

AMENDED IN SENATE JUNE 26, 2013

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

Introduced by Assembly Member Mitchell

February 21, 2013

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. *Existing law requires the Child Development Division of the department to provide technical assistance to agencies with conditional contracts.*

This bill would revise the 3 classes of contract designations, as specified. *The bill would require that technical assistance also be provided to any contracting agency making a written request to its assigned consultant or administrator within 60 days of receipt of the request.*

(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~~ a contracting 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.

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.

(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

1 Department of Social Services pursuant to Section 1597.11 of the
2 Health and Safety Code.

3 (b) Except in the case of immediate terminations taken pursuant
4 to Sections 8406.7 or 8406.9, provide 90 days' written notification
5 to any contractor whose agreement is being terminated.
6 Notwithstanding Article 18 (commencing with Section 8400), the
7 department shall establish procedures for placing a contractor
8 whose agreement is being terminated into receivership. Action to
9 initiate receivership shall be at the discretion of the department,
10 and may be taken against a contractor whose agreement is being
11 terminated either immediately or within 90 days. The receiver shall
12 not be a department employee. The receiver shall have sufficient
13 experience in the administration of child care and development
14 programs to ensure compliance with the terms of the receivership.

15 SEC. 2. Section 8401.5 is added to the Education Code, to
16 read:

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

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

29 SEC. 3. Section 8402 of the Education Code is amended to
30 read:

31 8402. (a) The department shall provide an independent appeal
32 procedure to each contracting agency providing child care and
33 development services pursuant to Section 8262 that shall be
34 conducted by the Office of Administrative Hearings and shall be
35 provided upon an appeal petition of the contracting agency in any
36 of the following circumstances:

- 37 (1) Termination of a contracting agency's contract.
- 38 (2) Denial of more than 4 percent or twenty-five thousand dollars
39 (\$25,000), whichever is less, of a local contracting agency's
40 contracted payment for services schedule.

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

4 (b) Before filing an appeal petition for an action taken pursuant
5 to paragraph (2) or (3) of subdivision (a), the contracting agency
6 shall have submitted all previously required standard monthly or
7 quarterly reporting forms to the department.

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

10 8403. All hearings required by Section 8402 shall be conducted
11 according to the provisions of the Administrative Procedure Act
12 (Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code), except as otherwise directed
14 in this article.

15 SEC. 5. Section 8406.6 of the Education Code is amended to
16 read:

17 8406.6. (a) The Superintendent shall establish a contract
18 classification system for purposes of identifying, monitoring, and
19 providing technical assistance to contractors as follows:

20 (a)

21 (1) Clear contract. This designation shall be given to a contract
22 that is neither a provisional contract, as described in ~~subdivision~~
23 ~~(b)~~, paragraph (2), nor a conditional contract, as described in
24 ~~subdivision (e) paragraph (3)~~.

25 ~~(b)~~

26 (2) Provisional contract. This designation applies to an
27 agency's first contract for any particular service or to the contract
28 of an existing contracting agency for a new, modified, or different
29 type of service. The timeframe of a provisional contract is at the
30 discretion of the department and is given to ensure that the
31 contracting agency can demonstrate fiscal and programmatic
32 compliance before the contract is designated as a clear contract.
33 The contract status shall be reviewed annually.

34 ~~(e)~~

35 (3) Conditional contract. This designation applies to a high-risk
36 contract awarded to a contracting agency that evidences fiscal or
37 programmatic noncompliance, or both fiscal and programmatic
38 noncompliance. A contracting agency with one or more contracts
39 designated as conditional is deemed to be on conditional status
40 with the department for all child care and development program

1 purposes and is subject to any restrictions deemed reasonable to
 2 secure compliance. The conditional contract shall include a bill of
 3 particulars detailing the items of noncompliance, the standards
 4 that must be met to avoid termination of contract and to qualify
 5 the agency for clear contract status, and technical assistance plan.
 6 Failure to demonstrate substantive progress toward fiscal or
 7 program compliance within six months of that designation shall
 8 constitute a breach of contract and may subject the contract to
 9 termination for any applicable cause specified in Section 8406.7
 10 or 8407, in accordance with Section 8402.

11 ~~(d)~~
 12 (b) Agencies with conditional contracts shall receive technical
 13 assistance from the Child Development Division of the department.
 14 (c) *Notwithstanding subdivision (b), technical assistance shall*
 15 *be provided to any contracting agency making a written request*
 16 *to its assigned consultant or administrator within 60 days of receipt*
 17 *of the request.*

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

20 8406.7. (a) A contracting agency that evidences any of the
 21 following acts or omissions may have its contract or contracts
 22 immediately terminated if there is documented evidence of the
 23 acts or omissions, and upon review and recommendation of the
 24 general counsel of the department:

- 25 (1) Fraud, or conspiracy to defraud.
- 26 (2) Misuse or misappropriation of state or federal funds,
 27 including a violation of Section 8406.9.
- 28 (3) Embezzlement.
- 29 (4) Threats of bodily or other harm to a state official.
- 30 (5) Bribery or attempted bribery of a state official.
- 31 (6) Unsafe or unhealthy physical environment or facility.
- 32 (7) Substantiated abuse or molestation of children.
- 33 (8) Failure to report suspected child abuse or molestation.
- 34 (9) Theft of supplies, equipment, or food.
- 35 (10) Cessation of operations without the permission of the
 36 department, or acts or omissions evidencing abandonment of the
 37 contract or contracts.
- 38 (11) Failure of a program operating pursuant to Article 3
 39 (commencing with Section 8220) or Article 15.5 (commencing
 40 with Section 8350) to *fully* reimburse a significant number of

1 approved child care providers, as determined by the department,
2 within 15 calendar days after the date set in the plan for timely
3 payments to *child care* providers adopted by the contracting agency
4 pursuant to Section 18226 of Title 5 of the California Code of
5 Regulations, unless the failure is attributable to a delay in receiving
6 apportionments from the state.

7 (12) Failure of a program operating pursuant to this chapter to
8 pay salaries owed to employees, pay federal payroll tax, or *fully*
9 reimburse a significant number of child care providers, as
10 determined by the department, affiliated with a contracting agency
11 pursuant to Article 8.5 (commencing with Section 8245) for more
12 than 15 days after the employee salaries, federal payroll taxes, or
13 reimbursement payments were due, unless the failure is attributable
14 to a delay in receiving apportionments from the state.

15 (b) An agency whose contract is immediately terminated
16 pursuant to this section retains appeal rights in accordance with
17 Section 8402.

18 (c) Notwithstanding any service provision in the Administrative
19 Procedure Act (Chapter 5 (commencing with Section 11500) of
20 Part 1 of Division 3 of Title 2 of the Government Code), a notice
21 of immediate termination shall be served on the contracting agency
22 by personal service or at the last address on file with the
23 department, by overnight mail or certified mail. Service may be
24 proved in the manner authorized in *a* civil action. Service by mail
25 is complete at the time of deposit.

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

30 SEC. 7. Section 8406.9 of the Education Code is amended to
31 read:

32 8406.9. (a) An agency that has in place or places a person in
33 a position of fiscal responsibility or control who has been convicted
34 of a crime involving misuse or misappropriation of state or federal
35 funds, or a state or federal crime involving moral turpitude, may
36 have its contract immediately terminated pursuant to Section
37 8406.7 if there is documented evidence of the conviction, and upon
38 review and recommendation of the general counsel of the
39 department.

1 (b) For purposes of this section, “position of fiscal responsibility
2 or control” includes any authority to direct or control expenditure
3 of, or any access to, state or federal child care and development
4 funds received pursuant to this chapter whether that authority or
5 access is conferred based on the person’s status as an employee,
6 director, manager, board member, or volunteer, or based on any
7 other status.

8 (c) If the agency provides evidence to the department, before
9 the effective date given in the notice of immediate termination,
10 that the convicted person has been removed from the position of
11 fiscal responsibility or control and provides assurance that the
12 person will not be returned to a position of fiscal responsibility or
13 control, the department shall withdraw the termination action.

14 SEC. 8. Section 8407 of the Education Code is amended to
15 read:

16 8407. Except for causes listed in Sections 8406.7 and 8406.9,
17 termination of a child care and development contract shall not
18 occur without good cause and without notice as described in
19 Section 8406 at least 90 days before the effective date given in the
20 notice of termination.

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

23 8408. Actions as defined in subdivision (a) of Section 8402
24 shall remain in effect during the appeal process. However, local
25 contracting agencies may continue to operate under the contract
26 during an appeal of termination, unless the action is an immediate
27 termination action taken pursuant to Section 8406.7 or 8406.9, in
28 which case a contracting agency shall not continue to operate under
29 the contract after the effective date given in the notice of immediate
30 termination.