

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 389

Introduced by Assembly Member Williams

February 15, 2013

An act to amend ~~Section 44237~~ Sections 44237 and 56366.1 of the Education Code, relating to private schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Williams. Private schools: employees.

(1) Existing law sets forth a method for providing special education and related services to pupils with exceptional needs. Existing law also permits, under certain circumstances, contracts to be entered for the provision of those services by nonpublic, nonsectarian schools or agencies, as defined. Existing law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified by the Superintendent of Public Instruction as meeting specified standards. The Superintendent is prohibited from certifying, or renewing the certification of, a nonpublic, nonsectarian school or agency, unless certain requirements are met.

This bill would require a nonpublic, nonsectarian school or agency to submit evidence of a successful criminal background check determination, as provided, for each owner, operator, or employee of the school or agency before the Superintendent may certify or renew the certification of the school or agency.

~~Existing~~

(2) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the

elementary or high school level to require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation.

This bill would delete the exemption for applicants possessing a valid California state teaching credential or who are currently licensed by another state agency that requires a criminal record summary, from submitting 2 sets of fingerprints for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. The bill also would make technical, nonsubstantive changes.

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

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

- 1 SECTION 1. Section 44237 of the Education Code is amended
- 2 to read:
- 3 44237. (a) Every person, firm, association, partnership, or
- 4 corporation offering or conducting private school instruction on
- 5 the elementary or high school level shall require each applicant
- 6 for employment in a position requiring contact with minor pupils
- 7 to submit two sets of fingerprints prepared for submittal by the
- 8 employer to the Department of Justice for the purpose of obtaining
- 9 criminal record summary information from the Department of
- 10 Justice and the Federal Bureau of Investigation.
- 11 (b) (1) As used in this section, “employer” means every person,
- 12 firm, association, partnership, or corporation offering or conducting
- 13 private school instruction on the elementary or high school level.
- 14 (2) ~~As use~~ *used* in this section, “employment” means the act of
- 15 engaging the services of a person, who will have contact with
- 16 pupils, to work in a position at a private school at the elementary
- 17 or high school level on or after September 30, 1997, on a regular,
- 18 paid full-time basis, regular, paid part-time basis, or paid full-time
- 19 or part-time seasonal basis.
- 20 (3) As used in this section, “applicant” means any person who
- 21 is seriously being considered for employment by an employer.

1 (4) This section does not apply to a secondary school pupil
2 working at the school he or she attends or a parent or legal guardian
3 working exclusively with his or her children.

4 (c) (1) Upon receiving the identification cards, the Department
5 of Justice shall ascertain whether the applicant has been arrested
6 or convicted of any crime insofar as that fact can be ascertained
7 from information available to the Department of Justice and
8 forward the information to the employer submitting the fingerprints
9 no more than 15 working days after receiving the identification
10 cards. The Department of Justice shall not forward information
11 regarding criminal proceedings that did not result in a conviction
12 but shall forward information on arrests pending adjudication.

13 (2) Upon implementation of an electronic fingerprinting system
14 with terminals located statewide and managed by the Department
15 of Justice, the Department of Justice shall ascertain the information
16 required pursuant to this subdivision within three working days.
17 If the Department of Justice cannot ascertain the information
18 required pursuant to this subdivision within three working days,
19 the Department of Justice shall notify the employer submitting the
20 fingerprints that it cannot so ascertain the required information.
21 This notification shall be delivered by telephone or email to the
22 employer submitting the fingerprints. If the employer submitting
23 the fingerprints is notified by the Department of Justice that it
24 cannot ascertain the required information about a person, the
25 employer shall not employ that person until the Department of
26 Justice ascertains that information.

27 (3) The Department of Justice shall review the criminal record
28 summary it obtains from the Federal Bureau of Investigation to
29 ascertain whether an applicant for employment has a conviction,
30 or an arrest pending final adjudication, for any sex offense,
31 controlled substance offense, crime of violence, or serious or
32 violent felony. The Department of Justice shall provide written
33 notification to the private school employer only as to whether an
34 applicant for employment has any convictions, or arrests pending
35 final adjudication, for any of these crimes.

36 (d) An employer shall not employ a person until the Department
37 of Justice completes its check of the state criminal history file as
38 set forth in this section.

39 (e) (1) An employer shall not employ a person who has been
40 convicted of a violent or serious felony or a person who would be

1 prohibited from employment by a public school district pursuant
2 to any provision of this code because of his or her conviction for
3 any crime.

4 (2) A person who would be prohibited from employment by a
5 private school pursuant to paragraph (1) ~~may~~ *shall* not, on or after
6 July 1, 1999, own or operate a private school offering instruction
7 on the elementary or high school level.

8 (f) An employer shall request subsequent arrest service from
9 the Department of Justice as provided under Section 11105.2 of
10 the Penal Code.

11 (g) This section applies to any violent or serious offense that,
12 if committed in this state, would have been punishable as a violent
13 or serious felony.

14 (h) For purposes of this section, a violent felony is any felony
15 listed in subdivision (c) of Section 667.5 of the Penal Code and a
16 serious felony is any felony listed in subdivision (c) of Section
17 1192.7 of the Penal Code.

18 (i) Notwithstanding subdivision (e), a person shall not be denied
19 employment or terminated from employment solely on the basis
20 that the person has been convicted of a violent or serious felony
21 if the person has obtained a certificate of rehabilitation and pardon
22 pursuant to Chapter 3.5 (commencing with Section 4852.01) of
23 Title 6 of Part 3 of the Penal Code.

24 (j) Notwithstanding subdivision (e), a person shall not be denied
25 employment or terminated from employment solely on the basis
26 that the person has been convicted of a serious felony that is not
27 also a violent felony if that person can prove to the sentencing
28 court of the offense in question, by clear and convincing evidence,
29 that he or she has been rehabilitated for the purposes of school
30 employment for at least one year. If the offense in question
31 occurred outside this state, then the person may seek a finding of
32 rehabilitation from the court in the county in which he or she is a
33 resident.

34 (k) The commission shall make available to each private school
35 a listing of all credentialholders who have had final adverse action
36 taken against their credential. The information shall be identical
37 to that made available to public schools in the state. The
38 commission shall also send on a quarterly basis a complete and
39 updated list of all teachers who have had their teaching credentials

1 revoked or suspended, excluding teachers who have had their
2 credentials reinstated, or who are deceased.

3 (l) The Department of Justice may charge a reasonable fee to
4 cover costs associated with the processing, reviewing, and
5 supplying of the criminal record summary as required by this
6 section. The fee shall not exceed the actual costs incurred by the
7 Department of Justice.

8 (m) Where reasonable access to the statewide electronic
9 fingerprinting network is available, the Department of Justice may
10 mandate electronic submission of the fingerprints and related
11 information required by this section.

12 (n) All information obtained from the Department of Justice is
13 confidential. Agencies handling Department of Justice information
14 shall ensure the following:

15 (1) A recipient shall not disclose its contents or provide copies
16 of information.

17 (2) Information received shall be stored in a locked file separate
18 from other files, and shall only be accessible to the custodian of
19 records.

20 (3) Information received shall be destroyed upon the hiring
21 determination in accordance with subdivision (a) of Section 708
22 of Title 11 of the California Code of Regulations.

23 (4) Compliance with destruction, storage, dissemination,
24 auditing, backgrounding, and training requirements as set forth in
25 Sections 700 to 708, inclusive, of Title 11 of the California Code
26 of Regulations and Section 11077 of the Penal Code governing
27 the use and security of criminal offender record information is the
28 responsibility of the entity receiving the information from the
29 Department of Justice.

30 *SEC. 2. Section 56366.1 of the Education Code is amended to*
31 *read:*

32 56366.1. (a) A nonpublic, nonsectarian school or agency that
33 seeks certification shall file an application with the Superintendent
34 on forms provided by the department, and *shall include all of the*
35 *following information on the application:*

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

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

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

10 (4) An annual operating budget.

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

16 (b) (1) The applicant shall provide the special education local
17 plan area in which the applicant is located with the written
18 notification of its intent to seek certification or renewal of its
19 certification. The applicant shall submit on a form, developed by
20 the department, a signed verification by local educational agency
21 representatives that they have been notified of the intent to certify
22 or renew certification. The verification shall include a statement
23 that representatives of the local educational agency for the area in
24 which the applicant is located have had the opportunity to review
25 the application at least 60 calendar days ~~prior to~~ *before* submission
26 of an initial application to the Superintendent, or at least 30
27 calendar days ~~prior to~~ *before* submission of a renewal application
28 to the Superintendent. The signed verification shall provide
29 assurances that local educational agency representatives have had
30 the opportunity to provide input on all required components of the
31 application.

32 (2) If the applicant has not received a response from the local
33 educational agency 60 calendar days from the date of the return
34 receipt for initial applications or 30 calendar days from the date
35 of the return receipt for renewal applications, the applicant may
36 file the application with the Superintendent. A copy of the return
37 receipt shall be included with the application as verification of
38 notification efforts to the local educational agency.

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

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

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

11 (e) ~~Prior to~~ *Before* certification, the Superintendent shall conduct
12 an onsite review of the facility and program for which the applicant
13 seeks certification. The Superintendent may be assisted by
14 representatives of the special education local plan area in which
15 the applicant is located and a nonpublic, nonsectarian school or
16 agency representative who does not have a conflict of interest with
17 the applicant. The Superintendent shall conduct an additional onsite
18 review of the facility and program within three years of the
19 effective date of the certification, unless the Superintendent
20 conditionally certifies the school or agency, or unless the
21 Superintendent receives a formal complaint against the school or
22 agency. In the latter two cases, the Superintendent shall conduct
23 an onsite review at least annually.

24 (f) The Superintendent shall make a determination on an
25 application within 120 days of receipt of the application and shall
26 certify, conditionally certify, or deny certification to the applicant.
27 If the Superintendent fails to take one of these actions within 120
28 days, the applicant is automatically granted conditional certification
29 for a period terminating on August 31 of the current school year.
30 If certification is denied, the Superintendent shall provide reasons
31 for the denial. The Superintendent ~~may certify the school or agency~~
32 *shall not certify the nonpublic, nonsectarian school or agency* for
33 a period ~~of not~~ longer than one year.

34 (g) Certification becomes effective on the date the nonpublic,
35 nonsectarian school or agency meets all the application
36 requirements and is approved by the Superintendent. Certification
37 may be retroactive if the *nonpublic, nonsectarian* school or agency
38 met all the requirements of this section on the date the retroactive
39 certification is effective. Certification expires on December 31 of
40 the terminating year.

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

7 (i) (1) The Superintendent shall conduct an investigation of a
8 nonpublic, nonsectarian school or agency onsite at any time without
9 prior notice if there is substantial reason to believe that there is an
10 immediate danger to the health, safety, or welfare of a child. The
11 Superintendent shall document the concern and submit it to the
12 nonpublic, nonsectarian school or agency at the time of the onsite
13 investigation. The Superintendent shall require a written response
14 to any noncompliance or deficiency found.

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

26 (3) Violations or noncompliance documented pursuant to
27 paragraph (1) or (2) shall be reflected in the status of the
28 certification of the school, at the discretion of the Superintendent,
29 pending an approved plan of correction by the nonpublic,
30 nonsectarian school. The department shall retain for a period of
31 10 years all violations pertaining to certification of the nonpublic,
32 nonsectarian school or agency.

33 (j) The Superintendent shall monitor the facilities, the
34 educational environment, and the quality of the educational
35 program, including the teaching staff, the credentials authorizing
36 service, the standards-based core curriculum being employed, and
37 the standard-focused instructional materials used, of an existing
38 certified nonpublic, nonsectarian school or agency on a three-year
39 cycle, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (l) (1) Notwithstanding any other provision of law, the
11 Superintendent shall not certify or renew the certification of a
12 nonpublic, nonsectarian school or agency, unless all of the
13 following conditions are met:

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

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

23 (C) The entity submits an entitywide annual audit that identifies
24 its costs and revenues, by entity, in accordance with generally
25 accepted accounting and auditing principles. The audit shall clearly
26 document the amount of moneys received and expended on the
27 education program provided by the nonpublic, nonsectarian school
28 *or agency*.

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

38 (E) *Evidence of a successful criminal background check*
39 *determination, conducted pursuant to Section 44237, for each*

1 owner, operator, and employee of the nonpublic, nonsectarian
2 school or agency is submitted to the Superintendent.

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

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

13		
14	(1) 1–5 pupils	\$ 300
15	(2) 6–10 pupils	500
16	(3) 11–24 pupils	1,000
17	(4) 25–75 pupils	1,500
18	(5) 76 pupils and over	2,000
19		

20 The nonpublic, nonsectarian school or agency shall pay this fee
21 when it applies for certification and when it updates its application
22 for annual renewal by the Superintendent. The Superintendent
23 shall use these fees to conduct onsite reviews, which may include
24 field experts. ~~No fee shall~~ A fee shall not be refunded if the
25 application is withdrawn or is denied by the Superintendent.

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

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

38 (o) In addition to meeting the standards adopted by the board,
39 a nonpublic, nonsectarian school or agency shall provide written

- 1 assurances that it meets all applicable standards relating to fire,
- 2 health, sanitation, and building safety.

O