

AMENDED IN ASSEMBLY MARCH 14, 2012

AMENDED IN SENATE MAY 17, 2011

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, ~~48854~~, 56155.7, 56157, 56342.1, ~~56366, 56366.1, 56366.4, and 56366.9~~, and ~~56366.10~~ of the Education Code, to amend Section 7579.5 of the Government Code, and to amend Sections 361 and 726 of the Welfare and Institutions 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 ~~and the juvenile court~~, as specified.

~~Existing law prohibits a licensed children's institution or nonpublic, nonsectarian school or agency from requiring as a condition of placement that educational authority for a child be designated to that institution, school, or agency.~~

~~This bill would also prohibit a licensed institution or nonpublic, nonsectarian school or agency from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil transfer or delegate that authority to an employee or person associated with a licensed children's institution or nonpublic, nonsectarian school or 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 ~~ensured~~ *assured*, and that before a local educational agency places an individual with exceptional needs in, or refers such 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 for the pupil.

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. ~~The bill would provide that, if the parent, guardian, or person holding the right to make educational decisions for the pupil decides to remove the pupil from public school and to place the pupil in a nonpublic, nonsectarian school without the required individualized education program, that person shall provide a written statement that he or she has made that decision to the local educational agency and the juvenile court, as specified.~~ 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.

~~Existing law requires that the master contract for nonpublic, nonsectarian school or agency services, in the case of a nonpublic, nonsectarian school that is owned by, operated by, or associated with, a licensed children's institution, include a method for evaluating whether the school is in compliance with specified statutory mandates.~~

~~This bill would expand those statutory mandates to include those prohibiting a licensed children's institution or nonpublic, nonsectarian school or agency from requiring as a condition of placement that educational authority for a child be designated to that institution, school, or agency; prohibiting a licensed institution or nonpublic, nonsectarian school or agency from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil transfer or delegate that authority to an employee or person associated with a licensed children's institution or nonpublic, nonsectarian school or agency; and prohibiting a licensed children's institution from requiring that a child be identified as an individual with exceptional needs as a condition of admission or residency.~~

~~Existing law requires the Superintendent of Public Instruction to conduct an investigation of a nonpublic, nonsectarian school or agency if he or she receives evidence of a significant deficiency in the quality of educational services provided, a violation of law, or noncompliance with policies, as specified.~~

~~This bill would add to the violations of law that the Superintendent is required to investigate provisions prohibiting a licensed children's institution or nonpublic, nonsectarian school or agency from requiring as a condition of placement that educational authority for a child be designated to it; prohibiting a licensed institution or nonpublic, nonsectarian school or agency from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil transfer or delegate that authority to an employee or person associated with it; requiring a licensed children's institution or nonpublic, nonsectarian school or agency to report to the local educational agency the educational progress demonstrated by an individual with exceptional needs placed there by the local educational agency; prohibiting an individual who is an employee of, or who is associated with, a licensed children's institution or an agency owned by, operated by, or associated with, a licensed children's institution or who is an employee of, or who is associated with, a nonpublic, nonsectarian school, from serving as a surrogate parent, or a surrogate parent from transferring or delegating his or her authority to such an individual; and prohibiting an individual who is an employee of, or who is associated with, a licensed children's institution or an agency owned by, operated by, or associated with, a licensed children's institution or who is an employee of, or who is associated with, a nonpublic,~~

nonsectarian school, from representing the interests of a child residing in a licensed children's institution, as specified.

Existing law requires the Superintendent to monitor the facilities, the educational environment, and the quality of the educational program of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as specified.

This bill would also require the Superintendent to monitor the certified nonpublic, nonsectarian school's or agency's compliance with all provisions of the master contract; certified requirements; provisions prohibiting a licensed children's institution or nonpublic, nonsectarian school or agency from requiring as a condition of placement that educational authority for a child be designated to it; prohibiting a licensed institution or nonpublic, nonsectarian school or agency from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil transfer or delegate that authority to an employee or person associated with it; prohibiting a licensed children's institution from requiring that a child be identified as an individual with exceptional needs as a condition of admission or residency; and prohibiting a licensed children's institution from requiring as condition of residential placement that it provide the appropriate educational programs to individuals with exceptional needs residing there through a nonpublic, nonsectarian school or agency owned, operated by, or associated with it, from referring or placing a pupil in a nonpublic, nonsectarian school, or from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for the pupil transfer or delegate that authority to an employee or person associated with it.

Existing law provides that the Superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school for specified reasons.

This bill would add to the reasons that the Superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school failure to comply with provisions prohibiting a licensed children's institution or nonpublic, nonsectarian school or agency from requiring as a condition of placement that educational authority for a child be designated to it; prohibiting a licensed institution or nonpublic, nonsectarian school or agency from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil transfer or delegate that authority to an employee or person associated with it; prohibiting a licensed children's institution from

~~requiring that a child be identified as an individual with exceptional needs as a condition of admission or residency; prohibiting a licensed children's institution from requiring as condition of residential placement that it provide the appropriate educational programs to individuals with exceptional needs residing there through a nonpublic, nonsectarian school or agency owned by, operated by, or associated with it from referring or placing a pupil in a nonpublic, nonsectarian school; or from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for the pupil transfer or delegate that authority to an employee or person associated with it.~~

Existing law prohibits a licensed children's institution from requiring as a condition of residential placement that it provide the appropriate educational programs to individuals with exceptional needs residing there through a nonpublic, nonsectarian school or agency owned, operated by, or associated with, it.

This bill would also prohibit a licensed children's institution from referring or placing a pupil in a nonpublic, nonsectarian school, ~~and from soliciting or in any way requesting that a parent or person holding the right to make educational decisions for a pupil residing there, transfer or delegate that authority to an employee or person associated with it.~~

Existing law requires a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs to certify in writing to the Superintendent that it meets specified requirements.

~~This bill would expand the list of certified requirements to include existence of and adherence to written policies that state that it will not require as a condition of placement that educational authority for a pupil be designated to that institution, school, or agency and that it will not solicit or in any way request that a parent or person holding the right to make educational decisions for the pupil transfer or delegate that authority to one of its employees or persons associated with it.~~

Existing law authorizes a local educational agency to appoint a surrogate parent, as specified, who shall serve as the child's parent and shall have the rights relative to the child's education of a parent, may represent the child in matters relating to special education and related services, and may provide written consent to an individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services, as specified.

~~This bill would prohibit an individual who is an employee of or who is associated with a licensed children's institution or an agency owned by, operated by, or associated with, a licensed children's institution or who is an employee of, or who is associated with, a nonpublic, nonsectarian school from serving as a surrogate parent, or a surrogate parent from transferring or delegating his or her authority to such an individual. The bill would also prohibit an individual who is an employee of, or who is associated with, a licensed children's institution or an agency owned by, operated by, or associated with, a licensed children's institution or who is an employee of, or who is associated with, a nonpublic, nonsectarian school from representing the interests of a child residing in a licensed children's institution, as specified.~~

~~Existing law authorizes the court to limit the right of the parent or guardian to make educational decisions for a child and at the same time appoint a responsible adult to make educational decisions for the child if a minor is adjudged to be a ward or dependent child of the court. However, existing law also provides that an individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions.~~

~~This bill would prohibit a responsible adult appointed by the court to make educational decisions for the child from delegating or transferring the right to make educational decisions for the child to any other individual, organization, agency, or entity. The bill would also prohibit an individual who is an employee of, or who is associated with, a licensed children's institution, or an agency owned by, operated by, or associated with, a licensed children's institution or who is an employee of, or who is associated with, a nonpublic, nonsectarian school from being appointed to make educational decisions for the child.~~

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
16 in another educational program, in which case the parent or
17 guardian or other person holding the right to make educational
18 decisions for the pupil shall provide a written statement that he or
19 she has made that determination to the local educational agency
20 ~~and the juvenile court~~. This statement shall include a declaration
21 that, ~~prior to~~ *before* making the decision, the local educational
22 agency informed the ~~holder of~~ *parent, guardian, or other person*
23 *holding* the right to make educational decisions for the pupil, in
24 writing, of all of the following:

25 (A) The pupil has a right to attend a regular public school in the
26 least restrictive environment.

27 (B) The alternate education program is a special education
28 program, if applicable.

29 (C) The decision to unilaterally remove the pupil from the
30 regular public school and to place the pupil in an alternate
31 education program may not be financed by the local educational
32 agency.

33 (D) Any attempt to seek reimbursement for the alternate program
34 will be at the expense of the ~~holder of~~ *parent, guardian, or other*
35 *person holding* the right to make educational decisions for the
36 pupil.

37 (b) Before any decision is made to place a pupil in a juvenile
38 court school as defined by Section 48645.1, a community school

1 as described in Sections 1981 and 48660, or other alternative
2 educational setting, the parent or guardian, or person holding the
3 right to make educational decisions for the pupil pursuant to
4 Section 361 or 726 of the Welfare and Institutions Code or Section
5 56055, shall first consider placement in the regular public school.

6 (c) If any dispute arises as to the school placement of a pupil
7 subject to this section, the pupil has the right to remain in his or
8 her school of origin, as defined in subdivision (e) of Section
9 48853.5, pending resolution of the dispute. The dispute shall be
10 resolved in accordance with the existing dispute resolution process
11 available to any pupil served by the local educational agency.

12 (d) This section does not supersede other laws that govern pupil
13 expulsion.

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

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

24 (1) For health and safety emergencies.

25 (2) To provide temporary, special, and supplementary services
26 to meet the child's unique needs if a decision regarding whether
27 it is in the child's best interests to attend the school of origin cannot
28 be made promptly, it is not practical to transport the child to the
29 school of origin, and the child would otherwise not receive
30 educational services.

31 The educational services may be provided at the shelter pending
32 a determination by the person holding the right regarding the
33 educational placement of the child.

34 (g) All educational and school placement decisions shall be
35 made to ensure that the child is placed in the least restrictive
36 educational programs and has access to academic resources,
37 services, and extracurricular and enrichment activities that are
38 available to all pupils. In all instances, educational and school
39 placement decisions shall be based on the best interests of the
40 child.

1 ~~SEC. 2.~~ Section 48854 of the Education Code is amended to
2 read:

3 ~~48854.~~ A licensed children’s institution or nonpublic,
4 nonsectarian school, or agency may not require as a condition of
5 placement that educational authority for a child, as defined in
6 subdivision (b) of Section 48859, be designated to that institution,
7 school, or agency. A licensed children’s institution or nonpublic,
8 nonsectarian school or agency shall not solicit or in any way
9 request that a parent or person holding the right to make
10 educational decisions for a pupil pursuant to Section 361 or 726
11 of the Welfare and Institutions Code transfer or delegate that
12 authority to an employee or person associated with a licensed
13 children’s institution or nonpublic, nonsectarian school or agency.

14 ~~SEC. 3.~~

15 ~~SEC. 2.~~ Section 56155.7 of the Education Code is amended to
16 read:

17 56155.7. A licensed children’s institution shall not require that
18 a child be identified as an individual with exceptional needs as a
19 condition of admission or residency.

20 ~~SEC. 4.~~

21 ~~SEC. 3.~~ Section 56157 of the Education Code is amended to
22 read:

23 56157. (a) In providing appropriate programs to individuals
24 with exceptional needs residing in licensed children’s institutions
25 or foster family homes, the local educational agency shall first
26 consider services in programs operated by public education
27 agencies for individuals with exceptional needs. If those programs
28 are not appropriate, special education and related services shall be
29 provided by contract with a nonpublic, nonsectarian school.

30 (b) (1) An individual with exceptional needs residing in a
31 licensed children’s institution or foster family home shall not be
32 referred to, or placed in, a nonpublic, nonsectarian school unless
33 his or her individualized education program specifies that the
34 placement is appropriate. ~~If the parent, guardian, or person holding~~
35 ~~the right to make educational decisions for the pupil decides to~~
36 ~~remove the pupil from public school and to place the pupil in a~~
37 ~~nonpublic, nonsectarian school without the required individualized~~
38 ~~education program, that person shall provide a written statement~~
39 ~~that he or she has made that decision to the local educational~~
40 ~~agency and the juvenile court. This statement shall include a~~

1 declaration that, prior to making the decision, the local educational
2 agency informed the holder of the right to make educational
3 decisions for the pupil, in writing, of all of the following:

4 (A) The pupil has a right to attend a regular public school in the
5 least restrictive environment.

6 (B) The alternate education program is a special education
7 program, if applicable.

8 (C) The decision to unilaterally remove the pupil from the
9 regular public school and to place the pupil in an alternate
10 education program may not be financed by the local educational
11 agency.

12 (D) Any attempt to seek reimbursement for the alternate program
13 will be at the expense of the holder of the right to make educational
14 decisions for the pupil.

15 (2) If special education and related services are provided by
16 contract with a nonpublic, nonsectarian school, or with a licensed
17 children's institution under this article, the terms of the contract
18 shall be developed in accordance with the provisions of Section
19 56366.

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

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

38 ~~SEC. 5.~~

39 *SEC. 4.* Section 56342.1 of the Education Code is amended to
40 read:

1 56342.1. Before a local educational agency places an individual
2 with exceptional needs in, or refers an individual to, a nonpublic,
3 nonsectarian school, the district, special education local plan area,
4 or county office of education shall initiate and conduct a meeting
5 pursuant to this chapter to develop an individualized education
6 program in accordance with Sections 56341.1 and 56345 and in
7 accordance with Section 300.325(a) of Title 34 of the Code of
8 Federal Regulations. An individual with exceptional needs shall
9 not be referred to, or placed in, a nonpublic, nonsectarian school
10 unless his or her individualized education program specifies that
11 the placement is appropriate. ~~If the parent, guardian, or person~~
12 ~~holding the right to make educational decisions for the pupil~~
13 ~~decides to remove the pupil from public school and to place the~~
14 ~~pupil in a nonpublic, nonsectarian school without the required~~
15 ~~individualized education program, that person shall provide a~~
16 ~~written statement that he or she has made that determination to the~~
17 ~~local educational agency and the juvenile court. This statement~~
18 ~~shall include a declaration that, prior to making the decision, the~~
19 ~~local educational agency informed the holder of the right to make~~
20 ~~educational decisions for the pupil, in writing, of all of the~~
21 ~~following:~~

22 (a) ~~The pupil has a right to attend a regular public school in the~~
23 ~~least restrictive environment.~~

24 (b) ~~The alternate education program is a special education~~
25 ~~program, if applicable.~~

26 (c) ~~The decision to unilaterally remove the pupil from the regular~~
27 ~~public school and to place the pupil in an alternate education~~
28 ~~program may not be financed by the local educational agency.~~

29 (d) ~~Any attempt to seek reimbursement for the alternate program~~
30 ~~will be at the expense of the holder of the right to make educational~~
31 ~~decisions for the pupil.~~

32 ~~SEC. 6. Section 56366 of the Education Code is amended to~~
33 ~~read:~~

34 ~~56366. It is the intent of the Legislature that the role of a~~
35 ~~nonpublic, nonsectarian school or agency shall be maintained and~~
36 ~~continued as an alternative special education service available to~~
37 ~~a local educational agency and parents.~~

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

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

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

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

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

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

37 ~~(C) In the case of a nonpublic, nonsectarian school that is owned~~
38 ~~by, operated by, or associated with, a licensed children's institution,~~
39 ~~the master contract shall include a method for evaluating whether~~
40 ~~the nonpublic, nonsectarian school is in compliance with the~~

1 mandates set forth in Sections 48854, 56155.7, and 56366.9 of this
2 code and subdivision (b) of Section 1501.1 of the Health and Safety
3 Code.

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

7 ~~(B) At any time during the term of the contract or individual~~
8 ~~services agreement, the parent, the nonpublic, nonsectarian school~~
9 ~~or agency, or the local educational agency may request a review~~
10 ~~of a pupil's individualized education program by the individualized~~
11 ~~education program team. Changes in the administrative or financial~~
12 ~~agreements of the master contract that do not alter the individual~~
13 ~~services agreement that outlines each pupil's educational~~
14 ~~instruction, services, or placement may be made at any time during~~
15 ~~the term of the contract as mutually agreed by the nonpublic,~~
16 ~~nonsectarian school or agency and the local educational agency.~~

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

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

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

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

37 ~~(8) (A) A nonpublic, nonsectarian school is subject to the~~
38 ~~alternative accountability system developed pursuant to Section~~
39 ~~52052 in the same manner as public schools and each pupil placed~~
40 ~~in the nonpublic, nonsectarian school by a local educational agency~~

1 shall be tested by qualified staff of the nonpublic, nonsectarian
2 school in accordance with that accountability program. The test
3 results shall be reported by the nonpublic, nonsectarian school to
4 the department.

5 (B) Beginning with the 2006-07 school year testing cycle, each
6 nonpublic, nonsectarian school shall determine its STAR testing
7 period subject to subdivisions (b) and (c) of Section 60640. The
8 nonpublic, nonsectarian school shall determine this period based
9 on completion of 85 percent of the instructional year at that
10 nonpublic, nonsectarian school, plus and minus 10 days, resulting
11 in a 21-day period. Each nonpublic, nonsectarian school shall
12 notify the district of residence of a pupil enrolled in the school of
13 its testing period. Staff at the nonpublic, nonsectarian school who
14 administer the assessments shall attend the regular testing training
15 sessions provided by the district of residence. If staff from a
16 nonpublic, nonsectarian school have received training from one
17 local educational agency, that training will be sufficient for all
18 local educational agencies that send pupils to the nonpublic,
19 nonsectarian school. The district of residence shall order testing
20 materials for its pupils that have been placed in the nonpublic,
21 nonsectarian school. The board shall adopt regulations to facilitate
22 the distribution of and collection of testing materials.

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

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

32 The superintendent shall withhold 20 percent of the amount
33 apportioned to a local educational agency for costs related to the
34 provision of nonpublic, nonsectarian school or agency placements
35 if the superintendent finds that the local educational agency is in
36 noncompliance with this subdivision. This amount shall be
37 withheld from the apportionments in the fiscal year following the
38 superintendent's finding of noncompliance. The superintendent
39 shall take other appropriate actions to prevent noncompliant

1 ~~practices from occurring and report to the Legislature on those~~
2 ~~actions.~~

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

12 ~~(2) If after 60 days the master contract or individual services~~
13 ~~agreement has not been finalized as prescribed in paragraph (1)~~
14 ~~of subdivision (a), either party may appeal to the county~~
15 ~~superintendent of schools, if the county superintendent is not~~
16 ~~participating in the local plan involved in the nonpublic,~~
17 ~~nonsectarian school or agency contract, or the superintendent, if~~
18 ~~the county superintendent is participating in the local plan involved~~
19 ~~in the contract, to negotiate the contract. Within 30 days of receipt~~
20 ~~of this appeal, the county superintendent or the superintendent, or~~
21 ~~his or her designee, shall mediate the formulation of a contract,~~
22 ~~which shall be binding upon both parties.~~

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

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

1 SEC. 7.— Section 56366.1 of the Education Code is amended to
2 read:

3 56366.1. (a) A nonpublic, nonsectarian school or agency that
4 seeks certification shall file an application with the Superintendent
5 on forms provided by the department, and include the following
6 information on the application:

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

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

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

20 (4) An annual operating budget.

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

26 (b) (1) The applicant shall provide the special education local
27 plan area in which the applicant is located with the written
28 notification of its intent to seek certification or renewal of its
29 certification. The applicant shall submit on a form, developed by
30 the department, a signed verification by local educational agency
31 representatives that they have been notified of the intent to certify
32 or renew certification. The verification shall include a statement
33 that representatives of the local educational agency for the area in
34 which the applicant is located have had the opportunity to review
35 the application at least 60 calendar days prior to submission of an
36 initial application to the Superintendent, or at least 30 calendar
37 days prior to submission of a renewal application to the
38 Superintendent. The signed verification shall provide assurances
39 that local educational agency representatives have had the

1 opportunity to provide input on all required components of the
2 application:

3 (2) ~~If the applicant has not received a response from the local
4 educational agency 60 calendar days from the date of the return
5 receipt for initial applications or 30 calendar days from the date
6 of the return receipt for renewal applications, the applicant may
7 file the application with the Superintendent. A copy of the return
8 receipt shall be included with the application as verification of
9 notification efforts to the local educational agency.~~

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

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

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

20 (e) ~~Prior to certification, the Superintendent shall conduct an
21 onsite review of the facility and program for which the applicant
22 seeks certification. The Superintendent may be assisted by
23 representatives of the special education local plan area in which
24 the applicant is located and a nonpublic, nonsectarian school or
25 agency representative who does not have a conflict of interest with
26 the applicant. The Superintendent shall conduct an additional onsite
27 review of the facility and program within three years of the
28 effective date of the certification, unless the Superintendent
29 conditionally certifies the school or agency or unless the
30 Superintendent receives a formal complaint against the school or
31 agency. In the latter two cases, the Superintendent shall conduct
32 an onsite review at least annually.~~

33 (f) ~~The Superintendent shall make a determination on an
34 application within 120 days of receipt of the application and shall
35 certify, conditionally certify, or deny certification to the applicant.
36 If the Superintendent fails to take one of these actions within 120
37 days, the applicant is automatically granted conditional certification
38 for a period terminating on August 31 of the current school year.
39 If certification is denied, the Superintendent shall provide reasons~~

1 for the denial. The Superintendent may certify the school or agency
2 for a period of not longer than one year.

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

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

15 ~~(i) (1) The Superintendent shall conduct an investigation of a
16 nonpublic, nonsectarian school or agency onsite at any time without
17 prior notice if there is substantial reason to believe that there is an
18 immediate danger to the health, safety, or welfare of a child. The
19 Superintendent shall document the concern, and submit it to the
20 nonpublic, nonsectarian school or agency at the time of the onsite
21 investigation. The Superintendent shall require a written response
22 to any noncompliance or deficiency found.~~

23 ~~(2) With respect to a nonpublic, nonsectarian school, the
24 Superintendent shall conduct an investigation, which may include
25 an unannounced onsite visit, if the Superintendent receives
26 evidence of a significant deficiency in the quality of educational
27 services provided, a violation of Section 48854, Section 56155.7,
28 subdivision (d) of Section 56157, or Section 56366.9 of this code,
29 or subdivision (j) or (n) of Section 7579.5 of the Government Code,
30 or noncompliance with the policies expressed by subdivision (b)
31 of Section 1501 of the Health and Safety Code by the nonpublic,
32 nonsectarian school. The Superintendent shall document the
33 complaint and the results of the investigation, and shall provide
34 copies of the documentation to the complainant, the nonpublic,
35 nonsectarian school, and the contracting local educational agency.~~

36 ~~(3) Violations or noncompliance documented pursuant to
37 paragraph (1) or (2) shall be reflected in the status of the
38 certification of the school, at the discretion of the Superintendent,
39 pending an approved plan of correction by the nonpublic,
40 nonsectarian school. The department shall retain for a period of~~

1 10 years all violations pertaining to certification of the nonpublic,
2 nonsectarian school or agency.

3 ~~(j) The Superintendent shall monitor the facilities, the~~
4 ~~educational environment, and the quality of the educational~~
5 ~~program, including the teaching staff, the credentials authorizing~~
6 ~~service, the standards-based core curriculum being employed, and~~
7 ~~the standard-focused instructional materials used, and compliance~~
8 ~~with all provisions of the master contract, the assurances set forth~~
9 ~~in Section 56366.10, and Sections 48854, 56155.7, and 56366.9~~
10 ~~of an existing certified nonpublic, nonsectarian school or agency~~
11 ~~on a three-year cycle, as follows:~~

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

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

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

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

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

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

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

36 ~~(C) The number of pupils proposed for services, the number of~~
37 ~~pupils currently served in the juvenile court, community school,~~
38 ~~or other nonspecial education program, the current school services~~
39 ~~including special education and related services provided for these~~

1 pupils, and the specific program of special education and related
2 services to be provided under the proposed program.

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

4 (E) The number of staff who will provide special education and
5 designated instruction and services and hold a current valid
6 California credential or license in the service rendered.

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

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

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

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

21 (b) (1) Notwithstanding any other law, the Superintendent shall
22 not certify or renew the certification of a nonpublic, nonsectarian
23 school or agency, unless all of the following conditions are met:

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

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

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

38 (D) The relationship between various entities operated by the
39 same entity are documented, defining the responsibilities of the
40 entities. The documentation shall clearly identify the services to

1 be provided as part of each program: for example, the residential
2 or medical program, the mental health program, or the educational
3 program. The entity shall not seek funding from a public agency
4 for a service, either separately or as part of a package of services,
5 if the service is funded by another public agency, either separately
6 or as part of a package of services.

7 (2) For purposes of this section, “licensed children’s institution”
8 has the same meaning as it is defined by Section 56155.5.

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

17		
18	(1) 1-5 pupils.....	\$—300
19	(2) 6-10 pupils.....	500
20	(3) 11-24 pupils.....	—1,000
21	(4) 25-75 pupils.....	—1,500
22	(5) 76 pupils and over.....	—2,000
23		

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

30 (n) (1) Notwithstanding any other law, only those nonpublic,
31 nonsectarian schools and agencies that provide special education
32 and designated instruction and services utilizing staff who hold a
33 certificate, permit, or other document equivalent to that which staff
34 in a public school are required to hold in the service rendered are
35 eligible to receive certification. Only those nonpublic, nonsectarian
36 schools or agencies located outside of California that employ staff
37 who hold a current valid credential or license to render special
38 education and related services as required by that state shall be
39 eligible to be certified.

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

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

7 SEC. 8.— Section 56366.4 of the Education Code is amended to
8 read:

9 56366.4.— (a) The Superintendent may revoke or suspend the
10 certification of a nonpublic, nonsectarian school or agency for any
11 of the following reasons:

12 ~~(1) Violation of an applicable state or federal rule or regulation,~~
13 ~~or aiding, abetting, or permitting the violation of an applicable~~
14 ~~state or federal rule or regulation.~~

15 ~~(2) Falsification or intentional misrepresentation of an element~~
16 ~~of the application, pupil records, or program presented for~~
17 ~~certification purposes.~~

18 ~~(3) Conduct in the operation or maintenance of the nonpublic,~~
19 ~~nonsectarian school or agency that is harmful to the health, welfare,~~
20 ~~or safety of an individual with exceptional needs.~~

21 ~~(4) Failure to comply with a provision in the contract with the~~
22 ~~local educational entity.~~

23 ~~(5) Failure to notify the department in writing of any of the~~
24 ~~following within 45 days of the occurrence:~~

25 ~~(A) Changes in credentialed, licensed, or registered staff who~~
26 ~~render special education and related services, ownership,~~
27 ~~management, or control of the nonpublic, nonsectarian school or~~
28 ~~agency.~~

29 ~~(B) Major modification or relocation of facilities.~~

30 ~~(C) Significant modification of the nonpublic, nonsectarian~~
31 ~~school or agency program.~~

32 ~~(6) Failure to implement recommendations and compliance~~
33 ~~requirements following an onsite review of the school or agency.~~

34 ~~(7) Failure to provide appropriate services, supplies, equipment,~~
35 ~~or facilities for a pupil as required in his or her individualized~~
36 ~~education program.~~

37 ~~(8) Failure to notify the Superintendent in writing within 10~~
38 ~~days of the revocation or suspension of a license or permit,~~
39 ~~including, but not limited to, a residential care license, business~~
40 ~~license, or other required license or permit.~~

1 ~~(9) Failure to implement a pupil's individualized education~~
2 ~~program.~~

3 ~~(10) Failure to notify the Superintendent in writing within 10~~
4 ~~days of the death of a pupil or any other individual of unnatural~~
5 ~~causes within the school or agency, including the circumstances~~
6 ~~surrounding the death and appropriate preventative measures being~~
7 ~~taken or recommended.~~

8 ~~(11) Failure to comply with Sections 48854, 56155.7, and~~
9 ~~56366.9.~~

10 ~~(b) The Superintendent shall notify contracting local educational~~
11 ~~agencies and the special education local plan area in which the~~
12 ~~nonpublic, nonsectarian school or agency is located of the~~
13 ~~determination to suspend or revoke state certification.~~

14 ~~(c) If the Superintendent determines that a nonpublic,~~
15 ~~nonsectarian school or agency has violated the certification~~
16 ~~requirements pursuant to this section and revokes the certification,~~
17 ~~the nonpublic, nonsectarian school or agency; the site administrator,~~
18 ~~business, organization, or entity involved in the administration of~~
19 ~~the nonpublic, nonsectarian school or agency whose certification~~
20 ~~was revoked; and the site administrator, business, organization, or~~
21 ~~entity whose nonpublic, nonsectarian school or agency certification~~
22 ~~was revoked at any time previously, shall not be eligible to apply~~
23 ~~for recertification of the school or agency for two full years from~~
24 ~~the date of revocation.~~

25 ~~SEC. 9.~~

26 ~~SEC. 5.~~ Section 56366.9 of the Education Code is amended to
27 read:

28 56366.9. A licensed children's institution at which individuals
29 with exceptional needs reside shall not require as a condition of
30 residential placement that it provide the appropriate educational
31 programs to those individuals through a nonpublic, nonsectarian
32 school or agency owned, operated by, or associated with, a licensed
33 children's institution. Those services may only be provided if the
34 special education local plan area determines that appropriate public
35 alternative educational programs are not available. A licensed
36 children's institution shall not refer a pupil to, or place a pupil in,
37 a nonpublic, nonsectarian school. ~~A licensed children's institution~~
38 ~~or nonpublic, nonsectarian school or agency shall not solicit or in~~
39 ~~any way request that a parent or person holding the right to make~~
40 ~~educational decisions for the pupil pursuant to Section 361 or 726~~

1 of the Welfare and Institutions Code transfer or delegate that
2 authority to an employee or person associated with either the
3 licensed children's institution or a nonpublic, nonsectarian school
4 or agency owned by, operated by, or associated with, a licensed
5 children's institution.

6 SEC. 10. Section 56366.10 of the Education Code is amended
7 to read:

8 56366.10. In addition to the certification requirements set forth
9 in Sections 56366 and 56366.1, a nonpublic, nonsectarian school
10 that provides special education and related services to an individual
11 with exceptional needs shall certify in writing to the Superintendent
12 that it meets all of the following requirements:

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

16 (b) Pupils have access to the following educational materials,
17 services, and programs that are consistent with each pupil's
18 individualized education program:

19 (1) (A) For kindergarten and grades 1 to 8, inclusive,
20 state-adopted, standards-based, core curriculum and instructional
21 materials, including technology-based materials as defined in
22 subdivision (m) of Section 60010.

23 (B) For grades 9 to 12, inclusive, standards-based, core
24 curriculum and instructional materials, including technology-based
25 materials as defined in subdivision (m) of Section 60010, used by
26 any local educational agency that contracts with the nonpublic,
27 nonsectarian school.

28 (2) College preparation courses.

29 (3) Extracurricular activities, such as art, sports, music, and
30 academie clubs.

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

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

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

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

4 ~~(e) The school has and abides by a written policy that states that~~
5 ~~it will not require as a condition of placement that educational~~
6 ~~authority for a pupil, as defined in subdivision (m) of Section~~
7 ~~48859, be designated to that institution, school, or agency.~~

8 ~~(f) The school has and abides by a written policy that states that~~
9 ~~it will not solicit or in any way request that a parent or person~~
10 ~~holding the right to make educational decisions for the pupil~~
11 ~~pursuant to Section 361 or 726 of the Welfare and Institutions~~
12 ~~Code transfer or delegate that authority to one of its employees or~~
13 ~~persons associated with it.~~

14 ~~SEC. 11. Section 7579.5 of the Government Code is amended~~
15 ~~to read:~~

16 ~~7579.5. (a) In accordance with Section 1415(b)(2)(B) of Title~~
17 ~~20 of the United States Code, a local educational agency shall~~
18 ~~make reasonable efforts to ensure the appointment of a surrogate~~
19 ~~parent not more than 30 days after there is a determination by the~~
20 ~~local educational agency that a child needs a surrogate parent. A~~
21 ~~local educational agency shall appoint a surrogate parent for a~~
22 ~~child in accordance with Section 300.519 of Title 34 of the Code~~
23 ~~of Federal Regulations under one or more of the following~~
24 ~~circumstances:~~

25 ~~(1) (A) The child is adjudicated a dependent or ward of the~~
26 ~~court pursuant to Section 300, 601, or 602 of the Welfare and~~
27 ~~Institutions Code upon referral of the child to the local educational~~
28 ~~agency for special education and related services, or if the child~~
29 ~~already has a valid individualized education program, (B) the court~~
30 ~~specifically has limited the right of the parent or guardian to make~~
31 ~~educational decisions for the child, and (C) the child has no~~
32 ~~responsible adult to represent him or her pursuant to Section 361~~
33 ~~or 726 of the Welfare and Institutions Code or Section 56055 of~~
34 ~~the Education Code.~~

35 ~~(2) No parent for the child can be identified.~~

36 ~~(3) The local educational agency, after reasonable efforts, cannot~~
37 ~~discover the location of a parent.~~

38 ~~(b) When appointing a surrogate parent, the local educational~~
39 ~~agency, as a first preference, shall select a relative caretaker, foster~~
40 ~~parent, or court-appointed special advocate, if any of these~~

1 individuals exists and is willing and able to serve. If none of these
2 individuals is willing or able to act as a surrogate parent, the local
3 educational agency shall select the surrogate parent of its choice.
4 If the child is moved from the home of the relative caretaker or
5 foster parent who has been appointed as a surrogate parent, the
6 local educational agency shall appoint another surrogate parent if
7 a new appointment is necessary to ensure adequate representation
8 of the child.

9 (e) For purposes of this section, the surrogate parent shall serve
10 as the child's parent and shall have the rights relative to the child's
11 education that a parent has under Title 20 (commencing with
12 Section 1400) of the United States Code and pursuant to Part 300
13 of Title 34 (commencing with Section 300.1) of the Code of
14 Federal Regulations. The surrogate parent may represent the child
15 in matters relating to special education and related services,
16 including the identification, assessment, instructional planning and
17 development, educational placement, and reviewing and revising
18 the individualized education program, and in all other matters
19 relating to the provision of a free appropriate public education of
20 the child. Notwithstanding any other law, this representation shall
21 include the provision of written consent to the individualized
22 education program including nonemergency medical services,
23 mental health treatment services, and occupational or physical
24 therapy services pursuant to this chapter.

25 (d) The surrogate parent is required to meet with the child at
26 least one time. He or she may also meet with the child on additional
27 occasions, attend the child's individualized education program
28 team meetings, review the child's educational records, consult
29 with persons involved in the child's education, and sign any
30 consent relating to individualized education program purposes.

31 (e) As far as practical, a surrogate parent should be culturally
32 sensitive to his or her assigned child.

33 (f) The surrogate parent shall comply with federal and state law
34 pertaining to the confidentiality of student records and information,
35 and shall use discretion in the necessary sharing of the information
36 with appropriate persons for the purpose of furthering the interests
37 of the child.

38 (g) The surrogate parent may resign from his or her appointment
39 only after he or she gives notice to the local educational agency.

1 ~~(h) The local educational agency shall terminate the appointment~~
2 ~~of a surrogate parent if (1) the person is not properly performing~~
3 ~~the duties of a surrogate parent or (2) the person has an interest~~
4 ~~that conflicts with the interests of the child entrusted to his or her~~
5 ~~care.~~

6 ~~(i) An individual who would have a conflict of interest in~~
7 ~~representing the child, as specified in Section 300.519(d) of Title~~
8 ~~34 of the Code of Federal Regulations, shall not be appointed as~~
9 ~~a surrogate parent. “An individual who would have a conflict of~~
10 ~~interest,” for purposes of this section, means a person having any~~
11 ~~interests that might restrict or bias his or her ability to advocate~~
12 ~~for all of the services required to ensure that the child has a free~~
13 ~~appropriate public education.~~

14 ~~(j) Except for individuals who have a conflict of interest in~~
15 ~~representing the child, and notwithstanding any other law or~~
16 ~~regulation, individuals who may serve as surrogate parents include,~~
17 ~~but are not limited to, foster parents, retired teachers, social~~
18 ~~workers, and probation officers who are not employees of the State~~
19 ~~Department of Education, the local educational agency, or any~~
20 ~~other agency that is involved in the education or care of the child.~~
21 ~~An individual who is an employee of, or who is associated with,~~
22 ~~a licensed children’s institution, as defined in Section 56155.5 of~~
23 ~~the Education Code, or an agency owned by, operated by, or~~
24 ~~associated with, a licensed children’s institution shall not serve as~~
25 ~~a surrogate parent, nor shall a surrogate parent transfer or delegate~~
26 ~~his or her authority to such an individual. An individual who is an~~
27 ~~employee of, or who is associated with, a nonpublic, nonsectarian~~
28 ~~school, as defined in Section 56034 of the Education Code, shall~~
29 ~~not serve as a surrogate parent, nor shall a surrogate parent transfer~~
30 ~~or delegate his or her authority to such an individual.~~

31 ~~(1) Except as provided above, a public agency authorized to~~
32 ~~appoint a surrogate parent under this section may select a person~~
33 ~~who is an employee of a nonpublic agency that only provides~~
34 ~~noneducational care for the child and who meets the other standards~~
35 ~~of this section.~~

36 ~~(2) A person who otherwise qualifies to be a surrogate parent~~
37 ~~under this section is not an employee of the local educational~~
38 ~~agency solely because he or she is paid by the local educational~~
39 ~~agency to serve as a surrogate parent.~~

1 ~~(k) The surrogate parent may represent the child until (1) the~~
2 ~~child is no longer in need of special education, (2) the minor~~
3 ~~reaches 18 years of age, unless the child chooses not to make~~
4 ~~educational decisions for himself or herself, or is deemed by a~~
5 ~~court to be incompetent, (3) another responsible adult is appointed~~
6 ~~to make educational decisions for the minor, or (4) the right of the~~
7 ~~parent or guardian to make educational decisions for the minor is~~
8 ~~fully restored.~~

9 ~~(l) The surrogate parent and the local educational agency~~
10 ~~appointing the surrogate parent shall be held harmless by the State~~
11 ~~of California when acting in their official capacity except for acts~~
12 ~~or omissions that are found to have been wanton, reckless, or~~
13 ~~malicious.~~

14 ~~(m) The State Department of Education shall develop a model~~
15 ~~surrogate parent training module and manual that shall be made~~
16 ~~available to local educational agencies.~~

17 ~~(n) Nothing in this section may be interpreted to prevent a parent~~
18 ~~or guardian of an individual with exceptional needs from~~
19 ~~designating another adult individual to represent the interests of~~
20 ~~the child for educational and related services.~~

21 ~~(1) If a child is residing in a licensed children's institution, as~~
22 ~~defined in Section 56155.5 of the Education Code, an individual~~
23 ~~who is an employee of, or who is associated with, a licensed~~
24 ~~children's institution shall not represent the interests of the child.~~

25 ~~(2) If a child is residing in a licensed children's institution, as~~
26 ~~defined in Section 56155.5 of the Education Code, an individual~~
27 ~~who is an employee of, or who is associated with, a nonpublic,~~
28 ~~nonsectarian school, as defined in Section 56034 of the Education~~
29 ~~Code, shall not represent the interests of the child.~~

30 ~~(o) If funding for implementation of this section is provided, it~~
31 ~~may only be provided from Item 6110-161-0890 of Section 2.00~~
32 ~~of the annual Budget Act.~~

33 ~~SEC. 12. Section 361 of the Welfare and Institutions Code is~~
34 ~~amended to read:~~

35 ~~361. (a) In all cases in which a minor is adjudged a dependent~~
36 ~~child of the court on the ground that the minor is a person described~~
37 ~~by Section 300, the court may limit the control to be exercised~~
38 ~~over the dependent child by any parent or guardian and shall by~~
39 ~~its order clearly and specifically set forth all those limitations. Any~~
40 ~~limitation on the right of the parent or guardian to make educational~~

1 decisions for the child shall be specifically addressed in the court
2 order. The limitations may not exceed those necessary to protect
3 the child. If the court specifically limits the right of the parent or
4 guardian to make educational decisions for the child, the court
5 shall at the same time appoint a responsible adult to make
6 educational decisions for the child until one of the following
7 occurs:

8 (1) The minor reaches 18 years of age, unless the child chooses
9 not to make educational decisions for himself or herself, or is
10 deemed by the court to be incompetent.

11 (2) Another responsible adult is appointed to make educational
12 decisions for the minor pursuant to this section.

13 (3) The right of the parent or guardian to make educational
14 decisions for the minor is fully restored.

15 (4) A successor guardian or conservator is appointed.

16 (5) The child is placed into a planned permanent living
17 arrangement pursuant to paragraph (3) of subdivision (g) of Section
18 366.21, Section 366.22, or Section 366.26, at which time the foster
19 parent, relative caretaker, or nonrelative extended family member
20 as defined in Section 362.7, has the right to represent the child in
21 educational matters pursuant to Section 56055 of the Education
22 Code.

23 (6) (A) Neither a responsible adult appointed by the court to
24 make educational decisions for the child, nor an individual defined
25 in paragraph (5), shall delegate or transfer the right to make
26 educational decisions for the child to any other individual,
27 organization, agency, or entity.

28 (B) An individual who would have a conflict of interest in
29 representing the child may not be appointed to make educational
30 decisions. For purposes of this section, “an individual who would
31 have a conflict of interest,” means a person having any interests
32 that might restrict or bias his or her ability to make educational
33 decisions, including, but not limited to, those conflicts of interest
34 prohibited by Section 1126 of the Government Code, and the
35 receipt of compensation or attorneys’ fees for the provision of
36 services pursuant to this section. An individual who is an employee
37 of, or who is associated with, a licensed children’s institution, as
38 defined in Section 56155.5 of the Education Code, or an agency
39 owned by, operated by, or associated with, a licensed children’s
40 institution, shall not be appointed to make educational decisions

1 for the child. An individual who is an employee of, or who is
2 associated with, a nonpublic, nonsectarian school, as defined in
3 Section 56034 of the Education Code, shall not be appointed to
4 make educational decisions for the child. A foster parent may not
5 be deemed to have a conflict of interest solely because he or she
6 receives compensation for the provision of services pursuant to
7 this section.

8 (C) If the court is unable to appoint a responsible adult to make
9 educational decisions for the child and paragraphs (1) to (5),
10 inclusive, do not apply, and the child has either been referred to
11 the local educational agency for special education and related
12 services, or has a valid individualized education program, the court
13 shall refer the child to the local educational agency for appointment
14 of a surrogate parent pursuant to Section 7579.5 of the Government
15 Code.

16 (D) If the court cannot identify a responsible adult to make
17 educational decisions for the child, the appointment of a surrogate
18 parent as defined in subdivision (a) of Section 56050 of the
19 Education Code is not warranted, and there is no foster parent to
20 exercise the authority granted by Section 56055 of the Education
21 Code, the court may, with the input of any interested person, make
22 educational decisions for the child.

23 (E) All educational and school placement decisions shall seek
24 to ensure that the child is in the least restrictive educational
25 programs and has access to the academic resources, services, and
26 extracurricular and enrichment activities that are available to all
27 pupils. In all instances, educational and school placement decisions
28 shall be based on the best interests of the child.

29 (b) Subdivision (a) does not limit the ability of a parent to
30 voluntarily relinquish his or her child to the State Department of
31 Social Services or to a licensed county adoption agency at any
32 time while the child is a dependent child of the juvenile court, if
33 the department or agency is willing to accept the relinquishment.

34 (e) A dependent child may not be taken from the physical
35 custody of his or her parents or guardian or guardians with whom
36 the child resides at the time the petition was initiated, unless the
37 juvenile court finds clear and convincing evidence of any of the
38 following circumstances listed in paragraphs (1) to (5), inclusive,
39 and, in an Indian child custody proceeding, paragraph (6):

1 ~~(1) There is or would be a substantial danger to the physical~~
2 ~~health, safety, protection, or physical or emotional well-being of~~
3 ~~the minor if the minor were returned home, and there are no~~
4 ~~reasonable means by which the minor's physical health can be~~
5 ~~protected without removing the minor from the minor's parent's~~
6 ~~or guardian's physical custody. The fact that a minor has been~~
7 ~~adjudicated a dependent child of the court pursuant to subdivision~~
8 ~~(e) of Section 300 shall constitute prima facie evidence that the~~
9 ~~minor cannot be safely left in the physical custody of the parent~~
10 ~~or guardian with whom the minor resided at the time of injury.~~
11 ~~The court shall consider, as a reasonable means to protect the~~
12 ~~minor, the option of removing an offending parent or guardian~~
13 ~~from the home. The court shall also consider, as a reasonable means~~
14 ~~to protect the minor, allowing a nonoffending parent or guardian~~
15 ~~to retain physical custody as long as that parent or guardian~~
16 ~~presents a plan acceptable to the court demonstrating that he or~~
17 ~~she will be able to protect the child from future harm.~~

18 ~~(2) The parent or guardian of the minor is unwilling to have~~
19 ~~physical custody of the minor, and the parent or guardian has been~~
20 ~~notified that, if the minor remains out of their physical custody for~~
21 ~~the period specified in Section 366.26, the minor may be declared~~
22 ~~permanently free from their custody and control.~~

23 ~~(3) The minor is suffering severe emotional damage, as indicated~~
24 ~~by extreme anxiety, depression, withdrawal, or untoward aggressive~~
25 ~~behavior toward himself or herself or others, and there are no~~
26 ~~reasonable means by which the minor's emotional health may be~~
27 ~~protected without removing the minor from the physical custody~~
28 ~~of his or her parent or guardian.~~

29 ~~(4) The minor or a sibling of the minor has been sexually abused,~~
30 ~~or is deemed to be at substantial risk of being sexually abused, by~~
31 ~~a parent, guardian, or member of his or her household, or other~~
32 ~~person known to his or her parent, and there are no reasonable~~
33 ~~means by which the minor can be protected from further sexual~~
34 ~~abuse or a substantial risk of sexual abuse without removing the~~
35 ~~minor from his or her parent or guardian, or the minor does not~~
36 ~~wish to return to his or her parent or guardian.~~

37 ~~(5) The minor has been left without any provision for his or her~~
38 ~~support, or a parent who has been incarcerated or institutionalized~~
39 ~~cannot arrange for the care of the minor, or a relative or other adult~~
40 ~~custodian with whom the child has been left by the parent is~~

1 ~~unwilling or unable to provide care or support for the child, and~~
2 ~~the whereabouts of the parent is unknown and reasonable efforts~~
3 ~~to locate him or her have been unsuccessful.~~

4 ~~(6) In an Indian child custody proceeding, continued custody~~
5 ~~of the child by the parent or Indian custodian is likely to result in~~
6 ~~serious emotional or physical damage to the child, and that finding~~
7 ~~is supported by testimony of a “qualified expert witness” as~~
8 ~~described in Section 224.6.~~

9 ~~(A) Stipulation by the parent, Indian custodian, or the Indian~~
10 ~~child’s tribe, or failure to object, may waive the requirement of~~
11 ~~producing evidence of the likelihood of serious damage only if the~~
12 ~~court is satisfied that the party has been fully advised of the~~
13 ~~requirements of the Indian Child Welfare Act (25 U.S.C. Sec. 1901~~
14 ~~et seq.), and has knowingly, intelligently, and voluntarily waived~~
15 ~~them.~~

16 ~~(B) Failure to meet non-Indian family and child-rearing~~
17 ~~community standards, or the existence of other behavior or~~
18 ~~conditions that meet the removal standards of this section, will not~~
19 ~~support an order for placement in the absence of the finding in this~~
20 ~~paragraph.~~

21 ~~(d) The court shall make a determination as to whether~~
22 ~~reasonable efforts were made to prevent or to eliminate the need~~
23 ~~for removal of the minor from his or her home or, if the minor is~~
24 ~~removed for one of the reasons stated in paragraph (5) of~~
25 ~~subdivision (c), whether it was reasonable under the circumstances~~
26 ~~not to make any of those efforts, or, in the case of an Indian child~~
27 ~~custody proceeding, whether active efforts as required in Section~~
28 ~~361.7 were made and that these efforts have proved unsuccessful.~~
29 ~~The court shall state the facts on which the decision to remove the~~
30 ~~minor is based.~~

31 ~~(e) The court shall make all of the findings required by~~
32 ~~subdivision (a) of Section 366 in either of the following~~
33 ~~circumstances:~~

34 ~~(1) The minor has been taken from the custody of his or her~~
35 ~~parent or guardian and has been living in an out-of-home placement~~
36 ~~pursuant to Section 319.~~

37 ~~(2) The minor has been living in a voluntary out-of-home~~
38 ~~placement pursuant to Section 16507.4.~~

39 ~~SEC. 13. Section 726 of the Welfare and Institutions Code is~~
40 ~~amended to read:~~

1 726. ~~(a) In all cases in which a minor is adjudged a ward or~~
2 ~~dependent child of the court, the court may limit the control to be~~
3 ~~exercised over the ward or dependent child by any parent or~~
4 ~~guardian and shall in its order, clearly and specifically set forth all~~
5 ~~those limitations, but no ward or dependent child shall be taken~~
6 ~~from the physical custody of a parent or guardian, unless upon the~~
7 ~~hearing the court finds one of the following facts:~~

8 ~~(1) That the parent or guardian is incapable of providing or has~~
9 ~~failed or neglected to provide proper maintenance, training, and~~
10 ~~education for the minor.~~

11 ~~(2) That the minor has been tried on probation while in custody~~
12 ~~and has failed to reform.~~

13 ~~(3) That the welfare of the minor requires that custody be taken~~
14 ~~from the minor's parent or guardian.~~

15 ~~(b) Whenever the court specifically limits the right of the parent~~
16 ~~or guardian to make educational decisions for the minor, the court~~
17 ~~shall at the same time appoint a responsible adult to make~~
18 ~~educational decisions for the child until one of the following~~
19 ~~occurs:~~

20 ~~(1) The minor reaches 18 years of age, unless the child chooses~~
21 ~~not to make educational decisions for himself or herself, or is~~
22 ~~deemed by the court to be incompetent.~~

23 ~~(2) Another responsible adult is appointed to make educational~~
24 ~~decisions for the minor pursuant to this section.~~

25 ~~(3) The right of the parent or guardian to make educational~~
26 ~~decisions for the minor is fully restored.~~

27 ~~(4) A successor guardian or conservator is appointed.~~

28 ~~(5) The child is placed into a planned permanent living~~
29 ~~arrangement pursuant to paragraph (5) or (6) of subdivision (b) of~~
30 ~~Section 727.3, at which time the foster parent, relative caretaker,~~
31 ~~or nonrelative extended family member as defined in Section 362.7~~
32 ~~has the right to represent the child in educational matters pursuant~~
33 ~~to Section 56055 of the Education Code.~~

34 ~~(6) (A) Neither a responsible adult appointed by the court to~~
35 ~~make educational decisions for the child, nor an individual defined~~
36 ~~in paragraph (5), shall delegate or transfer the right to make~~
37 ~~educational decisions for the child to any other individual,~~
38 ~~organization, agency, or entity.~~

39 ~~(B) An individual who would have a conflict of interest in~~
40 ~~representing the child, as specified under federal regulations, may~~

1 not be appointed to make educational decisions. For purposes of
2 this section, “an individual who would have a conflict of interest,”
3 means a person having any interests that might restrict or bias his
4 or her ability to make educational decisions, including, but not
5 limited to, those conflicts of interest prohibited by Section 1126
6 of the Government Code, and the receipt of compensation or
7 attorneys’ fees for the provision of services pursuant to this section.
8 An individual who is an employee of, or who is associated with,
9 a licensed children’s institution, as defined in Section 56155.5 of
10 the Education Code, or an agency owned by, operated by, or
11 associated with, a licensed children’s institution shall not be
12 appointed to make educational decisions for the child. An
13 individual who is an employee of, or who is associated with, a
14 nonpublic, nonsectarian school, as defined in Section 56034 of the
15 Education Code, shall not be appointed to make educational
16 decisions for the child. A foster parent may not be deemed to have
17 a conflict of interest solely because he or she receives compensation
18 for the provision of services pursuant to this section.

19 (C) If the court is unable to appoint a responsible adult to make
20 educational decisions for the child and paragraphs (1) to (5),
21 inclusive, do not apply, and the child has either been referred to
22 the local educational agency for special education and related
23 services, or has a valid individualized education program, the court
24 shall refer the child to the local educational agency for appointment
25 of a surrogate parent pursuant to Section 7579.5 of the Government
26 Code.

27 (D) All educational and school placement decisions shall seek
28 to ensure that the child is in the least restrictive educational
29 programs and has access to the academic resources, services, and
30 extracurricular and enrichment activities that are available to all
31 pupils. In all instances, educational and school placement decisions
32 shall be based on the best interests of the child.

33 (e) If the minor is removed from the physical custody of his or
34 her parent or guardian as the result of an order of wardship made
35 pursuant to Section 602, the order shall specify that the minor may
36 not be held in physical confinement for a period in excess of the
37 maximum term of imprisonment which could be imposed upon an
38 adult convicted of the offense or offenses which brought or
39 continued the minor under the jurisdiction of the juvenile court.

1 As used in this section and in Section 731, “maximum term of
 2 imprisonment” means the longest of the three time periods set
 3 forth in paragraph (2) of subdivision (a) of Section 1170 of the
 4 Penal Code, but without the need to follow the provisions of
 5 subdivision (b) of Section 1170 of the Penal Code or to consider
 6 time for good behavior or participation pursuant to Sections 2930,
 7 2931, and 2932 of the Penal Code, plus enhancements which must
 8 be proven if pled.

9 If the court elects to aggregate the period of physical confinement
 10 on multiple counts or multiple petitions, including previously
 11 sustained petitions adjudging the minor a ward within Section 602,
 12 the “maximum term of imprisonment” shall be the aggregate term
 13 of imprisonment specified in subdivision (a) of Section 1170.1 of
 14 the Penal Code, which includes any additional term imposed
 15 pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal
 16 Code, and Section 11370.2 of the Health and Safety Code.

17 If the charged offense is a misdemeanor or a felony not included
 18 within the scope of Section 1170 of the Penal Code, the “maximum
 19 term of imprisonment” is the longest term of imprisonment
 20 prescribed by law.

21 “Physical confinement” means placement in a juvenile hall,
 22 ranch, camp, forestry camp or secure juvenile home pursuant to
 23 Section 730, or in any institution operated by the Youth Authority.

24 This section does not limit the power of the court to retain
 25 jurisdiction over a minor and to make appropriate orders pursuant
 26 to Section 727 for the period permitted by Section 607.

27 ~~SEC. 14.~~

28 *SEC. 6.* If the Commission on State Mandates determines that
 29 this act contains costs mandated by the state, reimbursement to
 30 local agencies and school districts for those costs shall be made
 31 pursuant to Part 7 (commencing with Section 17500) of Division
 32 4 of Title 2 of the Government Code.