Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2640 (Valladares) – As Introduced February 18, 2022

SUBJECT: Pupil health: food allergies: California Food Allergy Resource Guide

SUMMARY: Requires the California Department of Education (CDE) to create the "California Food Allergy Resource Guide" (Guide) for voluntary use by local educational agencies (LEAs) to protect pupils with food allergies within schools and early education centers (ECE). Specifically, **this bill**:

1) Requires the CDE to create the Guide for voluntary use by LEAs to protect pupils with food allergies.

2) Requires the CDE, in creating the Guide, to:

    a) Provide LEAs, caregivers, and pupils with practical information, planning steps, and strategies for reducing allergic reactions to food within schools and ECEs;

    b) Ensure the Guide references the most recent version of the federal Centers for Disease Control and Prevention's (CDC*) Voluntary Guidelines for Managing Food Allergies in Schools and Early Care Education Programs*; and

    c) Include a summary of the specific state and local laws relevant to pupils with food allergies in schools, in addition to the federal laws and regulations included in the guidelines referenced in (b).

3) Requires the content of the Guide to include, but not be limited to, all of the following:

    a) A compilation of state and federal resources available for pupils with food allergies;

    b) Methods and qualifications necessary for pupils to initiate individualized food allergy management and prevention plans;

    c) Potential strategies to minimize the risk of food allergy anaphylaxis in school; and

    d) Methods to obtain ingredient lists for foods served to pupils at school from each of the school's food service providers.

4) Encourages an LEA to follow the Guide created and use it as an equitable resource to ensure the inclusiveness of pupils with food allergies at school.

5) Encourages an LEA to make the Guide available to pupils annually.

6) Defines LEA, for purposes of this section, as a school district, county office of education (COE), and charter school.

EXISTING LAW:

Federal law:

1) Requires the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs and make such guidelines available to LEAs, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only. (Section 112 of the Food and Drug Administration (FDA) Food Safety Modernization Act, 2011.12)

2) Requires school districts to provide a free appropriate public education to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability, which includes reasonable accommodations required for the management of chronic medical conditions. (Section 504 of the Rehabilitation Act of 1973)

3) Requires school food authorities (SFAs) to serve special meals, at no extra charge to children with disabilities and requires SFAs to make substitutions or modifications in the National School Lunch Program and School Breakfast Program for children whose disabilities restrict their diets. (7 CFR sections 15b and 15b.26(d))

State law:

1) Requires the governing board of any school district to give diligent care to the health and physical development of pupils, which may include employing properly certified persons for the work. (Education Code (EC) 49400)

2) Requires school districts, COEs, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained volunteers, and allows those individuals to utilize epinephrine auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction. (EC 49414)

3) Authorizes each public and private school to designate one or more volunteers to receive initial and annual refresher training, based on specified standards, regarding the storage and emergency use of an epinephrine auto-injector from the school nurse or other qualified person designated by an authorizing physician or surgeon. (EC 49414(d).)

4) Requires a qualified health supervisor at a school district, COE, or charter school to obtain from an authorizing physician, a prescription for epinephrine auto-injectors. (EC 49414)

5) Requires the Superintendent of Public Instruction (SPI) to review, every five years, or sooner as deemed necessary, standards of training for the administration of epinephrine auto-injectors by consulting with organizations and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment. (EC 49414)

6) Sets minimum requirements for the training described above requiring certain topics about anaphylaxis and procedures for rendering emergency treatment to be included in the training, and for the training to be consistent with guidelines of the federal CDC. (EC 49414)

7) Requires a school district, COE, or charter school to ensure that each employee who volunteers under this section will be provided defense and indemnification for any and all civil liability; and requires that this information be in writing, provided to the volunteer, and retained in the volunteer's personnel file. (EC 49414)

8) Provides that no person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. (Health and Safety Code (HSC) 1799.102.)

9) Requires that a person in charge of a retail food operation and all food employees have knowledge of, and be properly trained in, food safety as it relates to their assigned duties, including but not limited to, adequate knowledge of major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction. (HSC 113947)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, "AB 2640 will create the California Food Allergy Resource Guide to provide schools, parents, caregivers, and students with access to comprehensive and straightforward information that will make campuses safer for students with food allergies. No student should feel unsafe on campus, and no parent should have to worry about whether their child's school has the information to keep students safe. By investing in this resource guide, the state can ensure that all schools will be better equipped to reduce the likelihood of allergic reactions."

What is a food allergy? According to the CDC, a food allergy is defined as an adverse health effect arising from a specific immune response that occurs on exposure to a given food. The immune response can be severe and life-threatening. Although the immune system normally protects people from germs, in people with food allergies, the immune system mistakenly responds to food as if it were harmful. One way that the immune system causes food allergies is by making a protein antibody called immunoglobulin E (IgE) to the food. The substance in foods that cause this reaction is called the food allergen. When exposed to the food allergen, the IgE antibodies alert cells to release powerful substances, such as histamine, that cause symptoms that can affect the respiratory system, gastrointestinal tract, skin, or cardiovascular system and lead to a life-threatening reaction called anaphylaxis.

The CDC's 2013 *Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs* focuses not on all food allergies but on food allergies associated with IgE because those are the food allergies that are associated with the risk of anaphylaxis. There are other types of food-related conditions and diseases that range from the frequent problem of digesting lactose in milk, resulting in gas, bloating, and diarrhea, to reactions caused by cereal grains (celiac disease) that can result in severe malabsorption and a variety of other serious health problems. These conditions and diseases may be serious but are not immediately life-

threatening and are not addressed in the guidelines. More than 170 foods are known to cause IgE mediated food allergies. In the United States, the following eight foods or food groups account for 90% of serious allergic reactions: milk, eggs, fish, crustacean shellfish, wheat, soy, peanuts, and tree nuts. Federal law requires food labels in the United States to clearly identify the food allergen source of all foods and ingredients that are (or contain any protein derived from) these common allergens.

The U.S. Department of Agriculture's National School Lunch Program website includes links to Food Allergy Resources developed in cooperation with the Institute of Child Nutrition, including best practices fact sheets and posters, which are readily available to schools and families.

Incidence of severe food allergy among children and youth. According to the Asthma and Allergy Foundation of America, approximately 5.6 million children or 7.6% have food allergies. In 2018, 4.8 million children under 18 years had food allergies over the previous 12 months. Milk is the most common allergen for children, followed by egg and peanut. (Gupta, 2018)

According to the CDC, food allergies among children increased by 50% between 1997 and 2011. Today one in 13 children has food allergies, and nearly 40% of these children have already experienced a severe allergic reaction. Many of these reactions happen at school.

An international study of food allergies concluded that the best available evidence indicates that food allergy has increased in many westernized countries. The authors note that, of greatest concern is the apparent escalation in prevalence in older children and teenagers, a group in which the risk of death due to food anaphylaxis is highest. (Tang, 2016)

Anaphylaxis is a potentially lethal allergic reaction. Anaphylaxis can happen within minutes when a person is stung by a bee, ingests food such as shellfish or nuts, or comes in contact with something as simple as latex. Reactions can be severe, or even fatal, without prompt use of epinephrine. According to the Mayo Clinic, anaphylaxis requires an injection of epinephrine and a follow-up trip to an emergency room. If untreated, anaphylaxis can be fatal.

Children sometimes do not exhibit overt and visible symptoms after ingesting an allergen, making early diagnosis difficult. Some children may not be able to communicate their symptoms clearly because of their age or developmental challenges. Complaints such as abdominal pain, itchiness, or other discomforts may be the first signs of an allergic reaction. Signs and symptoms can become evident within a few minutes or up to 1–2 hours after ingestion of the allergen, and rarely, several hours after ingestion. Symptoms of breathing difficulty, voice hoarseness, or faintness associated with change in mood or alertness or rapid progression of symptoms that involve a combination of the skin, gastrointestinal tract, or cardiovascular symptoms signal a more severe allergic reaction (anaphylaxis) and require immediate attention. (CDC, 2013)

An epinephrine auto-injector (commonly called an "epi-pen" because its size and shape is similar to a writing pen) is a disposable medical drug delivery device that delivers a single measured dose of epinephrine, most frequently for the treatment of acute allergic reactions to avoid or treat the onset of anaphylactic shock. Anaphylactic shock can quickly cause death if untreated. Epinephrine auto-injectors can be obtained by prescription only.

California law has been amended to, among other things, permit school districts or COEs to provide emergency epinephrine auto-injectors to trained personnel, and to permit trained personnel to utilize the auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction.

Children with food allergies may be eligible for accommodations in school. Section 504 of the 1973 Rehabilitation Act applies to schools and programs that receive federal money and entitles students to accommodations for a wide range of health conditions, including life-threatening food allergy. USDOE's Office for Civil Rights lists allergy as an example of a hidden disability for the purpose of Section 504, and further explains how a food allergy, for many children, would be considered a disability under 504. Protections under Section 504 have been reinforced by the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008.

The U.S. Department of Agriculture states in its guidance for accommodating students with special dietary concerns that when a physician diagnoses a food allergy as impacting a major bodily function or other major life activity, the child's condition meets the definition of disability. In addition, federal law requires SFAs to serve special meals, at no extra charge to children with disabilities, and requires SFAs to make substitutions or modifications in the National School Lunch Program and School Breakfast Program for children whose disabilities restrict their diets. In California, the CDE notes that SFAs are required to make substitutions to meals for children with a disability that restricts the child's diet on a case-by-case basis and only when supported by a written medical statement from a state licensed healthcare professional.

Section 504 allows the pupil and parent, in collaboration with the school, to develop a 504 plan, which is a written management plan outlining how the school will address the individual needs of the child and allow the child to participate safely and equally alongside their peers during the school day.

Managing food allergies in schools. No treatment exists to prevent reactions to food allergies or anaphylaxis. Strict avoidance of the food allergen is the only way to prevent a reaction. However, avoidance is not always easy or possible, and the CDC notes that staff in schools and ECE programs must be prepared to deal with allergic reactions, including anaphylaxis. Early and quick recognition and treatment of allergic reactions that may lead to anaphylaxis can prevent serious health problems or death.

Food allergy management and prevention plans (FAMPP) are an important tool if used correctly. The CDC encourages each school to have a team leader on the FAMPP; one person whose job it is to ensure all guidelines are being met and all policies implemented appropriately. The FAMPP is designed to ensure a safe and equal learning environment for each student, regardless of allergies.

Each FAMPP should be written in plain language, comply with all federal laws (especially Section 504 of the 1973 Rehabilitation Act), and be adaptable to the changing circumstances of food allergies in schools. Moreover, the CDC has laid out five priorities which administrators should keep in mind when drafting an FAMPP. The priorities are below:

- Ensure the daily management of food allergies for individual children;
- Prepare for food allergy emergencies;

- Provide professional development on food allergies for staff;
- Educate children and family members about food allergies; and
- Create and maintain a healthy and safe educational environment.

Food Allergy Research and Education (FARE) notes that schools should identify methods to reduce risk of exposure to food allergens in the classroom; in the cafeteria; at recess; while pupils are being transported; during field trips; while participating in before and after school programs; as well as during physical education activities.

Managing food allergies in early care and education settings. This bill requires the guide to be created to apply to early education centers, as well as to schools. The federal guide does include a chapter specifically focused on managing food allergies in early care and education settings.

The regulation of childcare centers differs from that of K-12 schools. In California, the CDE is responsible for the oversight of California State Preschool Programs (CSPP) serving 3- and 4-year old children, while the California Department of Social Services (DSS) is responsible for the remaining childcare programs, including those serving children from 0-13 years in family childcare homes, childcare centers, and school-based childcare settings. DSS's Community Care Licensing Division oversees licensing for all childcare providers.

The main source of federal funding for childcare is the federal Child Care Development Block Grant (CCDBG) reauthorized in 2014. CCDBG includes provisions to strengthen health and safety requirements for child care facilities receiving CCDBG funds, including a training requirement for child care personnel to receive training in the prevention of, and response to, emergencies due to food and allergic reactions. It is unclear if California has instituted this requirement for child care programs.

Comprehensive guide for food allergy management exists. The CDC's *Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs*, is a comprehensive document of over 100 pages. ***The Committee may wish to consider*** whether it is necessary to have the CDE duplicate the work in creating such a document, or whether it would be more effective for the CDE to provide a link to the federal document with an addendum relevant to specific California laws and resources.

Arguments in support. Food Allergy Research and Education notes, "While there are more than 32 million Americans with life-threatening food allergies, the CDC found that over the past 20 years, the rates of children with food allergies has more than doubled and for children with a peanut or tree nut allergy, it has tripled. Life-threatening food allergies and the risk of fatal anaphylaxis are growing at an even faster rate among Black and Asian-American children.

While food allergies are on the rise nationally, a 2020 study found that children on Medicaid were less than one-tenth as likely as children on private health insurance to be diagnosed with a food allergy. These statistics demonstrate that we have a recipe for disaster in the making as we have more children than ever with life-threatening food allergies and a large population of California's children attending school without knowing they have food allergies.

AB 2640 would require the State Department of Education to create the California Food Allergy Resource Guide for the voluntary use by local education agencies. The guide would provide the

practical information our schools and early education centers need to protect all children with life threatening food allergies including those without a diagnosis. In addition, the guide would serve as an indispensable tool for pupils and parents to help navigate a blizzard of online information regarding food allergy management."

Recommended Committee amendments. Committee staff recommend that the bill be amended as follows:

1) Delete the requirement for CDE to develop a food allergy guide and instead require the CDE to develop and post a webpage on managing food allergies in schools and preschools, with links to relevant resources, which may include, but not be limited to, the federal "Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs" as well as best practices fact sheets available through the Institute of Child Nutrition, as well as information on any relevant California-specific laws or resources.

2) Delete reference to including "local laws."

3) Add parents and guardians, in addition to pupils, as able to initiate individualized food allergy management and prevention plans.

4) Add parents and guardians, in addition to pupils, as potential recipients of the food allergy information.

Related legislation. AB 2042 (Villapudua) of the 2021-22 Session requires the Department of Social Services (DSS), by July 1, 2023, to establish an anaphylactic policy, including guidelines and procedures to be followed by child daycare personnel to prevent a child from suffering from anaphylaxis and to be used during a medical emergency resulting from anaphylaxis; also requires the DSS to create informational materials on the anaphylactic policy by September 1, 2023 and distribute the materials to child daycare facilities and to post them on the DSS website.

AB 3342 (Bauer-Kahan) of the 2019-20 Session would have required the DSS to authorize child daycare facilities to keep emergency epinephrine auto-injectors onsite to be administered by trained, volunteer personnel to provide emergency medical aid to a person who is suffering, or reasonably believed to be suffering, from an anaphylactic reaction; would also have required the DSS to develop a training program for the participating personnel, which would include components, including, but not limited to, techniques for recognizing symptoms of anaphylaxis and emergency follow-up procedures. This bill was held in the Assembly Human Services Committee.

AB 1386 (Low) Chapter 374, Statutes of 2016, permits a pharmacy to furnish epinephrine auto-injectors to an authorized entity if they are furnished exclusively for use at or in connection with an authorized entity; an authorized health care provider provides a prescription; and, the records are maintained by the authorized entity for three years. Specifies that authorized entities include, but are not limited to, day care facilities, colleges and universities, summer and day camps, sports leagues, scout troops, before and after school programs, recreational parks and other places where children and adults could come into contact with potentially life-threatening allergens.

SB 738 (Huff) Chapter 132, Statutes of 2015, provides qualified immunity to physicians who issue prescriptions for epinephrine auto-injectors to school districts for emergency use on individuals afflicted with anaphylactic reaction.

SB 1266 (Huff) Chapter 321, Statutes of 2014, requires school districts, COEs, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered. Authorizes school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

REGISTERED SUPPORT / OPPOSITION:

Support

Allergy & Asthma Network
Allergy Moms LLC
Allergy Strong
Asthma and Allergy Foundation of America
California Food Allergy Moms
Denise Saldate Memorial Group
Food Allergy and Anaphylaxis Connection Team
Food Allergy and Research Education
Latino Food Allergy Network
Latitude Food Allergy Medical Care
Natalie Giorgi Sunshine Foundation
No Nuts Mom Group
Nut Free Wok
One individual

Opposition

None on file

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087