

---

THIRD READING

---

Bill No: AB 2827  
Author: Quirk-Silva (D)  
Amended: 4/7/22 in Assembly  
Vote: 21

---

SENATE HUMAN SERVICES COMMITTEE: 5-0, 6/13/22  
AYES: Hurtado, Jones, Cortese, Kamlager, Pan

SENATE EDUCATION COMMITTEE: 6-0, 6/29/22  
AYES: Leyva, Ochoa Bogh, Cortese, Dahle, McGuire, Pan  
NO VOTE RECORDED: Glazer

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22  
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 73-0, 5/23/22 - See last page for vote

---

**SUBJECT:** Child daycare facilities

**SOURCE:** Santa Clara County Office of Education

---

**DIGEST:** This bill requires the California Department of Social Services (CDSS), on or before January 1, 2024, to revise its regulations to permit children with exceptional needs who are enrolled in separate programs or classrooms from nondisabled children to use outdoor play spaces simultaneously with nondisabled children without first seeking a waiver, as specified, and requires CDSS to provide any health and safety requirements that must be met to do so, as specified.

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Individuals with Disabilities Education Act (IDEA), which ensures that children with disabilities and the families of such children

have access to a free appropriate public education and to improve educational results for children with disabilities. *(20 United States Code 1400, et seq.)*

- 2) Establishes the California Child Daycare Facilities Act, which creates a separate licensing category for child daycare centers and family daycare homes within CDSS's existing licensing structure. *(HSC 1596.70 et seq.)*
- 3) Defines "child daycare facility" to mean a facility that provides nonmedical care to children under 18 years of age, as specified, including daycare centers, employer-sponsored childcare centers, and family daycare homes. *(HSC 1596.750)*
- 4) Defines "children with exceptional needs" to mean either of the following:
  - a) Children under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act, as specified; and,
  - b) Children 3 to 21 years of age, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team, as specified, have an individualized education program, and are receiving early intervention services or appropriate special education. *(EDC 8205 (h))*
- 5) Defines "children with exceptional needs" to mean either of the following:
  - a) Infants and toddlers, under three years of age, who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act, including an infant or toddler with a developmental delay, or an established risk condition, or who is at high risk of having a substantial developmental disability; and,
  - b) Children, three to 21 years of age, who have been determined to be eligible for special education and related services by an individualized education program team, including children with intellectual disabilities, autism, hearing and other impairments as specified, who need special education and related services. *(WIC 10213.5(l))*
- 6) Requires CDSS to set criteria for, and permits the department to grant specific waivers of, the prioritization categories for agencies that wish to serve specific

populations, including children with exceptional needs, as specified. (*WIC 10271(b)(3)*)

- 7) Establishes regulations for licensed child care centers. (*22 California Code of Regulations (CCR), 101238 et seq.*)
- 8) Requires all of the following for a child care facility's outdoor activity space:
  - a) At least 75 square feet of outdoor activity space per child, as specified;
  - b) Be situated to provide a shaded rest area and to permit children to reach the space safely;
  - c) Equipment and activity areas arranged so that there is no hazard from conflicting activities;
  - d) Maintained surface in a safe condition and free of hazards, as specified;
  - e) Areas around and under high climbing equipment, swings, slides, and other similar equipment shall be cushioned with material that absorbs falls, as specified;
  - f) Sandboxes shall be inspected daily;
  - g) Playgrounds shall be enclosed by a fence at least four feet high to protect children and to keep them in the outdoor activity area; and
  - h) Any construction or equipment that could pose a hazard in the space shall be made inaccessible to children in care. (*22 CCR 101238.2*)
- 9) Authorizes CDSS to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, as specified. Further, requires the applicant or licensee to submit a written request for a waiver or an exception and substantiating evidence supporting the request to CDSS, as provided. (*22 CCR 101175*)

This bill:

- 1) Requires CDSS, on or before January 1, 2024, to revise its child daycare facility regulations to meet both of the following:

- a) Permit children with exceptional needs, who are enrolled in separate programs or classrooms from nondisabled children, to use outdoor play spaces simultaneously with nondisabled children without seeking a waiver.
  - b) Provide that any specific health and safety requirements must be met when simultaneous use of outdoor play spaces occurs.
- 2) Permits CDSS to implement the above changes by an all-county letter (ACL) or similar instruction. Further requires CDSS, if the department chooses to implement the program changes by an ACL or similar instruction, to issue such ACLs by January 1, 2024.

### **Comments**

According to the author, “as an elementary school teacher for over 30 years, I think it is important that every child has the opportunity to learn in a diverse environments in order for them to be exposed and develop an understanding and respect for each other's differences as well as similarities. As a State, we should be able to foster that without barriers or processes that hinder students or programs. Instead of requiring a waiver, clear standards should be in place for all programs to adhere to in order to ensure the health and safety of all children.”

*Individuals with Education Disabilities Act (IDEA)*. In January 2017, the U.S. Education Department (ED) and the U.S. Department of Health and Human Services (HHS) issued an updated “Dear Colleague” letter promoting inclusion in early childhood programs. This updated letter outlined the ED and HHS’s vision on such inclusion, as well as recommendations to states, local educational agencies (LEAs), schools, and public and private early childhood programs. According to the letter, HHS and ED did this because despite the expansion of early childhood programs, there was not a proportionate expansion of inclusive early learning opportunities for young children with disabilities so that they are able to participate in the least restrictive environment (LRE) possible. Existing federal law states that “to the maximum extent possible, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

The LRE requirements under the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities

aged three through five. Additionally, states may serve, at their discretion, to two-year-old children who will turn three during the school year. All states must make a “free appropriate public education” available to all children with disabilities available beginning on a child’s third birthday.

This bill seeks to increase the inclusion of disabled children on playgrounds with non-disabled children at child care facilities.

*Community Care Licensing Division (CCLD).* Within CDSS is CCLD, which is responsible for licensing and investigating complaints against facilities that fall within its jurisdiction, such as residential care facilities for the elderly, child care facilities, and placements for foster youth, among others. Typically, these facilities provide non-medical care and supervision for adults, children and youth by providing adult care services, early childhood education (child care), foster care and shelter services for youth, and residential care for seniors or individuals with developmental disabilities. CCLD is also responsible for ensuring these facilities comply with all applicable laws and regulations, including criminal background checks, as well as overseeing any necessary corrective actions in the event of noncompliance.

In regards to this bill, CCLD is responsible for inspecting and licensing California’s 36,109 child care facilities, which can currently serve up to 891,901 children. CCLD is required to conduct unannounced site visits of all licensed child daycare facilities and homes. Additionally, 30 percent of their annual inspections are conducted randomly. Each facility licensed by CCLD must be visited at least once every three years, although exceptions exist that may warrant more frequent inspections.

The two main sources of authority for CCLD activities are the California Health and Safety Code (HSC) and the CCR, Title 22. CCLD must follow CCR Title 22, Division 12 when licensing and inspecting child care and school-age daycare facilities in the state. Under CCR, if a child care facility wishes to implement changes to their program, such as provide new or alternate program concepts, or make changes to the services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, the facility would need to first request a waiver or an exception from CDSS and be approved before any changes can occur.

Instead, this bill permits child care facilities to allow children with exceptional needs, who are enrolled in separate programs or classrooms from nondisabled children, to use outdoor play spaces simultaneously with nondisabled children without seeking a waiver from CDSS. Additionally, this bill requires CDSS, on or

before January 1, 2024, to revise its child daycare facility regulations to allow this change and provide written instructions to facilities outlining health and safety changes need to keep all children safe in these shared, outdoor play spaces.

### **Related/Prior Legislation**

SB 217 (Portantino, 2019), as introduced, would have created the Early Intervention Grant Program to increase inclusive access to early education programs for children with exceptional needs and expand eligibility for transitional kindergarten to include children with exceptional needs turning five-years-old at any time during the school year. SB 217 was amended to include content unrelated to early education.

AB 1754 (McCarty, 2018) would have required the state to provide all eligible low-income four-year-old children with access to early care and education programs. AB 1754 was held in the Senate Appropriations Committee.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, CDSS estimates state operations costs of \$162,000 in the first year and \$149,000 ongoing (General Fund).

**SUPPORT:** (Verified 8/12/22)

Santa Clara County Office of Education (source)  
Association of Regional Center Agencies  
California County Superintendents Educational Services Association  
Coalition for Adequate Funding for Special Education  
Disability Rights California  
First 5 Association of California  
Los Angeles County Office of Education  
Los Angeles Unified School District  
SELPA Administrators of California  
Silicon Valley Community Foundation

**OPPOSITION:** (Verified 8/12/22)

None received

ASSEMBLY FLOOR: 73-0, 5/23/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley,

Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, Mia Bonta, Mayes, O'Donnell, Blanca Rubio

Prepared by: Bridgett Hankerson / HUMAN S. / (916) 651-1524  
8/13/22 9:43:53

\*\*\*\* END \*\*\*\*