and Enforcement Activities

- Added new language that set forth the requirements for the Superintendent in ensuring that pupil and performance results are monitored at the state and local levels.
- Added new language to clarify which areas must be the primary focus of the state's monitoring system pursuant to 20 U.S.C. 1412(a)(15).
- Minor technical changes were also made.

EC 56841- Permissive Use of Federal Funds

- Added new language stating that a local educational agency may use federal funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEPs.
- Minor technical changes were also made.