

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 1343 (Wolk) – As Amended May 4, 2016

**SENATE VOTE:** 35-0

**SUBJECT:** Pupils: intradistrict transfer of pupil convicted of violent felony or misdemeanor

**SUMMARY:** Authorizes a school district to transfer a pupil convicted of a violent felony or a specified misdemeanor to another school in the school district if the pupil and the victim of the crime are enrolled at the same school. Specifically, **this bill:**

- 1) Requires the governing board of a school district to do the following prior to transferring a pupil:
  - a) Adopt a policy at a regularly scheduled meeting that contains all of the following provisions:
    - i) A requirement that the pupil and pupil's parent or guardian be notified of the right to request a meeting with the school principal or designee of the school or school district.
    - ii) A requirement that the school first attempt to resolve the conflict before transferring a pupil, including, but not limited to, using restorative justice, counseling, or other services.
    - iii) Whether the decision to transfer a pupil is subject to periodic review and the procedure for conducting the review.
    - iv) The process to be used by the governing board of the school district to consider and approve or disapprove of the recommendation of the school principal or other school or school district designee to transfer the pupil.
  - b) Provide notice of the policy to parents or guardians as part of the annual parent notification.

**EXISTING LAW:**

- 1) Requires that each person between the ages of 6 and 18 years, not otherwise exempted, be subject to compulsory full-time education and attend the public full-time day school or continuation school or classes in which their parent or guardian resides, and that each parent, guardian or other person having control or charge of the pupil ensure that pupil's enrollment and attendance. (EC Section 48200)
- 2) Authorizes or requires a principal or a superintendent of schools to suspend or expel a student committing any of a number of specified acts. (EC Sections 48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915)

- 3) 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 Sections 48916, 48916.1, 48918, 48918.5, 48919, 48919.5, 48920, 48921, 48922, 48923, and 48924)
- 4) Prohibits a pupil from being denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system, including, but not limited to: 1) arrest; 2) adjudication by a juvenile court; 3) formal or informal supervision by a probation officer; and 4) detention for any length of time in a juvenile facility or enrollment in a juvenile court school. (EC Section 48645.5)
- 5) Requires the governing board of each high school or unified school district which assigns pupils to continuation schools to adopt rules and regulations governing procedures for the involuntary transfer of pupils to continuation schools. Specifies that a decision to transfer a pupil involuntarily shall be based on a finding that the pupil committed one of the acts that may result in suspension or expulsion or if the pupil has been habitually truant. (EC Section 48432.5)
- 6) Specifies that a pupil who commits one of the acts that may result in suspension or expulsion may be involuntarily transferred to a continuation school if the principal determines that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process. (EC Section 48432.5)
- 7) Specifies that a pupil who has been determined by personnel of either the district of residence or the district of proposed enrollment to have been the victim of an act of bullying committed by a pupil of the district of residence shall, at the request of the person having legal custody of the pupil, be given priority for interdistrict attendance under any existing interdistrict attendance agreement or, in the absence of an agreement, be given additional consideration for the creation of an interdistrict attendance agreement. (EC Section 46600)
- 8) Defines "violent felony" to include 23 acts, such as murder, rape, great bodily injury, threats to a victim or witness, robbery, and burglary. (Penal Code Section 667.5)
- 9) Sets forth misdemeanor penalties for offenses related to possession of a firearm. (Penal Code Section 29805)

**FISCAL EFFECT:** Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS: *Purpose of the bill.*** The author states, "Recently a student was convicted of an off-campus violent felony against another student and the local school board was advised not to transfer the perpetrator to a different high school because the incident occurred off-campus and the district had only one comprehensive high school. The victim obtained a temporary restraining order but schools aren't enforcement agencies. As a result, the victim had to change his classes to avoid direct daily contact with his attacker. Because they were students at the same school the perpetrator wasn't restricted in his access to the victim or to school activities thus violating the victim's constitutional right to attend a safe school."

This bill authorizes a school district to transfer a pupil who has been convicted of a specified violent felony, including murder, rape, great bodily injury, threats to a victim or witness, robbery, and burglary, or a misdemeanor associated with possession of a fire arm, if the pupil and the victim are enrolled in the same school. The bill requires the governing board of a school district that chooses to exercise this authority to first adopt a policy with specified requirements, including the process that will be used to determine whether to approve or disapprove a transfer and the requirement to first attempt to resolve the conflict, such as through counseling or restorative justice. The bill also requires the school district to include notification of the policy in the annual parent notification.

***Transfers to alternative programs.*** Existing law allows a school district to transfer a pupil involuntarily to a continuation high school if a pupil has committed an act that may lead to a suspension or expulsion and the principal determines that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process.

Existing law prohibits a student from being assigned to a community day school unless the student has been expelled or referred by probation, a school attendance review board, or other district level referral process. Any route of referral to a community day school requires a process to determine if the student should be transferred. Existing law requires school districts to adopt procedures for the involuntary transfer of students to continuation schools, including a determination based on specific findings.

Existing law prohibits a school district from preventing enrollment or readmission to a public school solely because the pupil was involved in the juvenile justice system. Is the involuntary transfer of a pupil who was convicted of a crime inconsistent with this law? The Senate Floor analysis cites the following related case law:

- 1) In *Danielle S. v. Ezra C.* (Westlaw 2840340, 2005), the Court ruled that “Appellant’s right to attend school is neither absolute nor unilateral. He is not constitutionally entitled to attend a specific school, particularly where his presence on school grounds may interfere with the peaceful conduct of the activities of the school or disrupt the school, its students, its teachers or its other employees. ... Schools have the obligation to protect pupils from violence and mistreatment by other children. Only a total deprivation of a state-given right to education would violate the United States Constitution.”
- 2) In *Nathan G. v. Clovis Unified School District* (224 Cal.App.4<sup>th</sup> 1393 (2014), the Court held that “a school or district is not required to exhaust all other means prior to involuntary transfer to a continuation school, and involuntary transfer to a continuation school did not substantially affect the student’s fundamental interest in access to public education.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

None on file

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