
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 2640 **Hearing Date:** June 15, 2022
Author: Valladares
Version: April 19, 2022
Urgency: No **Fiscal:** Yes
Consultant: Kordell Hampton

Subject: Pupil health: food allergies: California Food Allergy Resource internet web page

SUMMARY

This bill 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.

BACKGROUND

Existing law:

Government Code (GOV)

- 1) Under the Government Tort Claims Act, specifies rules of civil liability that apply to public entities and public employees in California. (GOV § 810)

Health and Safety Code (HSC)

- 2) 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. (HSC § 1799.102)

Education Code (EC)

- 3) Permits 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 school district or county office of education 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(a))
- 5) Requires a school district, county office of education, or charter school to ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter

school for any and all civil liability, in accordance with, but not limited to, that provided in GOV 810 This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file. (EC § 49414(j) and 49414.7(i))

- 6) Authorizes students to carry and self-administer prescribed inhaled asthma or auto-injectable epinephrine medication while at school. (EC § 49423 and 49423.1)
- 7) Authorizes each public and private elementary and secondary school in the state to voluntarily determine, as specified, whether or not to make emergency epinephrine auto-injectors and trained personnel available at its school. (EC § 49414(c))
- 8) Requires the Superintendent of Public Instruction (SPI) to review, every five years, or sooner as deemed necessary by the SPI, 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 and set minimum standards for training. (EC § 49414(e)(1) – (3))

ANALYSIS

This bill requires the CDE to create the Guide for voluntary use by LEAs to protect pupils with food allergies. Specifically this bill:

- 1) Declares that this section may be cited as the Zacky Bill.
- 2) Require CDE to create the California Food Allergy Resource internet web page to provide voluntary guidance to LEAs to help pupils with food allergies.
- 3) Requires the content on the California Food Allergy Resource internet web to meet the following:
- 4)
 - a) Provide LEA, caregivers, and pupils practical information, planning steps, and strategies for reducing allergic reactions to food within schools and early education centers.
 - b) The internet web page includes a link to the most recent version of the federal Centers for Disease Control and Prevention "Voluntary Guidelines for Managing Food Allergies in Schools and Early Care Education Programs," as well as other relevant resources, which may include, but are not limited to, best practices fact sheets produced by the Institute of Child Nutrition.
 - c) A summary of the specific state laws relevant to the issue of pupils with food allergies in schools are included to serve as a complement to the federal laws and regulations included in the federal guidelines.
- 5) Requires the content of the California Food Allergy Resource internet web page to include, at a minimum, the following:

- a) A compilation of state and federal resources available for pupils with food allergies.
 - b) Methods and qualifications necessary for pupils, or their parents and guardians, to initiate individualized food allergy management and prevention plans.
 - c) Potential strategies to minimize the risk of food allergy anaphylaxis in school.
 - d) Methods to obtain ingredient lists for foods served to pupils at school from each of the school's food service providers.
- 6) Encourages LEAs to consult the internet web page and use it as an equitable resource to ensure the inclusiveness of pupils with food allergies at school and is encouraged to make it available annually to pupils, parents, and guardians.
 - 7) For the purposes of this section, defines "local educational agency," to mean a school district, county office of education, and charter school.

STAFF COMMENTS

- 1) **Need for the bill.** According to the author "According to the Food Allergy Research Education (FARE) organization, as many as 32 million Americans suffer from life threatening allergies. This accounts for a 377% increase in the diagnosis of anaphylactic food reactions between 2007 and 2016. Of this population, 1 in 13 are children who rely on parents, caregivers, teachers, and school administrators to keep them safe while at school. Due to an oversaturation of information on food allergies, it can be difficult for parents and school officials to navigate the complex collection of existing state and federal resources. This confusion is compounded by the fact that school districts vary wildly in terms of the resources they devote to student health. While some school districts have the resources to provide parents with detailed information on best practices and give students access to school nutritionists, many districts do not. Parents and caregivers shouldn't need an advanced degree to understand all of the resources available to them and their children. It is imperative that the state make it as easy for schools, parents, caregivers, and students to access comprehensive and straightforward information that will improve campus safety for students with food allergies. California should offer this information to school districts and parents through a comprehensive online resource guide on food allergies."
- 2) **Food Allergy Among U.S. Children.** According to the Food Allergy Research & Education (FARE) Web site, eight foods account for 90 percent of all reactions: milk, eggs, peanuts, tree nuts, soy, wheat, fish, and shellfish. Even trace amounts of a food allergen can cause a reaction. Researchers estimate that up to 15 million Americans have food allergies. This potentially deadly disease affects one in every 13 children (under 18 years of age) in the U.S., equaling roughly two in every classroom. According to a study released in 2013 by the Centers for Disease Control and Prevention, food allergies among children increased approximately 50

percent between 1997 and 2011. FARE's Web site state's the economic cost of children's food allergies is nearly \$25 billion per year. Teenagers and young adults with food allergies are at the highest risk of fatal food-induced anaphylaxis. California School Board Association (CSBA) has a sample policy that addresses students' food allergies and special dietary needs, including the development of guidelines that address things such as strategies for identifying students at risk for allergic reactions, avoidance measures, education of staff regarding typical symptoms, and actions to be taken in the event of a severe allergic reaction. CSBA notes in the sample policy that it is prohibited to exclude students from school activities or otherwise discriminate against, harass, intimidate, or bully them because of their food allergies.

- 3) ***What is anaphylaxis?*** According to the National Institutes of Health, anaphylaxis is a severe, whole-body allergic reaction to a chemical that has become an allergen. After being exposed to a substance, such as bee sting venom, the person's immune system becomes sensitized to it. When the person is exposed to that allergen again, an allergic reaction may occur. Anaphylaxis happens quickly after the exposure, is severe, and involves the whole body. Tissues in different parts of the body release histamine and other substances. This causes the airways to tighten and leads to other symptoms. Some drugs (such as morphine, x-ray dye, and aspirin) may cause an anaphylactic-like reaction when people are first exposed to them. These reactions are not the same as the immune system response that occurs with true anaphylaxis. However, the symptoms, risk for complications, and treatment are the same for both types of reactions. Risks include a history of any type of allergic reaction. According to Food Allergy Research & Education (FARE), approximately 25% of first-time allergic reactions that require epinephrine happen at school.
- 4) ***Are schools required to accommodate students with food allergies?*** Federal law *requires* schools to provide substitutions or modifications in the National School Lunch Program and School Breakfast Program for students whose disabilities restrict their diets (e.g. the food allergy or food intolerance substantially limits one or more major life activities). Schools are *authorized* to provide special meals and/or accommodations for students who do not have a disability that requires a restricted diet but who do have a food intolerance or other medical condition.

1973 Rehabilitation Act. 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. This section 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 allergies. US Department of Education's (USDOE) 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. 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.

Food allergy management and prevention plans (FAMPP). The Center for Disease Control and Prevention 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.

- 5) **United States Department of Agriculture (USDA).** 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 school food authorities (SFA) 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.

- 6) **Related legislation. AB 3064 (Mayes)** of the 2019-20 Session would have also established Zacky Bill and required CDE to develop guideline for LEAs to protect pupils with food allergies. *This bill was held in Assembly Education Committee.*

SB 1258 (Huff) of the 2015-16 Session would have required requires each school district, county office of education, and charter school to develop a comprehensive policy to protect students with food allergies. *This bill was held on suspense in Senate Appropriations Committee.*

SB 738 (Huff), Chapter 132, Statues of 2015, provides qualified immunity to a physician who issues a prescription for an epinephrine auto-injector to a school district, county office of education, or charter school.

SB 1266 (Huff) Chapter 321, Statues of 2014, requires school districts, county offices of education (COE), and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered and allows school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons

SUPPORT

Allergy and Asthma network
Allergy Strong
California Food Allergy Moms

County of Los Angeles Board of Supervisors
Food Allergy and Anaphylaxis Connection Team (FAACT)
Food Allergy and Research Education
Latino Food Allergy Network
Latitude Food Allergy Medical Care
Nessie Bear Memorial Group
No Nuts Mom
Red Sneakers For Oakley

OPPOSITION

None on file.

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