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# LEGAL UPDATE

October 16, 2019

**To:** Superintendents, Member School Districts (K-12)  
**From:** Carl D. Corbin, General Counsel *CDC*  
**Subject:** AB 1172 – Significant New Requirements Associated with NPSs and NPAs  
Memo No. 30-2019

On October 2, 2019, the Governor approved Assembly Bill (“AB”) 1172, which created significant new requirements associated with Non-Public Schools (“NPSs”) and Non-Public Agencies (“NPAs”) that provide services for special education students in accordance with a master contract developed with a Local Educational Agency (“LEA”). Below, the new requirements for NPSs/NPAs will be described and then the new requirements for LEAs will be described.

## New Requirements for NPSs/NPAs Training

Commencing with the 2020–2021 school year, the NPS or NPA will have to document the training of staff who will have contact or interaction with pupils during the school day in the use of evidence-based practices and interventions specific to the unique behavioral needs of the NPS’/NPA’s pupil population.<sup>1</sup>

The training shall be provided within 30 days of employment to new staff who have any contact or interaction with pupils during the school day, and annually to all staff who have any contact or interaction with pupils during the school day.<sup>2</sup>

The training shall be selected and conducted by the NPS/NPA and shall satisfy all of the following conditions:

1. Be conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught;
2. Be taught in a manner consistent with the development and implementation of individualized education programs; and

<sup>1</sup> Education Code § 56366.1(a)(4)(i).

<sup>2</sup> *Id.*



3. Be consistent with the requirements of Article 5.2 (commencing with Section 49005) of Chapter 6 of Part 27, relating to pupil restraint and seclusion.<sup>3</sup>

The content of the training shall include, but is not limited to, all of the following:

1. Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan, and implement behavioral supports;
2. How to understand and address challenging behaviors, including evidence-based strategies for preventing those behaviors; and
3. Evidence-based interventions for reducing and replacing challenging behaviors, including deescalation techniques.<sup>4</sup>

The LEA contracting with the NPS/NPA shall annually verify the NPS/NPA has complied with these training requirements and the NPS/NPA shall annually report to the California Department of Education (“CDE”) that the contracting LEA has verified the NPS/NPA has complied with the annual training requirements.<sup>5</sup>

The NPS/NPA shall maintain written records of the annual training and shall provide written verification of the training upon request.<sup>6</sup>

New Requirements for NPSs/NPAs  
Administrator Credential/License

Commencing with the 2021–2022 school year, the NPS/NPA must document (in the application for certification with CDE) that the administrator of the NPS/NPA holds or is in the process of obtaining one of the following:

1. An administrative credential granted by an accredited postsecondary educational institution and two years of experience with pupils with disabilities;
2. A pupil personnel services credential that authorizes school counseling or psychology;
3. A license as a clinical social worker issued by the Board of Behavioral Sciences;
4. A license in psychology regulated by the Board of Psychology;
5. A master’s degree issued by an accredited postsecondary institution in education, special education, psychology, counseling, behavioral analysis, social work, behavioral science, or rehabilitation;

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<sup>3</sup> Education Code § 56366.1(a)(4)(B).

<sup>4</sup> Education Code § 56366.1(a)(4)(C).

<sup>5</sup> Education Code § 56366.1(a)(4)(D)(i).

<sup>6</sup> Education Code § 56366.1(a)(4)(D)(iv).



6. A credential authorizing special education instruction and at least two years of experience teaching in special education before becoming an administrator;
7. A license as a marriage and family therapist certified by the Board of Behavioral Sciences;
8. A license as an educational psychologist issued by the Board of Behavioral Sciences; or
9. A license as a professional clinical counselor issued by the Board of Behavioral Sciences.

New Requirements for NPSs/NPAs  
Notification of Law Enforcement Involvement

Effective January 1, 2020, a NPS/NPA shall notify CDE and the contracting LEA of any pupil-involved incident at the NPS/NPA in which law enforcement was contacted. This notification shall be provided in writing, no later than one business day after the incident occurred.<sup>7</sup>

New Requirements for NPSs/NPAs  
Qualified Individual to implement BIP

Effective January 1, 2020, to be certified by CDE, a NPS serving pupils with significant behavioral needs or who have a Behavioral Intervention Plan (“BIP”), the NPS must have an individual onsite during school hours who is qualified, and responsible for the design, planning, and implementation of behavioral interventions, as authorized under Section 3051.23 of Title 5 of the California Code of Regulations.<sup>8</sup>

New Requirements for LEAs

As described above, the LEA contracting with a NPS/NPA shall annually verify the NPS/NPA has complied with the new training requirements.<sup>9</sup>

For a NPS/NPA seeking initial certification, the contracting LEA shall verify that the plan and timeline for the new training requirements are included in the master contract.<sup>10</sup>

For a NPS/NPA not in existence as of the January 1 immediately preceding a school year, the contracting LEA shall, 30 days following the commencement of the school year, verify that the NPS/NPA complied with the new training requirements, and the LEA shall submit the verification to the Superintendent at that time.<sup>11</sup>

Commencing with the 2020–2021 school year, a LEA that enters into a master contract with a NPS/NPA school shall conduct, at minimum, the following:

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<sup>7</sup> Education Code § 56366.1(i)(2).

<sup>8</sup> Education Code § 56366.10.

<sup>9</sup> Education Code § 56366.1(a)(4)(D)(i).

<sup>10</sup> Education Code § 56366.1(a)(4)(D)(ii).

<sup>11</sup> Education Code § 56366.1(a)(4)(D)(iii).



1. An onsite visit to the NPS/NPA before placement of a pupil if the LEA does not have any pupils enrolled at the school at the time of placement.<sup>12</sup>
2. At least one onsite monitoring visit during each school year to the NPS/NPA at which the LEA has a pupil attending and with which it maintains a master contract. The monitoring visit shall include, but is not limited to:<sup>13</sup>
  - A. a review of services provided to the pupil through the individual service agreement between the LEA and NPS/NPA;
  - B. a review of progress the pupil is making toward the goals set forth in the pupil's Individualized Education Program ("IEP");
  - C. a review of progress the pupil is making toward the goals set forth in the pupil's BIP if the pupil has a BIP;
  - D. an observation of the pupil during instruction; and
  - E. a walkthrough of the facility.
3. The LEA shall report the findings resulting from the monitoring visit to CDE within 60 calendar days of the onsite visit. On or before June 30, 2020, CDE shall, with input from special education local plan area administrators, create and publish criteria for reporting this information to the department.

For your convenience, please see the following link to AB 1172:

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1172](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1172).

Please contact our office with questions regarding this Legal Update or any other matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>12</sup> Education Code § 56366.1(e)(3)(A).

<sup>13</sup> Education Code § 56366.1(e)(3)(B).