

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 611 (Weber) – As Introduced February 9, 2023

SUBJECT: Special education: nonpublic, nonsectarian schools or agencies: change in certification status: parental notification

SUMMARY: Requires that a contracting local education agency (LEA) inform parents and guardians of students who attend a nonpublic, nonsectarian school or agency (NPS/A) of the change in its certification status within 14 days of becoming aware of any such a change. Specifically, **this bill:**

- 1) Requires a contracting LEA, within 14 days of becoming aware of any change to the certification status of an NPS/A, to inform parents and guardians of students who attend the NPS/A through email or regular mail of the change in certification status.
- 2) Specifies that for purposes of this requirement, “becoming aware of any change in certification status” may include, but is not limited to, a determination to suspend or revoke the certification of the NPS/A, including, but not limited to, a determination resulting from a state investigation into student restraint or seclusion.

EXISTING LAW:

- 1) Requires an NPS/A that seeks certification to file an application with the Superintendent of Public Instruction (SPI) on forms provided by the California Department of Education (CDE), with specified information. Requires applicant NPS/A to notify the Special Education Local Plan Area (SELPA) in which it is located.
- 2) Requires the SPI to conduct an onsite review of the facility and program for which the applicant seeks certification and within three years of the effective date of the certification.
- 3) Requires the SPI to annually review the certification of each NPS/A.
- 4) Requires the SPI to conduct an investigation of a NPS/A onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child.
- 5) Requires the SPI to monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standards-focused instructional materials used, of an existing certified NPS/A on a three-year cycle. (Education Code (EC) 56366.1)
- 6) Authorizes the SPI to suspend or revoke the certification of a NPS/A for specified reasons, including:
 - a) Violation of an applicable state or federal rule or regulation, or aiding, abetting, or permitting the violation of an applicable state or federal rule or regulation;

- b) Falsification or intentional misrepresentation of an element of the application, student records, or program presented for certification purposes;
- c) Conduct in the operation or maintenance of the NPS/A that is harmful to the health, welfare, or safety of an individual with exceptional needs; and
- d) Failure to comply with a provision in the master contract with the LEA;
- e) Failure to notify the CDE in writing of any of the following within 45 days of the occurrence of:
 - i. Changes in credentialed, licensed, or registered staff who render special education and related services, ownership, management, or control of the NPS/A;
 - ii. Major modification or relocation of facilities or
 - iii. Significant modification of the NPS/A program.
- f) Failure to implement recommendations and compliance requirements following an onsite review of the NPS/A;
- g) Failure to provide appropriate services, supplies, equipment, or facilities for a student as required in the student's individualized education program (IEP);
- h) Failure to notify the SPI in writing within 10 days of the revocation or suspension of a license or permit, including, but not limited to, a residential care license, business license, or other required license or permit; and
- i) Failure to implement a student's IEP. (EC 56366.4)

FISCAL EFFECT: Unknown

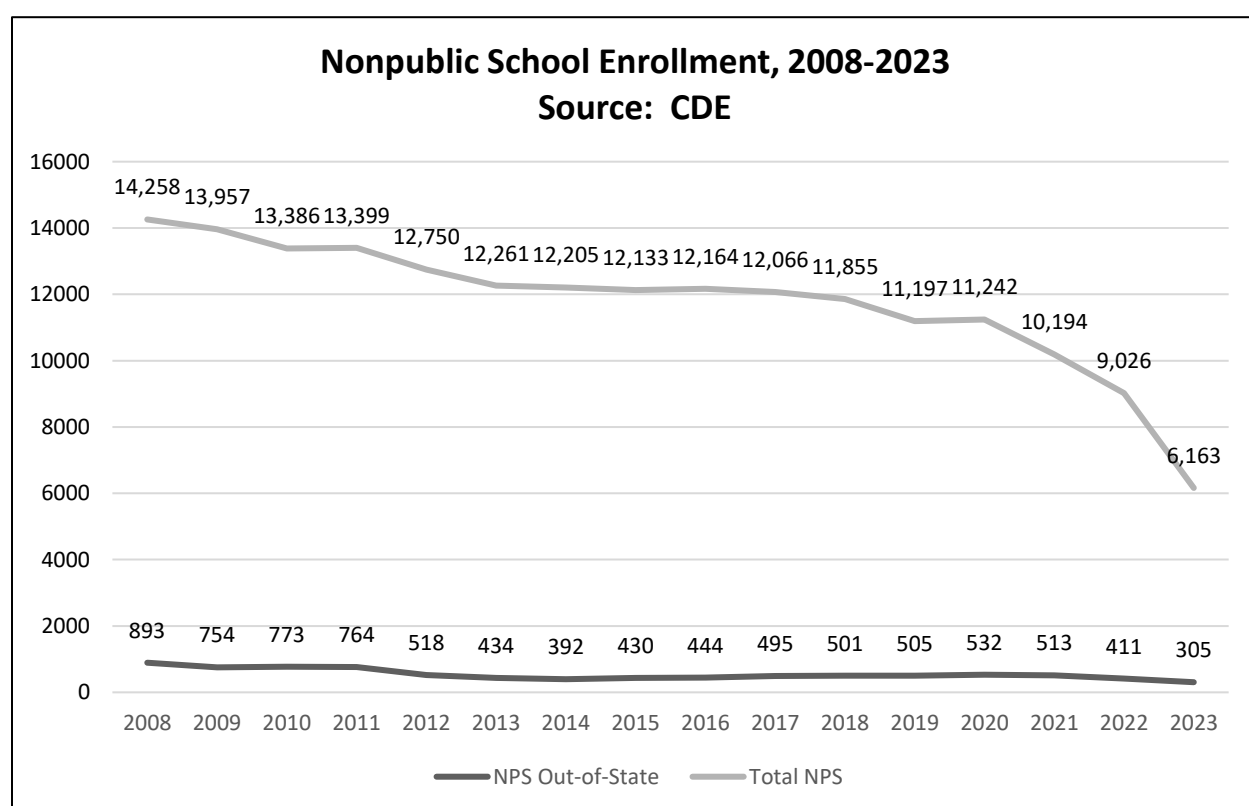
COMMENTS:

Need for the bill. The author states, "AB 611 seeks to expand transparency between LEAs and the families they serve. Parents put their trust in local school districts when they make recommendations to send students to nonpublic contracting schools. Parents and students deserve to have access to all relevant information in order to make meaningful decisions about their children's education. AB 611 will give families some peace of mind that if the nonpublic school their child is attending has a change in its certification status, that the local district will notify them within two weeks of becoming aware of any change by the state."

Parents not required to be informed of changes in certification status of NPS/As. Current law requires the SPI to notify LEAs of changes in certification status of NPS/As, such as the suspension, revocation, or issuance of a conditional certification. This bill seeks to extend notice of these changes to parents. Parents could then choose to request an IEP team meeting to discuss the placement, if one hasn't already been initiated by the contracting LEA.

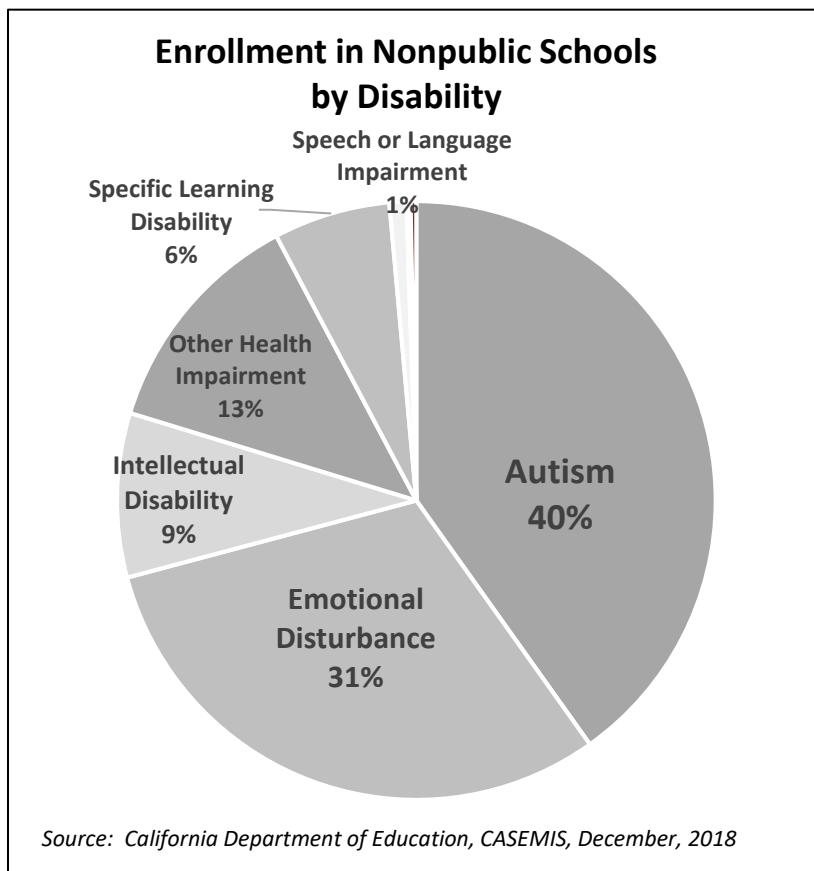
Changes in certification of NPS/A. The CDE may suspend, revoke, or make conditional the certification of NPS/As. According to information provided by the CDE, over the last three years (2020-2023), 10 certifications were revoked/retired and one was suspended. As of 2023, there were 202 in-state NPSs, 47 out-of-state NPSs, and 756 NPAs, making these changes in certification status relatively rare. *The Committee may wish to consider* that 5 of the 10 revocations were for out-of-state NPSs.

Non-public schools in California. California's NPSs are specialized private schools that provide services to public school students with disabilities. They are defined in statute as private, non-sectarian schools that enroll individuals with exceptional needs pursuant to an IEP. The tuition of a student in a non-public school is paid by the public LEA that places the student in the school. Each NPS is certified by the CDE.



According to the CDE, 202 in-state and 47 out-of-state NPSs served 5,858 and 305 students respectively during the 2022-23 school year. As shown in the table below, as of 2018, 40% of students served by NPSs are identified as on the Autism spectrum. The next largest group by disability are the students who are identified as having emotional disturbance, at 31%.

Trends in NPS enrollment. According to the CDE, and as illustrated in the graph above, enrollment in NPS has been declining precipitously. Enrollment declined from 14,258 in 2008 to 6,163 in 2023. Out-of-state enrollment has declined significantly, from 893 in 2008 to 305 in 2023.

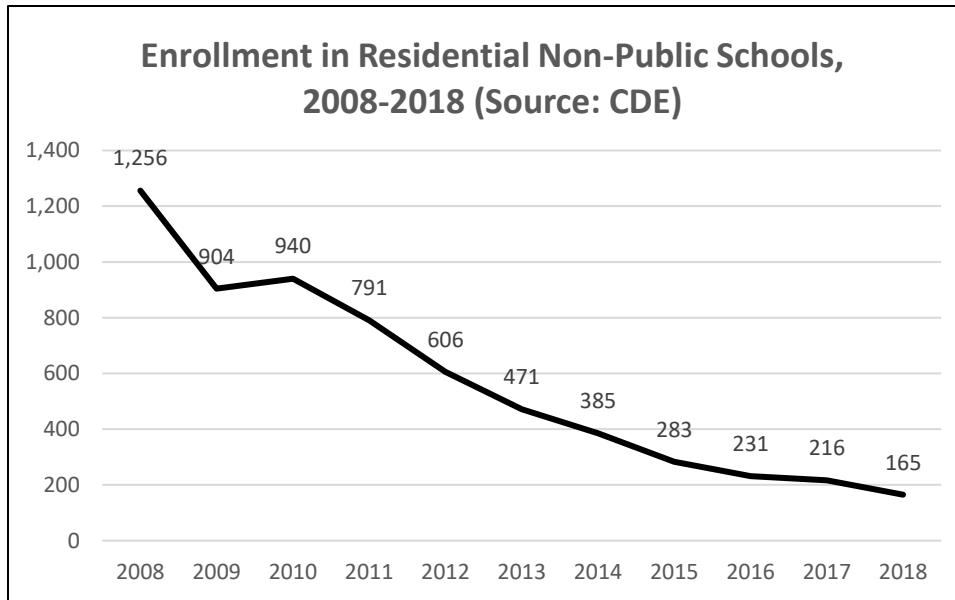


The decline in NPS residential enrollment has also been particularly steep. As shown in the graph on this page (data provided by CDE) enrollment in residential NPSs has declined by 87% between 2008 and 2018, from 1,256 to 165 students. This decline is likely due to Continuum of Care reforms which have reduced the use of licensed children's institutions to serve students in foster care, to which many residential NPS were attached.

What role does the state currently have in maintaining health and safety at NPSs?

Current law requires the following oversight of NPSs by the CDE, by requiring the SPI to:

- Annually review the certification of each NPS or NPA, and authorizes the SPI to conduct an onsite review as part of the annual review.
- Conduct an onsite investigation of an NPS or an NPA at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child.
- Conduct an investigation, which may include an unannounced onsite visit, if the SPI receives evidence of a significant deficiency in the quality of educational services provided, making enrollment in an NPS a condition of placement in a licensed children's institution, among other requirements.
- Reflect violations or noncompliance in the certification status of the NPS or NPA, at the discretion of the SPI, pending an approved plan of correction by the NPS or NPA. Requires the CDE to retain records of all violations for a period of 10 years.
- Monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standards-focused instructional materials used, of an existing certified NPS or NPA on a three-year cycle.



- Ensure that only those NPSs and NPAs that provide special education and designated instruction and services using staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification.

- Authorizes the SPI to revoke or suspend the certification of an NPS or an NPA for specified reasons, including failure to notify the CDE in writing of any of the following within 45 days of specified occurrences, including failure to notify the SPI in writing within 10 days of the death of a student or any other individual of unnatural causes within the school or agency, and including the circumstances surrounding the death and appropriate preventative measures being taken or recommended.

Recommended amendments. *Staff recommends that the bill be amended* as follows:

- 1) In order to avoid affecting NPS/A certification status for a failure of an LEA to meet the requirement, move the proposed requirement out of the current section and into a new section.
- 2) So that CDE may monitor compliance with this requirement, require LEAs to keep a record of the communication with parents and make it available upon inspection by the CDE.
- 3) Expand the notice requirement to include individuals holding educational rights for the student.
- 4) Require that LEAs include a copy of the notice of procedural safeguards in the notification to parents.

Arguments in support. California Health Coalition Advocacy writes, “This bill would expand transparency between nonpublic schools and parents and/or guardians of students with exceptional needs in nonpublic schools by requiring LEAs to alert parents and/or guardians via email or mail when a nonpublic school status changes to conditional or suspended or revoked due to a CDE investigation. There have been incidents of the restraint and seclusion of students with exceptional needs which have resulted in a NPS having their certification status changed by the CDE, but parents or guardians are not currently alerted to such changes. It is important that

parents and guardians have access to this important information in a timely manner so that they can protect the health and well-being of their children with exceptional needs.”

Related legislation. SB 483 (Cortese) of the 2023-24 Session would prohibit the use of prone restraint for any period of time by LEAs, charter schools, the State Special Schools for the Blind and the Deaf, and NPS/A.

AB 1172 (Frazier), Chapter 454, Statutes of 2019, requires that LEAs that send students to NPSs conduct on-site monitoring visits; requires that NPSs notify the CDE of any student-involved incident in which law enforcement is contacted; requires the CDE, if an investigation conducted by the CDE results in a finding that student health or safety has been compromised, to immediately suspend or revoke the school’s certification; requires that an NPS serving students with significant behavioral needs to have an individual on site who is qualified to implement behavior interventions, and requires that administrators of NPSs hold or be working toward specified credentials or licenses; requires that NPSs train specified staff in evidence-based practices and interventions specific to students’ unique behavioral needs.

AB 216 (Shirley Weber) of the 2019-20 Session would have, among other things, prohibited prone restraint, chemical restraint, and mechanical restraint; permit seclusion or restraint only be used when behavior is unpredictable and spontaneous; required every school to implement a program of positive behavioral interventions and supports; prohibit the use of seclusion or restraint until school staff have received emergency behavioral intervention training from a CDE-approved training provider; require that after the use of seclusion or restraint the student’s parent be notified by the end of the schoolday and require that a school file an emergency report within 24 hours; require that a debriefing meeting be held within 2 schooldays of the use of seclusion or restraint; require that, if seclusion or restraint occurs for more than 20 minutes, a student must be provided with access to the bathroom and water every 30 minutes, and that after the first 20 minutes, every 10 minutes the administrator must provide written authorization for the continuation of the seclusion or restraint. This bill was held in the Assembly Education Committee.

AB 2756 (Shirley Weber), Chapter 998, Statutes of 2018, prohibits the use of restraint or seclusion on any student, except under specified circumstances; establishes parameters and procedures for situations in which restraint or seclusion may be used; requires data collection and reporting to the CDE.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association for Parent-Child Advocacy
California Health Coalition Advocacy
Educate. Advocate.
Families for Early Autism Treatment
Inland Regional Center
Learning Rights Law Center

Opposition

None on file

Analysis Prepared by: Tanya Lieberman / ED. / (916) 319-2087