

Date of Hearing: July 1, 2026

ASSEMBLY COMMITTEE ON EDUCATION

Darshana R. Patel, Chair

SB 685 (Cortese) – As Amended June 22, 2026

SENATE VOTE: 36-0

SUBJECT: Special education: nonpublic schools and agencies

SUMMARY: Authorizes the California Department of Education (CDE) to certify qualified sectarian nonpublic schools and nonpublic agencies (NPSs and NPAs) to serve students with disabilities; prohibits public funds from being used for religious education at NPSs and NPAs; prohibits NPSs and NPAs, when providing educational services to public school students, from subjecting them to discrimination; requires all certificated NPS employees to hold a California credential; and requires all non-certificated NPS employees to hold a certificate of clearance from the Commission on Teacher Credentialing (CTC), among other provisions. Specifically, **this bill:**

Authority for the CDE to certify qualified sectarian NPSs and NPAs:

- 1) Removes the term “nonsectarian” from the definition of NPS and NPA, thereby permitting religious schools to apply to the CDE be certified as NPSs and NPAs.

Prohibitions on religious instruction:

- 2) Prohibits public funds paid by a local educational agency (LEA) from being used to pay for religious instruction at an NPS or NPA.
- 3) Excludes from the tuition or fees paid by an LEA to an NPS or NPA tuition or fees attributable to the provision of religious instruction to pupils not placed by an LEA.
- 4) Requires, consistent with federal law requiring that NPSs meet public educational standards applicable to LEAs when providing services under an individualized education program (IEP), an applicant seeking an initial or renewal certification as an NPS to certify, under penalty of perjury, that all educational services provided under a master contract with an LEA are secular, neutral, and respectful regarding religion and religious views, consistent with the state constitution and provisions of state law.
- 5) Prohibits an NPS or an NPA from providing religious instruction to pupils placed by a LEA when providing services under a master contract, individual service agreement, or IEP.
- 6) Defines “religious instruction,” for purposes of special education law, to mean religious nonsecular or nonneutral instruction in religious doctrine, principles, beliefs, observances, or practices. States that “religious instruction” does not refer to the use of, or references to, religious literature, dance, music, theater, and visual arts, or other subjects having a religious significance when the subject is consistent with Education Code (EC) section 51511.
- 7) Requires the master contract between an LEA and an NPS or NPA and individual service agreements to contain provisions requiring compliance with prohibitions on religious instruction and discrimination.

Discrimination:

- 8) Prohibits NPS and NPAs, in performing services under a master contract, individual service agreement, or an IEP, from subjecting students to discrimination on the basis of protected characteristics as specified in existing law.

Curriculum:

- 9) Specifies that the curriculum the CDE is required to monitor when provided through NPSs and NPAs is the state curriculum, and requires that the CDE monitor pupils' receipt of any instruction required for all pupils of LEAs, including but not limited to the California Healthy Youth Act.

Behavioral interventions:

- 10) Adds an existing set of prohibited emergency behavioral interventions and related parent notifications to the assurances NPS are required to provide when applying for certification.

Criminal background checks and educator misconduct:

- 11) By January 1, 2027, requires employees at NPSs to undergo criminal background checks, including fingerprinting, by the contracting LEA and CDE, so that these entities receive subsequent arrest records.
- 12) Requires, instead of authorizes, the Superintendent of Public Instruction (SPI) to verify that the NPS or NPA received a successful criminal background check clearance and has enrolled in subsequent arrest notice service for each owner, operator, employee, can contractor of the NPS or NPA.
- 13) Requires contractors at NPSs to undergo criminal background checks, including fingerprinting.
- 14) Requires NPSs to notify CDE and the contracting LEA within one day after specified emergencies, or if an employee is under investigation for misconduct.

Credentialing:

- 15) By January 1, 2028, requires all certificated NPS employees to hold a California credential. Out-of-state NPS employees would submit their out-of-state credential to the CTC and be issued a preliminary California credential. The CTC will monitor to ensure the teacher holds a credential that is equivalent to a California credential and monitor subsequent arrest records.
- 16) By July 1, 2027, requires all non-certificated NPS employees to hold a certificate of clearance from the CTC.
- 17) Requires all administrators at NPSs to hold a certificate of clearance from the CTC if they do not hold a valid credential from the CTC.
- 18) Requires the CDE, the contracting LEA, and the NPS to receive notification from the CTC of credentialholders who have adverse action taken on their credentials, and the CDE, the

contracting LEA, and the NPS will check to see whether NPS teachers have had their credential suspended or revoked.

19) Requires NPSs to notify the CTC of a change of employment status of any credentialholder.

Waivers:

20) Consolidates three special education waiver options into one waiver process in existing law by eliminating waiver authority of the SPI and prohibiting special education waivers under the SBE's general waiver authority, and instead requiring that waivers be granted when an LEA can show that failure to do so would hinder the implementation of a student's IEP or the LEA's compliance with the federal Individuals with Disabilities Education Act (IDEA).

21) Prohibits approval of waivers submitted by public agencies that are related to the placement at a noncertified nonpublic school or that is for an NPS to waive certification requirements for NPSs and NPAs, unless it meets all of the following conditions:

- a) It includes sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's IEP and the pupil's current placement;
- b) It includes the period of time that the waiver will be effective during any one school year;
- c) It includes documentation and assurance that the waiver does not abrogate any right provided to individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of an LEA with the federal IDEA, Section 504 of the federal Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) and related federal regulations;
- d) It includes a description of how the public agency requesting the waiver will oversee and evaluate the pupil's placement;
- e) It requires that the NPS meets the requirements of prohibitions on discrimination, credentialing, and curriculum;
- f) It requires that the funds expended comply with prohibitions on religious instruction and discrimination; and
- g) It requires that the NPS provide assurances of compliance with laws regarding behavioral interventions.

Conforming sections:

22) Removes the term nonsectarian from references to NPSs and NPAs in numerous provisions of the Education Code, including provisions relating to:

- a) The Teacher Residency Grant Program;
- b) Rights of highly mobile student groups, including but not limited to acceptance of coursework for credit and exemption from local graduation requirements;

- c) Rights of highly mobile student groups to remain in their schools of origin;
- d) Notice of educational rights of students in foster care and rights to remain in their school of origin;
- e) Designation of educational authority for foster youth in licensed children's institutions;
- f) Collaborative monitoring of placements for foster youth in licensed children's institutions;
- g) Suspension by site principal of a contracting NPS;
- h) Notice to parents and guardians relating to safe storage of firearms;
- i) Rights of highly mobile student groups, including but not limited to acceptance of coursework completed at another school, application of credits, and retaking a course;
- j) Definition of alternative schools for purposes of the statewide system of support;
- k) Special education programs;
- l) Definition of parent for special education provisions;
- m) Definition of NPS;
- n) Definition of NPA;
- o) Recommended placement in NPS or NPA by attorney or advocate with conflict of interest;
- p) Innovation and improvement, promotion in special education;
- q) Special education programs and placement;
- r) Hospitals and health facilities serving students with disabilities;
- s) Definition of "private school children with disabilities;"
- t) Contents of special education local plan;
- u) Transfers of students from districts not operating programs under the same local plan;
- v) Selection of language developmental milestones for deaf and hard of hearing (DHH) students;
- w) IEPs and placements;
- x) Contents of IEPs;
- y) Continuum of program options in special education;
- z) Parental notice regarding changes in certification status of NPSs and NPAs;

- aa) Payment for contract services of NPSs and use of funds;
- bb) Petition for review of denial, revocation, or suspension of NPS or NPA certification;
- cc) Certification and complaint investigation process for NPSs and NPAs;
- dd) Prohibition on requiring placement or referral of student in an NPS as a condition of residential placement;
- ee) Integration of students with disabilities in public schools;
- ff) Confidential communication with student and IEP team in NPSs;
- gg) NPS post placement review and assessment;
- hh) Early education service providers;
- ii) Early education services for preschoolers;
- jj) State hearings related to special education;
- kk) Placement in or services provided by an NPS;
- ll) Prohibited interventions for students with disabilities;
- mm) Cost of master contracts with NPSs and NPAs;
- nn) Extraordinary cost pool;
- oo) Advisory committee on students with autism;
- pp) Contracts for services in programs off state hospital grounds;
- qq) Contract with hospital for instruction and services for individuals with exceptional needs;
- rr) Contracts with hospitals for instruction and services for individuals with exceptional needs;
- ss) Hospitals serving students with disabilities;
- tt) Procedures for contracts with hospitals for special education;
- uu) Corporal punishment;
- vv) Inclusion of deaf and hard of hearing (DHH) students;
- ww) Licensed children's institutions;
- xx) Special education local policies;
- yy) Medically necessary occupational therapy and physical therapy; and

zz) Placement in residential facilities.

EXISTING LAW:

- 1) The California Constitution, prohibits public money from ever being appropriated for the support of any sectarian or denominational school, or any school under the exclusive control of the officers of the public schools, or any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of the state. (Article IX, section 8, California Constitution)
- 2) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. Defines “religion,” for purposes of this prohibition, to mean all aspects of religious belief, observance, and practice, and includes agnosticism and atheism. (Education Code (EC) 220)
- 3) States that nothing in the EC shall be construed to prevent, or exclude from the public schools, references to religion or references to or the use of religious literature, dance, music, theatre, and visual arts or other things having a religious significance when such references or uses do not constitute instruction in religious principles or aid to any religious sect, church, creed, or sectarian purpose and when such references or uses are incidental to or illustrative of matters properly included in the course of study. (EC 51511)
- 4) Prohibits governing boards from adopting any instructional materials for use in the schools that, in its determination, contain 1) any matter reflecting adversely upon persons on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation, occupation, or because of a protected characteristic, or 2) any sectarian or denominational doctrine or propaganda contrary to law. (EC 60044)
- 5) Federal law requires that NPSs meet public educational standards applicable to LEAs when providing services under an IEP. (U.S.C Title 20 Section 1412(a)(10)(B), Code of Federal Regulations, Title 34, Section 300.146)
- 6) Requires an NPS or an NPA that seeks certification to file an application with the SPI on forms provided by the CDE, with specified information. Requires applicant NPSs and NPAs to notify the Special Education Local Plan Area (SELPA) in which they are located. (EC 56366.1)
- 7) Requires the SPI to conduct an onsite review of the facility and program for which the applicant seeks certification, and again within three years of the effective date of the certification. (EC 56366.1)
- 8) Requires the SPI to annually review the certification of each NPS or NPA. (EC 56366.1)

- 9) Requires the SPI to conduct an investigation of an NPS or NPA onsite 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. (EC 56366.1)
- 10) 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. (EC 56366.1)
- 11) Authorizes the SPI to suspend or revoke the certification of an NPS or NPA for specified reasons, including:
 - a) Violation of an applicable state or federal rule or regulation, or aiding, abetting, or permitting the violation of an applicable state or federal rule or regulation;
 - b) Falsification or intentional misrepresentation of an element of the application, student records, or program presented for certification purposes;
 - c) Conduct in the operation or maintenance of the NPS or NPA that is harmful to the health, welfare, or safety of an individual with exceptional needs;
 - d) Failure to comply with a provision in the master contract with the LEA;
 - e) Failure to notify the CDE in writing of any of the following within 45 days of the occurrence of:
 - i) Changes in credentialed, licensed, or registered staff who render special education and related services, ownership, management, or control of the NPS or NPA;
 - ii) Major modification or relocation of facilities; or
 - iii) Significant modification of the NPS or NPA program.
 - f) Failure to implement recommendations and compliance requirements following an onsite review of the NPS or NPA;
 - g) Failure to provide appropriate services, supplies, equipment, or facilities for a student as required in the student's IEP;
 - h) Failure to notify the SPI in writing within 10 days of the revocation or suspension of a license or permit, including, but not limited to, a residential care license, business license, or other required license or permit; or
 - i) Failure to implement a student's IEP. (EC 56366.4)
- 12) Prohibits an educational provider, including NPSs, from doing any of the following:
 - a) Using seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation;

- b) Using locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
 - c) Using a physical restraint technique that obstructs a student's respiratory airway or impairs the student's breathing or respiratory capacity, including techniques in which a staff member places pressure on a student's back or places his or her body weight against the student's torso or back;
 - d) Using a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a student's face;
 - e) Using prone restraint, as defined;
 - f) Placing a student in a facedown position with the student's hands held or restrained behind the student's back; and
 - g) Using a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the student or others. (EC 49005.8)
- 13) Requires an educational provider to:
- a) Keep constant, direct observation of a student who is in seclusion, which may be through observation of the student through a window or another barrier, through which the educational provider is able to make direct eye contact with the student. Prohibits observation through indirect means, including through a security camera or a closed-circuit television;
 - b) Afford to students who are restrained the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the student and others; and
 - c) Ensure that, if prone restraint techniques are used, a staff member observes the student for any signs of physical distress throughout the use of prone restraint. States that, whenever possible, the staff member monitoring the student shall not be involved in restraining the student. (EC 49005.8)
- 14) Requires LEAs, as specified, to collect and, no later than three months after the end of a school year, report to the CDE annually on the use of behavioral restraints and seclusion for students enrolled in or served by the LEA for all or part of the prior school year. Requires that, no later than three months after the report is due to the CDE, the CDE post the data from the report annually on its website. (EC 49006)
- 15) Requires the CTC to deny, suspend, or revoke a teaching credential for an applicant or holder who has been convicted of certain sex offenses, controlled substance offenses, or violent or serious felonies. (EC 44424, 44425, 44010, and 44011)
- 16) Prohibits the governing board of a school district from employing or retaining a certificated or classified employee who has been convicted of a violent or serious felony. (EC 44830.1)

- 17) Prohibits a person who has been convicted of a sex offense from being employed by a school district. (EC 44010 and 44836)
- 18) Prohibits a person who has been convicted of a controlled substance offense, as defined in law, from being employed by a school district, unless the individual meets specified rehabilitation criteria. (EC 44011 and 44836)
- 19) Authorizes the CTC to investigate allegations of unprofessional conduct and to take disciplinary action, including suspension or revocation of a credential, based on a finding of unfitness to teach. (EC 44242.5 and 44242.7)
- 20) Requires the California Department of Justice (DOJ) to furnish criminal history information to school districts and the CTC for purposes of employment and credentialing decisions. (EC 44237 and 45125.1)
- 21) Requires school districts to conduct criminal background checks, including fingerprinting, for all prospective employees. (EC 44237)
- 22) Requires any entity that has a contract with an LEA to ensure that any employee who interacts with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal records summary. Requires, when the contracting entity performs the criminal background check, the entity to immediately provide any subsequent arrest and conviction information it receives to any LEA that it is contracting with pursuant to the subsequent arrest service. (EC 45125.1)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author states, “Students with disabilities deserve access to high-quality educational services that meet their individual needs. SB 685 updates California's framework for certified Nonpublic Schools in response to the Ninth Circuit's decision in *Loffman v. California Department of Education*. The bill establishes clear and consistent requirements related to student safety, educator qualifications, background checks, nondiscrimination protections, and curriculum requirements, helping ensure that students with disabilities receive the services identified in their Individualized Education Programs.”

Loffman v. CDE case. This bill is related to litigation, *Loffman v. CDE*, in which Orthodox Jewish families and schools alleged violations of free exercise and equal protection clauses arising from California's nonsectarian requirement for private schools seeking certification to provide students with disabilities a free appropriate public education (FAPE) under the IDEA.

According to a summary of this case by the California School Boards Association:

The families and schools alleged that the nonsectarian requirement for NPSs violated their constitutional rights to free expression because parents could not advocate for placement for their special education-eligible students in a Jewish Orthodox nonpublic school as no such school could legally exist. The families did not allege that their students are eligible for

placement in an NPS, including that an NPS was the least restrictive environment for their students, or that any IEP team had recommended such a placement.

The court found that, because the nonsectarian requirement singles out religious schools and limits their ability to apply for certification as an NPS, it is neither neutral nor generally applicable... Additionally, the court found the nonsectarian requirement law impermissibly burdens free exercise, explaining that such a burden can include imposing conditions on the receipt or denial of a benefit or privilege, such that a religious entity or individual is forced to choose between receipt of the benefit and practicing their religion. The court further explained that the families in this case are faced with such a choice, since they cannot request a religiously affiliated NPS due to the nonsectarian requirement. In other words, the choice between public, nonsectarian special education services or private religious instruction, but not both, created a constitutional issue.

In October 2024, the Ninth Circuit Court of Appeals reversed a lower court’s dismissal of the plaintiffs’ free exercise and equal protection claims and remanded the case to the district court. In May, 2025, the parties agreed to a settlement under which the CDE is prohibited from applying or enforcing the nonsectarian requirement in existing law. The agreement states that “such prohibition includes requiring entities to be nonsectarian, or to attest to their nonsectarian status, in: (a) applying for, obtaining, and maintaining certification as a ‘nonpublic, nonsectarian school’ or ‘nonpublic, nonsectarian agency,’ and (b) applying for, obtaining, and/or maintaining a contract with a public agency to serve as a ‘nonpublic, nonsectarian school’ or ‘nonpublic, nonsectarian agency.’”

Major provisions of this bill. This bill conforms numerous provisions of the Education Code to the *Loffman v. CDE* decision. ***The Committee may wish to consider that*** this bill applies all requirements equally to nonsectarian and sectarian applicants for certification as NPSs and NPAs. These provisions include:

Eligibility of religious schools to apply for NPS or NPA certification:

- Removes the term “nonsectarian” from NPS and NPA certification requirements, permitting religious schools to apply to be certified as NPSs; and
- Strikes the term “nonsectarian” from over fifty provisions of the Education Code.

Religious instruction:

- Prohibits public funds from being used for religious education (as defined) at NPSs and NPAs;
- Requires an applicant for certification to certify under penalty of perjury that all educational services provided under a master contract are secular, and both neutral and respectful with respect to religion(s) and religious views; and
- Prohibits NPSs from providing religious instruction to pupils placed by an LEA when providing services under a master contract, individual service agreement or IEP.

Discrimination:

- Prohibits NPS, when providing educational services to public school students, from subjecting them to discrimination on the basis of protected characteristics specified in existing law.

Curriculum:

- Requires, through monitoring requirements, that NPSs teach the California curriculum to public school students, and any instruction mandated for public school students, including the California Healthy Youth Act.

Behavioral interventions:

- Adds existing law regarding prohibited behavioral interventions to assurances required for NPS certification.

Criminal background checks and educator misconduct:

- By January 1, 2027, requires employees at NPSs to undergo criminal background checks, including fingerprinting, by the contracting LEA and CDE, so that they receive subsequent arrest records;
- Requires contractors at NPSs to undergo criminal background checks, including fingerprinting; and
- Requires NPSs to notify CDE and the contracting LEA within one day after specified emergencies, or if an employee is under investigation for misconduct.

Credentialing:

- By January 1, 2028, requires all certificated NPS employees to hold a California credential. Out-of-state NPS employees would submit their out-of-state credentials to the CTC and be issued a preliminary California credential. The CTC will monitor to ensure the teacher holds a credential that is equivalent to a California credential and monitor subsequent arrest records;
- Requires all non-certificated NPSs employees to hold a certificate of clearance from the CTC;
- Requires all administrators at NPSs to hold a certificate of clearance from the CTC, if they do not hold a valid credential from the CTC;
- Requires the CDE, the contracting LEA, and the NPS to receive notification from the CTC of credential holders who have adverse action taken on their credentials, and the CDE, the contracting LEA, and the NPS will check to see whether NPS teachers have had their credentials suspended or revoked; and
- Requires NPSs to notify the CTC of a change of employment status of any credential holder.

Waivers:

- Consolidates waiver options into one process which requires (in existing law) that waivers be granted only when an LEA can show that failure to do so would hinder the implementation of a student's IEP or the LEA's compliance with the IDEA. Includes all protections in existing law in the single waiver process. Prohibits waivers for specified health, safety, discrimination, fingerprinting, and religious instruction statutes.

NPS and NPA certification sections:

- Separates sections governing NPSs and NPAs, allowing the law to apply to each type of entity distinctly.

Prohibitions on religious instruction. This bill prohibits an NPS or an NPA from providing religious instruction to pupils placed by a LEA when providing services under a master contract, individual service agreement, or an IEP, and requires an applicant seeking an initial or renewal certification as an NPS or an NPA to certify, under penalty of perjury, that all educational services provided under a master contract with an LEA are secular, neutral, and respectful regarding religion and religious views, consistent with the state constitution and provisions of state law.

These provisions are consistent with Article IX, section 8 of the California Constitution, which prohibits public money from being appropriated for the support of any sectarian or denominational school, or any school under the exclusive control of the officers of the public schools, or any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of the state.

Why are California credentials necessary for out-of-state NPS staff? This bill requires out-of-state NPS credential holders to hold a California credential by submitting their out-of-state credential to the CTC, at which time the CTC will issue a preliminary California credential. The CTC will ensure the credential is equivalent to a California credential and monitor the credential holder's criminal history and subsequent arrest records. This bill requires the CDE, placing LEAs, and NPSs to receive notification from the CTC of credential holders who have adverse action taken on their credentials. Further, this bill requires contractors at NPSs to be fingerprinted in the same manner as contractors at all private schools, and requires NPS employees to be fingerprinted by the department and the sending LEA so that those entities receive criminal history and subsequent arrest records.

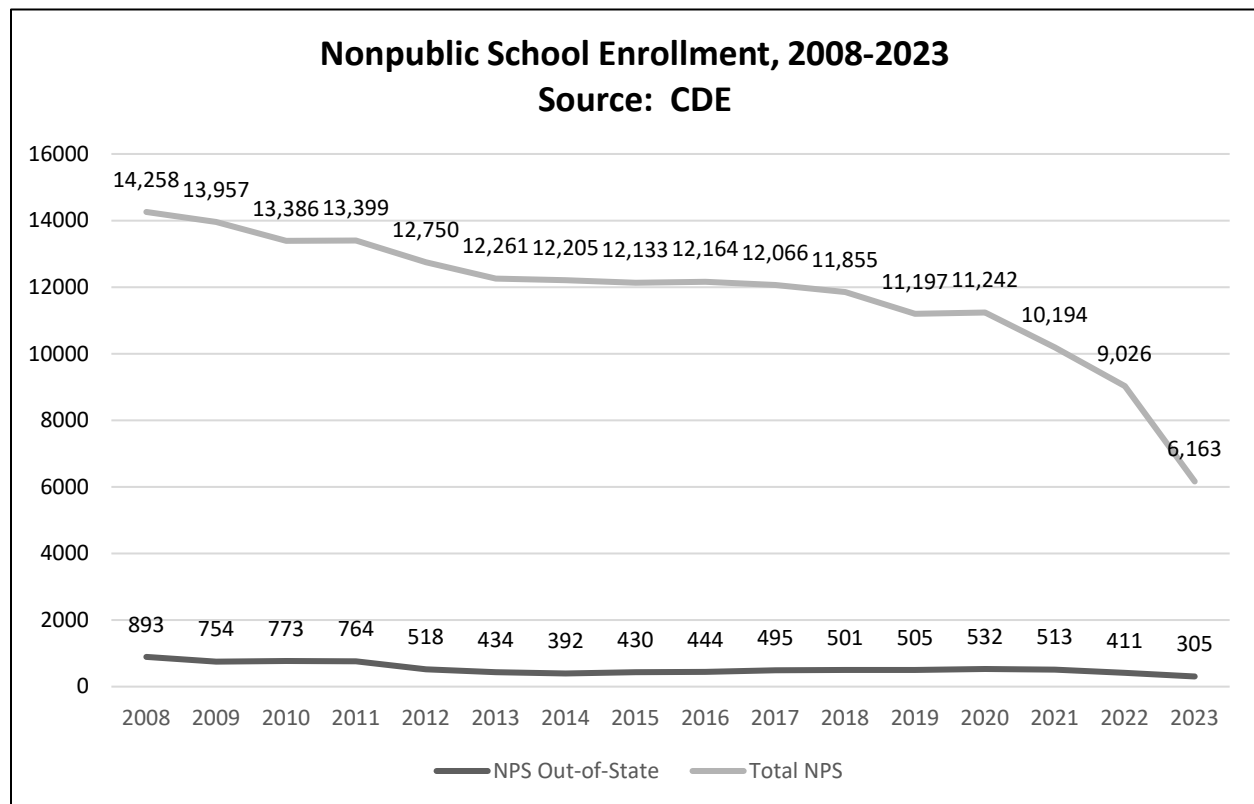
Current law allows staff at out-of-state NPSs to hold out of state credentials, which means the state of California does not track the subsequent arrest records for staff at out of state NPSs serving California students. Additionally, because NPSs do not report in the state's CalPADs data system, the teachers are not monitored by CTC in the misassignment monitoring system. The state of California does not track out of state NPS teachers in any way, other than the CDE certification process. The current system relies on the NPS alone to receive subsequent arrest records and remove a teacher from the classroom, at their discretion.

The current system for existing in-state and out-of-state NPSs does not allow the CDE, which certifies these schools, to be notified when a teacher is arrested, charged, or convicted of crimes that affect their fitness to work with students. This means if a teacher at an out-of-state NPS is charged with child molestation, the state of California would never know, and does not currently have a mechanism to monitor whether that teacher was removed from the classroom. Further, the

CDE is not notified when a teacher at a NPS (in-state or out-of-state) has their credential suspended or revoked. NPSs are authorized to receive notification from the CTC when a credential is suspended or revoked, but current law doesn't require NPSs to receive that notification. Given recent significant litigation in this space, it is in the best interest of students and the state to ensure that NPS staff are monitored both for quality and student safety.

Expanding fingerprinting for NPS staff to protect students. This bill requires NPSs to fingerprint contractors in the same manner as at private schools. Further, this bill requires NPS employees to be fingerprinted by the CDE and the sending LEA, ensuring that those entities receive criminal history and subsequent arrest records for employees interacting with California students. These steps will help to ensure a more robust system of student safety.

Employment prohibition. Several sections of the Education Code currently address criminal offenses that prohibit individuals from being employed by public and private schools in California. Section 45122.1 of the Education Code lists specific felonies, misdemeanors, and violent/serious felonies that prohibit classified staff from being employed by school districts. Section 44010 of the Education Code lists specified sex offenses, and Section 44011 lists controlled substance offenses. Both Section 44010 and 44011 are included in Section 44836, which prohibits anyone convicted of these offenses from being employed by a school district. This bill will apply these same employment prohibitions to out-of-state NPS staff to further protect students.



Reorganization of certification codes for NPSs and NPAs. This bill proposes to separate the statutes governing the certification of NPSs and NPAs into two sections. Because current law specifies requirements for both types of entity in one section, prior legislation has inadvertently applied requirements to both of these types of entity when intended for only one. This proposed reorganization of the certification sections is intended to avoid this problem in the future.

Nonpublic schools. California's NPSs are specialized private schools that provide services to public school students with disabilities. They are defined in statute as private, non-sectarian schools that enroll individuals with exceptional needs pursuant to an IEP. The tuition of a student in an NPS is paid by the LEA or charter school that places the student in the school. Each NPS must be certified by the CDE.

According to the CDE, in the 2022-23 school year 6,163 students were served by 202 in-state and 47 out-of-state NPSs. As shown in the table on this page, more than 40% of the students placed in NPS in that year were identified under the primary disability category of autism, with emotional disturbance being the second highest category at 26%. Other categories representing more than one percent of the nonpublic school population were intellectual disability (8%), other health impairment (13%), specific learning disability (6%), and multiple disabilities (2%).

Primary Disability Category of Students Served by NPSs (Source: CDE)	2022– 2023
Intellectual Disability	8.10%
Hard of Hearing	0.20%
Deafness/Hearing Impairment	0.50%
Speech or Language Impairment	0.60%
Visual Impairment	0.20%
Emotional Disturbance	26%
Orthopedic Impairment	0.40%
Other Health Impairment	13%
Specific Learning Disability	6.00%
Deaf-blindness	<0.1%
Multiple Disabilities	1.90%
Autism	43%
Traumatic Brain Injury	0.10%

In recent years, enrollment in both in-state and out-of-state NPSs has declined significantly. According to data from the CDE, enrollment declined from 14,258 in 2008 to 6,163 in 2023. Out-of-state enrollment has also declined significantly, from 893 in 2008 to 305 in the fall of 2023.

Under current law, LEAs may place students in certified NPSs outside of California, pursuant to their IEPs. If they do so, they must document their efforts to utilize public schools or to locate an appropriate NPS within the state. Out-of-state NPSs must be certified by the CDE.

The Budget Act of 2021, AB 180 (Committee on Budget), Chapter 44, Statutes of 2021, required the CDE to contract for a study that examines NPS/As. The CDE contracted with WestEd to conduct the study, which was required to examine:

- How California compares to other states in serving students through nonpublic schools and nonpublic agencies;
- Both in-state and out-of-state nonpublic school placements of California students;
- The process used by IEP teams in determining placements;
- Student outcomes in nonpublic school placements;
- The education certification, monitoring, and oversight activities at both the state and local levels; and
- How to improve coordination between the CDE and the CDSS.

This report recommended updating the statute and regulations to clarify the expected outcomes, certification and monitoring processes, roles and responsibilities, placement processes, and the requirements for data collection and reporting.

Recommended Committee amendments. Staff recommends that this bill be amended as follows:

- 1) In several sections, delete references to NPAs or placements in NPAs.
- 2) Clarify that any changes to waiver requirements apply to future waiver applications.
- 3) Require that curriculum requirements for NPS certification specify that this means the state adopted curriculum, and include any mandated instruction.
- 4) Add assurances relating to behavioral interventions to NPA certification requirements, to align with NPS certification requirements.
- 5) Permit, for purposes of the requirement that NPSs provide copies of credentials of staff providing instruction and services, when no credential for such services exists, they may submit licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.
- 6) Technical, clarifying, and conforming changes.

Arguments in support. The State Superintendent of Public Instruction, Tony Thurmond, writes, “I am pleased to sponsor Senate Bill (SB) 685 to align California’s nonpublic school and agency statutes with the Ninth Circuit’s decision in *Loffman v. California Department of Education*. The decision allows sectarian entities to apply to become certified nonpublic schools; as such this legislation removes the now obsolete ‘nonsectarian’ requirement thereby expanding eligibility. Further, the bill establishes appropriate safeguards governing nondiscrimination, educator credentialing, employee and contractor background checks, and incident reporting consistent with state law and regulations for all certified nonpublic schools.

One of my top priorities has been to ensure that students with disabilities receive the high-quality, specialized educational services required by their Individualized Education Programs (IEPs) in safe, appropriate, and accountable settings. Students placed in nonpublic schools are among California's most vulnerable learners, and it is essential that the legal and regulatory framework governing their placement reflects both current constitutional requirements and the state's commitment to student well-being.

California's nonpublic school program has long served as a critical placement option for students when the public school system cannot meet a student’s unique needs. California has an opportunity to update its statutes to reflect current constitutional standards while continuing to prioritize student safety, accountability, and educational quality. SB 685 modernizes California's nonpublic school certification framework in a manner consistent with these standards and strengthens the protections that ensure students with disabilities receive safe, appropriate, and high-quality services.

SB 685 prohibits nonpublic schools from using public funds that support publicly placed pupils for religious instruction and requires applicants for nonpublic school certification that all contacted educational services are secular, neutral, and respectful regarding religion and religious views. It also ensures nondiscrimination in the performance of the contracted services. The bill further strengthens student safety by extending fingerprint-based state and national background checks to both employees and contractors. Finally, it enhances oversight by phasing in full Commission on Teacher Credentialing requirements for both in-state and out-of-state nonpublic school instructional staff by January 1, 2028, this broadens incident-reporting triggers, and establishes a closed-loop process to ensure credentialholders subject to suspension or revocation are removed from contact with California pupils. By maintaining rigorous certification standards and expanding oversight mechanisms, SB 685 conforms statute on eligibility for nonpublic school certification to recent caselaw while ensuring accountability and student safety.”

Related legislation. SB 373 (Grove), Chapter 579, Statutes of 2025, expands certification requirements for NPSs located outside of California which serve students with disabilities, requires LEAs which have placed students at NPSs outside of California to conduct annual in-person interviews with students to evaluate their health and safety, and requires the CDE to develop an interview tool for this purpose.

SB 483 (Cortese), Chapter 587, Statutes of 2024, prohibits the use of prone restraint for any period of time by LEAs, charter schools, the State Special Schools for the Blind and the Deaf, and NPSs and NPAs.

AB 1466 (Weber), Chapter 582, Statutes of 2024, requires LEAs and charter schools to annually post on their websites the data on seclusions and restraints of students which is currently reported to the CDE.

AB 611 (Weber), Chapter 611, Statutes of 2023, requires that a contracting LEA inform parents and guardians of students who attend an NPS or an NPA of the change in its certification status within 14 days of becoming aware of any such change.

AB 153 (Committee on Budget), Chapter 86, Statutes of 2021 required the CDSS to decertify all out-of-state residential facilities for placement by county child welfare agencies or probation departments by January 1, 2023, and by that date to ensure that all children and youth had been returned to California.

AB 1172 (Frazier), Chapter 454, Statutes of 2019, requires that LEAs that send students to NPSs conduct on-site monitoring visits; requires that NPSs notify the CDE of any student-involved incident in which law enforcement is contacted; requires the CDE, if an investigation conducted by the CDE results in a finding that student health or safety has been compromised, to immediately suspend or revoke the school’s certification; requires that an NPS serving students with significant behavioral needs to have an individual on site who is qualified to implement behavior interventions, and requires that administrators of NPSs hold or be working toward specified credentials or licenses; requires that NPSs train specified staff in evidence-based practices and interventions specific to students’ unique behavioral needs.

AB 216 (Shirley Weber) of the 2019-20 Session, would have, among other things, prohibited prone restraint, chemical restraint, and mechanical restraint; permit seclusion or restraint only be used when behavior is unpredictable and spontaneous; required every school to implement a

program of positive behavioral interventions and supports; prohibit the use of seclusion or restraint until school staff have received emergency behavioral intervention training from a CDE-approved training provider; require that after the use of seclusion or restraint the student's parent be notified by the end of the schoolday and require that a school file an emergency report within 24 hours; require that a debriefing meeting be held within 2 schooldays of the use of seclusion or restraint; require that, if seclusion or restraint occurs for more than 20 minutes, a student must be provided with access to the bathroom and water every 30 minutes, and that after the first 20 minutes, every 10 minutes the administrator must provide written authorization for the continuation of the seclusion or restraint. This bill was held in the Assembly Education Committee.

AB 2756 (Shirley Weber), Chapter 998, Statutes of 2018, prohibits the use of restraint or seclusion on any student, except under specified circumstances; establishes parameters and procedures for situations in which restraint or seclusion may be used; requires data collection and reporting to the CDE.

REGISTERED SUPPORT / OPPOSITION:

Support

State Superintendent of Public Instruction, Tony Thurmond

Opposition

None on file

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