

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 1172 (Frazier) – As Amended April 22, 2019

**SUBJECT:** Special education: nonpublic, nonsectarian schools or agencies

**SUMMARY:** Requires that local educational agencies (LEAs) that send students to non-public, non-sectarian schools (NPSs) conduct on-site monitoring visits; requires that NPSs notify the California Department of Education (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 pupil 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. Specifically, **this bill:**

- 1) Requires, commencing with the 2021–22 school year, an LEA that enters into a master contract with an NPS to conduct, at minimum, an on-site visit to the NPS prior to placement of a pupil if the LEA does not have any pupils enrolled at the time of placement, and at least one onsite monitoring visit during each school year to the NPS at which the LEA has a pupil attending and with which it maintains a master contract.
- 2) Requires the LEA to report the findings from this monitoring visit to the CDE within 60 calendar days of the visit.
- 3) Requires, on or before June 30, 2020, the CDE, with input from special education local plan area (SELPA) administrators, to create and publish criteria for reporting this information to the CDE.
- 4) Requires an NPS and a nonpublic agenda (NPA) to notify the 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. Requires that this notification be provided in writing, no later than one business day after the incident occurred.
- 5) Requires that the Superintendent of Public Instruction (SPI) conduct an investigation of a significant deficiency in the quality of educational services provided by an NPA.
- 6) Authorizes the CDE to immediately suspend or revoke the certification of an NPS if an investigation by the CDE results in a finding that pupil health or safety has been compromised or is in danger of being compromised at an NPS or NPA.
- 7) For an NPS serving pupils with significant behavioral needs or who are on behavioral intervention plans, the school has an individual on site during school hours who is qualified, and responsible for the design, planning and implementation of behavior interventions as authorized under Section 3051.23 of Title 5 of the California Code of Regulations.

- 8) Commencing with the 2021-22 school year, documentation that the administrator of the NPS holds or is in the process of obtaining one of the following:
  - a) An administrative credential granted by an accredited postsecondary educational institution and 2 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 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 post-secondary institution in education, special education, psychology, counseling, behavior analysis, social work, behavioral science or rehabilitation
  - f) A credential authorizing special education and at least 2 years of experience teaching in special education prior to 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
- 9) Makes the holding of an administrative credential a condition of certification of the NPS.
- 10) Requires that LEAs pay fees, in addition to tuition, to NPSs and NPAs serving under their contract.

**EXISTING LAW:**

- 1) Expresses the intent of the Legislature that the role of an NPS and an 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). (EC 56366)
- 3) Requires the 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 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 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.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Need for the bill.* The author states, "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 California Department of Education 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

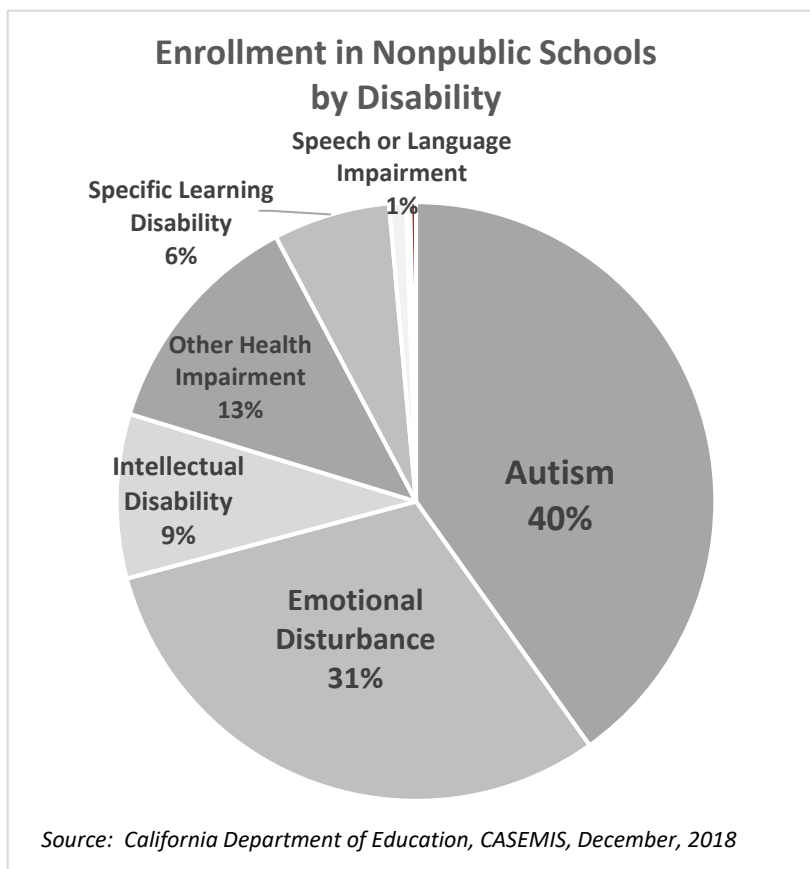
develop. AB 1172 will also protect students by requiring that staff at nonpublic schools meet higher standards of training and be better equipped to serve their students.”

This bill responds to the death of a student at the Guiding Hands NPS in El Dorado Hills in 2018. According to press reports, the student was restrained face-down by school staff for one hour and 45 minutes, and died a day later at the UC Davis Medical Center.

The school’s certification was revoked by the CDE in January of this year “based on numerous investigations, including one involving the death of a student, and alleged violations of improper use of restraints in violation of the California Education Code.”

**Major provisions of the bill.** This bill contains the following major provisions, with a discussion from the bill’s sponsor of the need for the reform and the relationship to the death at the Guiding Hands NPS:

- **Requires SELPAs and/or LEAs to conduct at least one annual on-site monitoring visit to each NPS and report the findings to CDE within 60 days.** According to the CDE, “The onsite monitoring visit by an LEA is necessary to ensuring a student’s protection by providing a second layer of oversight and additional rounds of monitoring of the nonpublic school in addition to the onsite review conducted by the SPI. LEAs contracting with outside entities, such as a non-public school, to provide special education and related services are ultimately responsible for the implementation of the student’s individualized education program (IEP). Furthermore, the LEA and IEP team are charged with evaluating whether or not a placement is appropriate given the unique needs of the students. Thus, LEAs should be accountable for the wellbeing of their students and monitor the students’ progress while placed at non-public schools. Specifically in relation to Guiding Hands, CDE’s investigation confirmed that LEA practices related to oversight and monitoring of students attending nonpublic schools was varied and inconsistent. Establishing expectations in this regard, and requiring information sharing between LEAs and the CDE, will strengthen oversight of nonpublic schools and establish appropriate safeguards for students.”
- **Requires NPSs and NPAs to report incidents involving law enforcement to LEAs and the CDE, in writing, within one-day of the incident.** According to the CDE, “By requiring non-public schools to immediately notify the CDE and the relevant LEA of any incident involving law enforcement or child protective services and immediately send copies of the



law enforcement report when it is available, the SPI and LEA will have direct knowledge of any potentially unsafe environment and can initiate an assessment of the situation without delay. Specifically in relation to Guiding Hands, CDE's investigation found that numerous prior incidents at Guiding Hands involving law enforcement were unknown to the CDE. Timely notification of these incidents likely would have prompted an earlier investigation into the non-public school."

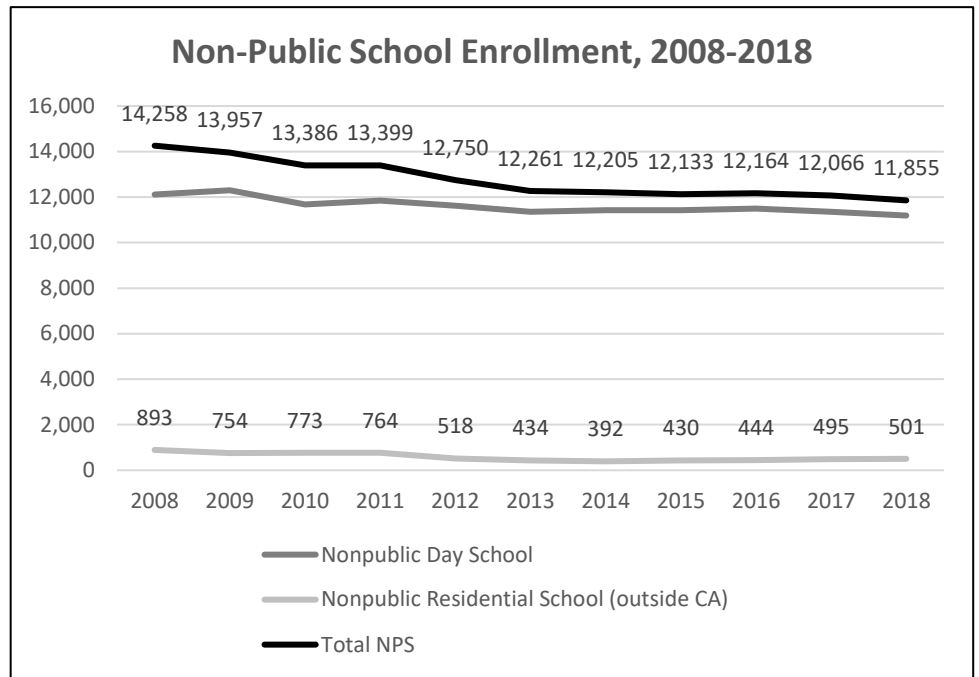
- **Authorizes the CDE to immediately suspend or revoke the certification of an NPS or NPA if the CDE finds, in an investigation, that the health or safety of a student has been compromised or is in danger.** According to the CDE, "By requiring non-public schools to immediately notify the CDE and the relevant LEA of any incident involving law enforcement or child protective services and immediately send copies of the law enforcement report when it is available, the SPI and LEA will have direct knowledge of any potentially unsafe environment and can initiate an assessment of the situation without delay. Specifically in relation to Guiding Hands, CDE's investigation found that numerous prior incidents at Guiding Hands involving law enforcement were unknown to the CDE. Timely notification of these incidents likely would have prompted an earlier investigation into the nonpublic school."
- **Requires that NPSs have a qualified individual on site when serving students with significant behavioral needs and/or who are on behavior intervention plans.** According to the CDE, "Many non-public schools serve students with complex and intense behavioral and emotional needs. The immediate availability of specialized staff with appropriate training, such as a qualified behavior analyst, is essential for applying their knowledge and expertise to resolve a situation safely. If specialized staff are not onsite, then other staff members may make uninformed attempts to handle the student(s), and those attempts may not adequately protect pupil health and safety. Specifically in relation to Guiding Hands, CDE's investigation found that staff's lack of training resulted in routinely and pervasively taking unsafe actions, which endangered students' health and safety."
- **Requires administrators at NPSs to hold, or be in the process of obtaining, specific credentials or licenses.** According to the CDE, "In relation to Guiding Hands, the CDE's investigation concluded that the administrators of Guiding Hands did not hold administrative credentials. With the additional education and training, credentialed administrators may be better equipped to recognize the widespread use of unsafe practices and institute policies at a nonpublic school to rapidly halt their use."

***Non-public schools in California.*** California's non-public, non-sectarian schools 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 a non-public school is paid by the public LEA that places the student in the school. Each NPS is certified by the CDE.

According to the CDE, 294 nonpublic schools served 11,855 California students with disabilities as of December, 2018. As shown in the table on page 4, 40 percent of students in NPSs are eligible to receive special education are identified as on the Autism spectrum. The next largest group by disability are the students who are identified as having emotional disturbance, at 31%.

**Trends in NPS enrollment.** According to the CDE, and as illustrated in the graph below, enrollment in NPS has been declining (data provided by CDE). Enrollment declined from 14,258 in 2008 to 11,855 in 2018.

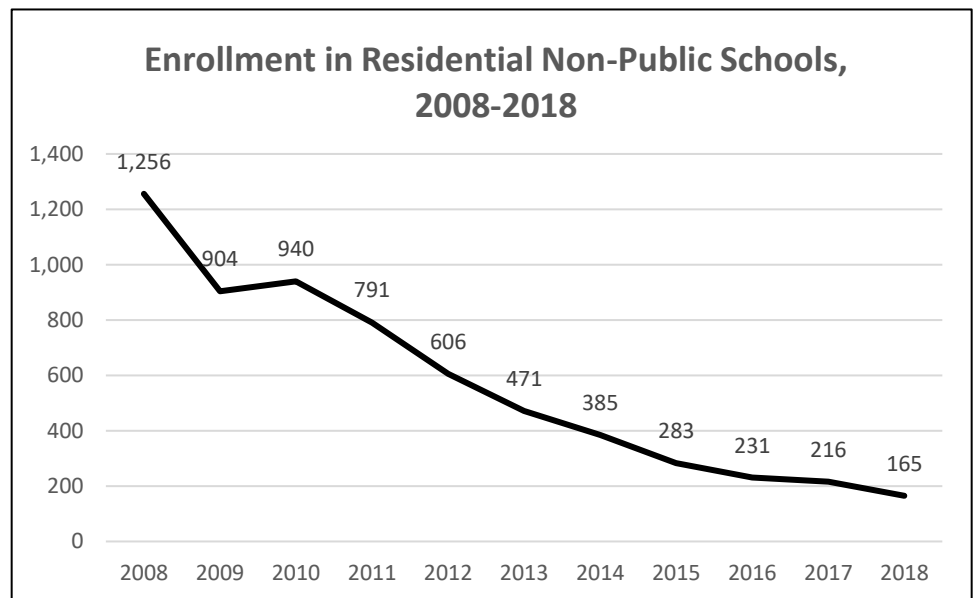
The decline in NPS residential enrollment has been particularly steep. As shown in the graph on this page (data provided by CDE) enrollment in residential NPSs has declined by 87% between 2008 and 2018, from 1,256 to 165 students. This decline is likely due to Continuum of Care reforms which have reduced the use of licensed children’s institutions to serve students in foster care, to which many residential NPS were attached.



**What role does the state currently have in maintaining health and safety at NPSs?**

Current law requires the following oversight of NPSs by the CDE, by requiring the SPI to:

- Annually review the certification of each NPS or NPA, and authorizes the SPI to conduct an onsite review as part of the annual review.
- 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.
- 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.



- Reflect violations or noncompliance in the certification status of the NPS or NPA, at the discretion of the SPI, pending an approved plan of correction by the NPS or NPA. Requires the CDE to retain records of all violations for a period of 10 years.
- 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.
- Ensure that 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.
- Authorizes the SPI to revoke or suspend the certification of an NPS or an NPA for specified reasons, including failure to notify the CDE in writing of any of the following within 45 days of specified occurrences, 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, and including the circumstances surrounding the death and appropriate preventative measures being taken or recommended.

***Special education in California.*** Federal law mandates that states provide students with disabilities with access to special education services, and organizes disabilities 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.

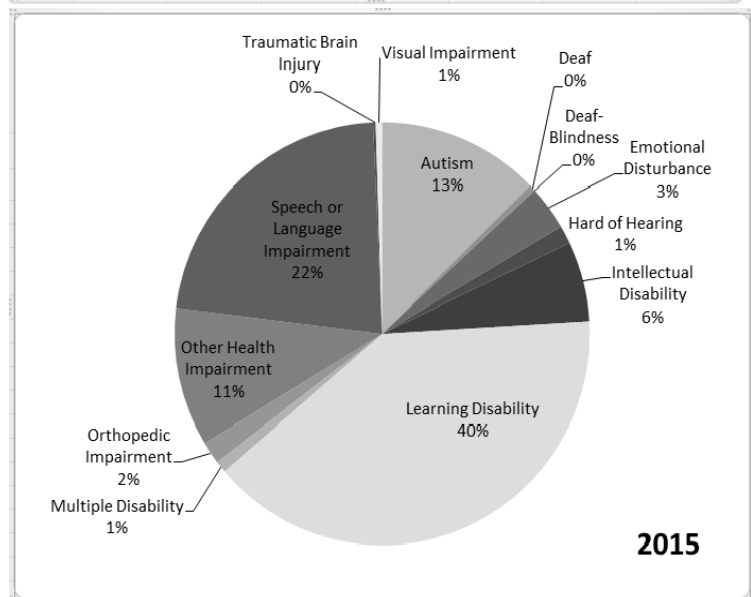
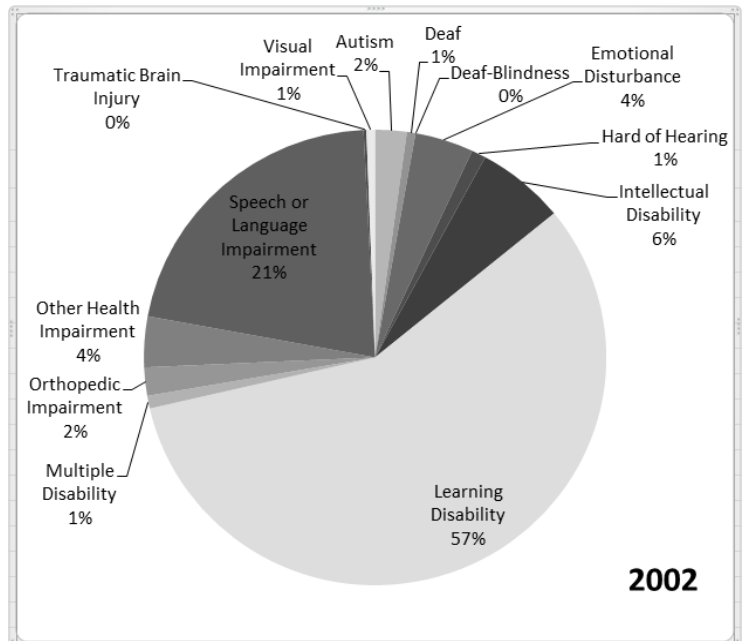
When children are three years of age and older, they may enter the special education system when LEAs determine that their needs cannot be met in general education programs. When this occurs, LEAs refer students for professional evaluation to determine if they qualify for special education. If the evaluation indicates that a student has a disability, and that the disability interferes with his or her education, the LEA is legally obligated to provide the student with special education services. Students identified as qualifying for special education receive an IEP—a written legal document developed by a team of stakeholders, including a student’s family—that outlines the students’ educational goals and the services that will be provided to meet those goals. 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.

According to the CDE, in 2016 there were 754,000 children, aged birth to 22, who were identified as having exceptional needs. 680,000 of these children were enrolled in grades K-12, representing roughly 11% of K-12 enrollment. A 2016 report from the Public Policy Institute of California states that the composition of this student population has changed in recent years. Specifically, although the most common disabilities in 2015 were specific learning disabilities, speech and language impairments, and other health impairments—which together constituted about 73 percent of all students with disabilities - the proportion of students with these

disabilities has declined, and the proportion of students identified with autism spectrum disorder has increased.

The most common disabilities among students are specific learning disabilities, speech and language impairments, and other health impairments, which together constituted about 73% of all students with exceptional needs in 2015. Viewed as a whole, there is a significant achievement gap between students with disabilities and their peers. The Legislative Analyst notes that while performance on standardized tests (including those specifically designed for students with disabilities) has improved over the past several years, a majority of students with disabilities still fail to meet state and federal achievement expectations, and that 60 percent of these students graduate on time with a high school diploma and about two-thirds of are engaged productively after high school (with about half enrolled in an institute of higher education and 15 percent competitively employed within one year after high school).

**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.”

**Arguments in opposition.** The California School Boards Association writes, “As amended, AB 1172 would expand what an LEA needs to pay to the NPS to include fees. Currently LEAs must pay the NPS for the tuition of a child who is attending the NPS at the behest of an IEP. This bill would also add that the LEA must also pay “fees, as applicable.” However, the bill does not define or reference what those fees *might* be. Unless the language can be better defined, it should be deleted from the bill.

AB 1172 also would require an LEA that enters into a master contract with an NPS to conduct at least one onsite monitoring visit during each school year to the NPS and to report the results to CDE within 60 days. The bill does require that CDE create and publish criteria for reporting the findings of the monitoring visit.

CSBA’s concern with this language centers around what the purpose of the monitoring visit is, and if this is an extension of the certification process. As placed in statute, this monitoring visit could be seen as to be part of the certification process. We have concerns as certification is a function of CDE who may already conduct inspections.

If the proposed language is to ensure that LEAs visit schools where they have placed students, there are a number of issues that need to be addressed in order to ensure appropriate reviews and reporting.”

**Recommended amendments.** *Staff recommends that the bill be amended to:*

- 1) Require the following of NPSs: Commencing in the 2020-21 school year, the nonpublic, nonsectarian school shall provide written verification of training for all staff that have any contact or interaction with students throughout the school day. The training shall be conducted on a written annual school year schedule with records kept of new employees being trained within 30 days of employment. This training shall:
  - a. Instruct staff in the use of evidence-based practices
  - b. Be conducted by persons licensed or certified in fields related to the evidence-based practices being taught
  - c. Be taught in a manner consistent with individualized education planning

The content of the training shall include, but not be limited to, the following:

- a. Positive behavioral intervention and supports, including collection and analysis of data to plan and implement behavioral supports
- b. Understanding challenging behaviors, and evidence-based strategies for preventing these behaviors

- c. Evidence-based interventions for reducing and replacing challenging behaviors, including de-escalation techniques
- 2) Require that the onsite visits of NPSs by LEAs include, but not be limited to, review of services provided to the pupil through the Individual Service Agreement between the LEA and the NPS, 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.
  - 1) Conform the requirement that administrators hold or be working toward a specified credential/license as a condition of certification to the recent amendments listing different options for fulfilling the credential/license requirements, and clarify that the proposed credential/license requirement becomes as a condition of certification of an NPS only after the effective date of the requirement.
  - 2) Make a technical correction to a section which states "onsite during school hours" twice.

***Prior and related legislation.*** AB 216 (Weber) of this Session would, among other things, prohibit prone restraint, chemical restraint, and mechanical restraint; permit seclusion or restraint only be used when behavior is unpredictable and spontaneous; require 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 pupil'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.

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

AB 1918 (O'Donnell), Chapter 127, Statutes of 2016, authorized county offices of education to issue temporary certificates to teachers employed at an NPS, including out-of-state teachers, while their credential applications are being processed at the California Commission on Teacher Credentialing, and increased background check requirements for all applicants for temporary certificates.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Superintendent of Public Instruction Tony Thurmond (sponsor)  
 Disability Rights California  
 State Council On Developmental Disabilities

**Opposition**

California School Boards Association

**Analysis Prepared by:** Tanya Lieberman / ED. / (916) 319-2087