

UNFINISHED BUSINESS

Bill No: SB 685
Author: Cortese (D)
Amended: 8/21/26
Vote: 21

Prior Senate votes not relevant pursuant to Senate Rule 29.10(d)

SENATE EDUCATION COMMITTEE: 5-1, 8/28/26

AYES: Pérez, Cabaldon, Cortese, Gonzalez, Reyes

NOES: Ochoa Bogh

NO VOTE RECORDED: Choi

ASSEMBLY FLOOR: 73-0, 8/26/26 - See last page for vote

SUBJECT: Special education: nonpublic schools and agencies

SOURCE: State Superintendent of Public Instruction

DIGEST: This bill 1) 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; and 2) makes broader changes to NPS and NPA oversight related to curriculum, behavioral interventions, criminal background checks, educator credentialing, incident reporting, and waivers.

Assembly Amendments replaced the contents of the bill with provisions related to special education NPSs and NPAs, including changes in response to the *Loffman v. California Department of Education* decision. The bill previously established a financial assistance pilot program for students attending specified California State University campuses who experienced homelessness during high school.

ANALYSIS:

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.

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.

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) *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.

- 5) *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.

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

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.

SUPPORT: (Verified 8/28/26)

State Superintendent of Public Instruction (source)
Alliance for Children's Rights
American Association of University Women - California
Associated Student 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: (Verified 8/28/26)

California Family Council

ARGUMENTS IN SUPPORT: The State Superintendent of Public Instruction, Tony Thurmond, writes that this bill “align[s] California’s nonpublic school and agency statutes with the Ninth Circuit’s decision in *Loffman v. California Department of Education*” by removing the obsolete “nonsectarian” requirement while establishing safeguards related to nondiscrimination, educator credentialing, background checks, and incident reporting. The Superintendent argues that the bill appropriately updates the state’s NPS framework to reflect current constitutional requirements while strengthening student safety, accountability, and educational quality.

ARGUMENTS IN OPPOSITION: The California Family Council argues that, while this bill removes the categorical exclusion of sectarian schools, it conditions their participation on requirements that impermissibly restrict their religious character. The organization contends that requiring contracted educational services to be “secular, neutral, and respectful regarding religion and religious views” effectively prevents religious schools from integrating their faith into those services and could result in additional constitutional litigation. The organization also objects to requiring NPSs to provide curriculum mandated for public school

pupils, including instruction under the California Healthy Youth Act, arguing that these requirements may conflict with the religious beliefs of participating schools and families.

ASSEMBLY FLOOR: 73-0, 8/26/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Irwin, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Chen, Gabriel, Hoover, Macedo, Ta, Tangipa

Prepared by: Ian Johnson / ED. / (916) 651-4105
8/28/26 16:07:09

**** END ****