

Assembly Bill No. 2759

CHAPTER 308

An act to amend Sections 8208, 8235, 8236, 8237, 8238.4, 8264.5, and 8266.1 of, to amend the heading of Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 of, and to add Sections 8236.1 and 8236.2 to, the Education Code, relating to child care and development services.

[Approved by Governor September 26, 2008. Filed with
Secretary of State September 26, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2759, Jones. State preschool programs: reform.

(1) Existing law requires the Superintendent of Public Instruction to administer state preschool programs, including part-day and preschool appropriate programs for low-income or otherwise disadvantaged prekindergarten age children.

This bill would recast those provisions as the California state preschool program, which would include both part-day and full-day education programs for 3- and 4-year-old children.

(2) Existing law requires the Superintendent to administer child care and development programs, which include programs that offer a full range of services for children from infancy to 13 years of age for any part of a day.

This bill would delete campus child care and development programs and child abuse protection and prevention services from the definition of child care and development programs.

(3) Existing law requires the Superintendent to administer preschool programs in accordance with specified funding priorities.

This bill would revise those funding priorities.

The bill would establish minimum hours per day and days per year for part-day and full-day California state preschool programs. The bill would require fees to be assessed and collected for families with children in full-day programs in accordance with fee schedules established by the Superintendent for families utilizing child care and development services, and would prohibit fees from being assessed for families whose children are enrolled in part-day programs.

(4) Existing law, for state preschool programs operating with funding that was initially allocated in a prior fiscal year, requires at least $\frac{1}{2}$ of the children enrolled at the preschool site to be 4 years old, and requires any exception to be approved by the Superintendent, and the Superintendent is required to inform the Secretary of Child Development and Education of any exceptions that have been granted.

This bill would instead require the Superintendent to inform the Secretary for Education and the Department of Finance, and would also require the Superintendent to inform those entities of the reasons the exceptions were granted.

(5) Existing law establishes an enrollment priority for agencies that receive funding for the expansion of a state preschool program.

This bill would delete that enrollment priority. The bill would require the State Department of Education to annually monitor funding utilized in child care and development programs for infants and toddlers and hours of service provided in the California state preschool program, and to annually report on specified matters to the Department of Finance and the Legislature.

(6) Existing law requires a state preschool program contracting agency to certify eligibility and enroll families within a specified timeframe each year.

This bill would specify that subsequent to enrollment, a child shall be deemed eligible for a part-day California state preschool program for the remainder of the program year. The bill would establish reimbursement rates for California state preschool program contracting agencies that offer full-day services to parents who have a qualifying need.

(7) Existing law provides for the allocation of funds for expenditure by the Superintendent for specified child development and preschool programs that serve children who would attend kindergarten in the subsequent academic year.

This bill would specify that those programs may participate in California state preschool programs, and would restrict the allocation of specified funds to eligible programs that were eligible to receive funding in the 2007–08 fiscal year.

(8) The bill would become operative on July 1, 2009, and only if SB 1629 of the 2007–08 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2009.

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

SECTION 1. Section 8208 of the Education Code is amended to read:
8208. As used in this chapter:

(a) “Alternative payments” includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent’s purchase of child care and development services.

(b) “Alternative payment program” means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) “Applicant or contracting agency” means a school district, community college district, college or university, county superintendent of schools,

county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) “Assigned reimbursement rate” is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) “Attendance” means the number of children present at a child care and development facility. “Attendance,” for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) “Capital outlay” means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) “Caregiver” means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) “Child care and development facility” means any residence or building or part thereof in which child care and development services are provided.

(i) “Child care and development programs” means those programs that offer a full range of services for children from infancy to 13 years of age for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

- (1) General child care and development.
- (2) Migrant child care and development.
- (3) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 of Division 4 of Title 2).
- (4) California state preschool program.
- (5) Resource and referral.
- (6) Child care and development services for children with exceptional needs.
- (7) Family child care home education network.
- (8) Alternative payment.
- (9) Schoolage community child care.

(j) “Child care and development services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care

and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) “Children at risk of abuse, neglect, or exploitation” means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(l) “Children with exceptional needs” means either of the following:

(1) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the Government Code. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.

(2) Children ages 3 to 21 years, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of Title 2, and who meet eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of Title 20 of the United States Code.

(m) “Closedown costs” means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) “Cost” includes, but is not limited to, expenditures that are related to the operation of child care and development programs. “Cost” may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. “Cost” may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. “Reasonable and necessary

costs” are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) “Elementary school,” as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) “Family child care home education network” means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home providers and to provide educational and support services to those providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) “Health services” include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) “Higher educational institutions” means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) “Intergenerational staff” means persons of various generations.

(t) “Limited-English-speaking-proficient and non-English-speaking-proficient children” means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) “Parent” means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) “Program director” means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) “Proprietary child care agency” means an organization or facility providing child care, which is operated for profit.

(x) “Resource and referral programs” means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) “Severely disabled children” are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. “Severely disabled children” also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 of Division 4 of Title 2 as it read on January 1, 1980.

(z) “Short-term respite child care” means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child’s own home.

(aa) (1) “Site supervisor” means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented.

(2) For California state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(ab) “Standard reimbursement rate” means that rate established by the Superintendent pursuant to Section 8265.

(ac) “Startup costs” means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) “California state preschool program” means part-day and full-day educational programs for low-income or otherwise disadvantaged three- and four-year-old children.

(ae) “Support services” means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) “Teacher” means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) “Underserved area” means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent.

(ah) “Workday” means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

(ai) “Three-year-old children” means children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(aj) “Four-year-old children” means children who will have their fourth birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(ak) “Local educational agency” means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

SEC. 2. The heading of Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code is amended to read:

Article 7. California State Preschool Programs

SEC. 3. Section 8235 of the Education Code is amended to read:

8235. (a) The Superintendent shall administer all California state preschool programs. Those programs shall include, but not be limited to, part-day and full-day age and developmentally appropriate programs for three- and four-year old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. Preschool programs for which federal reimbursement is not available shall be funded as prescribed by the Legislature in the Budget Act, and unless otherwise specified by the

Legislature, shall not utilize federal funds made available through Title XX of the Social Security Act (42 U.S.C. Sec. 1397).

(b) Three- and four-year-old children are eligible for the part-day California state preschool program if the family meets at least one of the criteria specified in paragraph (1) of subdivision (a) of Section 8263.

(c) Notwithstanding any other provision of law, a part-day California state preschool program may provide services to children in families whose income is no more than 15 percent above the income eligibility threshold, as described in Sections 8263 and 8263.1, after all eligible three- and four-year-old children have been enrolled. No more than 10 percent of children enrolled, calculated throughout the participating program's entire contract, may be filled by children in families above the income eligibility threshold.

(d) A part-day California state preschool program shall operate for a minimum of (1) three hours per day, excluding time for home-to-school transportation, and (2) a minimum of 175 days per year, unless the contract specifies a lower number of days of operation.

(e) Three- and four-year-old children are eligible for full-day California state preschool program services if the family meets at least one of the criteria specified in paragraph (1) of subdivision (a) of Section 8263, and the parents meet at least one of the criteria specified in paragraph (2) of subdivision (a) of Section 8263.

(f) A full-day California state preschool program shall operate (1) full time determined by the number of hours necessary to meet the child care and development needs of families, and (2) a minimum of 246 days per year, unless the contract specifies a lower number of days of operation.

(g) Fees shall be assessed and collected for families with children in the full-day California state preschool program pursuant to subdivisions (g) and (h) of Section 8263. Fees shall not be assessed for families whose children are enrolled in the part-day California state preschool program.

(h) Any agency described in subdivision (c) of Section 8208 as an "applicant or contracting agency" is eligible to contract to operate a California state preschool program.

SEC. 4. Section 8236 of the Education Code is amended to read:

8236. (a) (1) Each applicant or contracting agency funded pursuant to Section 8235 shall give first priority to three- or four-year-old neglected or abused children who are recipients of child protective services, or who are at risk of being neglected, abused, or exploited upon written referral from a legal, medical, or social service agency. If an agency is unable to enroll a child in this first priority category, the agency shall refer the child's parent or guardian to local resource and referral services so that services for the child can be located.

(2) Notwithstanding Section 8263, after children in the first priority category set forth in paragraph (1) are enrolled, each agency funded pursuant to Section 8235 shall give priority to eligible four-year-old children prior to enrolling eligible three-year-old children. Each agency shall certify to

the Superintendent that enrollment priority is being given to eligible four-year-old children.

(b) For California state preschool programs operating with funding that was initially allocated in a prior fiscal year, at least one-half of the children enrolled at a preschool site shall be four-year-old children. Any exception to this requirement shall be approved by the Superintendent. The Superintendent shall inform the Secretary for Education and the Department of Finance of any exceptions that have been granted and the reasons for granting the exceptions.

(c) The following provisions apply to the award of new funding for the expansion of the California state preschool program that is appropriated by the Legislature for that purpose in any fiscal year:

(1) In an application for those expansion funds, an agency shall furnish the Superintendent with an estimate of the number of four-year-old and three-year-old children that it plans to serve in the following fiscal year with those expansion funds. The agency also shall furnish documentation that indicates the basis of those estimates.

(2) In awarding contracts for expansion pursuant to this subdivision, the Superintendent, after taking into account the geographic criteria established pursuant to Section 8279.3, and the headquarters preferences and eligibility criteria relating to fiscal or programmatic noncompliance established pursuant to Section 8261, shall give priority to applicant agencies that, in expending the expansion funds, will be serving the highest percentage of four-year-old children.

(d) Nothing in this section shall be deemed to preclude a local educational agency from subcontracting with an appropriate public or private agency to operate a California state preschool program and to apply for funds made available for the purposes of this section. If a school district chooses not to operate or subcontract for a California state preschool program, the Superintendent shall work with the county office of education and other eligible agencies to explore possible opportunities in contracting or alternative subcontracting to provide a California state preschool program.

(e) Nothing in this section shall prevent eligible children who are currently receiving services from continuing to receive those services in future years pursuant to this chapter.

SEC. 5. Section 8236.1 is added to the Education Code, to read:

8236.1. The department shall annually monitor funding utilized in general child care and development programs for infants and toddlers, and hours of service provided in the California state preschool program, and shall annually report to the Department of Finance and to the Legislature a statewide summary identifying the estimated funding utilized for infants and toddlers, and the number of preschool age children receiving part-time and full-time development services. The annual report shall include a comparison to the prior year on a county-by-county basis.

SEC. 6. Section 8236.2 is added to the Education Code, to read:

8236.2. (a) The Superintendent shall encourage California state preschool program contracting agencies to offer full-day services to parents who have a qualifying need.

(b) Part-day services shall be reimbursed on a per capita basis, as determined by the Superintendent.

(c) Full-day services shall be reimbursed at no more than the standard reimbursement rate with adjustment factors.

(d) Federal Head Start funds used to provide services to families receiving California state preschool services shall be deemed nonrestricted funds.

SEC. 7. Section 8237 of the Education Code is amended to read:

8237. A part-day California state preschool program contracting agency has 120 calendar days prior to the first day of the beginning of the new preschool year to certify eligibility and enroll families into their program. Subsequent to enrollment, a child shall be deemed eligible for a part-day California state preschool program for the remainder of the program year.

SEC. 8. Section 8238.4 of the Education Code is amended to read:

8238.4. Of funds appropriated in Schedule (1) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2006 (Ch. 48, Stats. 2006) for child development and preschool programs, fifty million dollars (\$50,000,000) is available for expenditure by the Superintendent as follows:

(a) (1) Forty-five million dollars (\$45,000,000) to reimburse participating programs on a per-child basis at the same rate that is used for the state preschool program, as determined in the annual Budget Act or other statute.

(2) The funds described in paragraph (1) shall be assigned to programs located in the attendance area of elementary schools in deciles 1 to 3, inclusive, based on the 2005 base Academic Performance Index pursuant to Section 52056. Within elementary schools in deciles 1 to 3, inclusive, based on the 2005 base Academic Performance Index, preference shall be provided to underserved areas as described in subdivision (d) of Section 8279.3. If the funds described in paragraph (1) are offered under a new competitive bidding process after January 1, 2008, due to the termination, suspension, or relinquishment of an original contract award and in order to maintain an existing class, the department shall assign first priority to successful applicants that will maintain that class within the attendance area of the elementary school as originally granted.

(3) Notwithstanding any other provision of law, programs receiving funding in this section shall serve children who would attend kindergarten in the subsequent academic year. No child shall receive services from a program under this section for more than one year.

(4) Notwithstanding any other provision of law, a program receiving funding pursuant to this section may provide services to children in families above the income eligibility threshold, as described in Sections 8263 and 8263.1, if the number of contracted slots exceed the number of eligible children. No more than 20 percent of contracted slots, calculated throughout the participating program's entire contract, may be filled by children in families above the income eligibility threshold.

(5) The department shall report to the Department of Finance and the Legislature in the annual report specified in Section 8236.1 and in the same format used for the annual report, the number of children who are being served by the California state preschool program. The report shall also include the number of children served above the income eligibility threshold and the age of all children served.

(b) (1) Five million dollars (\$5,000,000) to be distributed to each participating class at a rate of two thousand five hundred dollars (\$2,500) per class per school year. Funds received pursuant to this subdivision may be used for all of the following purposes:

(A) Compensation and support costs for program coordinators as described in Section 8238.2.

(B) Staff development pursuant to Section 8238.3.

(C) Family literacy services.

(D) Instructional materials, including consumables.

(2) In the event that the total amount described in paragraph (1) is insufficient to fund all of the participating class at the per classroom rate described in that paragraph, the class rate shall be prorated accordingly.

(3) Eligibility to receive funding pursuant to this subdivision is restricted to participating programs that were eligible to receive funding pursuant to this section in the 2007–08 fiscal year.

(c) The appropriation of funds for purposes of this section beyond the amounts described in this section shall be pursuant to the annual Budget Act or other statute.

(d) Notwithstanding the provisions of this section to the contrary, programs receiving funding pursuant to this section may participate in all California state preschool programs administered by the Superintendent pursuant to Section 8235.

SEC. 9. Section 8264.5 of the Education Code is amended to read:

8264.5. The Superintendent may waive or modify child development requirements in order to enable child development programs to serve combinations of eligible children in areas of low population. The child development programs for which the Superintendent may grant waivers shall include, but need not be limited to, California state preschool full-day programs, child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 of Division 4 of Title 2), infant care and development services, migrant child care and development programs, and general child care and development programs.

SEC. 10. Section 8266.1 of the Education Code is amended to read:

8266.1. Commencing with the 1995–96 fiscal year and each fiscal year thereafter, for the purposes of this chapter, reimbursement rates shall be adjusted by the following reimbursement factors for child care and development programs with a standard reimbursement rate, but shall not apply to the Resource and Referral Programs set forth in Article 2 (commencing with Section 8210), the Alternative Payment Programs set forth in Article 3 (commencing with Section 8220), the part-day California

state preschool programs set forth in Article 7 (commencing with Section 8235), the schoolage community child care services programs set forth in Article 22 (commencing with Section 8460), or to the schoolage parent and infant development programs:

(a) For child care and development providers serving children for less than four hours per day, the reimbursement factor is 55 percent of the standard reimbursement rate.

(b) For child care and development program providers serving children for not less than four hours per day, and less than six and one-half hours per day, the reimbursement factor is 75 percent of the standard reimbursement rate. For providers operating under the At Risk Child Care Program set forth in Article 15.5 (commencing with Section 8350) and serving children for not less than four hours per day, and less than seven hours per day, the reimbursement factor is 75 percent of the standard reimbursement rate.

(c) For child care and development program providers serving children for not less than six and one-half hours per day, and less than 10 and one-half hours per day, the reimbursement factor is 100 percent of the standard reimbursement rate. For providers operating under the At Risk Child Care Program set forth in Article 15.5 (commencing with Section 8350) and serving children for not less than seven hours per day, and less than 10 hours per day, the reimbursement factor is 100 percent of the standard reimbursement rate.

(d) For child care and development program providers serving children for 10½ hours or more per day, the reimbursement factor is 118 percent of the standard reimbursement rate.

SEC. 11. This act shall become operative on July 1, 2009.

SEC. 12. This act shall become operative only if Senate Bill 1629 of the 2007–08 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2009.