

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE MAY 6, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1059

Introduced by Senator Liu

February 16, 2010

An act to amend Sections 48204, 48645.2, and 56028 of the Education Code, relating to local educational agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1059, as amended, Liu. Local educational agencies: districts of residence.

(1) Existing law provides for residency requirements for school attendance, including the requirement that a pupil placed within the boundaries of that school district in a regularly licensed children's institution, a licensed foster home, or a family home pursuant to a placement under a designated statute, is deemed to comply with residency requirements for that district.

This bill would provide that a school district into which a pupil is placed in a regularly licensed children's institution, a licensed foster home, or a family home pursuant to a placement under a designated statute is the district of residence. The bill would further require that this school district of residence would be responsible for providing the pupil with a free appropriate public education, as defined. Because this provision would impose new requirements on school districts, it would constitute a state-mandated local program.

(2) Existing law requires a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct, in conformity with the

interests of public safety and protection, to receive care, treatment, and guidance that is consistent with his or her best interest, that holds the minor accountable for his or her behavior, and that is appropriate for his or her circumstances.

Existing law provides for the establishment of public schools in juvenile halls, juvenile homes, day centers, juvenile ranches, juvenile camps, regional youth educational facilities, or Orange County youth correctional centers, as specified, to provide juvenile court school pupils with quality education and training. Existing law requires a county board of education to provide for the administration and operation of juvenile court schools in the county, either by the county superintendent of schools, as specified, or by contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located.

This bill would require that the county board of education is responsible for providing pupils detained in juvenile halls who are individuals with exceptional needs with a free appropriate public education, as defined. *However, if the expanded individualized education program team determines that residential placement is appropriate, the bill would require the county office of education to determine the school district responsible for paying and providing for education placement, pursuant to criteria specified by the bill.* Because this provision would impose new requirements on local educational agencies, it would constitute a state-mandated local program.

(3) 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 48204 of the Education Code, as amended
- 2 by Section 1 of Chapter 33 of the Statutes of 2007, is amended to
- 3 read:

1 48204. (a) Notwithstanding Section 48200, a pupil complies
2 with the residency requirements for school attendance in a school
3 district, if he or she is any of the following:

4 (1) (A) (i) A pupil placed within the boundaries of that school
5 district in a regularly established licensed children's institution,
6 or a licensed foster home, or a family home pursuant to a
7 commitment or placement under Chapter 2 (commencing with
8 Section 200) of Part 1 of Division 2 of the Welfare and Institutions
9 Code.

10 (ii) Notwithstanding Sections 48200 and 56028, for any pupil
11 placed pursuant to clause (i), the school district in which the pupil
12 resides is the district of residence, and it is that school district that
13 is responsible for providing the pupil with a free appropriate public
14 education within the meaning of Section 1412 of Title 20 of the
15 United States Code and Sections 104.33 and 300.104 of Title 34
16 of the Code of Federal Regulations, as these provisions exist on
17 January 1, 2011, pursuant to residential placement as specified in
18 Chapter 26.5 (commencing with Section 7570) of Division 7 of
19 Title 1 of the Government Code and Section 60200 of Title 2 of
20 the California Code of Regulations, as it exists on January 1, 2011.

21 (B) An agency placing a pupil in a home or institution described
22 in subparagraph (A) shall provide evidence to the school that the
23 placement or commitment is pursuant to law.

24 (2) A pupil for whom interdistrict attendance has been approved
25 pursuant to Chapter 5 (commencing with Section 46600) of Part
26 26.

27 (3) A pupil whose residence is located within the boundaries of
28 that school district and whose parent or legal guardian is relieved
29 of responsibility, control, and authority through emancipation.

30 (4) A pupil who lives in the home of a caregiving adult that is
31 located within the boundaries of that school district. Execution of
32 an affidavit under penalty of perjury pursuant to Part 1.5
33 (commencing with Section 6550) of Division 11 of the Family
34 Code by the caregiving adult is a sufficient basis for a
35 determination that the pupil lives in the home of the caregiver,
36 unless the school district determines from actual facts that the pupil
37 is not living in the home of the caregiver.

38 (5) A pupil residing in a state hospital located within the
39 boundaries of that school district.

(b) A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district.

(1) This subdivision does not require the school district within which at least one parent or the legal guardian of a pupil is employed to admit the pupil to its schools. A school district shall not, however, refuse to admit a pupil under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or the legal guardian of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or the legal guardian of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending school district, this subdivision does not authorize a net transfer of pupils out of a school district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in a fiscal year in excess of the following amounts:

(A) For a school district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

1 (B) For a school district with an average daily attendance for
2 that fiscal year of 501 or more, but less than 2,501, 3 percent of
3 the average daily attendance of the district or 25 pupils, whichever
4 amount is greater.

5 (C) For a school district with an average daily attendance of
6 2,501 or more, 1 percent of the average daily attendance of the
7 district or 75 pupils, whichever amount is greater.

8 (7) Once a pupil is deemed to have complied with the residency
9 requirements for school attendance pursuant to this subdivision
10 and is enrolled in a school in a school district the boundaries of
11 which include the location where at least one parent or the legal
12 guardian of a pupil is physically employed, the pupil does not have
13 to reapply in the next school year to attend a school within that
14 district and the district governing board shall allow the pupil to
15 attend school through grade 12 in that district if the parent or legal
16 guardian so chooses and if at least one parent or the legal guardian
17 of the pupil continues to be physically employed by an employer
18 situated within the attendance boundaries of the district, subject
19 to paragraphs (1) to (6), inclusive.

20 (c) This section shall become inoperative on July 1, 2012, and
21 as of January 1, 2013, is repealed, unless a later enacted statute,
22 that becomes operative on or before January 1, 2013, deletes or
23 extends the dates on which it becomes inoperative and is repealed.

24 SEC. 2. Section 48204 of the Education Code, as amended by
25 Section 2 of Chapter 33 of the Statutes of 2007, is amended to
26 read:

27 48204. Notwithstanding Section 48200, a pupil complies with
28 the residency requirements for school attendance in a school
29 district, if he or she is:

30 (a) (1) (A) A pupil placed within the boundaries of that school
31 district in a regularly established licensed children's institution,
32 or a licensed foster home, or a family home pursuant to a
33 commitment or placement under Chapter 2 (commencing with
34 Section 200) of Part 1 of Division 2 of the Welfare and Institutions
35 Code.

36 (B) Notwithstanding Section 56028, for any pupil placed
37 pursuant to subparagraph (A), the school district in which the pupil
38 resides is the district of residence, and it is that school district that
39 is responsible for providing the pupil with a free appropriate public
40 education within the meaning of Section 1412 of Title 20 of the

1 United States Code and Sections 104.33 and 300.104 of Title 34
2 of the Code of Federal Regulations, as these provisions exist on
3 January 1, 2011, pursuant to residential placement as specified in
4 Chapter 26.5 (commencing with Section 7570) of Division 7 of
5 Title 1 of the Government Code and Section 60200 of Title 2 of
6 the California Code of Regulations, as it exists on January 1, 2011.

7 (2) An agency placing a pupil in the home or institution
8 described in paragraph (1) shall provide evidence to the school
9 that the placement or commitment is pursuant to law.

10 (b) A pupil for whom interdistrict attendance has been approved
11 pursuant to Chapter 5 (commencing with Section 46600) of Part
12 26.

13 (c) A pupil whose residence is located within the boundaries of
14 that school district and whose parent or legal guardian is relieved
15 of responsibility, control, and authority through emancipation.

16 (d) A pupil who lives in the home of a caregiving adult that is
17 located within the boundaries of that school district. Execution of
18 an affidavit under penalty of perjury pursuant to Part 1.5
19 (commencing with Section 6550) of Division 11 of the Family
20 Code by the caregiving adult is a sufficient basis for a
21 determination that the pupil lives in the home of the caregiver,
22 unless the school district determines from actual facts that the pupil
23 is not living in the home of the caregiver.

24 (e) A pupil residing in a state hospital located within the
25 boundaries of that school district.

26 (f) This section shall become operative on July 1, 2012.

27 SEC. 3. Section 48645.2 of the Education Code is amended to
28 read:

29 48645.2. The county board of education shall provide for the
30 administration and operation of juvenile court schools established
31 pursuant to Section 48645.1:

32 (a) By the county superintendent of schools, provided that, in
33 any county in which the board of supervisors is establishing or
34 maintaining juvenile court schools on January 1, 1978, the county
35 superintendent of schools may contract with the board of
36 supervisors for the administration and operation of such schools
37 if agreed upon between the board of education and the board of
38 supervisors. In any event, the county superintendent of schools
39 may contract with other educational agencies for supporting

1 services to the same extent that school districts may contract with
2 other such agencies.

3 (b) By contract with the respective governing boards of the
4 elementary, high school, or unified school district in which the
5 juvenile court school is located.

6 (c) This subdivision shall apply solely to pupils detained in
7 juvenile halls pursuant to Article 23 (commencing with Section
8 850) of Chapter 2 of Part 1 of Division 2 of the Welfare and
9 Institutions Code.

10 (1) For a pupil in a juvenile court school established pursuant
11 to Section 48645.1, the county board of education is responsible
12 for the provision of a free appropriate public education for
13 individuals with exceptional needs. ~~The district of residence for~~
14 ~~the pupil shall maintain responsibility for paying and providing~~
15 ~~for residential placement within the meaning of Sections 7572.5~~
16 ~~and 7573 of the Government Code and Sections 104.33 and~~
17 ~~300.104 of Title 34 of the Code of Federal Regulations, as these~~
18 ~~federal regulations exist on January 1, 2011.~~ needs. The district of
19 residence for the pupil shall maintain responsibility for paying and
20 providing for residential placement within the meaning of Sections
21 7572.5 and 7573 of the Government Code and Sections 104.33
22 and 300.104 of Title 34 of the Code of Federal Regulations, as
23 these federal regulations exist on January 1, 2011.

24 (2) ~~For purposes of this section, “district of residence” means~~
25 ~~the last school district at which the pupil was enrolled prior to~~
26 ~~placement in the juvenile court school.~~

27 (3) ~~Within 20 days of the date that the pupil was detained in the~~
28 ~~juvenile hall, the county office of education shall do both of the~~
29 ~~following:~~

30 (A) ~~Determine the district of residence, as defined in paragraph~~
31 ~~(2).~~

32 (B) ~~Notify the district of residence of its responsibility under~~
33 ~~this section.~~

34 (4) ~~When a pupil is placed at a residential placement under this~~
35 ~~subdivision, the school district, as determined in paragraph (3),~~
36 ~~shall remain the district of residence for that pupil through the~~
37 ~~duration of the residential placement, including after the disposition~~
38 ~~of the pupil’s juvenile delinquency case.~~

39 (5) ~~If a determination is made by a properly constituted~~
40 ~~individualized education program team that a less-restrictive~~

1 environment is appropriate for the pupil, the district of residence,
2 as determined in paragraph (3), is responsible for transitioning the
3 pupil into a subsequent placement, including by creating a
4 transition plan as described in paragraph (4) of subdivision (b) of
5 Section 56345. This subsequent placement may be a public or
6 nonpublic school certified by the State Department of Education.

7 (6) If a dispute arises regarding responsibility for placement or
8 services, the district of residence, as determined in paragraph (3),
9 shall immediately implement the individual education plan,
10 including, but not necessarily limited to, paying and providing for
11 the residential placement, and any other related service, benefit,
12 or aid within the meaning of Sections 7572.5 and 7573 of the
13 Government Code and Sections 104.33 and 300.104 of Title 34
14 of the Code of Federal Regulations, as these federal regulations
15 exist on January 1, 2011, and maintaining responsibility for the
16 pupil's placement or services, or both, during the duration of the
17 dispute. A school district impacted by the decision made under
18 paragraph (3) may appeal to the county superintendent of schools,
19 who shall issue a written decision within 60 days, and that decision
20 shall be final. needs. However, if the expanded individualized
21 education program (IEP) team determines, pursuant to Sections
22 7572.5 and 7573 of the Government Code and Sections 104.33
23 and 300.104 of Title 34 of the Code of Federal Regulations, as
24 those sections exist on January 1, 2010, that residential placement
25 is appropriate, all of the following apply with respect to which
26 school district is responsible for paying and providing for the
27 education placement: needs. However, if the expanded
28 individualized education program (IEP) team determines, pursuant
29 to Sections 7572.5 and 7573 of the Government Code and Sections
30 104.33 and 300.104 of Title 34 of the Code of Federal Regulations,
31 as those sections exist on January 1, 2010, that residential
32 placement is appropriate, all of the following apply with respect
33 to which school district is responsible for paying and providing
34 for the education placement:

35 (A) For a pupil who has a parent, as described in paragraph
36 (1), (3), or (4) of subdivision (a) of Section 56028, the school
37 district where the parent resides shall be the responsible school
38 district.

39 (B) For a pupil who has a parent, as described in paragraph
40 (2) or (5) of subdivision (a) of Section 56028, the school district

1 where the pupil will be placed for the residential placement shall
2 be the responsible school district, unless the residential placement
3 is out of state, in which case the school district where the child
4 was last enrolled prior to placement in a residential juvenile court
5 school shall be the responsible school district.

6 (2) The county office of education shall determine the
7 responsible school district, as described in paragraph (1), and
8 timely notify the responsible school district of its responsibility
9 under this section.

10 (3) If a pupil is placed at a residential placement as described
11 in this subdivision, the responsible school district, as determined
12 pursuant to paragraph (2), shall remain the district of residence
13 for that pupil throughout the duration of the residential placement,
14 including, as necessary, after disposition of the pupil's juvenile
15 delinquency case.

16 (4) If a determination is made by a properly constituted
17 individualized education program team that a less restrictive
18 environment is appropriate for the pupil, the responsible school
19 district, as determined pursuant to paragraph (2), shall transition
20 the pupil into a subsequent education placement, including by
21 creating a transition plan as described in paragraph (4) of
22 subdivision (b) of Section 56345. This subsequent education
23 placement may be a public or nonpublic school certified by the
24 State Department of Education.

25 (5) If a dispute arises regarding responsibility for education
26 placement or services, the responsible school district, as
27 determined by the county office of education where the juvenile
28 court school is located pursuant to paragraph (2), shall implement
29 the individual education plan, including, but not necessarily limited
30 to, paying and providing for the education placement and any
31 other related service, benefit, or aid within the meaning of Sections
32 7572.5 and 7573 of the Government Code and Sections 104.33
33 and 300.104 of Title 34 of the Code of Federal Regulations, as
34 those sections exist on January 1, 2010, during the duration of the
35 dispute. A school district impacted by the decision made pursuant
36 to paragraph (2) may appeal to the county board of education
37 where the juvenile court school is located, which shall issue a
38 written decision within 60 days, and that decision shall be final.

39 (6) The responsible school district, as described in paragraph
40 (2), shall immediately assume responsibility for the educational

1 *costs. If the responsible school district fails or refused to assume*
2 *the educational costs, the county superintendent of schools may*
3 *draw a requisition against the funds of the responsible school*
4 *district in favor of the county office of education.*

5 SEC. 4. Section 56028 of the Education Code is amended to
6 read:

7 56028. (a) “Parent” means any of the following:

8 (1) A biological or adoptive parent of a child.

9 (2) A foster parent if the authority of the biological or adoptive
10 parents to make educational decisions on the child’s behalf
11 specifically has been limited by court order in accordance with
12 Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal
13 Regulations.

14 (3) A guardian generally authorized to act as the child’s parent,
15 or authorized to make educational decisions for the child, including
16 a responsible adult appointed for the child in accordance with
17 Sections 361 and 726 of the Welfare and Institutions Code.

18 (4) An individual acting in the place of a biological or adoptive
19 parent, including a grandparent, stepparent, or other relative, with
20 whom the child lives, or an individual who is legally responsible
21 for the child’s welfare.

22 (5) A surrogate parent who has been appointed pursuant to
23 Section 7579.5 or 7579.6 of the Government Code, and in
24 accordance with Section 300.519 of Title 34 of the Code of Federal
25 Regulations and Section 1439(a)(5) of Title 20 of the United States
26 Code.

27 (b) (1) Except as provided in paragraph (2), the biological or
28 adoptive parent, when attempting to act as the parent under this
29 part and when more than one party is qualified under subdivision
30 (a) to act as a parent, shall be presumed to be the parent for
31 purposes of this section unless the biological or adoptive parent
32 does not have legal authority to make educational decisions for
33 the child.

34 (2) If a judicial decree or order identifies a specific person or
35 persons under paragraphs (1) to (4), inclusive, of subdivision (a)
36 to act as the “parent” of a child or to make educational decisions
37 on behalf of a child, then that person or persons shall be determined
38 to be the “parent” for purposes of this part, Article 1 (commencing
39 with Section 48200) of Chapter 2 of Part 27, and Chapter 26.5
40 (commencing with Section 7570) of Division 7 of Title 1 of the

1 Government Code, and Sections 361 and 726 of the Welfare and
2 Institutions Code.

3 (c) “Parent” does not include the state or any political
4 subdivision of government.

5 (d) “Parent” does not include a nonpublic, nonsectarian school
6 or agency under contract with a local educational agency for the
7 provision of special education or designated instruction and
8 services for a child.

9 (e) For a pupil placed pursuant to subparagraph (A) of paragraph
10 (1) of subdivision (a) of Section 48204, the school district of
11 residence is the school district wherein the pupil resides. The
12 residence of the person or persons listed in paragraph (5) of
13 subdivision (a), or paragraph (2) of subdivision (b), of this section
14 does not determine the school district of residence.

15 SEC. 5. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.