

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1360 (Bonta) – As Amended March 30, 2017

SUBJECT: Charter schools: pupil admissions, suspensions, and expulsions

SUMMARY: Modifies the provisions for extending preferences for charter school admissions and establishes requirements for charter school suspension and expulsion procedures.

Specifically, **this bill:**

- 1) Expresses the intent of the Legislature to ensure the following:
 - a) Equal access to interested pupils at charter schools and prohibit practices that discourage enrollment or disproportionately push out segments of already enrolled pupils;
 - b) That charter school discipline policies are fair and transparent;
 - c) That charter schools operate within the system of common schools by remaining "... free, nonsectarian and open to all students..." as stated in *Wilson v. State Board of Education (1999)*;
 - d) Gather data on pupil turnover in the charter school environment.
- 2) Authorizes additional preferences for enrollment in a charter school in accordance with all of the following:
 - a) Each type of preference shall be approved by the charter school at a public hearing;
 - b) Preferences shall be consistent with federal law, the California Constitution, and Education Code Section 200;
 - c) Preferences shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program;
 - d) Preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.
- 3) Requires a charter school petition's descriptions of suspension and expulsion procedures to do the following:
 - a) Identify the list of acts for which a pupil enrolled in a charter school may be suspended or expelled;
 - b) Identify suspension and expulsion procedures, including the maximum length of time for which a pupil may be suspended. Requires the procedures to also accommodate the rights of pupils with disabilities, consistent with federal law.

- 4) Requires charter school suspension and expulsion procedures to meet the following minimum requirements:
 - a) The procedures shall comply with federal and state constitutional due process requirements, including providing notice and an opportunity to be heard;
 - b) For expulsions, the procedures shall ensure all of the following:
 - i) The pupil is entitled to a formal hearing to determine if the pupil shall be expelled;
 - ii) The pupil shall be provided written notice of the hearing, which, at a minimum, identifies the date and place of the hearing, a statement of specific facts and charges upon which the proposed expulsion is based, a copy of the disciplinary rules that relate to the alleged violation, and the notice of the procedures that will govern the hearing;
 - iii) At the hearing, the pupil or the pupil's parent or guardian, or the pupil's educational rights holder (if the pupil is a foster child or youth or a homeless child or youth), has a right to appear in person or to be represented by an attorney licensed to practice law in California or by a non-attorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including through witnesses. A record of the hearing shall be made so that a reasonably accurate and complete written transcription of the proceedings can be made;
 - iv) If the individual, panel, or board conducting the formal hearing determines that the pupil shall be expelled, a written decision must be issued identifying the basis for the decision, including all facts in support of the decision, which shall be based upon substantial evidence relevant to the charges adduced at the formal hearing and not consist solely of hearsay evidence;
 - v) Written notice of any decision to expel shall be sent by the charter school to the pupil or the pupil's parent or guardian, or the pupil's educational rights holder (if the pupil is a foster child or youth or a homeless child or youth), and shall include notice of the right to appeal the expulsion to the county board of education and notice of the educational placement to be provided to the pupil during the time of expulsion;
 - vi) A pupil may appeal the expulsion to the county board of education with jurisdiction in the county in which the charter school is located;
 - vii) The charter school shall ensure no loss of instructional days for the pupil pending final determination of the expulsion, including an appeal, if one is filed, by providing the pupil access to educational programming;
 - viii) Upon final determination to expel a pupil, the charter school must ensure the pupil is provided access to educational programming until the charter school has confirmed the pupil has been provided a suitable educational placement.

- 5) Specifies that a pupil shall not be removed, involuntarily dismissed, disenrolled, or terminated from a charter school unless the charter school has complied with all of the expulsion procedures specified.
- 6) Specifies that nothing in this bill is intended to restrict or otherwise limit the rights available to pupils in charter schools under other federal and state law. All such protections apply with full force and effect.
- 7) Specifies that a charter school may encourage parental involvement, but must notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

EXISTING LAW:

- 1) Establishes the Charter Schools Act of 1992 which authorizes a school district, a county board of education or the state board of education (SBE) to approve or deny a petition for a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved student learning. (EC 47600 and 47601)
- 2) Requires a charter school to admit all pupils who wish to attend the school. Specifies that if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance must be determined by a public random drawing. Specifies that preference shall be extended to pupils currently attending the charter school and pupils who reside in the county. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law. (EC 47605)
- 3) Establishes equal rights and opportunities in the educational institutions of the state for all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other any characteristic that is considered in the definition of hate crimes. (EC 200)
- 4) Requires a governing board of a school district to hold a public hearing on the provisions of the charter no later than 30 days after receiving a petition and either grant or deny the charter within 60 days of receipt of the petition. Specifies that the governing board of a school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings setting forth specific facts to support the findings, including the finding, among others, that the petition does not contain reasonably comprehensive description of the procedures by which pupils can be suspended or expelled. (EC 47605)
- 5) Specifies that a charter school shall comply with charter school laws but is otherwise exempt from the laws governing school districts, except for all of the following: (EC 47610)
 - a) Teacher participation in the State Teachers' Retirement System (STRS) and the Public Employees' Retirement System (PERS) if the charter chooses to offer coverage in either or both of those systems;
 - b) Access to loans from the Charter School Revolving Loan Fund;

- c) All laws establishing minimum age for public school attendance;
 - d) The California Building Standards Code.
- 6) Authorizes or requires a principal or a superintendent of schools to suspend or expel a student in a non-charter school committing any of a number of specified acts. (EC 48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915)
 - 7) Specifies the number of days a suspension can occur, the procedures for notifying parents or guardians and the requirement to hold a conference. (EC 48903, 48911)
 - 8) Specifies the process for expulsion, the requirement for the governing board to recommend a plan of rehabilitation for the pupil at the time of the expulsion order, the process for readmission, the requirement for the governing board to establish rules and regulations for expulsions, the right of a pupil to have a hearing, the timeline for the hearing, and the process for appealing an expulsion. (EC 48916, 48916.1, 48918, 48918.5, 48919, 48919.5, 48920, 48921, 48922, 48923, and 48924)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author,

“Charter schools have contributed to increased segregation rather than diverse integration of our public school system. Research and reports have documented disproportionately high use of punitive and exclusionary discipline in addition to different enrollment practices that violate protections of student rights for public schooling. Students with more significant needs - such as students with disabilities, students with social-emotional needs, and students who are English Learners – are often disenrolled or removed by charter schools, which undermines local communities.

Charter schools are part of the statewide public school system, and must have nondiscriminatory admission policies, as well as suspension and expulsion policies that guarantee all students appropriate due process rights. Any practices that serve to weed out certain children or families – whether intentional or unintentional – are not acceptable and must be eliminated. AB 1360 helps ensure that charter schools – as part of our system of public education – provide fair access to all students, regardless of zip code, family circumstances, where they were born, how they look, who they love, or the language they speak.

In order to guarantee student access at California’s charter schools, we must require charter schools to serve high-need students such as English learners and special education students, at the same level as neighborhood public schools. AB 1360 clarifies that a charter school’s admissions policies must not limit access to groups such as low-income students or English learners. AB 1360 clarifies that charter school suspension and expulsion procedures must comply with federal and state constitutional due process requirements, including fair notice

and an opportunity to be heard. All children in California should be entitled to equal access to all public education opportunities, including charter schools.”

Background. Charter schools are authorized by school district governing boards, county boards of education or the SBE. Charter schools must comply with charter school provisions of law and are generally exempt from most laws governing school districts. According to the CDE, there are currently 1,247 charter schools and seven all-charter districts in California enrolling a total of 572,752 students.

As part of its request for approval of charter status, a charter petition must include "reasonably comprehensive" descriptions of specified information, including, among others, a description of the educational program of the school, the governance structure of the school, qualifications required by individuals to be hired at the school, the manner by which annual, independent financial audits will be conducted, the manner by which the school's staff will be covered by the teachers' retirement systems or federal social security, the procedures the school will follow to ensure the health and safety of pupils and staff, and the procedures by which pupils can be suspended or expelled.

Conditions for establishing preferences for charter admission. Charter schools are required to admit all pupils who wish to attend. Current law also requires, if the number of pupils who wish to attend exceeds the capacity of the school, attendance must be determined by a public random drawing. Preference must be given to pupils currently attending the charter school and pupils who reside in the county.

This bill authorizes additional charter school admissions preferences as long as the preferences are:

- Approved by the charter school at a public hearing;
- Consistent with state law, federal law and Education Code Section 200;
- Do not result in limiting enrollment access to specified pupil groups;
- Do not require mandatory parental volunteer hours.

These requirements clarify that charter school admissions preferences must be fair, transparent and must ensure that the school's preferences do not result in limiting enrollment access to students with disabilities, academically low-achieving students, English learners, neglected or delinquent students, homeless students, or students who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program. These requirements essentially codify other parts of existing law and current practice.

Suspensions and expulsions in school districts: Under existing law, a principal or a superintendent may suspend or recommend expulsion of a pupil for committing any of a number of specified acts. For expulsions, current law specifies three categories: 1) acts committed by a pupil that result in immediate suspension and recommendation for expulsion; 2) acts committed by a pupil for which a principal or superintendent must recommend expulsion, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance; and 3) acts committed by a pupil for which a principal or superintendent have discretion to determine expulsion.

Upon a recommendation of expulsion of a pupil, a school district governing board is required to hold a hearing and provide a student and his or her parents or legal guardians written notice that includes the charges upon which a proposed expulsion is based, within specified timelines. The governing board may meet in closed session, but the final action to expel a pupil must be made in a public session. A pupil who is expelled may file an appeal to the county board of education.

Suspensions and expulsions in charter schools. Charter schools are required in their petition for a charter to describe the procedures by which pupils can be suspended or expelled, but are not required to comply with the suspension and expulsion policies and procedures which apply to other public schools under current law. This bill establishes procedures that are very similar, although not identical, to the procedures established under Education Code Section 48918 governing the expulsion process for school districts.

The bill requires a charter petition to identify the acts for which a pupil may be suspended or expelled and the length of time for which a pupil may be suspended. This bill allows a charter school to determine the actions subject to suspensions and expulsions and the length of suspensions.

This bill also requires a charter to ensure that its expulsion procedures provide a pupil with specified rights, including the right to receive and appear at a formal hearing, the right to have an attorney or non-legal advisor and the right to inspect documents and question witnesses. The charter must also provide a written notice of the hearing that includes specific facts and charges for which a proposed expulsion is based, the disciplinary rules that relate to the violation, and the procedures governing the hearing. If the individual, panel or board conducting the formal hearing decides to expel the pupil, a written decision must be issued identifying the basis and facts in support of the expulsion. A pupil may appeal the expulsion to the county board of education with jurisdiction in which the charter school is located. Until an expelled pupil is in a suitable educational placement, the charter school must ensure that the pupil is provided access to an educational program.

Research on charter school admission policies. A 2016 report by ACLU and Public Advocates, *Unequal Access: How Some California Charter Schools Illegally Restrict Enrollment*, reviewed charter schools' public, written policies on admissions. The authors contend that, out of the roughly 1,200 charter schools in California, at least 253 or over 20% have admissions policies that are exclusionary. The report cites examples of these charter schools, which have admissions requirements for entry, including the following:

- Minimum grade point average (GPA);
- Demonstration of English language proficiency;
- Pupil or parent/guardian essay or interview;
- Proof of citizenship;
- Mandatory parent volunteer hours and/or monetary donations.

The report contends that these types of requirements disadvantage certain groups of students, including English language learners, students with disabilities, and immigrants, among others by precluding or discouraging enrollment.

Discipline in charter schools. A 2016 report by the Center for Civil Rights Remedies at UCLA, *Charter Schools, Civil Rights and School Discipline: A Comprehensive Review* summarizes the analysis of publicly reported school discipline data for over 5,250 charter schools nationwide. The report notes that deep disparities in discipline practices were found at many charter schools. Findings include the following:

- In 2011-12, charter schools nationally suspended 7.8% of all students enrolled, versus a rate of 6.7% at non-charter schools;
- 235 charter schools suspended more than 50% of their enrolled students with disabilities and in 1,093 charter schools, students with disabilities were suspended at a rate at least 10 percentage points higher than their non-disabled peers;
- Charter secondary schools suspend more than 16 more Black students than White students per every 100 students enrolled;
- Suspension rate for English learners in charter secondary schools is 10% versus 5.6% for White students.

The report does note that, as with regular public schools, most charter schools are not high-suspending. There are wide variations in discipline policy and practice among charter schools. More elementary charter schools met the definition of a lower-suspending school than a higher-suspending school and at the secondary level; higher-suspending charters only slightly outnumbered lower-suspending charters.

The authors conclude that charter schools do not need to have high suspension rates to be successful and “while some charter schools are contributing to the school-to-prison pipeline, others may provide excellent examples of non-punitive approaches that could help plug the pipeline.”

Arguments in support. Supporters note that this bill helps to ensure that charter schools, as a part of the public education system, provide fair admission and fair discipline.

This bill would clarify that a charter school’s admission policies are approved at a public hearing and do not result in limiting access to groups of students, such as low-income students, disabled students, or English learners. They note that the intent of school choice is to allow parents and families to choose which school their children will attend, not that public schools choose which students they will serve. No charter school should discriminate against a student because of race, language, color, national origin, religion, gender or gender identification, sexual orientation, disability, marital status, or economic status, and should not discriminate against any student because of educational need, academic performance, or any other form of preferential selection.

They also note that the bill clarifies that charter school suspension and expulsion procedures must comply with federal and state constitutional due process requirements, including fair notice and an opportunity to be heard.

Finally, they state that a charter school should not intimidate a student or parent when asking for voluntary contributions to the charter school and that parent involvement and voluntary service should be encouraged, but cannot be a condition of enrollment.

Arguments in opposition. The California Charter Schools Association (CCSA) opposes AB 1360 as they contend that it removes charter schools' ability to establish their own suspension and expulsion practices and would establish a "one size fits all" policy. They note that many charter schools have become leaders in employing restorative justice practices and positive behavioral interventions, and that requiring charter schools to revert to traditional disciplinary practices would undermine these innovative programs.

According to CCSA, charter schools are currently required to ensure students are afforded due process when being recommended for suspension or expulsion under provisions of the U.S. and California constitutions. Charter schools are subject to an additional level of scrutiny through the oversight of the applicable chartering authority.

Finally, CCSA questions the need to revise the requirements for charter school admissions as current law already requires charter schools to outline their admission requirements in their petition and explicitly prohibits practices that discriminate against any protected class of pupils.

Prior and similar legislation. SB 322 (Leno) of the 2015-16 Session contained identical language as this bill, as well as double-jointing language to avoid chaptering out with SB 739 (Pavley). The bill failed passage on the Assembly Floor.

SB 739 (Pavley) of the 2015-16 Session would have prohibited a school district from authorizing a new charter school to be located outside of its jurisdiction if it is assigned a negative budget certification. This bill was vetoed by the Governor.

AB 2032 (Mendoza) of the 2011-12 Session would have required charter school suspension and expulsion procedures to identify a list of acts for which a pupil may be suspended or expelled, the length of time a pupil may be suspended, and the procedures a pupil and parents and guardians will be informed about their due process rights, including the right to a hearing. This bill was held in Assembly Appropriations.

AB 1034 (Gatto) of the 2011-12 Session would have made changes to the requirements for charter schools regarding student admissions requirements that are similar to those proposed by this bill. The bill was vetoed by the Governor. The veto message stated:

"Charter schools are established to encourage the widest possible range of innovation and creativity. Their governing charters reflect the ideas and aspirations of those willing to undertake this profoundly difficult challenge. It is critical that they have the flexibility to set admission criteria and parent involvement practices that are consistent with the school's mission."

SB 433 (Liu) of the 2011-12 Session, which, among other provisions, would have required charter schools to comply with the policies and procedures governing the suspension and expulsion of pupils in other public schools. The bill was held in Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Boys and Men of Color (Sponsor)
American Civil Liberties Union (Sponsor)
California Federation of Teachers (Sponsor)
California School Employees Association (Sponsor)
California Teachers Association (Sponsor)
Public Advocates (Sponsor)
Public Counsel (Sponsor)
California State PTA
Los Angeles Alliance for a New Economy
San Diego Education Association
United Teachers of Richmond

Opposition

California Charter Schools Association
Charter Schools Development Center

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087