

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2756 (Medina) – As Amended April 2, 2018

SUBJECT: Private schools: home schools: filing

SUMMARY: Requires each private school to specify the nature of the school on its Private School Affidavit. Specifically, **this bill:**

- 1) Requires a private school, on the affidavit that is filed annually with the California Department of Education (CDE), to indicate the nature of the school from among the following:
 - a) A conventional or traditional private school;
 - b) Private school satellite programs;
 - c) Private online or virtual schools;
 - d) Parents, guardians, or other individuals who operate a private home school; and
 - e) Certified, nonpublic, nonsectarian schools.
- 2) Requires a private school to include a description of the nature of the school on its affidavit if the school is not described by the listed schools.
- 3) Requires the Superintendent of Public Instruction (SPI) to prepare and publish a list of all private schools, which shall include the name and address of the school, the name of the school owner or administrator, and the nature of the school.
- 4) Defines "private school" to mean a person, firm, association, partnership, or corporation that provides private school instruction in the state."
- 5) Defines "private school instruction" to mean instruction and the provision of full-time day school at the elementary or high school level for one or more pupils who are 6 to 18 years of age, inclusive."
- 6) Defines "a person, firm, association, partnership, or corporation" to include, but not be limited to, conventional or traditional private schools, private school satellite programs, private online or virtual schools, parents, guardians, or other individuals who operate a private home school, and certified nonpublic, nonsectarian schools."
- 7) Makes other non-substantive changes.

EXISTING LAW:

- 1) Provides the following options for independent study or home school instruction:
 - a) Enrollment in an independent study program through a traditional public school;

- b) Enrollment in an independent study program through a charter school (typically an online, "virtual" school);
 - c) Homeschooling (not enrolled in a school, not subject to compulsory attendance laws, and being taught by persons capable of teaching); and
 - d) Instruction by a tutor, provided the instruction is provided at least three hours per day between the hours of 8:00 a.m. and 4:00 p.m. for 175 days each calendar year by a person who holds a valid state credential for the grade taught.
- 2) Requires persons who homeschool their children to file an annual Private School Affidavit Form.
- 3) Requires the Private School Affidavit to include the following:
- a) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business;
 - b) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California;
 - c) The address, including city and street, of the location of the records of the person, firm, association, partnership, or corporation, and the name and address, including city and street, of the custodian of such records;
 - d) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation;
 - e) The school enrollment, by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities;
 - f) That the following records are maintained at the address stated, and are true and accurate:
 - i) Records of attendance;
 - ii) The courses of study offered; and
 - iii) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.
 - g) Required criminal record summary information has been obtained.
- 4) Prohibits the CDE from including private schools with fewer than six pupils in its published list of private schools.

FISCAL EFFECT: Unknown

COMMENTS: "Homeschooling" has ambiguous legal standing in California. Compulsory education was first established in 1903, but exempted any child "being taught in a private school, or by a private tutor, or at home by any person capable of teaching..." (Statutes of 1903, Chapter 270). In 1929, the proviso that a child be taught by "any person capable of teaching" was struck

from the law and replaced by the requirement that the instructor "hold a valid state credential for the grade taught" (Statutes of 1929, Chapter 885). The 1929 statute also retained the exemption from compulsory attendance for children attending a private school or being tutored, but not for children being homeschooled. Court decisions in 1953 and 1961 concluded that it was the Legislature's intent not to include home schooled children in the exemption.¹

Although the Legislature has never acted to address or overturn these decisions, it has enacted legislation that gives implicit approval to home schooling. For example, the Legislature enacted Budget Act language in 1991 prohibiting the CDE from compiling information on private schools with fewer than five students. This language is still adopted in the annual Budget Act and has been interpreted to reflect the Legislature's acknowledgement that some private schools are, in fact, home schools. In addition, "a parent or guardian working exclusively with his or her children" is excluded from statutory background fingerprint requirements that apply to public and private school employees [Education Code §42237(b)(4)]. A 2008 court concluded that "home schooling is permitted in California as the result of implicit legislative recognition rather than explicit legislative action." As a result, there is a "near absence of objective criteria and oversight for home schooling."²

Currently, the law exempts children from compulsory attendance laws if they are taught "in a private full-time day school by persons capable of teaching." Such children must be taught in English and "receive instruction in the several branches of study required to be taught in the public schools of the state." Records of attendance must be kept, and the exemption from compulsory attendance is valid only after the school district verifies that the annual Private School Affidavit Form has been filed. However, neither the affidavit itself nor the verification that it has been filed shall "be construed as an evaluation, recognition, approval, or endorsement of any private school or course." While the attendance keeping requirement applies to homeschools, it is not enforceable, because districts have no way of knowing which (if any) children in their boundaries are being homeschooled. Homeschool parents are not required to inform their district of residence that they are homeschooling their children. Although homeschools are required to provide the same basic course of study as public schools, there is no mechanism to ensure that this happens. Neither private schools nor home schools are required to be accredited, employ credentialed teachers, or follow the state's curriculum content standards. Their pupils do not participate in the state testing and accountability system.

The CDE reports that 15,367 affidavits reflecting an enrollment of 503,252 pupils have been filed in 2017-18. Homeschools account for 12,410 (80.8%) of the affidavits and 22,583 of the enrollment. The average homeschool enrollment is 1.82 pupils per affidavit. It is possible that some homeschool parents do not file affidavits.

Homeschooling vs. independent study. Unlike homeschooled students, independent study students are enrolled in a school district or charter school and are under the direction of a certificated teacher. Because they are public school students, they are subject to the same minimum course requirements and state testing programs as all other public school students.

¹ *People v. Turner* (1953) 263 P.2d 685, 121 Cal.App.2d Supp. 861 (*Turner*) and *In re Shinn* (1961) 195 Cal.App.2d 683, 693 16 Cal.Rptr. 165 (*Shinn*)

² *Johnathan L. v Los Angeles County Department of Children and Family Services* (2008) 165 Cal.App.4th 1074.

How California compares to other states. Homeschool regulations and requirements among the states range from little-to-no regulations, like California, to closer oversight. New York, for example, requires homeschooling parents to submit an annual Individualized Home Instruction Plan to their local school superintendent for approval and must submit quarterly reports on their child's progress. Home instructors must have at least a high school diploma in 13 other states and the District of Columbia. Most states (29 plus the District of Columbia) specify a basic course of instruction. Standardized testing of homeschooled students is required in 20 states.

This bill requires private schools to indicate the nature of the school on the annually-filed Private School Affidavit and requires the affidavit to include the following options:

- A conventional or traditional private school;
- Private school satellite programs;
- Private online or virtual schools;
- Parents, guardians, or other individuals who operate a private home school; and
- Certified, nonpublic, nonsectarian schools.

The bill provides that, if the nature of the private school is not described by any of these options, then the affidavit shall provide a description of the nature of the school.

This bill also requires the SPI to include all private schools in the published list of private schools. Since 1991, annual Budget Act language has prohibited the SPI from expending funds to include schools with five or fewer students in that list. If that language is part of the 2018 Budget Act, then it would be in conflict with this bill. It is currently in the budget bill.

Arguments in support. Supporters argue that "the ability to distinguish between various categories of private schools will be of benefit to parents seeking a particular type of school, to researchers interested in refining their analyses of private school data, to member of the press seeking to paint accurate portraits of the incidence and distribution of various school types, to law enforcement and fire officials wishing to map out the schools located within their jurisdictions, and to the public-at-large."

Arguments in opposition. Opponents argue that this bill would create a child safety crisis by requiring the SPI to publish details of all private schools, even those with one student. They state that the data could be used to improperly target homeschoolers or other schools that someone might disagree with.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Private School Organizations
California Consortium for Independent Study
Riverside County Office of Education

Opposition

California Homeschool Network
Celebration Education
East Contra Costa Explorers
Holitopa Academy
Home School Legal Defense Association
Private and Home Educators of California
Real CA Homeschool
Many individuals

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