

AMENDED IN ASSEMBLY MAY 15, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 812**

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**Introduced by Assembly Member Mitchell**

February 21, 2013

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An act to amend Sections 8257, 8402, 8403, 8406.6, 8406.7, 8406.9, 8407, and 8408 of, and to add Section 8401.5 to, the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 812, as amended, Mitchell. Child care: contracts: termination and suspension.

(1) Existing law requires the State Department of Education to apply sanctions against contracting agencies that have serious licensing violations, as defined and reported by the State Department of Social Services and provide 90 days' written notification to any contractor whose agreement is being terminated, unless there is imminent danger to the health and welfare of children if agency operation is not terminated promptly.

This bill would require a 90-day written notification as specified, except in the case of certain immediate terminations.

(2) Existing law requires the department to provide an independent appeal procedure in certain instances, including, but not limited to, contract termination or suspension, to each contracting agency providing specified child care and development services.

This bill would delete the requirement that the department provide the independent appeal procedure for contract suspension. The bill would additionally require the department to provide an internal appeal procedure to resolve a dispute between the department and a contracting agency providing specified child care and development services regarding the interpretation or application of a contract term or condition, or to dispute the findings of a fiscal or programmatic review.

(3) Existing law requires the Superintendent of Public Instruction to establish a contract classification system with 3 classes of contract designations; a clear contract, a provisional contract, and a conditional contract, as specified.

This bill would revise the 3 classes of contract designations, as specified.

(4) Existing law authorizes any contracting agency that evidences chronic fiscal or program violations of a felony nature, as specified, to have its contract immediately suspended or terminated provided there is documented evidence of the violations and upon review and recommendation of the general counsel of the department.

This bill would instead authorize a contracting agency that evidences any specified acts or omissions to have its contract or contracts immediately terminated provided there is documented evidence of the acts or omission and upon review and recommendation of the general counsel of the department. The bill would add additional acts or omissions, as described, that may result in immediate termination of an agency's contract or contracts and require the notice of immediate termination of a contract to be served in a specified manner.

(5) Existing law authorizes a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of certain crimes to have its contract immediately suspended or terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. Existing law authorizes a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and require the contract termination to occur after notice, as specified, is provided at least 90 days before termination.

This bill would instead authorize a contracting agency that *has in place or* places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, to have its contract immediately terminated if there is

documented evidence of the conviction and upon review and recommendation of the general counsel of the department. The bill would repeal the authority of a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and the requirement that this termination occur after notice, as specified, is provided at least 90 days before termination.

(6) Existing law authorizes local contracting agencies to continue to operate under their contract during an appeal of termination, unless the specified action is based on imminent danger to the health and welfare of children. Existing law requires, if the contract is being terminated based on imminent danger to the health and welfare of children, the reason for the termination to be specified by the department in its notice of termination.

~~(7) This~~

*This* bill would instead authorize local contracting agencies to continue to operate under their contract during an appeal of termination, unless the action is an immediate termination action, as specified, in which case a local contracting agency would not be authorized to continue to operate under the contract after the effective date given in the notice of immediate termination.

~~This~~

(7) *This* bill would make conforming and nonsubstantive changes to these provisions.

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

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

- 1 SECTION 1. Section 8257 of the Education Code is amended
- 2 to read:
- 3 8257. The department shall do all of the following in
- 4 administering the provisions of this chapter:
- 5 (a) Apply sanctions against contracting agencies that have
- 6 serious licensing violations, as defined and reported by the State
- 7 Department of Social Services pursuant to Section 1597.11 of the
- 8 Health and Safety Code.
- 9 (b) Except in the case of immediate terminations taken pursuant
- 10 to Sections 8406.7 or 8406.9, provide 90 days' written notification
- 11 to any contractor whose agreement is being terminated.
- 12 Notwithstanding Article 18 (commencing with Section 8400), the

1 department shall establish procedures for placing a contractor  
2 whose agreement is being terminated into receivership. Action to  
3 initiate receivership shall be at the discretion of the department,  
4 and may be taken against a contractor whose agreement is being  
5 terminated either immediately or within 90 days. The receiver shall  
6 not be a department employee. The receiver shall have sufficient  
7 experience in the administration of child care and development  
8 programs to ensure compliance with the terms of the receivership.

9 SEC. 2. Section 8401.5 is added to the Education Code, to  
10 read:

11 8401.5. (a) The department shall provide an internal appeal  
12 procedure to resolve a dispute between the department and a  
13 contracting agency providing child care and development services  
14 pursuant to Section 8262 regarding the interpretation or application  
15 of a term or condition of a contract, or to dispute a finding made  
16 by the department resulting from a fiscal or programmatic review,  
17 including, but not limited to, an error rate notification.

18 (b) A contracting agency shall have the right to appeal the  
19 findings of a fiscal or programmatic review, including, but not  
20 limited to, an error rate finding, by submitting a request for appeal  
21 in accordance with the internal appeal procedure developed by the  
22 department pursuant to subdivision (a).

23 SEC. 3. Section 8402 of the Education Code is amended to  
24 read:

25 8402. (a) The department shall provide an independent appeal  
26 procedure to each contracting agency providing child care and  
27 development services pursuant to Section 8262 that shall be  
28 conducted by the Office of Administrative Hearings and shall be  
29 provided upon an appeal petition of the contracting agency in any  
30 of the following circumstances:

31 (1) Termination of a contracting agency's contract.

32 (2) Denial of more than 4 percent or twenty-five thousand dollars  
33 (\$25,000), whichever is less, of a local contracting agency's  
34 contracted payment for services schedule.

35 (3) Demand for remittance of an overpayment of more than 4  
36 percent or twenty-five thousand dollars (\$25,000), whichever is  
37 less, of a local contracting agency's annual contract.

38 (b) Before filing an appeal petition for an action taken pursuant  
39 to paragraph (2) or (3) of subdivision (a), the contracting agency

1 shall have submitted all previously required standard monthly or  
2 quarterly reporting forms to the department.

3 SEC. 4. Section 8403 of the Education Code is amended to  
4 read:

5 8403. All hearings required by ~~Sections 8401.5 and Section~~  
6 8402 shall be conducted according to the provisions of the  
7 Administrative Procedure Act (Chapter 5 (commencing with  
8 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
9 Code), except as otherwise directed in this article.

10 SEC. 5. Section 8406.6 of the Education Code is amended to  
11 read:

12 8406.6. The Superintendent shall establish a contract  
13 classification system for purposes of identifying, monitoring, and  
14 providing technical assistance to contractors as follows:

15 (a) Clear contract. This designation shall be given to a contract  
16 that is neither a provisional contract, as described in subdivision  
17 (b), nor a conditional contract, as described in subdivision (c).

18 (b) Provisional contract. This designation applies to an  
19 agency's first contract for any particular service or to the contract  
20 of an existing contracting agency for a new, modified, or different  
21 type of service. The timeframe of a provisional contract is at the  
22 discretion of the department and is given to ensure that the  
23 contracting agency can demonstrate fiscal and programmatic  
24 compliance before the contract is designated as a clear contract.  
25 The contract status shall be reviewed annually.

26 (c) Conditional contract. This designation applies to a high-risk  
27 contract awarded to a contracting agency that evidences fiscal or  
28 programmatic noncompliance, or both fiscal and programmatic  
29 noncompliance. A contracting agency with one or more contracts  
30 designated as conditional is deemed to be on conditional status  
31 with the department for all child care and development program  
32 purposes and is subject to any restrictions deemed reasonable to  
33 secure compliance. The conditional contract shall include a bill of  
34 particulars detailing the items of noncompliance, the standards  
35 that must be met to avoid termination of contract and to qualify  
36 the agency for clear contract status, and technical assistance plan.  
37 Failure to demonstrate substantive progress toward fiscal or  
38 program compliance within six months of that designation shall  
39 constitute a breach of contract and may subject the contract to

1 termination for any applicable cause specified in Section 8406.7  
2 or 8407, in accordance with Section 8402.

3 (d) Agencies with conditional contracts shall receive technical  
4 assistance from the Child Development Division of the department.

5 SEC. 6. Section 8406.7 of the Education Code is amended to  
6 read:

7 8406.7. (a) A contracting agency that evidences any of the  
8 following acts or omissions may have its contract or contracts  
9 immediately terminated if there is documented evidence of the  
10 acts or omissions, and upon review and recommendation of the  
11 general counsel of the department:

- 12 (1) Fraud, or conspiracy to defraud.
- 13 (2) Misuse or misappropriation of state or federal funds,  
14 including a violation of Section 8406.9.
- 15 (3) Embezzlement.
- 16 (4) Threats of bodily or other harm to a state official.
- 17 (5) Bribery or attempted bribery of a state official.
- 18 (6) Unsafe or unhealthy physical environment or facility.
- 19 (7) Substantiated abuse or molestation of children.
- 20 (8) Failure to report suspected child abuse or molestation.
- 21 (9) Theft of supplies, equipment, or food.
- 22 (10) Cessation of operations without the permission of the  
23 department, or acts or omissions evidencing abandonment of the  
24 contract or contracts.
- 25 (11) Failure of a program operating pursuant to Article 3  
26 (commencing with Section 8220) or Article 15.5 (commencing  
27 with Section 8350) to reimburse a significant number of approved  
28 child care providers, as determined by the department, within 15  
29 calendar days after the date set in the plan for timely payments to  
30 providers adopted by the contracting agency pursuant to Section  
31 18226 of Title 5 of the California Code of Regulations, unless the  
32 failure is attributable to a delay in receiving apportionments from  
33 the state.
- 34 (12) Failure of a program operating pursuant to this chapter to  
35 pay salaries owed to employees, pay federal payroll tax, or  
36 reimburse a significant number of child care providers, as  
37 determined by the department, affiliated with a contracting agency  
38 pursuant to Article 8.5 (commencing with Section 8245) for more  
39 than 15 days after the employee salaries, federal payroll taxes, or

1 reimbursement payments were due, unless the failure is attributable  
2 to a delay in receiving apportionments from the state.

3 (b) An agency whose contract is immediately terminated  
4 pursuant to this section retains appeal rights in accordance with  
5 Section 8402.

6 (c) Notwithstanding any service provision in the Administrative  
7 Procedure Act (Chapter 5 (commencing with Section 11500) of  
8 Part 1 of Division 3 of Title 2 of the Government Code), a notice  
9 of immediate termination shall be served on the contracting agency  
10 by personal service or at the last address on file with the  
11 department, by overnight mail or certified mail. Service may be  
12 proved in the manner authorized in civil action. Service by mail  
13 is complete at the time of deposit.

14 (d) The department shall advise child care and development  
15 contractors of the provisions of this section within 30 working  
16 days of the effective date of the act amending this section during  
17 the 2013–14 Regular Session of the Legislature.

18 SEC. 7. Section 8406.9 of the Education Code is amended to  
19 read:

20 8406.9. (a) An agency that has in place or places a person in  
21 a position of fiscal responsibility or control who has been convicted  
22 of a crime involving misuse or misappropriation of state or federal  
23 funds, or a state or federal crime involving moral turpitude, may  
24 have its contract immediately terminated pursuant to Section  
25 8406.7 if there is documented evidence of the conviction, and upon  
26 review and recommendation of the general counsel of the  
27 department.

28 (b) For purposes of this section, “position of fiscal responsibility  
29 or control” includes any authority to direct or control expenditure  
30 of, or any access to, state or federal child care and development  
31 funds received pursuant to this chapter whether that authority or  
32 access is conferred based on the person’s status as an employee,  
33 director, manager, board member, or volunteer, or based on any  
34 other status.

35 (c) If the agency provides evidence to the department, before  
36 the effective date given in the notice of immediate termination,  
37 that the convicted person has been removed from the position of  
38 fiscal responsibility or control and provides assurance that the  
39 person will not be returned to a position of fiscal responsibility or  
40 control, the department shall withdraw the termination action.

1 SEC. 8. Section 8407 of the Education Code is amended to  
2 read:

3 8407. Except for causes listed in Sections 8406.7 and 8406.9,  
4 termination of a child care and development contract shall not  
5 occur without good cause and without notice as described in  
6 Section 8406 at least 90 days before the effective date given in the  
7 notice of termination.

8 SEC. 9. Section 8408 of the Education Code is amended to  
9 read:

10 8408. Actions as defined in subdivision (a) of Section 8402  
11 shall remain in effect during the appeal process. However, local  
12 contracting agencies may continue to operate under the contract  
13 during an appeal of termination, unless the action is an immediate  
14 termination action taken pursuant to Section 8406.7 or 8406.9, in  
15 which case a contracting agency shall not continue to operate under  
16 the contract after the effective date given in the notice of immediate  
17 termination.