
SENATE COMMITTEE ON EDUCATION

Senator Sasha Renée Pérez, Chair

2025 - 2026 Regular

Bill No:	SB 685	Hearing Date:	August 28, 2026
Author:	Cortese		
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Urgency:	No	Fiscal:	Yes
Consultant:	Ian Johnson		

Subject: Special education: nonpublic schools and agencies.

NOTE: This bill has been amended to replace its contents, and this is the first time the bill is being heard in its current form.

SUMMARY

This bill revises requirements governing nonpublic schools (NPSs) and nonpublic agencies (NPAs) by permitting qualified sectarian entities to be certified as NPSs and NPAs, while requiring publicly funded educational services provided to pupils placed by local educational agencies (LEAs) to remain secular and nondiscriminatory. The bill also makes broader changes to NPS and NPA oversight related to curriculum, behavioral interventions, criminal background checks, educator credentialing, incident reporting, and waivers.

BACKGROUND

Existing law:

- 1) Prohibits public money from being appropriated for the support of any sectarian or denominational school and prohibits sectarian or denominational doctrine from being taught, directly or indirectly, in the common schools of the state.
- 2) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, immigration status, or other specified characteristics in any program or activity conducted by an educational institution that receives or benefits from state financial assistance.
- 3) Authorizes references to religion and the use of religious literature, dance, music, theater, visual arts, and other subjects having religious significance in public schools when those references do not constitute instruction in religious principles or aid to a religious sect, church, creed, or sectarian purpose and are incidental to or illustrative of matters properly included in the course of study.
- 4) Prohibits governing boards from adopting instructional materials that reflect adversely upon persons on the basis of specified protected characteristics or contain sectarian or denominational doctrine or propaganda contrary to law.
- 5) Requires, under federal law, an LEA that places or refers a pupil with a disability to a private school or facility as a means of providing special education and related services to ensure that the pupil is provided an education that meets the standards that apply to education provided by the LEA.

- 6) Defines an NPS as a private school certified by the Department of Education (CDE) that enrolls individuals with exceptional needs pursuant to an individualized education program (IEP), and defines an NPA as a private establishment or individual certified by the CDE that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupil's educational program. Existing law generally requires these entities to be nonsectarian.
- 7) Requires an NPS or NPA seeking certification to file an application with the Superintendent of Public Instruction (SPI), requires the SPI to conduct specified onsite reviews, and requires annual review of each NPS and NPA certification.
- 8) Requires the SPI to monitor, on a three-year cycle, the facilities, educational environment, and quality of the educational program of certified NPSs and NPAs, including teaching staff, credentials authorizing service, standards-based core curriculum, and standards-focused instructional materials.
- 9) Authorizes the SPI to suspend or revoke NPS or NPA certification for specified violations, including violations of applicable state or federal law, conduct harmful to the health, welfare, or safety of a pupil, failure to comply with a master contract, failure to provide services required by a pupil's IEP, and failure to implement a pupil's IEP.
- 10) Prohibits specified behavioral interventions by educational providers, including NPSs and NPAs, including seclusion or restraint for coercion, discipline, convenience, or retaliation; locked seclusion except as authorized by law; specified restraints that impair breathing; prone restraint; and restraint for longer than necessary to address a clear and present danger of serious physical harm.
- 11) Requires LEAs to collect and annually report specified data regarding the use of behavioral restraints and seclusion and requires the CDE to publish the reported data.
- 12) Requires the Commission on Teacher Credentialing (CTC) to deny, suspend, or revoke credentials based on specified criminal convictions and authorizes the CTC to investigate allegations of unprofessional conduct and take disciplinary action against credentialholders.
- 13) Requires school districts to conduct criminal background checks, including fingerprinting, for prospective employees and establishes requirements for criminal background checks of employees of entities contracting with LEAs who interact with pupils.
- 14) Authorizes LEAs to place pupils in certified out-of-state NPSs pursuant to their IEPs, subject to specified requirements, including documentation of efforts to utilize public schools or locate an appropriate NPS within California.

ANALYSIS

This bill:

- 1) Permits sectarian NPSs and NPAs to participate in the state's special education system by deleting the requirement that an NPS or NPA be "nonsectarian" and making conforming changes throughout the Education Code.
- 2) Establishes requirements governing religious instruction and the use of public funds by:
 - a) Prohibiting public funds paid by an LEA from being used to pay for religious instruction at an NPS or NPA;
 - b) Excluding from tuition or fees paid by an LEA amounts attributable to religious instruction provided to pupils who were not placed by an LEA;
 - c) Requiring an applicant for initial or renewal certification to certify, under penalty of perjury, that educational services provided to pupils placed by an LEA under a master contract are secular, neutral, and respectful regarding religion and religious views, consistent with specified provisions of the California Constitution and state law;
 - d) Prohibiting an NPS or NPA from providing religious instruction to a pupil placed by an LEA when providing services under a master contract, individual service agreement, or IEP; and
 - e) Defining "religious instruction" as nonsecular or nonneutral instruction in religious doctrine, principles, beliefs, observances, or practices, while excluding otherwise permissible references to religious literature, arts, and other subjects having religious significance consistent with existing law.
- 3) Prohibits discrimination by an NPS or NPA, when performing services under a master contract, individual service agreement, or IEP, against pupils on the basis of protected characteristics specified in existing law, and requires master contracts and individual service agreements to incorporate specified religious-instruction and nondiscrimination requirements.
- 4) Strengthens curriculum requirements by specifying that the curriculum the CDE is required to monitor at NPSs and NPAs is the state curriculum and requiring the CDE to monitor whether pupils receive instruction required for pupils of LEAs, including, but not limited to, instruction required by the California Healthy Youth Act.
- 5) Incorporates existing behavioral-intervention protections into NPS certification by requiring NPSs to provide assurances regarding compliance with existing prohibitions on specified emergency behavioral interventions and related parent notification requirements.
- 6) Expands criminal background check requirements by:

- a) Beginning January 1, 2027, requiring NPS employees to undergo fingerprint-based state and national criminal history background checks through CDE so that CDE receives subsequent arrest information;
 - b) Requiring contractors at NPSs to undergo specified criminal background checks; and
 - c) Requiring, rather than authorizing, the SPI to verify that specified owners, operators, employees, and contractors have received successful criminal background clearances and that the NPS or NPA has enrolled in subsequent arrest notification services.
- 7) Expands NPS incident reporting by requiring an NPS to notify CDE and the contracting LEA within one business day of specified pupil emergencies and serious incidents and specified investigations involving employee misconduct.
- 8) Revises credentialing and clearance requirements for NPS staff by:
- a) Beginning January 1, 2028, requiring certificated NPS instructional staff serving California pupils to satisfy specified California credentialing requirements;
 - b) Establishing requirements applicable to out-of-state NPS staff, including requirements related to California credentials and CTC certificates of clearance;
 - c) Beginning July 1, 2027, requiring specified noncredentialed NPS employees to hold a CTC certificate of clearance; and
 - d) Requiring NPS administrators who do not hold a valid CTC credential to hold a certificate of clearance.
- 9) Establishes additional monitoring of credentialholder discipline by requiring CDE, contracting LEAs, and NPSs to receive specified information from the CTC regarding credentialholders subject to adverse action and to monitor the credential status of NPS employees, and requires NPSs to notify the CTC of specified changes in the employment status of credentialholders.
- 10) Revises special education waiver authority by:
- a) Eliminating the existing NPS-specific waiver authority of the SPI;
 - b) Beginning January 1, 2027, excluding specified special education statutes from the State Board of Education's (SBE) general waiver authority;
 - c) Consolidating specified special education waivers under an existing waiver process requiring approval when an LEA demonstrates that denial of the waiver would hinder implementation of a pupil's IEP or the LEA's compliance with the federal Individuals with Disabilities Education Act (IDEA); and

- d) Establishing additional conditions for waivers involving placement in a noncertified NPS or waiver of specified NPS or NPA certification requirements, including protections related to pupils' rights, oversight of the placement, nondiscrimination, credentialing, curriculum, behavioral interventions, and restrictions on the use of public funds.
- 11) Separates specified statutory certification requirements governing NPSs and NPAs to distinguish requirements applicable to each type of entity.
- 12) Makes numerous technical and conforming changes throughout the Education Code to remove references to "nonsectarian" NPSs and NPAs and includes double-jointing language to avoid chaptering out changes proposed by other legislation.

STAFF COMMENTS

- 1) ***Need for the bill.*** 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."
- 2) ***Loffman v. California Department of Education.*** This bill responds to the Ninth Circuit Court of Appeals decision and subsequent settlement in *Loffman v. California Department of Education*, which challenged California's requirement that a private school be nonsectarian to be certified as a NPS eligible to serve pupils with disabilities pursuant to an IEP.

In October 2024, the Ninth Circuit reversed a lower court's dismissal of the plaintiffs' free exercise and equal protection claims, concluding that the statutory nonsectarian requirement was neither neutral nor generally applicable because it categorically excluded religious schools from seeking NPS certification based on their religious character. In May 2025, the parties entered into a settlement under which CDE may no longer apply or enforce the nonsectarian requirement in connection with NPS or NPA certification or contracting.

As a result, existing law contains numerous references to "nonpublic, nonsectarian schools" and "nonpublic, nonsectarian agencies" that no longer reflect the manner in which the state may administer these programs. This bill removes these categorical exclusions and establishes requirements applicable to both religious and nonreligious NPSs and NPAs.

- 3) ***Religious participation in publicly funded educational services.*** The *Loffman* decision establishes that an otherwise qualified religious entity may not be categorically excluded from seeking NPS or NPA certification because of its religious character. This bill accordingly permits sectarian entities to participate in

the NPS and NPA system while establishing standards governing the publicly funded educational services provided to pupils placed by LEAs.

Specifically, the bill prohibits public funds from being used for religious instruction, requires educational services provided to pupils placed by an LEA under a master contract to be secular, neutral, and respectful regarding religion and religious views, and prohibits religious instruction when providing services pursuant to a master contract, individual service agreement, or IEP. The bill also defines religious instruction in a manner that preserves permissible academic references to religion, religious literature, music, art, and other subjects of religious significance consistent with existing law.

These provisions seek to distinguish between the religious character of an eligible provider and the publicly funded educational services purchased by an LEA for a pupil with disabilities. In doing so, the bill allows qualified religious entities to participate while maintaining standards governing the public educational services for which the state and LEAs remain responsible.

- 4) ***Ensuring consistent protections for pupils placed in NPSs.*** Pupils are generally placed in NPSs when their IEP teams determine that an appropriate public school program is not available. These pupils may have significant and complex educational, behavioral, and health needs. According to CDE data, 6,163 pupils were served by 202 in-state and 47 out-of-state NPSs in 2022-23, with autism and emotional disturbance representing the two largest primary disability categories.

This bill establishes a common baseline of protections for pupils served by NPSs regardless of whether the provider is religious or nonreligious. Among other provisions, the bill applies specified nondiscrimination protections to services provided under an LEA contract or IEP, incorporates existing behavioral intervention protections into NPS certification requirements, and requires CDE to monitor the state curriculum and instruction required for pupils of LEAs.

This approach is consistent with federal law requiring that pupils placed by LEAs in private schools receive an education that meets the standards applicable to education provided by the LEA. It also provides clarity to NPSs, LEAs, families, and CDE regarding the standards applicable to publicly funded placements.

- 5) ***Strengthening educator and employee safety oversight.*** This bill also strengthens existing oversight of the adults who provide services to pupils in NPS placements. Current law allows staff at out-of-state NPSs to hold credentials issued by another state. However, California currently does not receive the same subsequent-arrest or credential-discipline information for these staff that is available for California credentialholders, and CDE is not automatically notified when an NPS educator's credential is suspended or revoked.

The bill responds by phasing in California credential or clearance requirements for specified NPS staff, expanding fingerprint-based criminal background checks, requiring CDE to receive subsequent-arrest information, and establishing mechanisms for CDE, contracting LEAs, and NPSs to receive and monitor

information regarding adverse credential actions. The bill also extends specified background-check requirements to NPS contractors.

While these provisions address oversight issues that extend beyond the narrow question presented in *Loffman*, they establish a more consistent system for ensuring that California has information regarding the qualifications and safety status of adults serving California pupils, including pupils placed in NPSs located outside the state.

- 6) ***Expanded incident reporting.*** Existing law provides CDE with authority to investigate NPSs, including through unannounced onsite investigations when there is substantial reason to believe there is an immediate danger to the health, safety, or welfare of a pupil. Existing law also authorizes suspension or revocation of NPS certification for specified violations involving pupil health and safety, failure to comply with a master contract, or failure to provide services required by an IEP.

This bill expands the circumstances in which an NPS must provide prompt notice to CDE and the contracting LEA, including specified medical emergencies, serious pupil injuries, and investigations involving allegations of employee misconduct.

These provisions are intended to ensure that the public entities responsible for certifying the NPS and for the pupil's placement receive timely information when circumstances arise that may warrant additional review, oversight, or intervention.

- 7) ***Consolidating special education waiver authority.*** Current law contains multiple avenues through which specified special education requirements may be waived. This bill consolidates these processes by eliminating the SPI's separate NPS waiver authority and, beginning January 1, 2027, excluding specified special education provisions from the SBE's general waiver authority. The bill instead utilizes a waiver process tied to whether denial of the waiver would hinder implementation of a pupil's IEP or an LEA's compliance with the federal IDEA.

For waivers involving placement in a noncertified NPS or specified NPS certification requirements, the bill preserves additional protections related to pupil rights, oversight of the placement, nondiscrimination, educator qualifications, curriculum, behavioral interventions, and restrictions on the use of public funds.

The revised structure preserves individualized flexibility when necessary to implement an IEP or comply with federal law, while establishing that specified student protections and program requirements remain applicable to placements made pursuant to a waiver.

- 8) ***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 contracted 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 credentialholders 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.”

- 9) ***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 of 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.”

SUPPORT

State Superintendent of Public Instruction (sponsor)
Alliance for Children’s Rights
American Association of University Women - California
Associated Students of San Francisco State University
Bill Wilson Center
California Coalition for Youth
California Faculty Association
Children’s Fund
Church State Council
Generation Up
HomeFirst Services of Santa Clara County
John Burton Advocates for Youth
National Center for Youth Law
People Assisting the Homeless

Santa Clara County School Boards Association
Student Homes Coalition
Youth Alliance

OPPOSITION

California Family Council

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