

## **Assembly Bill No. 1858**

### **CHAPTER 914**

An act to amend Sections 52052, 56157, 56341.5, 56366, 56366.1, 56366.5, and 56366.9 of, and to add Sections 49085, 56026.3, 56155.7, 56366.10, 56366.11, and 56366.12 to, the Education Code, to amend Section 1501.1 of the Health and Safety Code, and to add Section 16014 to the Welfare and Institutions Code, relating to foster children.

[Approved by Governor September 29, 2004. Filed  
with Secretary of State September 30, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1858, Steinberg. Foster children: education.**

Existing law requires the California School Information Services program administrator to submit to the State Board of Education a plan to administer, coordinate, and manage the development and implementation of an electronic statewide school information system to address current problems of information exchange. Existing law requires the plan to prescribe the set of statewide data elements and codes to be implemented by the California School Information Services and requires these data elements and codes to comply with specified privacy provisions.

This bill would require the State Department of Education to ensure that the California School Information Services' system meets the needs of pupils in foster care and includes disaggregated data on pupils in foster care.

Existing law requires the Superintendent of Public Instruction, with approval of the State Board of Education, to develop an Academic Performance Index (API), to measure the performance of schools, especially the performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

Existing law authorizes a school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school to receive an API score if the school has 11 or more valid test scores and the school chooses to receive an API score for at least 3 years.

This bill would also expand this authority for nonpublic, nonsectarian schools.

Existing law requires the Superintendent of Public Instruction, with approval of the State Board of Education, to develop an alternative

accountability system for schools with certain API scores and for certain other schools, including community day schools and alternative schools.

This bill would also require the Superintendent of Public Instruction to develop an alternative accountability system for nonpublic, nonsectarian schools.

Existing law makes each school district, special education local plan area, or county office of education responsible for providing appropriate education to individuals with exceptional needs residing in a licensed children's institution or foster family home located in the geographical area covered by the local plan. Existing law defines a licensed children's institution as a residential facility that is licensed, as specified, to provide nonmedical care to children, including individuals with exceptional needs.

This bill would prohibit a licensed children's institution and a residential care facility from requiring, as a condition of admission or residency, that a child be identified as an individual with exceptional needs.

Existing law makes each school district, special education local plan area, or county office of education responsible for providing appropriate education to individuals with exceptional needs residing in a licensed children's institution or foster family home located in the geographical area covered by the local plan. Existing law requires the school district, special education local plan area, or county office of education, in providing appropriate programs, to first consider services in programs operated by a public education agency. Under existing law, if those programs are not appropriate, special education and related services are required to be provided by contract with a nonpublic, nonsectarian school that is certified by the Superintendent of Public Instruction.

This bill would require a local educational agency that has placed an individual with exceptional needs residing in a licensed children's institution or foster family home in a nonpublic, nonsectarian school to conduct an annual evaluation, as part of the annual individualized education program process, of whether the placement is the least restrictive environment that is appropriate to meet the pupils' needs. The bill would require the nonpublic, nonsectarian school to report to the local educational agency that made the placement, on a quarterly or trimester basis, as appropriate, the educational progress demonstrated by the individual with exceptional needs towards the attainment of the goals and objectives specified in the individual's individualized education program.

Existing law enumerates the requirements for meetings of an individualized education program team.



This bill would require an individual with exceptional needs to be allowed, as part of his or her participation in the individualized education program process, to provide confidential input to any representative of his or her individualized education program team.

Existing law authorizes school districts, special education local plan areas, and county offices of education to enter into master contracts for the provision of special education and related services with nonpublic, nonsectarian schools or agencies, as defined, and requires the master contract to be developed in accordance with specified requirements, including, among others, that the master contract include a description of the process being utilized by the school district, county office of education, or special education local plan area to oversee and evaluate placements in nonpublic, nonsectarian schools.

This bill would require the local educational agency to, at least once every year and, to the extent possible, as part of the individualized education program process, conduct certain evaluations and considerations. To the extent this bill would impose additional duties on those local educational agencies, the bill would impose a state-mandated local program.

The bill would, in addition, require the master contract to include that, with respect to a nonpublic, nonsectarian school that is associated, as specified, with a licensed children's institution, there be a method of evaluating whether the school meets specified guidelines, and with respect to a nonpublic, nonsectarian school, the school be subject to the alternative accountability system of the Public School Performance Accountability Program in the same manner as public schools during the school's testing period, as specified, and each pupil placed in the school be tested in accordance with that accountability program, and the school prepare a school accountability report card, as provided. The bill would require the test results to be reported by the nonpublic, nonsectarian school to the State Department of Education.

Existing law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified by the Superintendent of Public Instruction as meeting specified standards. Existing law sets forth the certification application process and procedures for the nonpublic, nonsectarian schools or agencies that seek certification and provides that the Superintendent of Public Instruction may certify a nonpublic, nonsectarian school or agency for a period of not longer than 4 years. Existing law requires that only those nonpublic, nonsectarian schools and agencies that provide special education that utilize staff who hold, or are receiving training under the supervision of staff who hold, a



current valid California credential or license, as specified, may be certified.

This bill would instead authorize the Superintendent of Public Instruction to certify a nonpublic, nonsectarian school or agency for a period of not longer than 18 months, and would make related changes. The bill would require a nonpublic, nonsectarian school or agency to make notification of its intent to seek certification. The bill would require that only those nonpublic, nonsectarian schools and agencies that provide special education that utilize staff who hold a certificate, permit, or other document equivalent to that which staff in a public school would be required to hold may be certified.

This bill would require a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs to certify in writing to the Superintendent of Public Instruction that the school satisfies various requirements relating to, among others, access to standards-based curriculum and instructional materials, access to specific instruction and assistance, and a discipline policy.

Existing law authorizes the Superintendent of Public Instruction to monitor a nonpublic, nonsectarian school or agency onsite at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child.

This bill would require the Superintendent of Public Instruction to conduct an investigation onsite at any time without prior notice under those circumstances and monitor the facilities, the educational environment, and the quality of the educational program of an existing certified nonpublic, nonsectarian school or agency on a 3-year cycle, as provided. The bill would also require the Superintendent of Public Instruction, with respect to a nonpublic, nonsectarian school, to conduct an investigation, which is to include an unannounced onsite visit, if the Superintendent of Public Instruction receives evidence of a significant deficiency in the quality of educational services provided by the school or noncompliance with other specified requirements. The bill would place additional requirements on a nonpublic, nonsectarian school regarding financial recordkeeping, submitting an annual budget and an annual audit, and documenting services and programs.

Existing law requires the Superintendent of Public Instruction to charge a nonpublic, nonsectarian school or agency a reasonable fee for certification and requires the nonpublic, nonsectarian school or agency to pay the fee when it applies for certification and when it updates its application for annual review by the Superintendent of Public Instruction. Existing law prescribes the base fee for these purposes based on the number of pupils.

This bill would increase the base fees.



Existing law requires a school district, special education local plan area, or county office of education, upon receipt of a request from a nonpublic, nonsectarian school for payment for services provided under contract, to either send a warrant within 45 days or notify the school or agency within 10 working days of the reason why payment will not be made.

This bill would provide that any educational funds received from a local educational agency for the educational costs of individuals with exceptional needs it has placed in nonpublic, nonsectarian schools are to be used solely for those purposes and not for the costs of a residential program.

This bill would require the State Department of Education to implement a program, as provided, to integrate individuals with exceptional needs placed in nonpublic, nonsectarian schools into public schools.

Existing law prohibits a licensed children's institution at which individuals with exceptional needs reside from requiring as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned or operated by a licensed children's institution. Existing law provides that those services may only be provided if the special education local plan area determines that alternative educational programs are not available.

This bill would prohibit a licensed children's institution at which individuals with exceptional needs reside from requiring as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, a licensed children's institution. The bill would provide that those services may only be provided if the special education local plan area determines that appropriate public alternative education programs are not available.

This bill would require a nonpublic, nonsectarian school to ensure confidential communication between a pupil of the school and members of the pupil's individualized education program team, at the pupil's discretion.

This bill would change all references to a school district, special education local plan area, and county office of education in those provisions to a local educational agency, and would define a local educational agency as a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.



This bill would require the State Department of Education and the State Department of Social Services to collaborate with specified entities to increase access to federal funds for foster youth services.

This bill would also delete obsolete language and make related changes and various technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature hereby finds and declares the following:

(1) According to recent reports by the Little Hoover Commission and the American Institutes for Research, the educational outcomes for our children while in foster care are substandard and, in many cases, California's foster care and educational systems do not provide the educational, life skills, and employment supports and opportunities to ensure that all foster children are able to successfully transition from dependency to self-sufficiency. Foster children that have been identified as requiring special education services, in order to benefit from their education, face extraordinary challenges.

(2) Pursuant to two recent reports, which were requested and funded by the Legislature and conducted by the American Institutes for Research, the subset of children in foster care who are also in special education and who have been placed in nonpublic schools do not always receive the same educational opportunities and often do not have access to the same caliber of instruction and instructional materials as individuals with exceptional needs in public schools.

(3) In the 2002–03 fiscal year, California spent over \$129 million on 4,700 pupils residing in licensed children's institutions and placed in nonpublic schools to fund the provision of special education services by the nonpublic schools for this population.

(4) Approximately one-third of youth emancipating from foster care fail to complete high school and a limited number enter college, although two-thirds express a desire to attend college. Of those who do complete



high school, not all of those pupils receive a grade point average, which is required for admission to a higher education institution.

(5) After emancipating from foster care, at least 25 percent experience homelessness, 33 percent receive welfare, 50 percent face unemployment, and approximately 25 percent are arrested and spend time incarcerated. Some of these problems could be diminished by ensuring that youth in foster care, including those who have been identified as individuals with exceptional needs, also receive the services that will assist them to transition to financial independence.

(6) Pupils in foster care are frequently moved to a different school, and often experience multiple placements during each school year, slowing their educational progress.

(7) Pupils in foster care lack parents to advocate for appropriate educational placement and service, and rely on surrogate parents, responsible adults, or the state to establish and monitor standards for curriculum, instruction, and services.

(8) California's current funding system for individuals with exceptional needs in foster care provides fiscal incentives for placement in a nonpublic school. These incentives may conflict with the goal of giving individuals with exceptional needs access to the least restrictive environment appropriate to their needs. According to the report of the American Institutes for Research, California's current system of funding nonpublic school services for children residing in licensed children's institutions is contrary to federal law.

(9) California's funding system also provides insufficient incentives to school districts to control costs when a child residing in a licensed children's institution is placed in a nonpublic school. According to the report of the American Institutes for Research, California now spends between sixty-five thousand dollars (\$65,000) and one hundred fifty thousand dollars (\$150,000) per child annually to house and educate a child in foster care residing in a group home, the higher costs of which are incurred for those placed in a nonpublic school.

(10) State standards are substantially less comprehensive for nonpublic schools than the standards and monitoring applied to California's public schools.

(11) Accountability for educational outcomes for pupils in foster care is vague and the system for monitoring the educational progress of pupils in foster care placed in nonpublic schools, as well as those in the regular public schools, is inadequate.

(12) Foster children and other pupils who have been identified as individuals with exceptional needs have the right to the best educational placement, and in accordance with the federal Individuals with Disabilities Education Act requirement for a free appropriate public



education that places pupils in the least restrictive environment appropriate to their needs, whether that is in a public school or a nonpublic school.

(b) It is therefore the intent of the Legislature to do all of the following:

(1) Increase state and local accountability for individuals with exceptional needs placed in nonpublic schools, including those residing in foster care.

(2) Improve state and local monitoring of nonpublic schools.

(3) Ensure that foster children and individuals with exceptional needs who are placed in nonpublic schools are included in the state's testing system in order to monitor and improve their educational outcomes.

(4) Include the nonpublic schools and individuals with exceptional needs who reside in licensed children's institutions in the special education Focused Monitoring and Technical Assistance System at the state and local level.

(5) Require the State Department of Education to add nonpublic schools to the Public School Accountability Act in order to measure pupil performance at nonpublic schools.

(6) Create a funding structure that is neutral in regard to the type of educational placement necessary and best suited for the pupil and that allows public schools to access funding currently available only for nonpublic schools and agencies in serving individuals with exceptional needs in foster care.

SEC. 2. Section 49085 is added to the Education Code, to read:

49085. The department shall ensure that the California School Information Services system meets the needs of pupils in foster care and includes disaggregated data on pupils in foster care.

SEC. 3. Section 52052 of the Education Code is amended to read:

52052. (a) (1) The Superintendent of Public Instruction, with approval of the state board, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils,



numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the state board.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were counted as part of a school district's enrollment in the October California Basic Educational Data System's data collection for the current fiscal year and were continuously enrolled during that year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the state board shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the

statewide API performance target adopted by the state board pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the state board may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the state board, the Superintendent of Public Instruction shall recommend, and the state board shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The state board may establish additional criteria that schools must meet to be eligible for the Governor's Performance Award Program.

(e) The API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, a nonpublic, nonsectarian school as identified in Section 56366, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 or more valid test scores and the school chooses to receive an API score for at least three years.



(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52053 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) The Superintendent of Public Instruction, with the approval of the state board, shall develop an alternative accountability system for schools with fewer than 100 test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools as identified in Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.

SEC. 4. Section 56026.3 is added to the Education Code, to read:

56026.3. "Local educational agency" means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

SEC. 5. Section 56155.7 is added to the Education Code, to read:

56155.7. A licensed children's institution may not require that a child be identified as an individual with exceptional needs as a condition of admission or residency.

SEC. 6. Section 56157 of the Education Code is amended to read:

56157. (a) In providing appropriate programs to individuals with exceptional needs residing in licensed children's institutions or foster family homes, the local educational agency shall first consider services in programs operated by public education agencies for individuals with exceptional needs. If those programs are not appropriate, special education and related services shall be provided by contract with a nonpublic, nonsectarian school.

(b) If special education and related services are provided by contract with a nonpublic, nonsectarian school, or with a licensed children's

institution under this article, the terms of the contract shall be developed in accordance with the provisions of Section 56366.

(c) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the local educational agency that made the placement shall conduct an annual evaluation, in accordance with federal law as part of the annual individualized education program process, of whether the placement is the least restrictive environment that is appropriate to meet the pupil's needs.

(d) If an individual with exceptional needs residing in a licensed children's institution or foster family home is placed in a nonpublic, nonsectarian school, the nonpublic, nonsectarian school shall report to the local educational agency that made the placement, on a quarterly or trimester basis, as appropriate, the educational progress demonstrated by the individual with exceptional needs towards the attainment of the goals and objectives specified in the individual's individualized education program. Pursuant to federal law, no local educational agency shall refer a pupil to a nonpublic, nonsectarian school unless the services required by the individualized education program of the pupil can be assured.

SEC. 7. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each local educational agency convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed-upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents or guardians shall also be informed in the notice of the right, pursuant to clause (ii) of paragraph (1) of subsection (b) of Section 300.345 of Title 34 of the Code of Federal Regulations, to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

(d) As part of the participation of an individual with exceptional needs in the individualized education program process, as required by federal law, the individual with exceptional needs shall be allowed to provide confidential input to any representative of his or her individualized education program team.

(e) For an individual with exceptional needs beginning at age 14, or younger, if appropriate, the meeting notice shall also indicate that a



purpose of the meeting will be the development of a statement of the transition services needs of the individual required by subdivision (a) of Section 56345.1 and indicate that the individual with exceptional needs is also invited to attend. In accordance with paragraph (3) of subsection (b) of Section 300.345 of the Code of Federal Regulations, for an individual with exceptional needs beginning at 16 years of age or younger, if appropriate, the meeting notice shall also indicate that a purpose of the meeting is the consideration of needed transition services for the individual required by subdivision (b) of Section 56345.1 and indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the pupil's preferences and interests are considered in accordance with paragraph (2) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) The meeting notice shall also identify any other local agency in accordance with paragraph (3) of subsection (b) of Section 300.344 of Title 34 of the Code of Federal Regulations.

(g) If no parent or guardian can attend the meeting, the local educational agency shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls.

(h) A meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. In this event, the local educational agency shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, as follows:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(i) The local educational agency shall take whatever action is necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English.

(j) The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 8. Section 56366 of the Education Code is amended to read:  
56366. It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an



alternative special education service available to a local educational agency and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial, including teacher-to-pupil ratios, between the nonpublic, nonsectarian school or agency and the local educational agency to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting local educational agency to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) (A) The master contract shall include an individual services agreement for each pupil placed by a local educational agency that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

(B) The master contract shall include a description of the process being utilized by the local educational agency to oversee and evaluate placements in nonpublic, nonsectarian schools, as required by federal law. This description shall include a method for evaluating whether the pupil is making appropriate educational progress. At least once every year, the local educational agency shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an individualized education program:

(i) Evaluate the educational progress of each pupil placed in a nonpublic, nonsectarian school, including all state assessment results pursuant to the requirements of Section 52052.

(ii) Consider whether or not the needs of the pupil continue to be best met at the nonpublic, nonsectarian school and whether changes to the individualized education program of the pupil are necessary, including whether the pupil may be transitioned to a public school setting. This consideration shall be made at the meeting required by subdivision (d) of Section 56343.

(C) In the case of a nonpublic, nonsectarian school that is owned, operated by, or associated with a licensed children's institution, the master contract shall include a method for evaluating whether the nonpublic, nonsectarian school is in compliance with the mandate set forth in Section 56366.9 of the Education Code and subdivision (b) of Section 1501.1 of the Health and Safety Code.



(3) Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent, the nonpublic, nonsectarian school or agency, or the local educational agency may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the local educational agency.

(4) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(5) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the local educational agency agree otherwise in the contract or individual services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(7) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting local educational agency.

(8) (A) A nonpublic, nonsectarian school, is subject to the alternative accountability system developed pursuant to Section 52052, in the same manner as public schools and each pupil placed in the nonpublic, nonsectarian school by a local educational agency shall be tested by qualified staff of the nonpublic, nonsectarian school in accordance with that accountability program. The test results shall be reported by the nonpublic, nonsectarian school to the department.

(B) Beginning with the 2006–07 school year testing cycle, each nonpublic, nonsectarian school shall determine its STAR testing period subject to subdivisions (b) and (c) of Section 60640. The nonpublic, nonsectarian school shall determine this period based on completion of 85 percent of the instructional year at that nonpublic, nonsectarian



school, plus and minus 10 days, resulting in a 21-day period. Each nonpublic, nonsectarian school shall notify the district of residence of a pupil enrolled in the school of its testing period. Staff at the nonpublic, nonsectarian school who shall administer the assessments shall attend the regular testing training sessions provided by the district of residence. If staff from a nonpublic, nonsectarian school have received training from one local educational agency, that training will be sufficient for all local educational agencies that send pupils to the nonpublic, nonsectarian school. The district of residence shall order testing materials for its pupils that have been placed in the nonpublic, nonsectarian school. The state board shall adopt regulations to facilitate the distribution of and collection of testing materials.

(9) With respect to a nonpublic, nonsectarian school, the school shall prepare a school accountability report card in accordance with Section 33126.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a local educational agency for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a local educational agency for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local educational agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the local educational agency prior to agreement to a contract or individual services agreement, the local educational agency shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the



superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 9. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.



(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The applicant shall submit on a form, developed by the department, a signed verification by local educational agency representatives that they have been notified of the intent to certify or renew certification. The verification shall include a statement that local educational agency representatives in which the applicant is located have had the opportunity to review the application at least 60 calendar days prior to submission of an initial application to the superintendent, or at least 30 calendar days prior to submission of a renewal application to the superintendent. The signed verification shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the applicant has not received a response from the local educational agency 30 days from the date of the return receipt, the applicant may file the application with the superintendent. A copy of the return receipt shall be included with the application as verification of notification efforts to the local educational agency.

(3) The department shall mail renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days prior to the date their current certification expires.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the certification effective date, unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the



superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) (1) The superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency 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. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite investigation. The superintendent shall require a written response to any noncompliance or deficiency found.

(2) With respect to a nonpublic, nonsectarian school, the superintendent shall conduct an investigation, which may include an unannounced onsite visit, if the superintendent receives evidence of a significant deficiency in the quality of educational services provided or a violation of Section 56366.9 or noncompliance with the policies expressed by subdivision (b) of Section 1501 of the Health and Safety Code by the nonpublic, nonsectarian school. The superintendent shall document the complaint and the results of the investigation and shall provide copies of the documentation to the complainant, the nonpublic, nonsectarian school, and the contracting local educational agency.

(3) Violations or noncompliance documented pursuant to paragraph (1) or (2) shall be reflected in the status of the certification of the school, at the discretion of the superintendent, pending an approved plan of correction by the nonpublic, nonsectarian school. The department shall retain for a period of 10 years, all violations pertaining to certification of the nonpublic, nonsectarian school or agency.



(j) The superintendent shall 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 standard focused instructional materials used, of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as follows:

(1) The nonpublic, nonsectarian school or agency shall complete a self-review in year one.

(2) The superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.

(3) The superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.

(k) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) through (f), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:



(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).

(l) (1) Commencing July 1, 2006, notwithstanding any other provision of law, the superintendent may not certify or renew the certification of a nonpublic, nonsectarian school or agency, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school or agency maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school or agency identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the education program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

(2) For purposes of this section, the term licensed children's institution has the same meaning as it is defined by Section 56155.5.

(m) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:



|                              |        |
|------------------------------|--------|
| (1) 1– 5 pupils .....        | \$ 300 |
| (2) 6–10 pupils .....        | 500    |
| (3) 11–24 pupils .....       | 1,000  |
| (4) 25–75 pupils .....       | 1,500  |
| (5) 76 pupils and over ..... | 2,000  |

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing 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. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The state board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 10. Section 56366.5 of the Education Code is amended to read:

56366.5. (a) Upon receipt of a request from a nonpublic, nonsectarian school for payment for services provided under a contract entered into pursuant to Sections 56365 and 56366, the local educational agency shall either (1) send a warrant for the amount requested within 45 days, or (2) notify the nonpublic, nonsectarian school within 10 working days of any reason why the requested payment shall not be paid.

(b) If the local educational agency fails to comply with subdivision (a), the nonpublic, nonsectarian school may require the local educational agency to pay an additional amount of 1½ percent of the unpaid balance per month until full payment is made. The local educational agency may not claim reimbursement from the state for the additional amount pursuant to any provision of law, including any provision contained in Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code.

(c) Any educational funds received from a local educational agency for the educational costs of individuals with exceptional needs it has placed in nonpublic, nonsectarian schools shall be used solely for those purposes and not for the costs of a residential program.

SEC. 11. Section 56366.9 of the Education Code is amended to read:

56366.9. A licensed children's institution at which individuals with exceptional needs reside shall not require as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, a licensed children's institution. Those services may only be provided if the special education local plan area determines that appropriate public alternative educational programs are not available.

SEC. 12. Section 56366.10 is added to the Education Code, to read:

56366.10. In addition to the certification requirements set forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs shall certify in writing to the superintendent that it meets all of the following requirements:

(a) It will not accept a pupil with exceptional needs if it cannot provide or ensure the provision of the services outlined in the pupil's individualized education program.

(b) Pupils have access to the following educational materials, services, and programs to the extent available at the local educational agency in which the nonpublic school is located:

(1) Standards-based, core curriculum and the same instructional materials used by the local educational agency in which the nonpublic, nonsectarian school is located.

(2) College preparation courses.

(3) Extracurricular activities, such as art, sports, music, and academic clubs.

(4) Career preparation and vocational training, consistent with transition plans pursuant to state and federal law.

(5) Supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling.

(c) The teachers and staff provide academic instruction and support services to pupils with the goal of integrating pupils into the least restrictive environment pursuant to federal law.

(d) The school has and abides by a written policy for pupil discipline which is consistent with state and federal law and regulations.

SEC. 13. Section 56366.11 is added to the Education Code, to read:

56366.11. (a) The department shall implement a program to integrate individuals with exceptional needs placed in nonpublic, nonsectarian schools into public schools, as appropriate. Under the program, a pupil placed in a nonpublic, nonsectarian school and each individual who has the right to make educational decisions for the pupil shall be informed of all their rights relating to the educational placement of the pupil. Existing dispute resolution procedures involving public school enrollment or attendance shall be explained to a pupil placed in nonpublic, nonsectarian school in an age and developmentally appropriate manner. The Foster Child Ombudsman shall disseminate the information on education rights to every foster child residing in a licensed children's institution or foster family home.

(b) Following the development of the next statewide assessment contract, the department shall submit to the Legislature a report on the academic progress of pupils attending nonpublic, nonsectarian schools serving individuals with exceptional needs. Using the results of the two most recent years of the Standardized Testing and Reporting (STAR) Program and the California Alternative Performance Assessment, the report shall summarize by district the achievement of all pupils attending a nonpublic, nonsectarian school. The department shall ensure that the report does not violate the confidentiality of individual pupil scores. In addition, the report shall include an academic performance index score for pupils attending nonpublic, nonsectarian schools for each district using the same procedures as under Section 52052.

SEC. 14. Section 56366.12 is added to the Education Code, to read:

56366.12. A nonpublic, nonsectarian school shall ensure private and confidential communication between a pupil of the nonpublic, nonsectarian school and members of the pupil's individualized education program team, at the pupil's discretion.

SEC. 15. Section 1501.1 of the Health and Safety Code is amended to read:

1501.1. (a) It is the policy of the state to facilitate the proper placement of every child in residential care facilities where the placement is in the best interests of the child. A county may require placement or licensing agencies, or both placement and licensing agencies, to actively seek out-of-home care facilities capable of meeting the varied needs of the child. Therefore, in placing children in out-of-home care, particular attention should be given to the individual child's needs, the ability of the facility to meet those needs, the needs of other children in the facility, the licensing requirements of the facility as determined by the licensing agency, and the impact of the placement on the family reunification plan.



(b) Pursuant to this section, children with varying designations and varying needs, except as provided by statute, may be placed in the same facility provided the facility is licensed, complies with all licensing requirements relevant to the protection of the child, and has a special permit, if necessary, to meet the needs of each child so placed. A facility may not require, as a condition of placement, that a child be identified as an individual with exceptional needs as defined by Section 56026 of the Education Code.

(c) Neither the requirement for any license nor any regulation shall restrict the implementation of the provisions of this section. Implementation of this section does not obviate the requirement for a facility to be licensed by the department.

(d) Pursuant to this section, children with varying designations and varying needs, except as provided by statute, may be placed in the same licensed foster family home or with a foster family agency for subsequent placement in a certified family home. Children with developmental disabilities, mental disorders, or physical disabilities may be placed in licensed foster family homes or certified family homes, provided that an appraisal of the child's needs and the ability of the receiving home to meet those needs is made jointly by the placement agency and the licensee in the case of licensed foster family homes or the placement agency and the foster family agency in the case of certified family homes, and is followed by written confirmation prior to placement. The appraisal shall confirm that the placement poses no threat to any child in the home.

For purposes of this chapter, the placing of children by foster family agencies shall be referred to as "subsequent placement" to distinguish the activity from the placing by public agencies.

SEC. 16. Section 16014 is added to the Welfare and Institutions Code, to read:

16014. (a) It is the intent of the Legislature to maximize federal funding for foster youth services provided by local educational agencies.

(b) The State Department of Education and the State Department of Social Services shall collaborate with the County Welfare Directors Association, representatives from local educational agencies, and representatives of private, nonprofit foster care providers to establish roles and responsibilities, claiming requirements, and sharing of eligibility information eligible for funding under Part E (commencing with Section 470) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.). These state agencies shall also assist counties and local educational agencies in drafting memorandums of understanding between agencies to access funding for case management activities associated with providing foster youth services for eligible



children. That federal funding shall be an augmentation to the current program and shall not supplant existing state general funds allocated to this program.

(c) School districts shall be responsible for 100 percent of the nonfederal share of payments received under that act.

SEC. 17. Public schools are encouraged to apply for all available federal, state, and local supplemental sources of funding to accomplish the goals set forth in this act, including funding available for neglected or delinquent pupils who are at risk of dropping out of school, as funded by Section 6421 of Title 20 of the United States Code, funding pursuant to the federal Stewart B. McKinney Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), Title XIX of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 18. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

