

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 17, 2011

SENATE BILL

No. 121

Introduced by Senator Liu

January 24, 2011

An act to amend Sections 48853, 56157, and 56342.1 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

SB 121, as amended, Liu. Pupils: foster children: special education.

Existing law requires a pupil who is placed in a licensed children's institution or foster family home to attend programs operated by the local educational agency unless the pupil is entitled to remain in his or her school of origin, the pupil has an individualized education program requiring placement elsewhere, or the pupil's parent or guardian, or other person holding the right to make educational decisions for the pupil, determines that it is in the best interests of the pupil to be placed in another educational program.

This bill would require that if the pupil's parent or guardian, or other person holding the right to make educational decisions for the pupil, makes that determination, he or she shall provide a written statement to that effect to the local educational agency.

Existing law provides that no local educational agency shall refer an individual with exceptional needs residing in a licensed children's institution or foster family home to a nonpublic, nonsectarian school unless the services required by the individualized education program of the pupil can be ~~assured~~ *ensured* and that before a local educational agency places an individual with exceptional needs in, or refers an individual to, a nonpublic, nonsectarian school, the school district,

special education local plan area, or county office of education shall initiate and conduct a meeting to develop an individualized education program.

This bill would specify that these pupils shall not be referred to, or placed in, a nonpublic, nonsectarian school unless their individualized education programs specify that the placement is appropriate, or they are placed in the nonpublic, nonsectarian school by their parent or guardian, or other person holding the right to make educational decisions for the pupil. This bill would also specify that the meeting that is required to take place to develop an individualized education program shall be conducted pursuant to specified provisions. To the extent this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 48853 of the Education Code is amended
2 to read:
3 48853. (a) A pupil described in subdivision (a) of Section
4 48853.5 who is placed in a licensed children’s institution or foster
5 family home shall attend programs operated by the local
6 educational agency, unless one of the following applies:
7 (1) The pupil is entitled to remain in his or her school of origin
8 pursuant to paragraph (1) of subdivision (d) of Section 48853.5.
9 (2) The pupil has an individualized education program requiring
10 placement in a nonpublic, nonsectarian school or agency, or in
11 another local educational agency.
12 (3) The parent or guardian, or other person holding the right to
13 make educational decisions for the pupil pursuant to Section 361
14 or 726 of the Welfare and Institutions Code or Section 56055,
15 determines that it is in the best interests of the pupil to be placed

1 in another educational program, in which case the parent or
2 guardian or other person holding the right to make educational
3 decisions for the pupil shall provide a written statement that he or
4 she has made that determination to the local educational agency.
5 *The total amount of money that a local educational agency is*
6 *required to expend to provide special education and related*
7 *services for a pupil who is placed in another educational program*
8 *by his or her parent or other person holding the right to make*
9 *educational decisions for him or her is limited to a proportionate*
10 *amount of the federal funds received under the federal Individuals*
11 *with Disabilities Education Act (IDEA) (20 U.S.C. Sec. 1400 et*
12 *seq.).*

13 (b) Before any decision is made to place a pupil in a juvenile
14 court school as defined by Section 48645.1, a community school
15 as described in Sections 1981 and 48660, or other alternative
16 educational setting, the parent or guardian, or person holding the
17 right to make educational decisions for the pupil pursuant to
18 Section 361 or 726 of the Welfare and Institutions Code or Section
19 56055, shall first consider placement in the regular public school.

20 (c) If any dispute arises as to the school placement of a pupil
21 subject to this section, the pupil has the right to remain in his or
22 her school of origin, as defined in subdivision (e) of Section
23 48853.5, pending resolution of the dispute. The dispute shall be
24 resolved in accordance with the existing dispute resolution process
25 available to any pupil served by the local educational agency.

26 (d) This section does not supersede other laws that govern pupil
27 expulsion.

28 (e) This section does not supersede any other law governing the
29 educational placement in a juvenile court school, as defined by
30 Section 48645.1, of a pupil detained in a county juvenile hall, or
31 committed to a county juvenile ranch, camp, forestry camp, or
32 regional facility.

33 (f) Foster children living in emergency shelters, as referenced
34 in the federal McKinney-Vento Homeless Assistance Act (42
35 U.S.C. Sec. 11301 et seq.), may receive educational services at
36 the emergency shelter as necessary for short periods of time for
37 either of the following reasons:

38 (1) For health and safety emergencies.

39 (2) To provide temporary, special, and supplementary services
40 to meet the child's unique needs if a decision regarding whether

1 it is in the child's best interests to attend the school of origin cannot
2 be made promptly, it is not practical to transport the child to the
3 school of origin, and the child would otherwise not receive
4 educational services.

5 The educational services may be provided at the shelter pending
6 a determination by the person holding the right regarding the
7 educational placement of the child.

8 (g) All educational and school placement decisions shall be
9 made to ensure that the child is placed in the least restrictive
10 educational programs and has access to academic resources,
11 services, and extracurricular and enrichment activities that are
12 available to all pupils. In all instances, educational and school
13 placement decisions shall be based on the best interests of the
14 child.

15 SEC. 2. Section 56157 of the Education Code is amended to
16 read:

17 56157. (a) In providing appropriate programs to individuals
18 with exceptional needs residing in licensed children's institutions
19 or foster family homes, the local educational agency shall first
20 consider services in programs operated by public education
21 agencies for individuals with exceptional needs. If those programs
22 are not appropriate, special education and related services shall be
23 provided by contract with a nonpublic, nonsectarian school.

24 (b) An individual with exceptional needs residing in a licensed
25 children's institution or foster family home shall not be referred
26 to, or placed in, a nonpublic, nonsectarian school unless his or her
27 individualized education program specifies that the placement is
28 appropriate, or he or she is placed in the nonpublic, nonsectarian
29 school by his or her parent or guardian, or other person holding
30 the right to make educational decisions for the pupil pursuant to
31 paragraph (3) of subdivision (a) of Section 48853. If special
32 education and related services are provided by contract with a
33 nonpublic, nonsectarian school, or with a licensed children's
34 institution under this article, the terms of the contract shall be
35 developed in accordance with the provisions of Section 56366.

36 (c) If an individual with exceptional needs residing in a licensed
37 children's institution or foster family home is placed in a nonpublic,
38 nonsectarian school, the local educational agency that made the
39 placement shall conduct an annual evaluation, in accordance with
40 federal law as part of the annual individualized education program

1 process, of whether the placement is the least restrictive
2 environment that is appropriate to meet the pupil's needs.

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

15 SEC. 3. Section 56342.1 of the Education Code is amended to
16 read:

17 56342.1. Before a local educational agency places an individual
18 with exceptional needs in, or refers an individual to, a nonpublic,
19 nonsectarian school, the district, special education local plan area,
20 or county office of education shall initiate and conduct a meeting
21 pursuant to this chapter to develop an individualized education
22 program in accordance with Sections 56341.1 and 56345 and in
23 accordance with Section 300.325(a) of Title 34 of the Code of
24 Federal Regulations. An individual with exceptional needs shall
25 not be referred to, or placed in, a nonpublic, nonsectarian school
26 unless his or her individualized education program specifies that
27 the placement is appropriate, or he or she is placed in the nonpublic,
28 nonsectarian school by his or her parent or guardian, or other
29 person holding the right to make educational decisions for the
30 pupil pursuant to paragraph (3) of subdivision (a) of Section 48853.

31 SEC. 4. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

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