

Date of Hearing: May 6, 2020

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 3097 (Frazier) – As Amended May 4, 2020

SUBJECT: Special education: nonpublic, nonsectarian schools or agencies

SUMMARY: Establishes updated reporting requirements for student-related incidents involving law enforcement at a nonpublic, nonsectarian school (NPS) or agency (NPA). Requires an NPS report any student-involved incident at the NPS or NPA in which law enforcement was contacted to the local educational agency (LEA) with which it has a master contract within one business day, but not to the California Department of Education (CDE). Clarifies that a single monitoring visit may be used to monitor multiple pupils placed at a NPS by LEAs within a special education local plan area (SELPA). Specifically, **this bill:**

- 1) Removes the existing requirement for a NPS to report any student-involved incident in which law enforcement is contacted to the CDE within one business day. Requires that such incidents be reported to the LEA with which the NPS has a master contract within one business day.
- 2) Clarifies that a single monitoring visit may be used to monitor multiple pupils placed at the NPS by LEAs within a SELPA.

EXISTING LAW:

- 1) Defines an NPS as a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program (IEP) and is certified by the CDE. (Education Code (EC) 66034).
- 2) Requires a master contract for NPS and NPA services to specify the general administrative and financial agreements, 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 IEP. (EC 56366)
- 3) Requires the Superintendent of Public Instruction (SPI) to do the following:
 - a) Conduct an onsite review of the facility and program for which an applicant NPS seeks certification. (EC 56366.1)
 - b) Annually review certifications of each NPS or NPA, which may involve an onsite review. (EC 56366.1)
 - c) Conduct onsite investigations without prior notice if there is substantial reason to believe there is immediate danger to the health, safety, or welfare of a child. (EC 56366.1)
 - d) 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, and document the complaint and results of the investigation. (EC 56366.1)

- e) Monitor the facilities, educational environment, and quality of the educational program of an existing certified NPS or NPA on a three-year cycle. (EC 56366.1)
- f) Notify contracting LEAs and the SELPA in which the NPS or NPA is located of the determination to suspend or revoke state certification. The SPI is authorized to revoke or suspend the certification of an NPS for specified reasons. (EC 56366.1)
- g) Requires violations or noncompliance to 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. (EC 56366.1)
- h) Requires, commencing in the 2020-21 school year, an LEA that enters into a contract with an NPS to conduct an onsite visit before placement of a student if the LEA does not have students enrolled at the time of placement. (EC 56366.1)
- i) Requires an LEA to conduct at least one monitoring visit to the NPS during each school year which will include, but is not limited to, a review of the services provided, and progress of the student towards the goals in the student's IEP. (EC 56366.1)
- j) Requires an NPS or NPA to do the following:
 - a) 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. (EC 56366.1)
 - b) Commencing in the 2020-21 school year, provide specified trainings to staff members who have contact with pupils. (EC 56366.1)
 - c) Commencing in the 2020-21 school year, have, as a criteria for certification, an administrator that holds or is in the process of obtaining specified credentials. (EC 56366.1)
 - d) 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. (EC 56366.1)
- k) 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. (EC 56366.1)
- l) Requires an LEA to collect, and no later than three months after the end of the school year, report to the department annually specified information on the use of behavioral restraints and seclusions for pupils enrolled in or served by the LEA. Requires the data collected and reported to be made available as public record and requires the CDE to post the data on its website. (EC 49006)

COMMENTS:

Need for the bill. “AB 3097 is a simple bill that contains minor technical clean-up to ease the implementation of AB 1172 (Frazier), signed into law last year. Specifically, AB 3097 clarifies that local educational agencies (LEAs) may make a single monitoring visit for multiple students placed at the same nonpublic school or agency, and eliminates a duplicative reporting requirement to the Department of Education.

Last year’s AB 1172 added safeguards to enhance the safety of students attending nonpublic schools and nonpublic agencies. AB 1172 also ensured nonpublic schools have the appropriate credentialed and specialty staff.”

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 if LEAs determine that their needs cannot be met solely 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 2019 there were 795,000 children, aged birth to 22 in California, who were identified as having exceptional needs. 720,000 of these children were enrolled in grades K-12, representing roughly 12% 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, since 2015, the number of students with specific learning disabilities, speech and language impairments, and other health impairments has declined, while the proportion of students identified with autism spectrum disorder has increased.

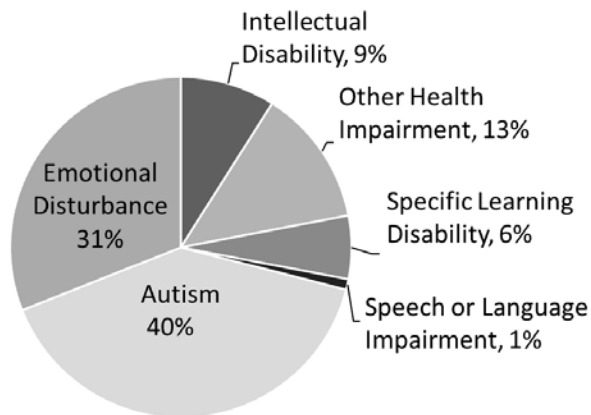
In 2014, the DOE’s Office for Civil Rights (OCR) reported that in 2011-12 students with disabilities represented 12% of the national student population, but 58% of those placed in seclusion and 75% percent of those subjected to physical restraint. In California, 81 percent of students exposed to physical restraint are students with disabilities.

Some students may have needs so exceptional that they cannot readily meet in a public school setting. When an appropriate public education program is unavailable, an LEA can contract with an NPS to provide appropriate services and special education to students with disabilities.

Non-Public, Non-sectarian schools. California's NPSs are specialized private schools that provide services to public school students with disabilities pursuant to an IEP. By law, students with exceptional needs receiving services from an NPS must have access to the educational materials, services, and programs that are consistent with each student's 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, 390 nonpublic schools served 10,549 California students with disabilities as of August, 2019. As shown in the figure below, 40% of students in NPSs who were eligible to receive special education were identified as on the autism spectrum in 2018 (data from the CDE). The next largest group by disability were students who were identified as having emotional disturbance, at 31%. By comparison, at public schools in California 15% of the students who were eligible to receive special education were identified as being on the autism spectrum and 3% were identified as having emotional disturbance.

Enrollment in Nonpublic Schools by Disability



Source: California Department of Education, CASEMIS, December 2018

attached.

Enrollment in NPSs has declined in recent years from 14,258 in 2008 to 11,855 in 2018, according to data from the CDE. This decline is especially steep for residential NPSs, which declined by 87% from 1,256 students in 2008 to 165 students in 2018. 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 NPSs were

Recent increases in regulations, monitoring, and reporting to improve the health and safety of students. The Safe Schools Assessment Program (Article 7 of Title 5 of the California Code of Regulations (CCR)) requires LEAs to submit to the CDE reports that contain specific numerical data on the incidents of crime, including hate crimes or hate motivated incidents occurring on their campuses. This data is aggregated and submitted to the CDE twice annually.

In 2018, legislation was passed to restrict the use of seclusion and restraint in schools. It stipulated that an educational provider is only authorized to use behavioral restraints, which includes physical and mechanical restraints, or seclusion, to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive. Additionally, this law required LEAs to collect and annually report to the CDE information regarding the use of behavioral restraints and seclusion for students enrolled or served by the LEA.

In 2019, in response to an incident in which a student died after being subjected to prolonged restraint in a California NPS, laws were enacted to increase the regulation of NPSs. The main provisions of the 2019 legislation (AB 1172) are the following:

- Requires LEAs to conduct at least one annual on-site monitoring visit to each NPS at which it has at least one student placed and with which it holds a master contract, and report the findings to CDE within 60 days.
- Requires NPSs and NPAs to report incidents involving law enforcement to LEAs and the CDE, in writing, within one-day of the incident.
- 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.
- Requires that NPSs have a qualified individual on site when serving students with significant behavioral needs and/or who are on behavior intervention plans.
- Requires administrators at NPSs to hold, or be in the process of obtaining, specific credentials or licenses.

AB 3097 proposes changes to the first two of these stipulations. First, this bill clarifies that LEAs or SELPAs can monitor one or more students during each on-site monitoring visit. This change makes it clear that an LEA does not need to conduct a separate monitoring visit for each student the LEA has enrolled at the NPS. Furthermore, if a SELPA holds a master contract with the NPS at the SELPA level, this clarifies that the SELPA can conduct a single monitoring visit for all students.

AB 3097 also changes the requirement for an NPS or NPA to report student-related incidents in which law enforcement was contacted. Current law requires the NPS or NPA to report such incidents to both the LEA that holds a master contract with the NPS, and to the CDE within one business day of the event. AB 3097 would only require the NPS to report these incidents to the LEA.

Role of the state in monitoring 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 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.
- 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.

While the SPI and the CDE have significant authority in the oversight of NPAs and NPSs, the majority of these provisions relate to either systemic compliance issues (tracking quality of the program, ensuring proper certification and training of employees, reviewing certifications), or extreme incidences of noncompliance where there is reason to believe there is a threat of immediate danger to a student. In the former case, periodic, aggregated reports of incidents at NPAs would allow these oversight entities to observe trends, and detect patterns of noncompliance, and respond appropriately through the authority granted to them in statute. In the latter case, the authority of the CDE to respond is restricted to its ability to revoke the NPAs certification. Removing the requirement for NPAs to report all incidents involving law enforcement to the CDE within one day does not remove CDE's authority to immediately suspend or revoke an NPS's certification if a situation occurs that warrants this intervention.

Most student incidents involving law enforcement are student behavioral incidents that do not require a response from the CDE, and in which the LEA or SELPA that placed the student at the NPA rather than the CDE possesses the necessary authority to intervene appropriately with disciplinary or other action towards the student(s) involved. The requirement to report incidents involving law enforcement to the CDE within one day, regardless of the nature of the incident, places an administrative burden on both the CDE and the NPA. The committee may wish to consider whether, under current law, the CDE possesses the authority to appropriately respond to day-of reports of all incidents involving law enforcement.

The CDE receives annual reports of incidents involving statutory offenses and seclusion and restraint pursuant to current federal and state law. A CDE guide on the use of the California Longitudinal Pupil Achievement Data System (CALPADS), which is used to report student data, summarizes current reporting requirements: “[LEAs must report]... (1) incidents that result in the use of physical restraint or seclusion, (2) incidents in which a statutory offense is committed, and (3) for incidents in which a statutory offense is committed, the offense committed, and the disciplinary result (e.g. other means of correction, suspension, expulsion). This information is required to satisfy state law (EC 49005-49006.4), federal requirements under the Gun-Free

Schools and Communities Act, the Individuals with Disabilities Education Act (IDEA), and to determine persistently dangerous schools under the Elementary and Secondary Education Act of 1965, as amended (ESEA).” (CDE CALPADS data guide, 2020)

According to information on the CDC website, the format for submitting this data was updated in 2019-20 to streamline the collection of seclusion and restraint data with previous reporting requirements. LEAs are required to submit a Student Incident File in which LEAs report all incidents (1) resulting in the use of physical restraint, mechanical restraint, or seclusion; and (2) in which a statutory offense is committed. They must also submit a Student Incident Result File, in which they select one or more items from a list of possible incident results. For instance, a result for a student who is restrained or secluded could be “physical restraint”, “mechanical restraint”, or “seclusion.” The list of possible incident results for students who commit a statutory offense is extensive, but includes “Law enforcement referral, not including school-related arrest.”

To summarize, in addition to the day-of-incident reporting requirement for student incidents involving law enforcement, the existing statute and regulations require LEAs to submit aggregated reports of all events of all student-involved statutory offenses, including those in which law enforcement, and all incidents involving seclusion and restraint to the CDE.

Prior and related legislation. AB 2670 (Weber) of this Session would require an LEA to post on its website an annual report on the use of behavioral restraints and seclusions for pupils enrolled or served by the LEA. Existing law requires LEAs to submit this report to the CDE, and requires the CDE to make it available on its website.

AB 216 (Weber) of this Session establishes the Pupil and Staff Safety Pilot Program, to be administered by the Scale Up MTSS Statewide (SUMS) project, for the purpose of training school staff de-escalation techniques and alternatives to physical restraint and seclusion of students.

AB 1172 (Frazier) Chapter 454, Statutes of 2019 requires local educational agencies (LEAs) that send students to non-public, non-sectarian schools (NPSs) to conduct on-site monitoring visits; requires NPSs to 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 an NPS serving students with significant behavioral needs to have an individual on site who is qualified to implement behavior interventions, and requires administrators of NPSs to hold or be working toward specified credentials or licenses.

AB 2657 (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

None

Opposition

None

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