

SENATE THIRD READING
SB 685 (Cortese)
As Amended August 17, 2026
Majority vote

SUMMARY

Authorizes the California Department of Education (CDE) to certify qualified sectarian nonpublic schools and nonpublic agencies (NPSs and NPAs) to serve students with disabilities; prohibits public funds from being used for religious education at NPSs and NPAs; prohibits NPSs and NPAs, when providing educational services to public school students, from subjecting them to discrimination; requires all certificated NPS employees to hold a California credential; and requires all non-certificated NPS employees to hold a certificate of clearance from the Commission on Teacher Credentialing (CTC), among other provisions.

Major Provisions

Authority for the CDE to certify qualified sectarian NPSs and NPAs:

- 1) Removes the term "nonsectarian" from the definition of NPS and NPA, thereby permitting religious schools to apply to the CDE be certified as NPSs and NPAs.

Prohibitions on religious instruction:

- 2) Prohibits public funds paid by a local educational agency (LEA) from being used to pay for religious instruction at an NPS or NPA.
- 3) Excludes from the tuition or fees paid by an LEA to an NPS or NPA tuition or fees attributable to the provision of religious instruction to pupils not placed by an LEA.
- 4) Requires, consistent with federal law requiring that NPSs meet public educational standards applicable to LEAs when providing services under an individualized education program (IEP), an applicant seeking an initial or renewal certification as an NPS to certify, under penalty of perjury, that all educational services provided to students placed by an LEA under a master contract with an LEA are secular, neutral, and respectful regarding religion and religious views, consistent with the state constitution and provisions of state law.
- 5) Prohibits an NPS or an NPA from providing religious instruction to pupils placed by a LEA when providing services under a master contract, individual service agreement, or IEP.
- 6) Defines "religious instruction," for purposes of special education law, to mean religious nonsecular or nonneutral instruction in religious doctrine, principles, beliefs, observances, or practices. States that "religious instruction" does not refer to the use of, or references to, religious literature, dance, music, theater, and visual arts, or other subjects having a religious significance when the subject is consistent with Education Code (EC) section 51511.
- 7) Requires the master contract between an LEA and an NPS or NPA and individual service agreements to contain provisions requiring compliance with prohibitions on religious instruction and discrimination.

Discrimination:

- 8) Prohibits NPS and NPAs, in performing services under a master contract, individual service agreement, or an IEP, from subjecting students to discrimination on the basis of protected characteristics as specified in existing law.

Curriculum:

- 9) Specifies that the curriculum the CDE is required to monitor when provided through NPSs and NPAs is the state curriculum, and requires that the CDE monitor pupils' receipt of any instruction required for all pupils of LEAs, including but not limited to the California Healthy Youth Act.

Behavioral interventions:

- 10) Adds an existing set of prohibited emergency behavioral interventions and related parent notifications to the assurances NPS are required to provide when applying for certification.

Criminal background checks and educator misconduct:

- 11) By January 1, 2027, requires employees at NPSs to undergo criminal background checks, including fingerprinting, by the CDE, so that CDE will receive subsequent arrest records.
- 12) Requires, instead of authorizes, the Superintendent of Public Instruction (SPI) to verify that the NPS or NPA received a successful criminal background check clearance and has enrolled in subsequent arrest notice service for each owner, operator, employee, can contractor of the NPS or NPA.
- 13) Requires contractors at NPSs to undergo criminal background checks, including fingerprinting.
- 14) Requires NPSs to notify CDE and the contracting LEA within one day after specified emergencies, or if an employee is under investigation for misconduct.

Credentialing:

- 15) By January 1, 2028, requires all certificated NPS employees to hold a California credential. Out-of-state NPS employees would submit their out-of-state credential to the CTC and be issued a California credential. Requires out-of-state NPS employees to either hold a valid or expired California credential in addition to a certificate of clearance from the CTC. The CTC will monitor to ensure the teacher holds a credential that is equivalent to a California credential and monitor subsequent arrest records.
- 16) By July 1, 2027, requires all non-certificated NPS employees to hold a certificate of clearance from the CTC.
- 17) Requires all administrators at NPSs to hold a certificate of clearance from the CTC if they do not hold a valid credential from the CTC.
- 18) Requires the CDE, the contracting LEA, and the NPS to receive notification from the CTC of credential holders who have adverse action taken on their credentials, and the CDE, the contracting LEA, and the NPS will check to see whether NPS teachers have had their credential suspended or revoked.

19) Requires NPSs to notify the CTC of a change of employment status of any credential holder.

Waivers:

20) Consolidates three special education waiver options into one waiver process in existing law by eliminating waiver authority of the SPI and prohibiting, as of January 1, 2027, special education waivers under the SBE's general waiver authority, and instead requiring that waivers be granted when an LEA can show that failure to do so would hinder the implementation of a student's IEP or the LEA's compliance with the federal Individuals with Disabilities Education Act (IDEA).

21) Prohibits approval of waivers submitted by public agencies that are related to the placement at a noncertified nonpublic school or that is for an NPS to waive certification requirements for NPSs and NPAs, unless it meets specified conditions.

Conforming sections:

22) Removes the term nonsectarian from references to NPSs and NPAs in numerous provisions of the Education Code.

COMMENTS

Loffman v. CDE case. This bill is related to litigation, *Loffman v. CDE*, in which Orthodox Jewish families and schools alleged violations of free exercise and equal protection clauses arising from California's nonsectarian requirement for private schools seeking certification to provide students with disabilities a free appropriate public education (FAPE) under the IDEA.

According to a summary of this case by the California School Boards Association:

The families and schools alleged that the nonsectarian requirement for NPSs violated their constitutional rights to free expression because parents could not advocate for placement for their special education-eligible students in a Jewish Orthodox nonpublic school as no such school could legally exist. The families did not allege that their students are eligible for placement in an NPS, including that an NPS was the least restrictive environment for their students, or that any IEP team had recommended such a placement.

The court found that, because the nonsectarian requirement singles out religious schools and limits their ability to apply for certification as an NPS, it is neither neutral nor generally applicable... Additionally, the court found the nonsectarian requirement law impermissibly burdens free exercise, explaining that such a burden can include imposing conditions on the receipt or denial of a benefit or privilege, such that a religious entity or individual is forced to choose between receipt of the benefit and practicing their religion. The court further explained that the families in this case are faced with such a choice, since they cannot request a religiously affiliated NPS due to the nonsectarian requirement. In other words, the choice between public, nonsectarian special education services or private religious instruction, but not both, created a constitutional issue.

In October 2024, the Ninth Circuit Court of Appeals reversed a lower court's dismissal of the plaintiffs' free exercise and equal protection claims and remanded the case to the district court. In May, 2025, the parties agreed to a settlement under which the CDE is prohibited from

applying or enforcing the nonsectarian requirement in existing law. The agreement states that "such prohibition includes requiring entities to be nonsectarian, or to attest to their nonsectarian status, in: (a) applying for, obtaining, and maintaining certification as a 'nonpublic, nonsectarian school' or 'nonpublic, nonsectarian agency,' and (b) applying for, obtaining, and/or maintaining a contract with a public agency to serve as a 'nonpublic, nonsectarian school' or 'nonpublic, nonsectarian agency.'"

Prohibitions on religious instruction. This bill prohibits an NPS or an NPA from providing religious instruction to pupils placed by a LEA when providing services under a master contract, individual service agreement, or an IEP, and requires an applicant seeking an initial or renewal certification as an NPS or an NPA to certify, under penalty of perjury, that all educational services provided under a master contract with an LEA are secular, neutral, and respectful regarding religion and religious views, consistent with the state constitution and provisions of state law.

These provisions are consistent with Article IX, section 8 of the California Constitution, which prohibits public money from being appropriated for the support of any sectarian or denominational school, or any school under the exclusive control of the officers of the public schools, or any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of the state.

Why are California credentials necessary for out-of-state NPS staff? This bill requires out-of-state NPS credential holders to hold a California credential by submitting their out-of-state credential to the CTC, at which time the CTC will issue a preliminary California credential. The CTC will ensure the credential is equivalent to a California credential and monitor the credential holder's criminal history and subsequent arrest records. This bill requires the CDE, placing LEAs, and NPSs to receive notification from the CTC of credential holders who have adverse action taken on their credentials. Further, this bill requires contractors at NPSs to be fingerprinted in the same manner as contractors at all private schools, and requires NPS employees to be fingerprinted by the department so that CDE receives criminal history and subsequent arrest records.

Current law allows staff at out-of-state NPSs to hold out of state credentials, which means the state of California does not track the subsequent arrest records for staff at out of state NPSs serving California students. Additionally, because NPSs do not report in the state's CalPADs data system, the teachers are not monitored by CTC in the misassignment monitoring system. The state of California does not track out of state NPS teachers in any way, other than the CDE certification process. The current system relies on the NPS alone to receive subsequent arrest records and remove a teacher from the classroom, at their discretion.

The current system for existing in-state and out-of-state NPSs does not allow the CDE, which certifies these schools, to be notified when a teacher is arrested, charged, or convicted of crimes that affect their fitness to work with students. This means if a teacher at an out-of-state NPS is charged with child molestation, the state of California would never know, and does not currently have a mechanism to monitor whether that teacher was removed from the classroom. Further, the CDE is not notified when a teacher at a NPS (in-state or out-of-state) has their credential suspended or revoked. NPSs are authorized to receive notification from the CTC when a credential is suspended or revoked, but current law doesn't require NPSs to receive that

notification. Given recent significant litigation in this space, it is in the best interest of students and the state to ensure that NPS staff are monitored both for quality and student safety.

According to the Author

"Students with disabilities deserve access to high-quality educational services that meet their individual needs. SB 685 updates California's framework for certified Nonpublic Schools in response to the Ninth Circuit's decision in *Loffman v. California Department of Education*. The bill establishes clear and consistent requirements related to student safety, educator qualifications, background checks, nondiscrimination protections, and curriculum requirements, helping ensure that students with disabilities receive the services identified in their Individualized Education Programs."

Arguments in Support

The State Superintendent of Public Instruction, Tony Thurmond, writes, "I am pleased to sponsor Senate Bill (SB) 685 to align California's nonpublic school and agency statutes with the Ninth Circuit's decision in *Loffman v. California Department of Education*. The decision allows sectarian entities to apply to become certified nonpublic schools; as such this legislation removes the now obsolete 'nonsectarian' requirement thereby expanding eligibility. Further, the bill establishes appropriate safeguards governing nondiscrimination, educator credentialing, employee and contractor background checks, and incident reporting consistent with state law and regulations for all certified nonpublic schools.

One of my top priorities has been to ensure that students with disabilities receive the high-quality, specialized educational services required by their Individualized Education Programs (IEPs) in safe, appropriate, and accountable settings. Students placed in nonpublic schools are among California's most vulnerable learners, and it is essential that the legal and regulatory framework governing their placement reflects both current constitutional requirements and the state's commitment to student well-being.

California's nonpublic school program has long served as a critical placement option for students when the public school system cannot meet a student's unique needs. California has an opportunity to update its statutes to reflect current constitutional standards while continuing to prioritize student safety, accountability, and educational quality. SB 685 modernizes California's nonpublic school certification framework in a manner consistent with these standards and strengthens the protections that ensure students with disabilities receive safe, appropriate, and high-quality services.

SB 685 prohibits nonpublic schools from using public funds that support publicly placed pupils for religious instruction and requires applicants for nonpublic school certification that all contacted educational services are secular, neutral, and respectful regarding religion and religious views. It also ensures nondiscrimination in the performance of the contracted services. The bill further strengthens student safety by extending fingerprint-based state and national background checks to both employees and contractors. Finally, it enhances oversight by phasing in full Commission on Teacher Credentialing requirements for both in-state and out-of-state nonpublic school instructional staff by January 1, 2028, this broadens incident-reporting triggers, and establishes a closed-loop process to ensure credential holders subject to suspension or revocation are removed from contact with California pupils. By maintaining rigorous certification standards and expanding oversight mechanisms, SB 685 conforms statute on

eligibility for nonpublic school certification to recent caselaw while ensuring accountability and student safety."

Arguments in Opposition

The California Family Council writes, "SB 685 presents itself as an expansion of special education access by removing the word 'nonsectarian' from the definition of eligible nonpublic schools. What it actually does is impose a sweeping secular ideological test on every religious school that seeks to participate. What the bill gives with one hand, it takes away with the other.

Section 34(e) of the bill requires any applicant seeking certification to declare, under penalty or perjury, that all educational services provided under a master contract with a local educational agency are 'secular, neutral, and respectful regarding religion and religious views.' The Pacific Justice Institute, in its formal opposition letter, identifies this provision plainly: 'A secular view is an antithesis to a religious view, while both may be respectful and neutral, they are not compatible one with the other. This is a thinly veiled attempt to restrict aid to schools which allow sectarian content.' No school that opens in prayer, teaches children they are made in the image of God, or integrates Scripture into its curriculum can honestly sign that statement. The bill does not expand access for religious schools. It offers participation on the condition that those schools stop being religious, a condition no institution of faith can accept with integrity.

The U.S. Supreme Court has ruled emphatically and repeatedly that states may not exclude religious institutions from otherwise available public programs solely because of their religious character. In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Court struck down a no-aid provision whose 'goal or effect' was ensuring public funds did not reach 'sectarian education' — nearly identical language to the mandate embedded in SB 685. In *Carson v. Makin*, 596 U.S. 767, 778 (2022), the Court went further, holding that 'a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.' As PJI concludes, SB 685 replicates precisely the discriminatory structure the Court condemned in *Espinoza*. If this bill becomes law, California will face costly constitutional litigation — and the precedents weigh heavily against the state.

The bill further requires the California Department of Education to monitor whether contracted nonpublic schools are delivering all curriculum mandated for public school pupils, including, explicitly, the California Healthy Youth Act. This provision would require religious schools to deliver ideology-driven comprehensive sex education to their special education students as a condition of maintaining certification. Families who chose a religious school specifically because of its values-aligned environment would be forced to choose between their child's educational services and their family's convictions. That is not a genuine choice. It is compulsion wearing the language of inclusion."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) One-time General Fund costs of \$450,000 and \$444,000 ongoing annually for the Commission on Teacher Credentialing (CTC) to hire three additional staff responsible for increased application and background check processing, providing technical assistance to NPSs, coordination with the CDE, and addressing potential litigation.

2) No costs to CDE.

VOTES

SENATE FLOOR: 36-0-4

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, McGuire, McNerney, Menjivar, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Choi, Limón, Niello, Reyes

ASM HIGHER EDUCATION: 8-0-2

YES: Fong, Boerner, Jeff Gonzalez, Jackson, Muratsuchi, Patel, Celeste Rodriguez, Sharp-Collins
ABS, ABST OR NV: DeMaio, Tangipa

ASM EDUCATION: 8-0-1

YES: Patel, Hoover, Alvarez, Bonta, Castillo, Lowenthal, Pellerin, Zbur
ABS, ABST OR NV: Garcia

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache
ABS, ABST OR NV: Hoover, Dixon, Ta, Tangipa

UPDATED

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