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## SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

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**Bill No:** AB 1172 **Hearing Date:** July 3, 2019  
**Author:** Frazier  
**Version:** June 24, 2019  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Ian Johnson

**Subject:** Special education: nonpublic, nonsectarian schools or agencies.

### SUMMARY

This bill places new documentation requirements on nonpublic schools (NPS) related to their administrators and staff trainings, places new monitoring requirements on local educational agencies (LEAs) that enter into contract with a NPS, and places notification requirement on a NPS for any pupil-involved incident involving law enforcement.

### BACKGROUND

Existing law:

- 1) Expresses the intent of the Legislature that the role of an NPS and a nonpublic agency (NPA) be maintained and continued as an alternative special education service available to an LEA and parents.
- 2) Requires a master contract for NPS and NPA services specify the general administrative and financial agreements, including teacher-to-pupil ratios, between the nonpublic, nonsectarian school or agency and the LEA to provide the special education and designated instruction and services, as well as transportation specified in each pupil's individualized education program (IEP).
- 3) Requires the Superintendent of Public Instruction (SPI), before certification, to conduct an onsite review of the facility and program for which the applicant NPS seeks certification.
- 4) Requires the SPI to annually review the certification of each NPS or NPA. Authorizes the SPI to conduct an onsite review as part of the annual review.
- 5) Requires the SPI to conduct an onsite investigation of an NPS or an NPA at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. Requires the SPI to document the concern and submit it to the NPS or NPA at the time of the onsite investigation and require a written response to any noncompliance or deficiency found.
- 6) Requires the SPI to conduct an investigation, which may include an unannounced onsite visit, if the SPI receives evidence of a significant deficiency in the quality of educational services provided, making enrollment in an NPS a

condition of placement in a licensed children's institution, among other requirements.

- 7) Requires the SPI to document the complaint and the results of the investigation and to provide copies of the documentation to the complainant, the NPS, and the contracting LEA.
- 8) Requires that violations or noncompliance be reflected in the status of the certification of the NPS or NPA, at the discretion of the SPI, pending an approved plan of correction by the NPS or NPA. Requires the California Department of Education (CDE) to retain for a period of 10 years all violations pertaining to certification of the NPS or NPA.
- 9) Requires the SPI to monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standards-focused instructional materials used, of an existing certified NPS or NPA on a three-year cycle.
- 10) Requires only those NPSs and NPAs that provide special education and designated instruction and services using staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification.
- 11) Authorizes the SPI to revoke or suspend the certification of an NPS or NPA for specified reasons, including failure to notify the SPI in writing within 10 days of the death of a pupil or any other individual of unnatural causes within the school or agency, including the circumstances surrounding the death and appropriate preventative measures being taken or recommended.
- 12) Requires the SPI to notify contracting LEAs and the special education local plan area (SELPA) in which the NPS or NPA is located of the determination to suspend or revoke state certification.
- 13) Prohibits an NPS or NPA for which certification was revoked from being eligible to apply for recertification for two full years after certification was revoked.

## ANALYSIS

This bill:

- 1) Beginning with the 2020-21 school year, requires a nonpublic, nonsectarian school or agency to include in its certification application documentation that all staff who have any contact or interaction with pupils have been trained in the use of practices and interventions specific to needs of the school's students. The training must be provided within 30 days of employment to new staff and annually to all staff who have any contact or interaction with pupils. The training shall:

- a) Be conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught.
  - b) Be taught in a manner consistent with the development and implementation of individualized education programs (IEP).
  - c) Include all of the following content:
    - i) Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan and implement behavioral supports.
    - ii) How to understand and address challenging behaviors, including evidence-based strategies for preventing these behaviors.
    - iii) Evidence-based interventions for reducing and replacing challenging behaviors, including de-escalation techniques.
- 2) Beginning with the 2021-22 school year, requires a nonpublic, nonsectarian school or agency to include in its certification application documentation that the school's administrator holds or is in the process of obtaining the following:
- a) An administrative credential granted by an accredited postsecondary educational institution and two years of experience with pupils with disabilities.
  - b) A pupil personnel services credential that authorizes school counseling or psychology.
  - c) A license as a clinical social worker issued by the Board of Behavioral Sciences.
  - d) A license in psychology regulated by the Board of Psychology.
  - e) A master's degree issued by an accredited postsecondary institution in education, special education, psychology, counseling, behavioral analysis, social work, behavioral science, or rehabilitation.
  - f) A credential authorizing special education instruction and at least two years of experience teaching in special education before becoming an administrator.
  - g) A license as a marriage and family therapist certified by the Board of Behavioral Sciences.
  - h) A license as an educational psychologist issued by the Board of Behavioral Sciences.
  - i) A license as a professional clinical counselor issued by the Board of Behavioral Sciences.

- 3) Beginning with the 2020-21 school year, requires a LEA that enters into a master contract with a nonpublic, nonsectarian school to conduct at least both of the following:
  - a) An onsite visit to the school before placement of a pupil if the LEA does not have any pupils enrolled at the school at the time of placement.
  - b) At least one onsite monitoring visit during each school year to the school at which the LEA has a pupil attending and with which it maintains a master contract. The monitoring visit shall include, but is not limited to, the review of services provided to the pupil through the individual service agreement between the LEA and the school, a review of progress the pupil is making toward the goals set forth in the pupil's IEP, a review of progress the pupil is making toward the goals set forth in the pupil's behavioral intervention plan, if applicable, an observation of the pupil during instruction, and a walk through of the facility. The LEA shall report the findings resulting from the monitoring visit to the CDE within 60 calendar days of the onsite visit. On or before June 30, 2020, CDE shall, with input from special education local plan area administrators, create and publish criteria for reporting this information to CDE.
- 4) Requires a nonpublic, nonsectarian school or agency to notify CDE and the LEA with which it has a master contract of any pupil-involved incident at the school or agency in which law enforcement was contacted. This notification shall be provided in writing, no later than one business day after the incident occurred.
- 5) Specifies that, beginning with the 2021-22 school year, only those nonpublic, nonsectarian schools or agencies that provide special education and designated instruction and services using administrators who hold or are in the process of obtaining a specified credential, degree, or license are eligible to be certified.
- 6) Authorizes CDE to immediately suspend or revoke the certification of a nonpublic, nonsectarian school or agency if an investigation conducted by CDE results in a finding that pupil health or safety has been compromised or is in danger of being compromised.
- 7) Requires a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs to certify in writing to the SPI all of the following:
  - a) For a school serving pupils with significant behavioral needs or who are on behavioral intervention plans, the school has an individual onsite during school hours who is qualified, and responsible for the design, planning, and implementation of behavioral interventions.
  - b) Beginning with the 2020–21 school year, the school provides annual training to all staff who have any contact or interaction with pupils during the schoolday. The training is also provided within 30 days of employment to new staff who have any contact or interaction with pupils during the schoolday. The school maintains written records of the training, and will

provide written verification of the training upon request. The training shall contain all of the components mentioned above.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The recent death of a student at a nearby nonpublic school was a tragedy that should never have happened. Non-public schools serve the most vulnerable members of our society. An investigation by the CDE revealed this school routinely employed practices and procedures that were incorrect and exposed students to severe harm. This bill will help ensure that local education authorities and the state are able to more closely monitor these non-public schools and enable early intervention if problems develop. AB 1172 will also protect students by requiring that staff at nonpublic schools meet higher standards of training and be better equipped to serve their students.”
- 2) ***What are nonpublic schools?*** Nonpublic, nonsectarian schools are specialized private schools that provide services to public school students with disabilities. They are defined in statute as private, nonsectarian schools that enroll individuals with exceptional needs pursuant to an IEP. The tuition for a student in a nonpublic school is paid by the local educational agency that places the student in the school. Each nonpublic school must obtain certification from CDE. According to CDE, 294 nonpublic schools served 11,855 California students with disabilities as of December, 2018.
- 3) ***Special education overview.*** State and federal law require that students determined to have exceptional needs be provided special education services. The various student disabilities are organized into thirteen classifications that cover a broad range of conditions: specific learning disabilities; speech or language impairments; autism; other health impairments (includes students with chronic or acute health problems, such as heart conditions or diabetes); intellectual disability; emotional disturbance; orthopedic impairment; hard of hearing; multiple disabilities; visual impairments; deaf; traumatic brain injuries; and deaf and blind.

When children turn three years old, they can enter the special education system upon their school making the determination that their needs cannot be met from general education programs alone. When this occurs, the school refers students for professional evaluation to determine if they qualify for special education. Upon an evaluation determining that a student has a disability, and that the disability interferes with the student’s education, the school district is legally obligated to provide the student with special education services.

- 4) ***Development of an Individualized Education Program.*** An IEP is a written statement of the educational program designed to meet a child’s individual needs. Every child who receives special education services must have an IEP. The purpose of the IEP is to set reasonable learning goals for a child and to state the services that the LEA will provide. The IEP is developed by a team of individuals that includes key school staff and the child’s parents. The team meets, reviews the assessment information available about the child, and

designs an educational program to address the child's educational needs. An IEP meeting must be held within 30 calendar days after it is determined, through a full and individual evaluation, that a child has one of the disabilities listed in state and federal special education law and needs special education and related services. Students' IEPs must be reviewed at least annually to determine whether the annual goals are being achieved and must be revised as appropriate.

For students requiring other special accommodations to facilitate their participation in school activities (e.g., wheelchair ramps or blood sugar monitoring), Section 504 plans may be added to, or replace, an IEP.

- 5) ***Arguments in support.*** The State Council on Developmental Disabilities (SCDD) writes, "In 2018, the State Council on Developmental Disabilities and California mourned the death of a student at Guiding Hands School in El Dorado Hills who reportedly stopped breathing after being placed in a prone restraint for over an hour and died at the hospital. A prone restraint involves immobilizing a student in a face down position and poses substantial risk to health. AB 1172 provides the state with additional tools to safeguard children in nonpublic schools from being harmed by practices that pose substantial risk to their health, welfare, and safety.

Close to 50 years ago, Congress established the State Councils in every state and territory. The Councils are authorized in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 to ensure that individuals with developmental disabilities and their families design and can access services and supports that "promote self-determination, independence, productivity, and integration and inclusion" in community life. The Lanterman Act establishes the SCDD in California to be comprised of 31 members appointed by the Governor, including individuals with disabilities, their families, other partners and state agencies. The SCDD develops a five-year state plan to implement the DD Act through the work of 12 regional offices in California. The plan is developed with stakeholder input and is focused on addressing systemic barriers to employment, housing, education, community supports, health and safety for persons with developmental disabilities."

## **SUPPORT**

Superintendent of Public Instruction (sponsor)  
 California Alliance of Child and Family Services  
 California Department of Education  
 California School Boards Association  
 California Teachers Association  
 Disability Rights California  
 State Council on Developmental Disabilities

## **OPPOSITION**

None received

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