

Memorandum

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FROM: Department of Consumer Affairs Legal Office

**SUBJ: Utilization of Speech-Language Pathologists and
Audiologists in Nonpublic Schools**

A. ISSUE

In 2004, Education Code Section 56366.1(n)(1) was amended to permit nonpublic schools certified by the Superintendent of Public Instruction to utilize special education staff holding licenses or credentials equivalent to those professionals performing the same services in public schools. A question has arisen as to whether these nonpublic schools can employ speech-language pathologists and audiologists who hold credentials issued by the Commission on Teacher Credentialing.

B. CONCLUSION

Certified nonpublic schools can utilize speech-language pathologists and audiologists who either hold a license issued by the Speech-Language Pathology and Audiology Board ("Board") or who have been credentialed by the Commission on Teacher Credentialing.

C. DISCUSSION

Speech-language pathologists and audiologists can legally provide professional services in public schools if they are licensed by the Board. They may also provide professional services in public schools if they are not licensed by the Board, but hold a credential from the Commission on Teacher Credentialing and their practice is conducted within the confines or jurisdiction of the public school. (B. & P. Code § 2530.5(c).)

In 2004, Education Code Section 56366.1(n)(1) was modified to read in part as follows:

Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold ~~a current valid California credential or license a certificate, permit, or other document equivalent to that which staff in a public school are required to hold~~ in the service rendered shall be eligible to receive certification. . . .

The Legislative Counsel's digest stated that: "This bill would require that only those nonpublic, nonsectarian schools . . . that utilize staff who hold a certificate, permit, or other document equivalent to that which staff in a public school would be required to hold may be certified."

Staff in public schools can either be licensed by the Board or hold an appropriate credential. Thus, Education Code Section 56366.1(n)(1) would appear to permit professionals holding the same credentials or licenses to also perform professional services in nonpublic, nonsecretarial schools.

The key is whether the professional working in a nonpublic school holds the same *credential* as his or her public school counterpart. The fact that Business and Professions Code Section 2530.5(c) limits the practice of credential professionals to public schools is not contrary to this interpretation. It would make little sense to say that credentialed professionals can practice in nonpublic schools, but then turn around and say they cannot practice there because these same professionals can only practice in public schools. This would defeat the intent of Education Code Section 56366.1(n)(1).

In addition, Education Code Section 56366.1(n)(1) contains the language "Notwithstanding any other provision of law." This means that any other provision of law that would *not* permit the practice of credentialed professionals in nonpublic schools is superceded by Section 56366.1(n)(1). "The phrase 'notwithstanding any other provision of law' is a very comprehensive phrase. [It] signals a broad application overriding all other code sections unless it is specifically modified by use of a term applying it only to a particular code section or phrase." (*Cutler v. Cutler*, 79 Cal. App. 4th 460, 475, 94 Cal. Rptr. 2d 156 (2000), quoting, *People v. Tillman*, 73 Cal. App. 4th 771, 86 Cal. Rptr. 2d 715 (1999).)

On the other hand, the limitation in Section 2530.5(c) on *where* the credentialed speech-language pathologist or audiologist may practice should not be ignored altogether. The credentialed professional is to limit his or her practice to the particular school system in which he or she is employed. This same limitation should also apply for nonpublic schools. A contrary interpretation would mean that a credentialed professional could practice in an unlicensed capacity and provide services to the general public. This result was clearly not intended by the Legislature.

For these reasons, it appears that the clear intent of the Legislature and the plain language of the statute is to permit speech-language pathologists and audiologists who hold appropriate credentials from the Teacher Credentialing Commission to provide professional services in nonpublic schools.

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