

Senate Bill No. 1059

Passed the Senate August 19, 2010

Secretary of the Senate

Passed the Assembly August 16, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 48204, 48645.2, and 56028 of the Education Code, relating to local educational agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1059, Liu. Local educational agencies: districts of residence.

(1) Existing law provides for residency requirements for school attendance, including the requirement that a pupil placed within the boundaries of that school district in a regularly licensed children's institution, a licensed foster home, or a family home pursuant to a placement under a designated statute, is deemed to comply with residency requirements for that district.

This bill would provide that a school district into which a pupil is placed in a regularly licensed children's institution, a licensed foster home, or a family home pursuant to a placement under a designated statute is the district of residence. The bill would further require that this school district of residence would be responsible for providing the pupil with a free appropriate public education, as defined. Because this provision would impose new requirements on school districts, it would constitute a state-mandated local program.

(2) Existing law requires a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct, in conformity with the interests of public safety and protection, to receive care, treatment, and guidance that is consistent with his or her best interest, that holds the minor accountable for his or her behavior, and that is appropriate for his or her circumstances.

Existing law provides for the establishment of public schools in juvenile halls, juvenile homes, day centers, juvenile ranches, juvenile camps, regional youth educational facilities, or Orange County youth correctional centers, as specified, to provide juvenile court school pupils with quality education and training. Existing law requires a county board of education to provide for the administration and operation of juvenile court schools in the county, either by the county superintendent of schools, as specified, or by contract with the respective governing boards of the

elementary, high school, or unified school district in which the juvenile court school is located.

This bill would require that the county board of education is responsible for providing pupils detained in juvenile halls who are individuals with exceptional needs with a free appropriate public education, as defined. However, if the expanded individualized education program team determines that placement is appropriate, the bill would require the provider of educational services to determine the school district responsible for paying and providing for education placement, pursuant to criteria specified by the bill. Because this provision would impose new requirements on local educational agencies, it would constitute a state-mandated local program.

(3) 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.

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. Section 48204 of the Education Code, as amended by Section 1 of Chapter 33 of the Statutes of 2007, is amended to read:

48204. (a) Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following:

(1) (A) (i) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(ii) Notwithstanding Sections 48200 and 56028, for any pupil placed pursuant to clause (i), the school district in which the pupil resides is the district of residence, and it is that school district that is responsible for providing the pupil with a free appropriate public

education within the meaning of Section 1412 of Title 20 of the United States Code and Sections 104.33 and 300.104 of Title 34 of the Code of Federal Regulations, as these provisions exist on January 1, 2010, pursuant to residential placement as specified in Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and Section 60200 of Title 2 of the California Code of Regulations, as it exists on January 1, 2010.

(B) An agency placing a pupil in a home or institution described in subparagraph (A) shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.

(5) A pupil residing in a state hospital located within the boundaries of that school district.

(b) A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district.

(1) This subdivision does not require the school district within which at least one parent or the legal guardian of a pupil is employed to admit the pupil to its schools. A school district shall not, however, refuse to admit a pupil under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or the legal guardian of the pupil is established, or the school district to which the pupil is to be transferred under this

subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or the legal guardian of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending school district, this subdivision does not authorize a net transfer of pupils out of a school district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in a fiscal year in excess of the following amounts:

(A) For a school district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For a school district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For a school district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district the boundaries of which include the location where at least one parent or the legal guardian of a pupil is physically employed, the pupil does not have to reapply in the next school year to attend a school within that district and the district governing board shall allow the pupil to

attend school through grade 12 in that district if the parent or legal guardian so chooses and if at least one parent or the legal guardian of the pupil continues to be physically employed by an employer situated within the attendance boundaries of the district, subject to paragraphs (1) to (6), inclusive.

(c) This section shall become inoperative on July 1, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 48204 of the Education Code, as amended by Section 2 of Chapter 33 of the Statutes of 2007, is amended to read:

48204. Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is:

(a) (1) (A) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(B) Notwithstanding Section 56028, for any pupil placed pursuant to subparagraph (A), the school district in which the pupil resides is the district of residence, and it is that school district that is responsible for providing the pupil with a free appropriate public education within the meaning of Section 1412 of Title 20 of the United States Code and Sections 104.33 and 300.104 of Title 34 of the Code of Federal Regulations, as these provisions exist on January 1, 2010, pursuant to residential placement as specified in Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and Section 60200 of Title 2 of the California Code of Regulations, as it exists on January 1, 2010.

(2) An agency placing a pupil in the home or institution described in paragraph (1) shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section shall become operative on July 1, 2012.

SEC. 3. Section 48645.2 of the Education Code is amended to read:

48645.2. The county board of education shall provide for the administration and operation of juvenile court schools established pursuant to Section 48645.1:

(a) By the county superintendent of schools, provided that, in any county in which the board of supervisors is establishing or maintaining juvenile court schools on January 1, 1978, the county superintendent of schools may contract with the board of supervisors for the administration and operation of such schools if agreed upon between the board of education and the board of supervisors. In any event, the county superintendent of schools may contract with other educational agencies for supporting services to the same extent that school districts may contract with other such agencies.

(b) By contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located.

(c) This subdivision shall apply solely to pupils detained in juvenile halls pursuant to Article 23 (commencing with Section 850) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.

(1) For a pupil in a juvenile hall established pursuant to Section 48645.1, the county board of education is responsible for the provision of a free appropriate public education for individuals with exceptional needs. However, if the expanded individualized

education program (IEP) team determines, pursuant to Sections 7572.5 and 7573 of the Government Code and Sections 104.33 and 300.104 of Title 34 of the Code of Federal Regulations, as those sections exist on January 1, 2010, that residential placement is appropriate, all of the following apply with respect to which school district is responsible for paying and providing for the education placement:

(A) For a pupil who has a parent, as described in paragraph (1) or (4) of subdivision (a) of Section 56028, or who has a legal guardian, the school district where the parent or the legal guardian resides shall be the responsible school district.

(B) For a pupil who has a parent, as described in paragraph (2) or (5) of subdivision (a) of Section 56028, or for a pupil who has a responsible adult appointed in accordance with Section 361 of the Welfare and Institutions Code, the school district where the pupil will be placed for the residential placement shall be the responsible school district, unless the residential placement is out of state, in which case the school district where the child was last enrolled prior to placement in a juvenile hall shall be the responsible school district.

(2) The county office of education shall determine the responsible school district, as described in paragraph (1), and timely notify the responsible school district of its responsibility under this section.

(3) If a pupil is placed at a residential placement as described in this subdivision, the responsible school district, as determined pursuant to paragraph (2), shall remain the district of residence for that pupil throughout the duration of the residential placement, including, as necessary, after disposition of the pupil's juvenile delinquency case.

(4) If a determination is made by a properly constituted individualized education program team that a less restrictive environment is appropriate for the pupil, the responsible school district, as determined pursuant to paragraph (2), shall transition the pupil into a subsequent education placement, including by creating a transition plan as described in paragraph (4) of subdivision (b) of Section 56345. This subsequent education placement may be a public or nonpublic school certified by the State Department of Education.

(5) If a dispute arises regarding responsibility for education placement or services, the responsible school district, as determined by the county office of education where the juvenile hall is located pursuant to paragraph (2), shall implement the individualized education program, including, but not necessarily limited to, paying and providing for the education placement and any other related service, benefit, or aid within the meaning of Sections 7572.5 and 7573 of the Government Code and Sections 104.33 and 300.104 of Title 34 of the Code of Federal Regulations, as those sections exist on January 1, 2010, during the duration of the dispute. A school district impacted by the decision made pursuant to paragraph (2) may appeal to the county board of education where the juvenile hall is located, which shall issue a written decision within 60 days, and that decision shall be final.

(6) The responsible school district, as described in paragraph (2), shall immediately assume responsibility for the educational costs. If the responsible school district fails or refuses to assume the educational costs, the county superintendent of schools may draw a requisition against the funds of the responsible school district in favor of the provider of educational services.

SEC. 4. Section 56028 of the Education Code is amended to read:

56028. (a) “Parent” means any of the following:

(1) A biological or adoptive parent of a child.

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child’s behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child’s welfare.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal

Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b) (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

(c) “Parent” does not include the state or any political subdivision of government.

(d) “Parent” does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

(e) For a pupil placed pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 48204, the school district of residence is the school district wherein the pupil resides. The residence of the person or persons listed in paragraph (5) of subdivision (a), or paragraph (2) of subdivision (b), of this section does not determine the school district of residence.

SEC. 5. 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.

Approved _____, 2010

Governor