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## Education

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# Education

## Education; Master Plan for Special Education

Education Code §§1710, 1711, 1850-1856, 1870, 1871, 1880-1891, 41863, 41866, 41880-41882, 41884-41889, 41977, 42210, 42238.3, 42900-42909, 46605, 48310, 48311, 51051, 51052, 56000-56865 (repealed); §§2551.3, 2570-2573, 39365.5, 42238.3, 42241.3, 42241.5, 42900-42902, 56000-56826, 56134, 56338, 56347, 56366.5, 56450-56456, 56500.1, 56500.2 (new); §§2550, 2558, 14057, 14058, 33595, 41601, 41891, 41897, 42237, 42238, 42241.3, 62000 (amended).

SB 1870 (Rodda); STATS 1980, Ch 797

Support: California Association for the Retarded; California Parent and Teachers Association; Department of Finance

AB 3075 (Papan); STATS 1980, Ch 1353

Support: Department of Finance

AB 3043 (Vasconcellos); STATS 1980, Ch 1373

Support: Department of Developmental Services; Department of Mental Health

Opposition: Department of Finance

*Eliminates per capita limitations on funding for special education and provides for apportionment of state aid directly to the local governing agency; eliminates requirement that a plan designate a responsible local agency; revises pupil eligibility criteria for special education programs; provides for assessment of pupils by an individualized education program team; imposes time limits for the development of an individualized education program; expands the role of the resource specialist program and provides specific caseload restrictions for resource specialists; limits removal of students with exceptional needs from regular classes to specified circumstances; allows local governing entity to contract with private nonsectarian schools for designated instruction but eliminates superintendent's ability to waive applicable standards; revises criteria governing assessment hearings; expands role of the special education services region and provides for more definite inter-agency and joint powers agreements; provides that local governing entity may contract with any other public agency to provide special education and related services.*

As subsequently amended by Chapters 1353 and 1373, Chapter 797 provides a comprehensive revision of the law governing special educa-

tion, including substantial changes in funding, administration, program development, and student eligibility.<sup>1</sup> The primary legislative objectives of Chapter 797 are the provision of appropriate educational opportunities for all individuals, the unification and improvement of special education programs, the continued availability of full educational opportunities to all individuals with exceptional needs, and the completion of the restructuring of special education programs by June 30, 1982.<sup>2</sup> Special education is defined for these purposes as "specially designed instruction, at no cost to the parent, to meet the needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, which may be needed to assist such individuals to benefit from specially designed instruction."<sup>3</sup> Pursuant to these legislative objectives, Chapter 797 sets specific program goals that are substantially similar to those designated under prior law,<sup>4</sup> such as (1) the assurance of an education appropriate to the needs of each individual with exceptional needs,<sup>5</sup> (2) the promotion of maximum interaction between these individuals and the general school population,<sup>6</sup> and (3) the continuous evaluation of the effectiveness of special education programs to insure the highest quality educational offerings.<sup>7</sup>

#### FUNDING MECHANISMS FOR SPECIAL EDUCATION

Previously, special education was provided for under either the Master Plan for Special Education<sup>8</sup> or under separate provisions, depending on whether the pupil was classified as mentally retarded,<sup>9</sup> emotionally handicapped,<sup>10</sup> or physically handicapped.<sup>11</sup> Chapter 797 eliminates this dual system by repealing the above special provisions and categories and requiring that all funding be done under the Master Plan for Special Education.<sup>12</sup>

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1. See generally CAL. EDUC. CODE §§2550, 2551.3, 2558, 2570-2573, 42238.3, 42241.3, 42241.5, 56000-56826, 62000.

2. See *id.* §56000.

3. See *id.* §56031.

4. Compare *id.* §56001 with CAL. STATS. 1979, c. 61, §1, at — (amending CAL. EDUC. CODE §56301).

5. See CAL. EDUC. CODE §56001(a).

6. See *id.* §56001(g).

7. See *id.* §56001(m). Compare *id.* §56001 with CAL. STATS. 1979, c. 61, §1, at — (amending CAL. EDUC. CODE §56301).

8. See CAL. STATS. 1976, c. 1010, §2, at 3736 (enacting CAL. EDUC. CODE §§56000-56367).

9. See generally *id.* §2, at 3768 (enacting CAL. EDUC. CODE §§56500-56542).

10. See generally *id.* §2, at 3779 (enacting CAL. EDUC. CODE §§56600-56619).

11. See generally *id.* §2, at 3788 (enacting CAL. EDUC. CODE §§56700-56752).

12. See generally CAL. EDUC. CODE §§56700-56826; Comment, *The Right to a Meaningful Education in California: Should Dollars Make the Difference?* 10 PAC. L.J. 991 (1979).

Chapter 797 also makes significant changes in the procedure for apportioning state aid for special education. Previously, funds apportioned for special education could not exceed a specified per capita amount.<sup>13</sup> Since this formula did not adequately take into account the costlier instruction of pupils with severe or multiple handicaps, districts were forced to compensate by “over-identifying” pupils with mild learning disabilities in order to qualify for additional funds.<sup>14</sup> Chapter 797 eliminates the per capita limitation and instead implements a services-based formula which apportions funds based on the type of service, taking into account specified revenue limits, applicable federal funds, a local general fund contribution, and property tax revenues.<sup>15</sup>

## PUPIL ELIGIBILITY, IDENTIFICATION, AND ASSESSMENT

### A. Eligibility

Prior law based eligibility for special education and related services on the qualification of an individual under at least one of several specific categories of “handicapped children”<sup>16</sup> or “individuals with exceptional needs”,<sup>17</sup> including physical handicap, mental retardation, educational handicap, and autism.<sup>18</sup> Under Chapter 1353, a person is categorized as an individual with exceptional needs<sup>19</sup> when identified by an individualized education program team<sup>20</sup> as a handicapped child under federal standards,<sup>21</sup> whose impairment requires instruction, services, or both that cannot be provided with modifications of the regular school program.<sup>22</sup> The individual also must be (1) younger than four years and nine months of age and identified as requiring intensive special education and services,<sup>23</sup> (2) between the ages of four years and nine months and 18 years, inclusive,<sup>24</sup> or (3) between the ages of 19 and 22, for the purpose of completing prescribed courses of study under specified circumstances.<sup>25</sup> Pupils are excluded from this category whose educational needs are due primarily to unfamiliarity with the

13. See CAL. STATS. 1977, c. 1247, §47, at — (amending CAL. EDUC. CODE §56360).

14. See *Bills Seek to Improve Programs for the Handicapped*, Sacramento Union, Mar. 31, 1980, (Today), at 3.

15. See CAL. EDUC. CODE §§56711, 56712.

16. See CAL. STATS. 1976, c. 1010, §2, at 3736 (enacting CAL. EDUC. CODE §56000).

17. See CAL. STATS. 1978, c. 402, §4, at 1272 (enacting CAL. EDUC. CODE §56031).

18. See *id.*

19. See CAL. EDUC. CODE §56026.

20. See *id.* §56341.

21. See *id.* §56026(a). See also 20 U.S.C. §1401(1) (1976).

22. See CAL. EDUC. CODE §56026(b).

23. See *id.* §56026(c)(1), (2).

24. See *id.* §56026(c)(3).

25. See *id.* §56026(c)(4).

English language, temporary physical disabilities, social maladjustment, or environmental, cultural, or economic factors.<sup>26</sup> Two additional classifications of pupils are categorized as individuals with exceptional needs as follows: (1) persons having a language or speech disorder<sup>27</sup> that adversely affects educational performance and that cannot be corrected without special education and related services,<sup>28</sup> and (2) persons with a specific learning disability<sup>29</sup>—that is, persons for whom a severe discrepancy exists between intellectual ability and achievements in one or more of a number of specified academic areas<sup>30</sup> due to a disorder in any of the basic psychological processes,<sup>31</sup> which discrepancy cannot be corrected through other regular or categorical services offered within the regular instructional program.<sup>32</sup>

### B. Identification and Referral

Under prior law, pupil identification and assessment were conducted by two education teams. At the school site level, the *school appraisal team* conducted pupil assessment and made placement recommendations, including placement of pupils requiring instruction at home or in a hospital for a short-term physical disability.<sup>33</sup> At the regional level, the *education assessment service team* made placement recommendations for any pupil attending a school or program other than his or her normal school of attendance, except for pupils at home or in a hospital for a short-term physical disability, and for any pupil requiring a more intensive study.<sup>34</sup>

Chapter 797 replaces these teams with the “*individualized education program team*”<sup>35</sup> and provides for only one assessment,<sup>36</sup> rather than the two required by prior law.<sup>37</sup> Moreover, Chapters 797 and 1353 establish a uniform identification and assessment procedure for all individuals with exceptional needs,<sup>38</sup> requiring each district, special education services region, or county office to (1) actively and systematically seek out all individuals with exceptional needs, ages 0 through

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26. See *id.* §56026(e).

27. See *id.* §§56333(a)-(e).

28. See *id.* §56333.

29. See *id.* §56338 (definition of specific learning disability).

30. See *id.* §56337(a).

31. See *id.* §56337(b).

32. See *id.* §56337(c).

33. See CAL. STATS. 1979, c. 483, §12, at — (amending CAL. EDUC. CODE §56336.2).

34. See *id.*

35. See CAL. EDUC. CODE §56341(a).

36. See *id.* §§56320-56329.

37. See CAL. STATS. 1979, c. 483, §12, at —.

38. See CAL. EDUC. CODE §§56300-56329.

21,<sup>39</sup> (2) establish written policies and procedures for a continuous system relating identification, screening, referral, assessment, planning, implementation, review, and triennial assessment of students,<sup>40</sup> and (3) provide for the identification and assessment of an individual's exceptional needs, and the planning of an individualized instructional program to best meet those needs.<sup>41</sup> Referral of a pupil for special education instruction and services may occur only after the resources of the regular education program have been considered and, when appropriate, utilized.<sup>42</sup>

### C. Assessment

Before any pupil with exceptional needs may be placed in special education instruction, Chapter 1353 requires that an individual assessment of the pupil's educational needs be conducted.<sup>43</sup> This assessment is based upon tests and other assessment materials and procedures that are selected and administered so as not to be racially, culturally, or sexually discriminatory.<sup>44</sup> The tests must be administered in the pupil's native language or other mode of communication, unless this is clearly shown not to be feasible,<sup>45</sup> and must be administered to ensure validity<sup>46</sup> and provide a comprehensive<sup>47</sup> determination of the pupil's specific areas of educational need.<sup>48</sup> These procedures will ensure that the tests result in an accurate reflection of the pupil's aptitude, achievement level, motor abilities, health and development, or other factors that the tests are designed to measure.<sup>49</sup>

Any psychological assessment of pupils must be conducted by a credentialed school psychologist.<sup>50</sup> Similarly, any health assessment must be conducted by a credentialed school nurse or physician.<sup>51</sup> In either case, the personnel conducting the assessments must be trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed,<sup>52</sup> and the assessment must be made in accordance

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39. *See id.* §56300.

40. *See id.* §56301.

41. *See id.* §56302.

42. *See id.* §56303.

43. *See id.* §56320.

44. *See id.* §56320(a).

45. *See id.* §56320(b)(1).

46. *See id.* §56320(b)(2), (3).

47. *See id.* §56320(c), (e).

48. *See id.* §56320(c).

49. *See id.* §56320(d), (f).

50. *See id.* §56324(a).

51. *See id.* §56324(b).

52. *See id.* §56324. *See generally id.* §§56320-56323, 56325-56329 (description of assessment procedures).

with the general standards and procedures previously described.<sup>53</sup>

The assessment procedure must be conducted by a multidisciplinary group of persons, including at least one teacher or specialist with knowledge in the area of the suspected disability or, alternatively, at least one specialist qualified to conduct diagnostic examinations or assessments in the primary area of the suspected disability.<sup>54</sup> In conducting the assessment, a complete and specific record must be maintained of the diagnostic procedures and assessments employed, the instruments utilized, the conclusions reached, and the proposed education or treatment alternatives indicated by the assessment results.<sup>55</sup> The resulting assessment report must include the five following items: (1) a determination of whether the pupil may need special education and related services<sup>56</sup> and the basis for making that determination<sup>57</sup> (2) observations of pupil behavior relevant to this determination<sup>58</sup> and its relationship to the pupil's academic and social functioning;<sup>59</sup> (3) any educationally relevant health and development and medical findings;<sup>60</sup> (4) when appropriate, a determination concerning the effects of environmental, cultural, or economic disadvantage;<sup>61</sup> and (5) for pupils with learning disabilities, whether the discrepancy between achievement and ability is such that it cannot be corrected without special education and related services.<sup>62</sup> Chapter 797 provides an exception to these requirements when a pupil transfers into a school district operating programs under a different local plan than the district in which he or she was last enrolled in a special education program.<sup>63</sup> Under these circumstances, the administrator of a local program may place the pupil in a comparable program for a period not to exceed 30 days, during which time the individualized education program team must review the interim placement and make a final recommendation for placement in accordance with the provisions regulating pupil assessment.<sup>64</sup>

#### LOCAL PROGRAMS AND RESPONSIBILITIES

Prior law maintained specific local program components under the

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53. *See id.* §56324.

54. *See id.* §56322(a).

55. *See id.* §56322(b).

56. *See id.* §56327(a).

57. *See id.* §56327(b).

58. *See id.* §56327(c).

59. *See id.* §56327(d).

60. *See id.* §56327(e).

61. *See id.* §56327(g).

62. *See id.* §56327(f).

63. *See id.* §56325.

64. *See id.*

code provisions relating to each of the separate handicap categories.<sup>65</sup> Chapter 797 eliminates this categorization of program standards according to specific handicap, but now requires that each district, special education services region, or county office ensure that the needs of individuals with exceptional needs are met by providing<sup>66</sup> (1) the instruction and services designated in the individualized education program,<sup>67</sup> (2) a resource specialist program,<sup>68</sup> (3) special classes and centers to enroll students with similar and more intensive needs,<sup>69</sup> (4) private nonsectarian school services when no appropriate public education program is available,<sup>70</sup> and (5) state special schools.<sup>71</sup>

### *A. Individualized Education Program*

With the enactment of Chapter 1353, the items required to be in the written statement of a pupil's individualized education program remain essentially unchanged.<sup>72</sup> Chapter 1353 provides that, when appropriate, the program may now include linguistic goals and services for pupils whose primary language is other than English,<sup>73</sup> extended school year services,<sup>74</sup> and provision for the transition into the regular class program.<sup>75</sup> For secondary grade level pupils, the individualized education program may include both alternative methods to complete the district's prescribed course of study and to meet or exceed the proficiency standards for graduation,<sup>76</sup> and specially designed courses in vocational education and career development.<sup>77</sup> Chapter 797 also imposes time limits for the development of an individualized education program, requiring that the initial development of the program be completed within 50 days, not including July and August, from the date of receipt of the parent's written consent for assessment, unless the parent agrees in writing to an extension.<sup>78</sup> Moreover, for any pupil who was referred within 20 days of the end of the preceding school year, the individualized education program must be developed within 30 days

65. See CAL. STATS. 1978, c. 402, §4, at 1272.

66. See CAL. EDUC. CODE §§56360, 56361.

67. See *id.* §§56361(b), 56363.

68. See *id.* §§56361(a), 56362.

69. See *id.* §§56361(c), 56364.

70. See *id.* §§56361(d), 56365.

71. See *id.* §§56361(e), 56367.

72. Compare *id.* §56345 with CAL. STATS. 1978, c. 402, §7.7, at 1283 (amending CAL. EDUC. CODE §56336.5).

73. See CAL. EDUC. CODE §56345(b)(3).

74. See *id.* §56345(b)(4).

75. See *id.* §56345(b)(5).

76. See *id.* §56345(b)(2).

77. See *id.* §56345(b)(1).

78. See *id.* §56344.



after the commencement of the subsequent regular school year.<sup>79</sup>

Chapter 797 requires each district,<sup>80</sup> special education services region,<sup>81</sup> or county office<sup>82</sup> to initiate and conduct meetings to develop, review, and revise the individualized education program<sup>83</sup> of each pupil with exceptional needs.<sup>84</sup> Whereas prior law provided for the development of individualized education programs by the school appraisal and education assessment teams,<sup>85</sup> under Chapter 797 each meeting to develop, review, or revise the individualized education program of a pupil with exceptional needs is conducted by an individualized education program team,<sup>86</sup> which is responsible for reviewing assessment results, determining pupil eligibility, determining the content of the individualized education program, and making program placement recommendations.<sup>87</sup> In addition to the services provided by the local educational program under prior law, Chapters 797 and 1353 require that social worker services<sup>88</sup> and specially designed vocational education career development programs be provided.<sup>89</sup> Moreover, in providing nonacademic and extracurricular services and activities, participation of each individual with exceptional needs in those services and activities with nonhandicapped pupils must be ensured to the maximum extent appropriate to the needs of the individual.<sup>90</sup>

#### *B. The Individualized Education Program Team*

The individualized education program team must include the following: (1) a representative of the administration other than the pupil's teacher, who may be an administrator, program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education;<sup>91</sup> (2) the pupil's present teacher or, if unavailable, a regular classroom teacher referring the pupil or a special education teacher qualified to teach a pupil of his or her age;<sup>92</sup> (3) one or both of

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79. *See id.*

80. *See id.* §56025 (definition of district).

81. *See id.* §56032 (definition of special education services region).

82. *See id.* §56022 (definition of county office).

83. *See id.* §56345(a) (definition of individualized education program).

84. *See id.* §56340.

85. *See* CAL. STATS. 1979, c. 483, §12, at —.

86. *See* CAL. EDUC. CODE §56341(a).

87. *See id.* §56342.

88. *See id.* §56363(b)(13).

89. *See id.* §56345(b)(1).

90. *See id.* §56364.

91. *See id.* §56341(b)(1).

92. *See id.* §56341(b)(2).

the pupil's parents, a representative selected by either parent, or both;<sup>93</sup> (4) a person who has either conducted an assessment of the pupil or is knowledgeable about the assessment procedure, familiar with the individual results, and qualified to interpret them;<sup>94</sup> and (5) for pupils with suspected learning disabilities or behavior disorders, a person other than the pupil's regular teacher who has observed the pupil's educational performance in an appropriate setting.<sup>95</sup> Under appropriate circumstances, the team may also include the pupil concerned<sup>96</sup> or any other persons at the discretion of the parent or the educational agency.<sup>97</sup>

Chapter 1353 also requires that the individualized program team meet at least once annually to review the pupil's progress, the individualized education program, and the appropriateness of placement, and to make any necessary revisions.<sup>98</sup> The team must also meet when a pupil has received a formal assessment<sup>99</sup> or the pupil's placement, instruction, services, or any combination thereof under the program is to be developed, changed, or terminated.<sup>100</sup> A team meeting also will be required if the pupil demonstrates a lack of anticipated progress,<sup>101</sup> or the parent or teacher requests a meeting to develop, review, or revise the individualized education program.<sup>102</sup>

### C. Resource Specialist Program

Under existing law, the resource specialist or specialists must be available to provide instruction and services for pupils with exceptional needs who are assigned to regular classroom teachers for the majority of a schoolday.<sup>103</sup> Chapter 1353 specifies that the duties of the resource specialist now include emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.<sup>104</sup> Further, Chapter 1353 restricts the resource specialist program to provide that: (1) the average caseload for resource specialists must be no more than 24 pupils, and no resource spe-

93. *See id.* §56341(b)(3).

94. *See id.* §56341(c).

95. *See id.* §56341(d).

96. *See id.* §56341(b)(4)(A).

97. *See id.* §56341(b)(4)(B).

98. *See id.* §56343(e).

99. *See id.* §56343(a).

100. *See id.* §56343(b).

101. *See id.* §56343(c).

102. *See id.* §56343(d).

103. *Compare id.* §56362(a)(1) with CAL. STATS. 1977, c. 1247, §23.5, at 4247 (amending CAL. EDUC. CODE §56333).

104. *See* CAL. EDUC. CODE §56362(a)(6).

cialist may have a caseload exceeding 28 pupils;<sup>105</sup> and (2) resource specialists may not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.<sup>106</sup>

*D. Special Classes for Pupils with Intensive Education Needs*

Existing law additionally mandates the inclusion in local programs of special classes and centers for the enrollment of pupils with similar and more intensive educational needs.<sup>107</sup> Under prior law, pupils were qualified for enrollment when the nature or severity of their disability was such that a less restrictive environment could not be achieved satisfactorily.<sup>108</sup> It was further required that the interaction of these pupils with other pupils in the regular school program be facilitated.<sup>109</sup> Chapter 1353 provides that pupils be placed in special classes and centers if the nature or severity of their disabilities or handicaps precludes their participation in the regular school program for a majority of the schoolday.<sup>110</sup> Such pupils may only be removed from the regular education environment when education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.<sup>111</sup> Additionally, it is now specified that each pupil with exceptional needs be guaranteed participation in nonacademic and extracurricular services and activities with nonhandicapped pupils to the maximum extent appropriate to the needs of the individual concerned.<sup>112</sup>

*E. Private Nonsectarian Schools*

Prior law permitted a local school district to contract with private schools to provide special education and related services specified in a pupil's individualized education program.<sup>113</sup> A private school involved in this arrangement was required to meet educational standards established by the State Board of Education, signified by certification of the school.<sup>114</sup> The school could petition the Superintendent of Public Instruction to waive one or more of the requirements otherwise applicable to any agency providing special education services, upon a

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105. *See id.* §§56221 (enumeration of local education policies), 56362(c).

106. *See id.* §§56033 (definition of superintendent), 56362(f).

107. *Compare id.* §56364 with CAL. STATS. 1978, c. 402, §7, at 1278 (amending CAL. EDUC. CODE §56332).

108. *See* CAL. STATS. 1978, c. 402, §7, at 1278.

109. *See id.*

110. *See* CAL. EDUC. CODE §56364.

111. *See id.*

112. *See id.*

113. *See* CAL. STATS. 1977, c. 1247, §8, at 4232 (enacting CAL. EDUC. CODE §56032).

114. *See id.* §8, at 4235 (enacting CAL. EDUC. CODE §56041).

demonstration that the pupil would not be adequately served if the waiver were not granted.<sup>115</sup> Chapters 797 and 1353 substantially retain the provisions of prior law pertaining to the contractual relationship between the participating public agency and the nonpublic, nonsectarian school<sup>116</sup> as to certification procedures,<sup>117</sup> adding only the specification that the private nonsectarian school must provide all services specified in the individualized education program unless otherwise provided for by the contract,<sup>118</sup> and deleting the provision relating to waiver of educational standards.<sup>119</sup> Further, Chapter 797 expressly provides that a district, special education services region, or county office may contract with private nonsectarian schools and private agencies for the purpose of providing special education and related services to pupils with exceptional needs only when no appropriate public education program is available.<sup>120</sup> Before contracting with a private nonsectarian school outside of the State of California, every effort must be made to utilize public schools or to locate an appropriate private nonsectarian school program within the state.<sup>121</sup>

#### PARENT/PUPIL PROCEDURAL RIGHTS

Chapters 797, 1353, and 1373 substantially retain the procedural rights of parents, pupils, and educational agencies provided for under prior law as to any decision regarding either the pupil's identification as an individual with exceptional needs, the assessment of the pupil, and the implementation of the individualized education program, or the denial, placement, transfer, or termination of the pupil in a special education or related services program.<sup>122</sup> The requisite notice to a parent of a proposed assessment of a pupil must now be provided at least 15 calendar days<sup>123</sup> prior to the projected date for the assessment,<sup>124</sup> rather than ten schooldays, as previously allowed.<sup>125</sup> Additionally, while

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115. *See id.* (enacting CAL. EDUC. CODE §56042).

116. *See* CAL. EDUC. CODE §56366(a)(1)-(3).

117. *See id.* §56366(c).

118. *Compare id.* §56366(a)(4) with CAL. STATS. 1977, c. 1247, §8, at 4233 (enacting CAL. EDUC. CODE §56034).

119. *See generally* CAL. EDUC. CODE §56345(b)(1).

120. *See id.* §56365(a).

121. *See id.* §56365(d).

122. *Compare id.* §§56321, 56329, 56341(e), 56346, 56500.1, 56500.2, 56501-56506 with CAL. STATS. 1979, c. 1143, §2, at — (enacting CAL. EDUC. CODE §§56180-56185) and *id.* §1, at — (amending CAL. EDUC. CODE §56036) and CAL. STATS. 1979, c. 1247, §8, at 4234 (enacting CAL. EDUC. CODE §56037) and CAL. STATS. 1978, c. 1220, §3, at — (enacting CAL. EDUC. CODE §56135) and CAL. STATS. 1976, c. 1010, §2, at 3748 (enacting CAL. EDUC. CODE §§56130-56131).

123. *See* CAL. EDUC. CODE §56023 (definition of day).

124. *See id.* §56321(a).

125. *See* CAL. STATS. 1979, c. 483, §13, at — (amending CAL. EDUC. CODE §56337).

prior law mandated that the parent be notified in writing of the findings of the assessment, the recommended educational decision, and the reasons therefor,<sup>126</sup> a conference with the parent concerning the findings and recommendations occurred only upon the request of the parent.<sup>127</sup> Chapter 797 requires that (1) the parent receive written notice that he or she may obtain, upon request, a copy of the findings of the assessment,<sup>128</sup> and (2) a conference be automatically scheduled with the parent, that includes the individualized education program team, to discuss the assessment, the educational recommendations, and the reasons for these recommendations.<sup>129</sup>

Chapter 1353 amends the procedural rights of administrative review under prior law<sup>130</sup> to provide that due process hearing procedures may be initiated by the pupil, the parent, or the public education agency involved<sup>131</sup> whenever there occurs any of the following: (1) a proposal to initiate or alter the identification, assessment, or educational placement or opportunities available to the pupil,<sup>132</sup> (2) a refusal to make a change in the placement or opportunities,<sup>133</sup> or (3) the parent's refusal to consent to an assessment of a child.<sup>134</sup> The due process hearing procedures also apply to the right to a mediation conference,<sup>135</sup> the right to examine pupil records,<sup>136</sup> and the right to a fair and impartial administrative hearing at the state level.<sup>137</sup> The parent has the additional right to have the pupil who is the subject of the state hearing present at that hearing<sup>138</sup> and the right to open the state hearing to the public.<sup>139</sup> Moreover, within three days of receipt by the public education agency of a copy of a written request to the superintendent to initiate a due process hearing, the agency must advise the parent of free or low-cost legal and other relevant services available within the geographical area.<sup>140</sup> Under existing law, a parent is entitled to terminate a special education program at any time by withdrawing consent.<sup>141</sup> Chapter

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126. *See id.*

127. *See id.*

128. *See* CAL. EDUC. CODE §56329.

129. *See id.* §56329(a).

130. *See* CAL. STATS. 1979, c. 1143, §3, at — (amending CAL. EDUC. CODE §56341).

131. *See* CAL. EDUC. CODE §56501(a).

132. *See id.* §§56501(a)(1), 56502, 56503.

133. *See id.* §56501(a)(2).

134. *See id.* §§56346 (parental consent as prerequisite to pupil participation in special education program), 56501(a)(3).

135. *See id.* §56501(b)(1).

136. *See id.* §§56501(b)(2), 56504.

137. *See id.* §§56501(b)(3), 56505.

138. *See id.* §56501(c)(1).

139. *See id.* §56501(c)(2).

140. *See id.* §56502(a).

141. *Compare id.* §56346 with CAL. STATS. 1977, c. 1247, §33, at 4253.

797 allows a parent to consent to particular components of a special education program, while withholding consent to other components of the program.<sup>142</sup>

Further, Chapter 1373 requires that all procedural safeguards of the Education for All Handicapped Children Act of 1975<sup>143</sup> be established and maintained by each agency that provides education, related services, or both, to children with exceptional needs.<sup>144</sup> Chapter 1373 also provides that an expeditious and effective process must be implemented for the resolution of complaints regarding any alleged violations of the provisions of the Education for All Handicapped Children Act.<sup>145</sup>

## THE LOCAL PLAN

### A. Governance Plan Options

Prior law required the governing board of each school district to submit to the Superintendent of Public Instruction a local comprehensive plan for the education of all individuals with exceptional needs residing in the district.<sup>146</sup> This plan could either be a single district plan, a multi-district plan, or a plan in conjunction with a county office.<sup>147</sup> Chapters 797 and 1353 retain this governance plan option for local districts<sup>148</sup> and further retain the classification of "special education services region" for those districts joining together under a multi-district plan.<sup>149</sup> Chapter 797 further requires each school district submitting a local plan in conjunction with another school district or with a county office to develop written agreements to be entered into by all entities participating in the plan.<sup>150</sup> These agreements must include a coordinated identification, referral, and placement system,<sup>151</sup> procedural safeguards regarding parental rights as to identification and placement of pupils with exceptional needs,<sup>152</sup> reference to regionalized services to local programs,<sup>153</sup> and a description of the coordination of services with other local public agencies that are funded to serve individuals with exceptional needs.<sup>154</sup>

142. See CAL. EDUC. CODE §56346.

143. See Pub. L. No. 94-142, 89 Stat. 775 (codified at 20 U.S.C. §§1401-1461 (1976)).

144. See CAL. EDUC. CODE §56500.1.

145. See *id.* §56500.2. See generally 20 U.S.C. §§1401-1461 (1976).

146. See CAL. STATS. 1977, c. 1247, §17, at 4241 (amending CAL. EDUC. CODE §56315).

147. See *id.*

148. See CAL. EDUC. CODE §56170.

149. See *id.* §56032.

150. See *id.* §56220.

151. See *id.* §56220(a).

152. See *id.* §56220(b).

153. See *id.* §56220(c).

154. See *id.* §56220(d).

B. *Elements of the Local Plan*

Chapter 797 replaces the concept of the "local comprehensive plan" with the "local plan",<sup>155</sup> retaining the substance of the former local comprehensive plan and specifically requiring the following: (1) assurances of compliance with federal standards and other provisions of the Master Plan for Special Education<sup>156</sup> under California statutes;<sup>157</sup> (2) an annual budget plan;<sup>158</sup> (3) verification of appropriate review of the plan by the community advisory committee;<sup>159</sup> and (4) a description of identification, referral, assessment, instructional planning, implementation, and review procedures.<sup>160</sup> The local plan is no longer required to include the designation of a "responsible local agency," but must provide for joint power agreements and other contracts to (1) provide for a governance structure and necessary administrative support for implementation,<sup>161</sup> (2) establish a system for determining the responsibility under the plan of each participating agency,<sup>162</sup> and (3) designate an entity to receive and distribute regionalized services funds, provide administrative support, and coordinate implementation of the plan.<sup>163</sup>

Alternatively, the governing board may join with the county office to submit a local plan,<sup>164</sup> providing for contractual agreements to establish a system for determining responsibility of participating agencies for educational services<sup>165</sup> and to designate the county office, or other local agency or administrative entity, to receive and distribute regionalized services funds, provide administrative support, and coordinate implementation of the plan.<sup>166</sup>

Regardless of which governance option is chosen, Chapter 797 requires that each district cooperate with the county office and other school districts in the geographic area in choosing its organizational option for annual development of a local plan.<sup>167</sup> Beginning in fiscal year 1982-83, each district must notify the county office of the govern-

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155. Compare *id.* §56027 with CAL. STATS. 1978, c. 402, §5, at 1273 (amending CAL. EDUC. CODE §56302).

156. See CAL. EDUC. CODE §56000.

157. See *id.* §56200(a).

158. See *id.* §56200(e).

159. See *id.* §56200(f). See also *id.* §§56190-56194 (definition of community advisory committee).

160. See *id.* §56200(g).

161. See *id.* §56170(b)(1).

162. See *id.* §56170(b)(2).

163. See *id.* §56170(b)(3).

164. See *id.* §56170(c).

165. See *id.* §56170(c)(1).

166. See *id.* §56170(c)(2).

167. See *id.* §56171(a).

ance option to be used by the district, at least one year prior to the proposed effective date of the implementation of the option.<sup>168</sup> The district is also responsible for assuring compatibility with other local plans in the county and any contiguous county,<sup>169</sup> and for submitting any local plan developed on its own or in conjunction with another school district to the county office for review.<sup>170</sup>

### C. *Special Education for Institutionalized Children*

Existing law requires that special education programs be provided for individuals with exceptional needs who have been adjudicated by the juvenile court for placement in a juvenile hall or juvenile home, ranch, or camp.<sup>171</sup> Chapter 797 makes similar provision for pupils in any juvenile day center<sup>172</sup> or in any licensed children's institution.<sup>173</sup> To assure the delivery of these services to qualified pupils, existing law requires that each person, court, regional center for the developmentally disabled, or public agency that places children in licensed children's institutions must report to the appropriate county office any referral or admission of a child who is potentially eligible for special education.<sup>174</sup> Chapter 797 additionally requires that each person licensed to operate a licensed children's institution notify the appropriate county office of any child potentially eligible for special education who resides at the facility.<sup>175</sup> These requirements do not, however, apply to programs operating in state hospitals and juvenile court schools,<sup>176</sup> or to individuals with exceptional needs in licensed children's institutions pursuant to the procedure for placement in private nonsectarian schools under contract with an appropriate public agency.<sup>177</sup>

### D. *Miscellaneous Program Requirements*

Under Chapters 797 and 1353, all entities providing special education under the Master Plan are now required to adopt policies for the

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168. *See id.*

169. *See id.* §56171(b).

170. *See id.* §56171(d).

171. *Compare id.* §56150 with CAL. STATS. 1978, c. 1220, §4, at 1272 (enacting CAL. EDUC. CODE §56314.5).

172. *See* CAL. EDUC. CODE §56150.

173. *See id.* §56155 (definition of licensed children's institution).

174. *Compare id.* §56156(a) with CAL. STATS. 1979, c. 1035, at — (enacting CAL. EDUC. CODE §42900).

175. *See* CAL. EDUC. CODE §56166(b).

176. *See id.* §56164.

177. *See id.* §§56165, 56365 (provision for placement of pupils with exceptional needs in private nonsectarian schools).



programs and services they operate.<sup>178</sup> These policies *must* include provisions for (1) review of the assignment of a pupil with special needs to a regular class, upon request of the regular teacher,<sup>179</sup> (2) the use of resource specialists,<sup>180</sup> (3) the use of private nonsectarian services,<sup>181</sup> and (4) the procedural safeguards concerning parental rights as to pupil identification and placement.<sup>182</sup> These policies *may* include provisions for the involvement of district and county governing board members in any due process hearing procedure activities under state and federal law.<sup>183</sup> Additional program requirements under Chapter 797, relating to staff development,<sup>184</sup> provide for the participation of pupils with exceptional needs and their parents in the design and implementation of staff development programs<sup>185</sup> and provision of a budget for reasonable and necessary expenses relating to these programs.<sup>186</sup>

Chapter 797 now requires that each regular classroom teacher who provides services to individuals with exceptional needs receive the equivalent of at least one day of training annually relating to the needs of these pupils.<sup>187</sup> Chapter 797 also contains specifications for the use of substitute teachers in special education.<sup>188</sup> An employer is required to seek and maintain lists of appropriately credentialed substitute teachers,<sup>189</sup> using, by priority,<sup>190</sup> teachers with the appropriate special education credentials,<sup>191</sup> teachers with any other special education credentials,<sup>192</sup> and substitute teachers with regular teaching credentials;<sup>193</sup> a noncredentialed person may not, however, substitute for any special education certificated position.<sup>194</sup> A person holding a valid credential authorizing substitute teaching may serve as a substitute for the appropriately credentialed special education teacher<sup>195</sup> with the limitation that an inappropriately credentialed substitute teacher may not be em-

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178. *See id.* §56221(a).

179. *See id.* §56221(b)(2).

180. *See id.* §56221(b)(4).

181. *See id.* §56221(b)(1).

182. *See id.* §56221(b)(3). *See generally id.* §§56500-56506 (description of procedural safeguards).

183. *See id.* §56221(c).

184. *See generally id.* §§56240-56243.

185. *See id.* §56241(b).

186. *See id.* §56241(g).

187. *See id.* §56243.

188. *See generally id.* §§56060-56063.

189. *See id.* §56063.

190. *See id.* §56062.

191. *See id.* §56062(a).

192. *See id.* §56062(b).

193. *See id.* §56062(c).

194. *See id.* §56060.

195. *See id.* §56061.

ployed for a period of more than 20 cumulative school days for each special education teacher absent during each school year,<sup>196</sup> except under specified circumstances.<sup>197</sup>

Chapter 797 further provides that each district, special education services region, or county office may contract with any other public agency as required to assist in the provision of special education or related services to a pupil with exceptional needs.<sup>198</sup> In addition, Chapter 797 states that members of the community advisory committee<sup>199</sup> must be appointed for annually staggered terms for at least two years, in accordance with a locally determined selection procedure described in the local plan.<sup>200</sup> The local plan may not, however, be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.<sup>201</sup>

Current law no longer includes provisions mandating occupational transition programs and development centers for physically handicapped and mentally retarded pupils,<sup>202</sup> experimental education programs for deaf and multi-handicapped pupils,<sup>203</sup> or summer programs offering teacher preparation pursuant to special education services for physically handicapped, mentally retarded, and educationally handicapped pupils.<sup>204</sup> Additionally, the termination date for special education programs, subject to legislative review and continuation of the programs, is extended by Chapter 797 from the date of June 30, 1981, cited under prior law,<sup>205</sup> to June 30, 1985.<sup>206</sup>

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196. *See id.* §56061(a).

197. *See id.* §56061(b), (c).

198. *See id.* §56369.

199. *See id.* §56190.

200. *See id.* §56191.

201. *See id.* §56140(b)(3).

202. *See* CAL. STATS. 1976, c. 1010, §2, at 3745 (enacting CAL. EDUC. CODE §§56070-56076).

203. *See* CAL. STATS. 1978, c. 446, §1, at 1271 (amending CAL. EDUC. CODE §56161.5); CAL. STATS. 1976, c. 1010, §2, at 3749 (enacting CAL. EDUC. CODE §56160).

204. *See* CAL. STATS. 1976, c. 1010, §2, at 3743 (enacting CAL. EDUC. CODE §§56050, 56060).

205. *See* CAL. STATS. 1979, c. 282, §28.5, at — (enacting CAL. EDUC. CODE §62000).

206. *See* CAL. EDUC. CODE §62000.

## Education; bilingual-bicultural programs

Education Code §§52047, 52169.1, 52170, 52171, 52174, 52178.5 (repealed); §§52163.5, 52163.6, 52164.6, 52170, 52171, 52174, 52178.5

(new); §§10106, 44253.5, 52015, 52161, 52162, 52163, 52164, 52164.1, 52164.2, 52164.3, 52164.4, 52164.5, 52165, 52166, 52167, 52168, 52171.6, 52172, 52173, 52175, 52176, 52177, 52178, 54024, 56001 (amended).

AB 507 (Chacon); STATS 1980, Ch 1339

(Operative July 1, 1981)

Support: Association of Mexican-American Educators; California School Board Association; Department of Education; Department of Finance

*Replaces the full bilingual and partial bilingual programs with one basic bilingual program; allows the creation of experimental bilingual programs; requires school districts to establish criteria to reclassify pupils of limited English proficiency into English-only classrooms as soon as possible; extends the length of waivers provided to school districts lacking sufficient certified bilingual-crosscultural instructors.*

Prior to the enactment of Chapter 1339, bilingual-bicultural education<sup>1</sup> was considered under a full bilingual or partial bilingual program created by the Chacon-Moscone Bilingual-Bicultural Act of 1976.<sup>2</sup> Chapter 1339, the Bilingual Education Improvement and Reform Act of 1980,<sup>3</sup> eliminates the full and partial bilingual programs and replaces them with a basic bilingual program<sup>4</sup> designed only for pupils of limited English proficiency.<sup>5</sup> In addition, Chapter 1339 excludes non-English speaking students from the provisions of the bilingual education system<sup>6</sup> and enacts a program requiring districts to reclassify bilingual pupils into English-only classrooms as soon as the student has obtained the necessary skills to learn in an English-only environment.<sup>7</sup> Moreover, Chapter 1339 makes technical changes in the criteria for determining the number of limited English ability students allowed in a bilingual classroom<sup>8</sup> and the criteria for determining the number of certified bilingual-crosscultural instructors required.<sup>9</sup> Chapter 1339 also extends the waiver procedure available for school districts lacking

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1. See CAL. EDUC. CODE §52163(b) (definition of bilingual-bicultural education).

2. See CAL. STATS. 1977, c. 36, §484, at 327-37 (enacting CAL. EDUC. CODE §§52160-52179).

3. See CAL. STATS. 1980, c. 1339, §1, at —.

4. See CAL. EDUC. CODE §52163(a).

5. Compare *id.* with CAL. STATS. 1977, c. 36, §484, at 327 (enacting CAL. EDUC. CODE §52163(a), (b)). See generally CAL. EDUC. CODE §52163(m) (definition of pupil of limited English proficiency).

6. Compare CAL. EDUC. CODE §§52015, 52161-52179 with CAL. STATS. 1977, c. 894, §46, at 2707 and CAL. STATS. 1977, c. 36, §484, at 327-37.

7. See CAL. EDUC. CODE §52164.6.

8. See *id.* §52167.

9. See *id.* §52165.

sufficient certificated bilingual instructors.<sup>10</sup>

The basic bilingual program created by Chapter 1339 requires the student to be taught basic academic subjects in his or her primary language<sup>11</sup> while receiving instruction in English reading, writing, and speaking.<sup>12</sup> Under this program, the amount of instruction the pupil receives in English will increase as the student develops proficiency in the English language.<sup>13</sup> The intent of the basic bilingual program is to hasten the placement of a pupil of limited English proficiency into an English-only classroom by using individualized instruction and continuing evaluation of pupil progress;<sup>14</sup> however, this transfer into an English-only classroom must not be at the expense of the student acquiring basic academic skills.<sup>15</sup>

### *Experimental Bilingual Programs*

Chapter 1339 also allows a school district to create an *experimental bilingual program*<sup>16</sup> designed to expand the learning opportunities of students with limited English proficiency.<sup>17</sup> Experimental programs include (1) innovative programs using new management approaches, team teaching, or other appropriate improvements that are consistent with the basic bilingual requirements,<sup>18</sup> and (2) planned variation programs for the purpose of comparing and improving language skills for those pupils whose English skills are superior to their skills in their primary language.<sup>19</sup> Chapter 1339 further requires that initial guidelines, criteria, and procedures for the experimental programs be developed by the Department of Education no later than March 1, 1981.<sup>20</sup> The implementation of an experimental bilingual program must com-

10. See *id.* §52178.

11. See *id.* §52163(g) (definition of primary language).

12. See *id.* §§52163(a), 52163.5.

13. See *id.* §§52163(a)(2), 52163.5.

14. See *id.* §§52161, 52163.5.

15. See *id.* §52163(a). See generally *id.* §52163(l) (basic skills).

16. See *id.* §52163(c)(1) (definition of experimental bilingual program).

17. See *id.* §52163(c)(1)(A).

18. See *id.* (no State Board of Education approval of an innovative program is required unless the local school board is requesting waivers of certain provisions required by law).

19. See *id.* §52163(c)(1)(B) (statewide limit of 150 classrooms having planned variation programs with no single school district having more than 15 such classrooms).

20. See *id.* §52163(c)(2). The established guidelines must include, but are not limited to the following: (1) a clear statement of purposes, goals, and objectives for planned variation programs and projected outcomes, *id.* §52163(c)(2)(A); (2) a delineated management, staffing, and instructional plan, *id.* §52163(c)(2)(B); (3) pupil identification, diagnosis, and assessment procedures, *id.* §52163(c)(2)(C); (4) evidence of qualified bilingual instructional staff, see *id.* §52163(c)(2)(D); (5) documented community and parent participation and support, *id.* §52163(c)(2)(E); (6) use of state and federal funding, if applicable, *id.* §52163(c)(2)(F); and (7) an evaluation component that controls instructional treatments, instructional engaged time, staffing, pupil language characteristics, achievement, attendance, and related data, *id.* §52163(c)(2)(G).

ply with the primary goal of bilingual education, which is to teach English to pupils of limited English proficiency.<sup>21</sup>

### *Bilingual Learning Programs*

Prior to the enactment of Chapter 1339, only one individual learning program had been established.<sup>22</sup> Chapter 1339 instead creates three bilingual learning programs.<sup>23</sup> The first, a *secondary level language learning program*,<sup>24</sup> is designed to systematically develop the English language skills of a secondary student while providing primary language instructional support to sustain the necessary academic achievement in the areas required for high school graduation.<sup>25</sup> The program is based on the diagnosis of the student's language proficiency and must be conducted as an integral part of an English curriculum for not less than one full period a day.<sup>26</sup> The next program, a *secondary level individual learning program*,<sup>27</sup> is an individualized systematic program that meets the needs of limited English speaking pupils and increases their proficiency in the English language.<sup>28</sup> The third program, an *elementary level individual learning program*,<sup>29</sup> is a program of instruction in which a basic bilingual, or experimental bilingual program is individualized to meet the needs of a pupil with limited English proficiency.<sup>30</sup> Both the secondary level individual learning program and the elementary level individual learning program must comply with federal regulations and guidelines<sup>31</sup> and the elementary level individual learning program must be consistent with the requirements of the basic or experimental bilingual programs.<sup>32</sup>

### *Reclassification*

Existing law requires that school districts conduct an annual census to determine the primary language and primary language skills of en-

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21. *See id.* §52163(c)(4).

22. *See generally* CAL. STATS. 1977, c. 36, §484, at 328 (enacting CAL. EDUC. CODE §52163(f)).

23. *Compare* CAL. EDUC. CODE §52163(d)-(f) *with* CAL. STATS. 1977, c. 36, §484, at 328.

24. *See* CAL. EDUC. CODE §52163(d).

25. *See id.*

26. *See id.*

27. *See id.* §52163(e).

28. *See id.*

29. *See id.* §52163(f).

30. *See id.*

31. *See id.* §52163(e), (f). *See, e.g.,* *Lau v. Nichols*, 414 U.S. 563 (1974); 20 U.S.C. §§1701-1758 (1976) (Equal Education Opportunities Act of 1974).

32. *See* CAL. EDUC. CODE §52163(f).

rolling students.<sup>33</sup> Chapter 1339 expands this procedure to require a more thorough assessment of the pupil's language skills.<sup>34</sup> If a student is found to be of limited English proficiency, Chapter 1339 requires further assessment to determine the pupil's primary language proficiency.<sup>35</sup> When available, parallel measuring devices must be used to compare the student's abilities in both languages.<sup>36</sup> Upon discovery that the pupil has no proficiency in his or her primary language, a more detailed assessment involving consultation with the parent or guardian, teacher, pupil, or others familiar with the pupil's ability must be conducted.<sup>37</sup> If thereafter no proficiency is found to exist, the child is not protected by the provisions of the bilingual programs.<sup>38</sup> An assessment of the pupil's proficiency must be completed within 90 days of the pupil's initial enrollment and must be performed according to the regulations adopted by the district board of education.<sup>39</sup> In addition, Chapter 1339 requires the Department of Education to conduct annually a study to insure the uniformity and impartiality of the assessment procedures.<sup>40</sup> The results of any assessment must be made known to the parent or guardian of the pupil in question.<sup>41</sup> Prior law stated that an enrolling student whose home language was other than English *could* be enrolled in a bilingual program.<sup>42</sup> Chapter 1339 *requires* that a pupil entering the school for the first time be enrolled in a bilingual program if his or her home language is other than English, at least until an assessment of the student's language skills has been conducted.<sup>43</sup>

Existing law requires a reassessment of a pupil's proficiency when a parent or guardian, teacher, or school site administrator claims that there is reasonable doubt about the pupil's designation as limited English proficient.<sup>44</sup> Prior to Chapter 1339, however, no procedure existed requiring pupil reclassification when the pupil became proficient in English language skills.<sup>45</sup> Chapter 1339 now requires school districts to establish criteria to determine when pupils of limited English proficiency have developed the necessary English skills to succeed in an

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33. *See id.* §§52164, 52164.1.

34. *See id.* §52164.1(a), (b).

35. *See id.* §52164.1(c).

36. *See id.*

37. *See id.*

38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.*

42. *See* CAL. STATS. 1978, c. 848, §6, at 2689 (enacting CAL. EDUC. CODE §52164.4).

43. *See* CAL. EDUC. CODE §52164.4.

44. *See id.* §52164.3(a).

45. *Compare id.* §52164.3 with CAL. STATS. 1978, c. 848, §§5-7, at 363.

English-only classroom.<sup>46</sup> The reclassification process must include, but is not limited to, the following: (1) a teacher evaluation;<sup>47</sup> (2) an objective assessment of language proficiency and reading and writing skills;<sup>48</sup> (3) a parental opinion and consultation;<sup>49</sup> and (4) an empirically established range of performance in basic skills, based on nonminority English proficient pupils of the same grade and age, which demonstrates that the pupil is sufficiently proficient in English to succeed in an English-only classroom.<sup>50</sup> The board must adopt the reclassification criteria no later than April 1, 1981,<sup>51</sup> and the superintendent must prepare and distribute to each school district background materials and guidelines for language reclassification by May 1, 1981.<sup>52</sup> In following the board's regulations each school district must, by September 1, 1981, establish the criteria for determining when pupils of limited English proficiency enrolled in a bilingual program have developed the English language skills necessary to succeed in an English-only instructional setting.<sup>53</sup>

### Waivers

Existing law requires that teachers in a bilingual program be certified by the Commission for Teacher Preparation and Licensing as bilingual-crosscultural instructors.<sup>54</sup> A school district may, however, obtain a renewable waiver<sup>55</sup> of that requirement if the district has an insufficient number of qualified bilingual instructors.<sup>56</sup> Prior to Chapter 1339, that waiver was for *one school year only* and could be renewed for no more than three successive school years.<sup>57</sup> Moreover, the waiver procedure was to have expired on September 1, 1980.<sup>58</sup> Chapter 1339 provides for a renewable *two-year* waiver and allows the teacher to work under a bilingual program for four school years commencing with the first year the teacher was under waiver so long as continuing progress toward a certificate of competence is indicated to the board.<sup>59</sup>

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46. See CAL. EDUC. CODE §52164.6.

47. *Id.* §52164.6(a).

48. *Id.* §52164.6(b).

49. *Id.* §52164.6(c).

50. *Id.* §52164.6(d).

51. See *id.* §52164.6.

52. See *id.*

53. See *id.*

54. See *id.* §§44253.5, 52165, 52166, 52172, 52178.

55. See *id.* §52178.

56. See *id.*

57. See CAL. STATS. 1978, c. 1073, §2, at 3293 (amending CAL. EDUC. CODE §52178).

58. See *id.*

59. See CAL. EDUC. CODE §52178. See generally *id.* §44253.5 (requirements for certificate of competence).

All waivers granted will expire no later than the end of the fourth school year the teacher has been under waiver, or June 30, 1984, whichever is earliest.<sup>60</sup> Teachers providing instruction in a bilingual classroom with a waiver, however, must have at least four years to complete their bilingual certification from the first year the waiver was approved.<sup>61</sup> In addition, Chapter 1339 states that no fully certificated teacher who taught in a bilingual program under a waiver may be dismissed solely on the basis that the waiver has expired.<sup>62</sup> Even if that teacher is unable to qualify for a bilingual credential or a bilingual-crosscultural certificate of competence,<sup>63</sup> he or she must retain the status, seniority, and rights of a probationary or permanent employee for the purpose of serving as a monolingual teacher<sup>64</sup> in other programs offered by the school district.<sup>65</sup> A district is not eligible for these waivers if it hired new teachers without making a good faith effort to first recruit and hire certificated bilingual-crosscultural teachers.<sup>66</sup> Moreover, the district must report the number of classrooms for which a bilingual teacher is required, the total number of certificated bilingual-crosscultural teachers employed by district in classroom positions, and, in the event the district requested a waiver, the total number of waivers requested.<sup>67</sup>

Prior to the enactment of Chapter 1339, all waiver applications had to indicate that the teacher had satisfied the competence requirements.<sup>68</sup> Chapter 1339 modifies this application process to require that the applicant teacher make the following progress toward a bilingual-crosscultural certificate of competence or bilingual specialist credential: (1) for the first year no requirement exists;<sup>69</sup> (2) beginning the second year on waivers, the teacher must have competence in language, culture, *or* methodology;<sup>70</sup> (3) beginning the third year there is no additional requirement;<sup>71</sup> and (4) beginning the fourth year, the teacher must be competent in *two* of the three areas listed in (2) above.<sup>72</sup> In lieu of a certificate of competence in culture or methodology,<sup>73</sup> the dis-

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60. *See id.* §52178.

61. *See id.*

62. *See id.* §52172.

63. *See id.* §10103 (bilingual-crosscultural credential).

64. *See id.* §44259 (requirements for a certificated teacher).

65. *See id.* §52172.

66. *See id.* §52178.

67. *See id.*

68. *See* CAL. STATS. 1978, c. 1073, §2, at 3293 (amending CAL. EDUC. CODE §52178).

69. *See* CAL. EDUC. CODE §52178(a).

70. *See id.* §§44253.5, 52178(b).

71. *See id.* §52178(c).

72. *See id.* §§44253.5, 52178(d).

73. *See id.* §§44253.5, 52178.



trict may submit a statement from a bilingual teacher training institution<sup>74</sup> showing that the necessary coursework has been completed.<sup>75</sup> In order to actually receive a certificate of competence, however, the applicant must pass the examinations in language, culture, *and* methodology.<sup>76</sup> In addition, Chapter 1339 requires that an extension of a waiver be given until July 1, 1984, for a teacher instructing in a language when there is no preparation and examination available for obtaining a certificate of competence for bilingual-crosscultural instruction.<sup>77</sup>

### Conclusion

Chapter 1339 seeks to insure that the purpose of the bilingual education program is to teach students of limited English speaking abilities the necessary skills to become proficient in the English language.<sup>78</sup> Chapter 1339 amends the Chacon-Moscone Bilingual-Bicultural Act of 1976 to eliminate full and partial bilingual programs and to institute a basic bilingual program.<sup>79</sup> The Chapter also allows a school district to create an experimental bilingual program.<sup>80</sup> In addition, Chapter 1339 requires school districts to establish criteria to use for reclassifying pupils of limited English proficiency into English-only classrooms as soon as the student acquires sufficient skills to succeed in an English-only environment,<sup>81</sup> and extends the waiver procedure available to school districts lacking sufficient certificated bilingual-crosscultural instructors.<sup>82</sup> The provisions of Chapter 1339 become effective on July 1, 1981,<sup>83</sup> except that the provisions of the new basic and experimental bilingual programs, reclassification criteria, and waiver criteria become effective on January 1, 1981.<sup>84</sup>

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74. *See id.* §10104 (institution must be approved by the Commission for Teacher Preparation and Licensing).

75. *See id.* §52178.

76. *See id.*

77. *See id.* §52178.5 (exception provides that no waiver will be granted for teachers in classrooms using Spanish or the Cantonese dialect of Chinese).

78. *See id.* §§52161, 52163(d)-(f).

79. *Compare id.* §52163(a) with CAL. STATS. 1977, c. 36, §484, at 327.

80. *See* CAL. EDUC. CODE §52163(c).

81. *See id.* §52164.6.

82. *See id.* §52178.

83. *See* CAL. STATS. 1980, c. 1339, §39(a), at —.

84. *See id.* §39(b), at —.

## Education; disclosure of student records—civil actions

Education Code §§67137, 67137.5, 67138, 67139, 67139.5, 67147.5 (new).

AB 3107 (Bates); STATS 1980, Ch 1034

Support: California State Student Association; Department of Finance; Office of the Governor, Legal Affairs Unit

Under federal and state law, a college or university may not deny a student access to inspect or review the contents of the student's records that are kept by the institution.<sup>1</sup> In *Girardier v. Webster College*,<sup>2</sup> however, the United States Court of Appeals held that the federal Family Educational Rights and Privacy Act<sup>3</sup> did not confer on students a private remedy to enforce the provisions of the act.<sup>4</sup> With the enactment of Chapter 1034, students in the California State Universities and Colleges<sup>5</sup> are empowered to bring a civil action to redress violations of a student's rights of access and review.<sup>6</sup> Students of the University of California, however, will not have this power unless the Regents of the University of California adopt a resolution making the provisions applicable to these students.<sup>7</sup>

Chapter 1034 permits an individual to bring a civil action for an injunction or for damages against a college or university when the institution takes any action that conflicts with any rule or regulation adopted by the governing board of the institution pursuant to federal or state law<sup>8</sup> controlling the privacy of student records.<sup>9</sup> The court will hear the action de novo and the burden is upon the institution to show that it did not violate the rule or regulation.<sup>10</sup> The court has the power to examine the disputed records *in camera* to determine if any of the information in the records is confidential or unrelated to the complaint.<sup>11</sup> Before a student may seek an injunction or damages, however, he or she must first exhaust all administrative remedies provided by the insti-

1. See 20 U.S.C. §1232g (1976); CAL. EDUC. CODE §§67100, 67110, 67121, 67122, 67123, 67124, 67140, 67143. See generally 45 C.F.R. §§99.1-99.67 (1980).

2. 563 F.2d 1267 (8th Cir. 1977).

3. Family Educational Rights and Privacy Act of 1974, Pub. L. No. 93-380, 93 Stat. 644.

4. See *Girardier v. Webster College*, 563 F.2d 1267, 1276-77 (8th Cir. 1977).

5. See CAL. EDUC. CODE §67146.

6. See *id.* §§67137, 67138.

7. See *id.* §67147. The provisions of Chapter 1034 do not apply to private universities and colleges. See *id.* §67100.

8. See 20 U.S.C. §1232g (1976); CAL. EDUC. CODE §§67100-67147.5.

9. See CAL. EDUC. CODE §§67137, 67138.

10. See *id.* §67137.5.

11. See *id.*

tution.<sup>12</sup> In addition, all administrative remedies provided by the United States Department of Education must also have been exhausted prior to an action for damages.<sup>13</sup> Further, a person is not authorized to bring suit for any injury sustained as a result of violations of rules enacted by the institution pursuant to federal or state laws if the injury occurred before January 1, 1981.<sup>14</sup>

When a court is hearing an action to obtain an injunction against a college or university, the court may enjoin the institution from withholding student records and order the institution to produce the improperly held records for the complainant.<sup>15</sup> The court may award reasonable attorney's fees and costs to the complainant if (1) the complainant prevails, (2) a permanent injunction is granted, and (3) damages are not awarded.<sup>16</sup> Reasonable attorney's fees and costs may also be awarded if the court awards damages and determines that the violation of the rules enacted by the institution pursuant to federal or state laws was either the result of arbitrary or capricious conduct on the part of the college or university or by a college or university employee acting in his or her official capacity.<sup>17</sup> If the college or university or its employee prevails in the civil action, and the court finds that the suit was not brought with reasonable cause, the court may assess upon the complainant the reasonable attorney's fees and costs incurred by the college or university or the employee.<sup>18</sup> The award of attorney's fees is made expressly ancillary to the main action; no new cause of action is created for recovery of attorney's fees.<sup>19</sup> Further, the provisions of the Donahoe Higher Education Act<sup>20</sup> controlling student records<sup>21</sup> are not intended to limit the privacy rights afforded to a student or to a student's parents by any other provisions of the law.<sup>22</sup>

When any person, other than an employee of the state or of a local governmental agency acting solely in his or her official capacity, intentionally discloses confidential information from a student record of the complainant without the written consent of the complainant and when this person knew or reasonably should have known that the informa-

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12. *See id.* §§67137, 67138.

13. *See* 20 U.S.C. §1232g(c) (1976); 45 C.F.R. §§99.60-99.67 (1980) (enforcement); CAL. EDUC. CODE §67138.

14. *See* CAL. EDUC. CODE §67147.5.

15. *See id.* §67137.5.

16. *See id.* §67139(a).

17. *See id.*

18. *See id.* §67139(b).

19. *See id.*

20. *See generally id.* §§66000-67147.5 (Donahoe Higher Education Act).

21. *See generally id.* §§67100-67147.5.

22. *See id.* §67147.5.

tion should not have been disclosed without written permission, this person will be subject to a civil action for invasion of privacy.<sup>23</sup> If the complainant prevails, the court will award exemplary damages, attorney's fees, and reasonable costs in addition to any special or general damages awarded.<sup>24</sup> Apparently, the ability of a student to state a cause of action for this invasion of privacy caused by intentional disclosure is founded upon the holding of the California Court of Appeal in *Porten v. University of San Francisco*.<sup>25</sup>

23. See *id.* §67139.5.

24. See *id.*

25. 64 Cal. App. 3d 825, 832, 134 Cal. Rptr. 839, 843-44 (1976). See generally 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §334 (8th ed. 1974), (Supp. 1980); 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §274A (8th ed. 1974), (Supp. 1980).

## Education; Child Care and Development Services Act

Education Code §§8200-8214, 8240-8256, 8381-8384, 8400-8460 (repealed); §§8200-8208, 8210-8214, 8220-8224, 8225, 8230-8233, 8235, 8240-8242, 8250-8252, 8260-8264, 8265-8273, 8275-8279, 8280, 8285-8289 (new); §§8328, 8360, 33420 (amended); headings of Article 4, Article 5, Article 7, and Chapter 2 (amended and renumbered).

SB 863 (Sieroty); STATS 1980, Ch 798

*(Effective July 28, 1980)*

Support: California Children's Lobby; California State Parent and Teachers Association; California State Student Association; Department of Finance; Department of Social Services; Governor's Advisory Committee on Child Care; Northern California Association for Education for Young Children; Private Nursery School Association; Women in Politics

*Expands the use of resource and referral programs previously tested under the Alternative Child Care Program; provides more comprehensive program of child care for migrant children, children with special needs, and children who require care beyond the normal workday; establishes a more flexible means of financing by permitting extensive use of alternative payment programs; coordinates the administration of public and private services; reorganizes priorities for state and federally subsidized child development services; amends the requirements for the issuance of a regular child development permit.*

California child care programs have been criticized as administratively overburdened, poorly coordinated, inadequately funded, and excessively costly per unit of service.<sup>1</sup> Chapter 798, enacting the Child Care and Development Services Act, seeks to deal with these problems.<sup>2</sup>

The new law expands and reorganizes the services provided under prior law by developing more comprehensive programs of child care,<sup>3</sup> coordinated with the extensive use of resource and referral services<sup>4</sup> and alternative payment programs.<sup>5</sup> Chapter 798 also provides more effective funding to encourage the offering of a variety of services.<sup>6</sup>

### *Resource and Referral Services*

Prior to the enactment of Chapter 798, a limited attempt was made to inform parents of the local services available to meet their needs by furnishing resource and referral centers under pilot programs.<sup>7</sup> Chapter 798 introduces a new program of resource and referral guidance for *all* services administered by the Department of Education under the Child Care and Development Services Act.<sup>8</sup> This new program includes (1) an up-to-date resource file that provides general information about each available program in the geographic area,<sup>9</sup> (2) a confidential referral process including a telephone referral system,<sup>10</sup> and (3) an expanded publicity program designed to maximize parental knowledge and use of all available programs.<sup>11</sup> Moreover, Chapter 798 expands the class of potential users by broadening the definition of a parent from someone with legal custody over a child to someone who lives with and is responsible for the care and welfare of a child.<sup>12</sup>

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1. See *Joint Hearing on Administration and Financing of Subsidized Child Care Systems—Implications of Alternative Systems before the California Assembly Committee on Human Resources, the Ways and Means Subcommittee No. 1 on Health and Welfare and the Ways and Means Subcommittee No. 2 on Education*, Oct. 17, 1978, at 230-35 (briefing paper).

2. See CAL. EDUC. CODE §§8200-8289.

3. Compare *id.* §§8230-8233, 8240-8242, 8250-8252 with CAL. STATS. 1976, c. 1010, §2, at 2554-75 (enacting CAL. EDUC. CODE §§8200-8213, 8240-8256, 8280-8285, 8320-8330, 8360-8370, 8380-8384, 8390-8397).

4. See CAL. EDUC. CODE §§8210-8214.

5. See *id.* §§8220-8224.

6. See *id.* §§8202(g), 8275-8279.

7. See *id.* §8436. See generally CAL. STATS. 1977, c. 36, §399, at 283, 287-88 (enacting CAL. EDUC. CODE §§8400-8450) (the Alternative Child Care Program).

8. See CAL. EDUC. CODE §§8210-8214.

9. See *id.* §8212(a).

10. See *id.* §8212(b).

11. See *id.*

12. Compare *id.* §8208(x) with CAL. STATS. 1976, c. 1010, §2, at 2556 (enacting CAL. EDUC. CODE §8207).

### *Programs of Care*

In addition, Chapter 798 adopts the approach of the Alternative Child Care Program<sup>13</sup> by emphasizing that child care should be made available beyond the normal workday period.<sup>14</sup> This is consistent with the legislative intent that parents should have the opportunity to choose from a range of services the type of care most suited to their needs.<sup>15</sup> General child care and development programs may be designed to provide weekend care, night shift care, worksite care, temporary emergency care, and care for ill children.<sup>16</sup> All programs must, however, include activities appropriate to the age and stage of development of the children and must be supervised.<sup>17</sup> Moreover, these programs must incorporate parental education and involvement, health services, provision for nutritional needs, social services that include identification of child and family needs, and staff training and career ladder opportunities.<sup>18</sup>

Chapter 798 also specifically recognizes the need for programs designed for children with special needs,<sup>19</sup> including (1) infants to the age of two years, (2) limited-English-speaking and non-English-speaking children,<sup>20</sup> (3) handicapped children,<sup>21</sup> and (4) children at risk of neglect, abuse, or exploitation.<sup>22</sup> Chapter 798 provides that, to the greatest extent possible, children with special needs must have equal access to programs for nonhandicapped children whenever their needs can be appropriately met.<sup>23</sup> When a child cannot be served by a regular child care program because of a severe disabling condition, Chapter 798 directs the Superintendent of Public Instruction to establish alternative placements as expansion funds become available.<sup>24</sup> All child care and development programs, however, must include plans for the care of sick children<sup>25</sup> and must afford any handicapped child all the rights and protections guaranteed by state and federal law concerning

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13. *See* CAL. STATS. 1977, c. 36, §399, at 283; CAL. EDUC. CODE §§8400-8450 (the Alternative Child Care Program was enacted in 1977, repealed in 1979, and reenacted in 1980 by SB 1343).

14. *Compare* CAL. EDUC. CODE §8241 with CAL. STATS. 1977, c. 36, §20, at 96 (amending CAL. EDUC. CODE §8211).

15. *See* CAL. EDUC. CODE §8202(g).

16. *See id.* §8241.

17. *See id.* §8240(a), (b).

18. *See id.* §8240(c)-(g).

19. *See id.* §§8208(k), 8250-8252.

20. *See id.* §8208(w).

21. *See id.* §8208(r), (s).

22. *See id.* §8208(j), (k).

23. *See id.* §8250(a).

24. *See id.* §8250(b).

25. *See id.* §8251.

individuals with exceptional needs.<sup>26</sup>

Prior to the enactment of Chapter 798, only limited attention was given to the particular needs of migrant children.<sup>27</sup> Chapter 798 expands this program and sets a first-year goal of at least one migrant infant care center in every publicly subsidized farm labor camp not already providing infant care.<sup>28</sup> Moreover, Chapter 798 provides for the establishment of additional infant, preschool, and school-age programs, with emphasis on out-of-camp programs,<sup>29</sup> and provides for annual reimbursement of the approvable start-up and close-down costs of the centers.<sup>30</sup> Priority funding will be given to migrant child care agencies having programs that include social services, health services, and staffing that reflects the linguistic and cultural background of the children.<sup>31</sup> Social services must include identification of family needs with follow-up referrals as appropriate,<sup>32</sup> a bilingual liaison between parents and the center,<sup>33</sup> and liaison between the agency and the relevant community agencies and organizations.<sup>34</sup> Health services must include health and dental screening, follow-up treatment, recording, and tracking for all children enrolled in migrant child care and development programs,<sup>35</sup> and bilingual health personnel must be available to each migrant care program site.<sup>36</sup> As a matter of administration, Chapter 798 provides that funding and records are to follow the child from one care provider to another.<sup>37</sup>

### *Financing*

In an effort to allow for maximum parental choice between available programs,<sup>38</sup> Chapter 798 also adopts a system of alternative payments.<sup>39</sup> Alternative payments include payments made by one child care agency to another agency or child care provider for the provision of child care services and payments made by an agency to a parent for

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26. *See id.* §8250(c). *See, e.g.,* 20 U.S.C. §§1401-1461 (1976) (provisions for the education of the handicapped, including special centers, services and programs, research projects, training personnel, and financial assistance).

27. *See* CAL. STATS. 1977, c. 642, §1, at 2141.

28. *See* CAL. EDUC. CODE §8233(a).

29. *See id.* §8233(b).

30. *See id.* §8233(d).

31. *See id.* §8232.

32. *See id.* §8232(a)(3).

33. *See id.* §8232(a)(1).

34. *See id.* §8232(a)(2).

35. *See id.* §8232(d).

36. *See id.* §8232(c)(1).

37. *See id.* §8232(d).

38. *See id.* §8220.

39. *See id.* §§8220-8224.

the parent's purchase of child care and development services.<sup>40</sup> These payments may be made only for services provided in licensed centers or family child care homes, for care provided in the child's home, or for the provision of other types of care conforming to applicable law<sup>41</sup> and may take the form of a subsidy that will follow the family from one provider to another within a given alternative payment program.<sup>42</sup> It is unclear, however, whether this subsidy must be paid to the family itself or to the provider.<sup>43</sup>

In addition, Chapter 798 states that in order to offer maximum support for parents and providers, alternative payment programs must have access to resource and referral services.<sup>44</sup> When no established program of resource and referral exists, the alternative payment program will supply similar services, including professional and technical assistance and information for providers as well as information for parents to assist them in their choice of programs.<sup>45</sup>

Apparently, in response to criticism that prohibitive costs have prevented some rural areas from starting needed programs,<sup>46</sup> Chapter 798 now specifically permits the Superintendent of Public Instruction to reimburse child care agencies for start-up costs,<sup>47</sup> to provide grants and loans for renovations and repairs,<sup>48</sup> and to fund capital outlays in given situations.<sup>49</sup> A revolving loan fund has been established to provide loans to improve child care facilities to meet state and local health and safety standards.<sup>50</sup> Also, funds are to be appropriated for the state purchase of relocatable child care and development facilities to be leased to agencies in geographic areas presently without care facilities.<sup>51</sup>

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40. *See id.* §8208(b).

41. *See id.* §8221. *See also* 5 CAL. ADM. CODE §§18000-18024 (campus child development programs), 18140-18174 (school-age parenting and infant development programs).

42. *See* CAL. EDUC. CODE §8220(a).

43. *See id.* §8220.

44. *See id.* §8220.5.

45. *See id.*

46. *See Joint Hearing on Administration and Financing of Subsidized Child Care Systems—Implications of Alternative Systems before the California Assembly Committee on Human Resources, the Ways and Means Subcommittee No. 1 on Health and Welfare and the Ways and Means Subcommittee No. 2 on Education*, Oct. 17, 1978, at 116-17, 233 (statement of Linda Almdale, program administrator of a rural innovative program, and briefing paper).

47. *See* CAL. EDUC. CODE §8275.

48. *See id.* §8276.5.

49. *See, e.g., id.* §§8277-8277.4.

50. *See id.* §8277.2.

51. *See id.* §§8276.5, 8277.7(b).



### Administration

Generally, only those persons holding a regular child care and development permit may be employed in a child care and development program.<sup>52</sup> Under prior law, any person holding a teaching credential was also deemed to hold a regular child development permit.<sup>53</sup> Chapter 798 instead requires that, to hold such a permit, a person must have 12 units of training or two years experience in early childhood education or in a child care and development program,<sup>54</sup> and also must have either (1) a credential authorizing teaching service in elementary schools or (2) a single subject credential in home economics.<sup>55</sup> Regulations that govern staffing and group size ratios<sup>56</sup> may be waived, however, if there are no facilities in the area able to meet the special needs of particular children or if subsidized children comprise a majority of the enrollment.<sup>57</sup>

Further, Chapter 798 changes the priority for state and federally subsidized child development services.<sup>58</sup> First priority will now be given to recipients of child protective services for children who are neglected, abused, or at risk of abuse or neglect, and who are referred, in writing, by a legal, medical, social service, or public agency.<sup>59</sup> Priority will no longer be given to children of single parent families,<sup>60</sup> but will instead be given to eligible families<sup>61</sup> with the lowest gross monthly income who are also recipients of (1) aid to families with dependent children, (2) state supplementary program for aged, blind, and disabled, (3) work incentive programs, or (4) comprehensive employment and training programs.<sup>62</sup>

### Conclusion

Chapter 798 incorporates many of the ideas and programs tested

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52. *See id.* §8360.

53. *See* CAL. STATS. 1977, c. 36, §36, at 102 (amending CAL. EDUC. CODE §8360).

54. *See* 5 CAL. ADM. CODE §80105 (definition of course work, year of experience, and general education).

55. *See* CAL. EDUC. CODE §8360.

56. *See id.*; 5 CAL. ADM. CODE §§18168 (personnel provisions), 18203-18208 (staffing ratios).

57. *See* CAL. EDUC. CODE §8242.

58. *Compare id.* §8263(b) with CAL. STATS. 1977, c. 36, §26, at 97 (amending CAL. EDUC. CODE §8248).

59. *See* CAL. EDUC. CODE §8263(b)(1).

60. *See* CAL. STATS. 1977, c. 36, §26, at 97.

61. *See* CAL. EDUC. CODE §8263(a) (definition of eligible families).

62. *See id.* §8263(b)(1), (2). *See generally* 29 U.S.C. §§801-999 (1976) (comprehensive employment and training programs); CAL. UNEMP. INS. CODE §§5200-5202 (work incentive programs); CAL. WELF. & INST. CODE §§11200-11268 (aid to families with dependent children), 11300-11310 (work incentive programs), 12000-12351 (state supplementary program for aged, blind, and disabled).

under the Alternative Child Care Program<sup>63</sup> and attempts to provide a comprehensive, coordinated, and cost-effective system of child care.<sup>64</sup> The new Child Care and Development Services Act introduces a resource and referral system that will allow for greater utilization of all programs,<sup>65</sup> and provides new programs for children with special needs,<sup>66</sup> migrant children,<sup>67</sup> and children who need care beyond the usual workday.<sup>68</sup> Priority has been directed first to prevention of child abuse and then to low-income families.<sup>69</sup> As a means of providing for maximum parental choice, alternative payments will be available.<sup>70</sup> Moreover, existing programs, both public and private, are continued and coordinated within the provisions of this chapter.<sup>71</sup>

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63. Compare CAL. EDUC. CODE §§8400-8450 with CAL. STATS. 1977, c. 36, §399, at 283.

64. See CAL. EDUC. CODE §8201(a).

65. See *id.* §§8210-8214.

66. See *id.* §§8250-8252.

67. See *id.* §§8230-8233.

68. See *id.* §8241.

69. See *id.* §8263(b)(1).

70. See *id.* §8220.

71. See *id.* §§8208(h), 8225, 8235, 8279.

## Education; teacher preparation—securing personal information

Education Code §44341 (amended).

SB 1883 (Dills); STATS 1980, Ch 753

Support: Department of Finance

Prior to the enactment of Chapter 753, the Commission on Teacher Preparation and Licensing (hereinafter referred to as the Commission) was authorized to secure information, records, reports, and other data relative to the identification or fitness of any applicant for a credential, from any agency or department of the state.<sup>1</sup> With the enactment of Chapter 753, this information may be obtained only for the limited purpose of ascertaining the moral character and true identity of the holder of a credential or of an applicant for the issuance or renewal of a credential.<sup>2</sup> In addition, the application for a credential now must contain notice that the information provided by the applicant is subject to

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1. See CAL. STATS. 1976, c. 1010, §2, at 3280 (enacting CAL. EDUC. CODE §44210). See generally 37 OP. ATT'Y GEN. 201 (1961) (investigation of an applicant is proper).

2. Compare CAL. EDUC. CODE §44341(a) with CAL. STATS. 1976, c. 1010, §2, at 3280.

investigation and verification for this limited purpose.<sup>3</sup> Moreover, information may be obtained from *any* political subdivision<sup>4</sup> of the state, whether chartered by the state or not.<sup>5</sup>

An applicant will be deemed to have given consent for the securing and disclosure of information to the Commission for the sole purpose of ascertaining that person's moral character and true identity.<sup>6</sup> Additionally, the Department of Justice will furnish any information pertaining to an applicant on record in its office upon the request of the Commission or its authorized representative.<sup>7</sup> Information that may compromise or prejudice an ongoing "criminal investigative matter," however, may be withheld by the Department of Justice until the matter is completed.<sup>8</sup> Chapter 753 further provides that the Commission must maintain the confidentiality of the information received in accordance with the Information Practices Act of 1977.<sup>9</sup>

Existing law authorizes the Commission, upon written request by any private school authority, to release to that private school authority information and other data relative to the identification or fitness of any applicant for a teaching position in the private school;<sup>10</sup> but with the enactment of Chapter 753, the written consent of an applicant now is required before the information may be disclosed.<sup>11</sup> Disclosure will not be permitted, however, if prohibited by any other provision of law.<sup>12</sup>

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3. See CAL. EDUC. CODE §44341(e).

4. See generally 72 C.J.S. *Political-Politics* §223.

5. See CAL. EDUC. CODE §44341(a). See, e.g., CAL. STATS. 1976, c. 1010, §2, at 3280 (includes state hospitals); 72 C.J.S. *Political-Politics* §223 (includes Internal Revenue Service and municipalities).

6. See CAL. EDUC. CODE §44341(b). But see text accompanying notes 10-11 *infra*.

7. See CAL. EDUC. CODE §44341(c).

8. See *id.* See generally CAL. PENAL CODE §11076.

9. See CAL. EDUC. CODE §44341(a). See generally *id.* §§1798-1798.76 (Information Practices Act of 1977).

10. See *id.* §44341(d).

11. Compare *id.* with CAL. STATS. 1976, c. 1010, §2, at 3280.

12. See CAL. EDUC. CODE §44341(d).

## Education; schools—pupil suspension

Education Code §48903 (amended).

SB 1247 (Ayala); STATS 1980, Ch 73

(Effective April 24, 1980)

Chapter 73 was enacted in an apparent effort to maintain adequate standards of procedural due process when a pupil is suspended from attendance at school<sup>1</sup> and to allow for greater procedural flexibility to avoid hindering the efficiency of the school staff.<sup>2</sup> In an apparent response to a recent opinion of the Attorney General.<sup>3</sup> Chapter 73 clarifies existing law concerning a principal's authority to designate a person to carry out suspension procedures even when the principal is present on school grounds,<sup>4</sup> and to permit a pupil to waive the right to an informal conference<sup>5</sup> when that student has been suspended without a conference due to an emergency situation.<sup>6</sup>

In addition, Chapter 73 more clearly defines a "principal's designee" as an administrator or, if there is not a second administrator at the school site, as a certificated person specifically designated in writing by the principal to assist with disciplinary procedures.<sup>7</sup> The principal may appoint only one person at a time to serve as designee throughout the school year, and that person's name must be on file in the principal's office.<sup>8</sup> The school principal's designee is authorized to suspend pupils or to conduct pre-suspension conferences irrespective of the principal's presence on school grounds.<sup>9</sup>

Existing law requires that an informal conference precede pupil suspension.<sup>10</sup> Currently, however, the principal or the principal's designee may forgo the presuspension hearing if it is determined that an emergency situation exists.<sup>11</sup> Under existing law, if a pupil is suspended without a hearing, a conference is to be held within two school days from the day the suspension is ordered.<sup>12</sup> Chapter 73 supplements this provision by including a requirement that both the parent and the pupil

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1. See *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *Abella v. Riverside Unified School Dist.*, 65 Cal. App. 3d 153, 168, 135 Cal. Rptr. 177, 186 (1976); CAL. EDUC. CODE §48903(b), (c). See generally 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §315 (disciplinary action against students) (8th ed. 1974), (Supp. 1980); 10 PAC. L.J., REVIEW OF SELECTED 1978 CALIFORNIA LEGISLATION 449 (1979) (pupil discipline in public schools).

2. See generally 62 OP. ATT'Y GEN. 399 (1979) (authority to suspend).

3. See *Goss v. Lopez*, 419 U.S. 565, 583 (1975); 62 OP. ATT'Y GEN. 399 (1979) (authority to suspend). Compare CAL. EDUC. CODE §48903(b), (c) with CAL. STATS. 1978, c. 668, §3, at 2149. See generally Comment, *Due Process in School Discipline: The Effect of Goss v. Lopez*, 12 SAN DIEGO L. REV. 912 (1975); Senator Ruben S. Ayala, Press Release, April 25, 1980.

4. See CAL. EDUC. CODE §48903(a); 62 OP. ATT'Y GEN. 399 (1979) (authority to suspend). See generally CAL. EDUC. CODE §48900 (grounds for suspension).

5. See CAL. EDUC. CODE §48903(c).

6. See *id.* (definition of emergency situation).

7. Compare *id.* §48903(i) with CAL. STATS. 1978, c. 668, §3, at 2149.

8. See CAL. EDUC. CODE §48903(i).

9. See *id.* §48903(b).

10. See *id.*

11. See *id.* §48903(c).

12. See *id.*

be notified of the pupil's right to return to school for a conference.<sup>13</sup> Moreover, this two day period may be extended if the pupil either waives the right to the conference or is physically unable to attend for any reason including, but not limited to, incarceration or hospitalization.<sup>14</sup> In the latter case, the conference must be held as soon as the pupil is physically able to return to school for the conference.<sup>15</sup> Finally, Chapter 73 repeals the requirement that a certificated school employee be present at the conference.<sup>16</sup>

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13. *See id.*

14. *See id.*

15. *See id.*

16. *Compare id.* §48903(b) with CAL. STATS. 1978, c. 668, §3, at 2149.