

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 322 (Leno) – As Amended July 8, 2015

**SENATE VOTE:** 24-15

**SUBJECT:** Charter schools: pupils: suspension and expulsion: admissions: departures.

**SUMMARY:** Modifies the provision for extending preferences for charter school admissions and establishes requirements for suspension and expulsion procedures. Specifically, **this bill:**

- 1) Authorizes other preferences for enrollment on an individual charter school basis 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, 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.
- 2) 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.
- 3) 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) At least 10 days before the proposed hearing date, 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, including those specifying the right to appear in person, have representation, inspect documents and question witnesses.
- iii) Before the hearing has commenced, the governing board of the school district may issue subpoenas at the request of either the charter school principal or the charter school principal's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. Any objection raised by the charter school principal or the charter school principal's designee or the pupil to the issuance of subpoenas may be considered by the individual, panel, or board conducting the formal hearing, if so requested by the pupil before the hearing. Any decision by the individual, panel, or board conducting the formal hearing in response to an objection to the issuance of subpoenas shall be final and binding. Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to a subpoena, other than the parties or officers or employees of the state or any political subdivision of the state, shall receive fees, and all witnesses appearing pursuant to a subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.
  - iv) The hearing shall be held in a forum that is closed to the public, unless the pupil requests in writing at least five days before the date of the hearing that the hearing be open to the public.
  - v) The hearing shall be held within 30 schooldays after the date that the charter school principal determines that the pupil has committed any of the expellable acts identified in the charter, unless the pupil requests in writing that the hearing be postponed. A pupil shall be entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the charter school. If compliance by the charter school with the time requirement for conducting the expulsion hearing is impracticable during the school year, the charter school may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance with the time requirement for conducting the expulsion hearing is impractical due to a recess of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements, except that the total number of schooldays not counted toward the time requirements shall not exceed 20 schooldays, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days before the first day of school for the school year.
  - vi) 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 nonattorney 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.
- vii) Within 10 schooldays after the conclusion of the formal hearing, the charter school shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed.
  - viii) If the individual, panel, or board conducting the formal hearing determines that the pupil shall be expelled, the individual, panel, or board shall issue a written decision 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 shall not consist solely of hearsay evidence.
  - ix) 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.
  - x) A pupil may appeal the expulsion to the county board of education with jurisdiction in the county in which the charter school is located, and the appeal shall be governed by Education Code Section 48919, except that the pupil shall submit a written request for a copy of the written transcripts and supporting documents related to the expulsion and expulsion hearing to the charter school and the charter school shall provide the pupil with the transcripts, supporting documents, and records within 10 schooldays after the pupil's written request.
  - xi) 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.
  - xii) Upon final determination to expel a pupil, the charter school shall ensure the pupil is provided access to educational programming until the charter school has confirmed the pupil has been provided a suitable educational placement.
- 4) 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 in this bill.
  - 5) 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 shall apply with full force and effect.
  - 6) Deletes the provision specifying that if a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days and shall provide that school district with a copy of the cumulative record of the pupil,

including a transcript of grades or report card, health information, and the reason for the pupil's departure.

- 7) Specifies that a charter school may encourage parental involvement, but shall 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.
- 8) Expresses the intent of the Legislature to ensure the following:
  - a) Equal access to interested pupils at charter schools and practices that discourage enrollment or disproportionately push out segments of already enrolled pupils are prohibited;
  - b) That charter school discipline policies are fair and transparent; and,
  - c) That charter schools operate within the system of common schools by remaining "... free, nonsectarian and open to all students...";

#### **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. (Education Code (EC) Sections 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, except for existing pupils of the charter school, shall 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 except as provided for in the Charter School Facility Grant Program. Specifies that other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law. (EC Section 47605)
- 3) 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 following, among others:
  - a) The petition does not contain reasonably comprehensive description of the procedures by which pupils can be suspended or expelled. (EC Section 47605)
- 4) 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:

- 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. (EC Section 47610)
- 5) 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)
  - 6) Specifies the number of days a suspension can occur, the procedures for notifying parents or guardians and the requirement to hold a conference. (EC Section 48903, 48911)
  - 7) 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)

**FISCAL EFFECT:** Unknown

**COMMENTS:** This bill addresses both entry into and exits from 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, with the exception of the following:

- 1) Teacher participation in the STRS and PERS if the charter chooses to offer coverage in either or both of those systems.
- 2) Access to loans from the Charter School Revolving Loan Fund.
- 3) All laws establishing minimum age for public school attendance.
- 4) The California Building Standards Code.

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 and federal social security, the procedures the school will follow to ensure the health and safety of pupils and staff (including any employee criminal record), and the procedures by which pupils can be suspended or expelled.

According to the CDE, as of 2013-14, there were 1,125 charter schools enrolling approximately 514,000 of the state's 6.2 million students.

***Preferences for admission:*** This bill authorizes charter school admissions preferences as long as the preferences are approved by the charter school at a public hearing; preferences are consistent with state law, federal law and Education Code Section 200; preferences do not result in limiting enrollment access to specified pupil groups; and, preferences 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.

Supporters of the bill state that charter schools across the state have been found to have selective admissions criteria, including requiring parent volunteer hours as a condition of enrollment. As an example, supporters state that a charter school in San Diego requires 30 parent volunteer hours per year. Parents that do not meet the required hours in specified jobs are given "probation." After two probations, a parent may be asked to meet with the governing board to determine the future enrollment of the pupil at the school.

***Suspensions and expulsions:*** 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.

***What does this bill do?*** 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 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 nonlegal advisor and the right to inspect documents and question witnesses. At least 10 days before a hearing, 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. The hearing shall be closed to the public, unless the pupil requests in writing for the hearing to be

public. The charter school is required to make a decision on whether to expel the pupil within 10 schooldays after the conclusion of the hearing. If the individual, panel or board conducting the formal hearing decides to expel the pupil, the individual, panel or board must issue a written decision identifying the basis and facts in support of the expulsion. The charter school must also make a record of the hearing. 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.

Supporters state that pupils have a constitutional right to due process. Yet, pupils attending charter schools have been subject to expulsions due to repeated minor actions (e.g., using profanity), are not provided a hearing or are not informed about the right to a hearing, and once expelled, can be dropped from the education system for an indefinite amount of time. The provisions in this bill are not as prescriptive as those established in current law applying to school districts; however, they are very similar and consistent. Opponents argue that charter schools should be able to design their own expulsion procedures to accommodate the needs of the schools and the population at a school as long as they ensure that students have due process rights. The Committee may wish to consider whether ensuring all charter school pupils have consistent and equal due process protections is good policy. The right to appeal to the county board of education, which is the appeal body for traditional public school students, will ensure that a pupil did receive a hearing. The bill specifies that the county board of education handling the appeal shall be the board with jurisdiction in the county in which the charter is located to ensure that students and their families are able to attend appeals hearing, in the event the charter school is not located in the same area as the charter authorizer. Finally, once expelled, ensuring that a pupil is able to continue to receive an educational program until an educational placement is determined will ensure that pupils are not dropped from the educational system.

***Amendments:***

- 1) On page 10, lines 28 and 29, correct a drafting error by striking "governing board of the school district" and insert "charter school." The bill was drafted incorrectly by allowing the governing board of a school district to issue subpoenas at the request of a charter school principal.
- 2) The author requests reinstatement of the provision on page 12, lines 32 through 40, which was inadvertently struck in the July 8<sup>th</sup> version of the bill.

***Arguments in support.*** The author states, "Unfortunately, some charter schools establish admission requirements and preferences designed to allow only the most 'desirable' students and to screen out students who may have lower standardized test scores. Examples of discriminatory admission policies include mandatory parental volunteer hours, minimum English proficiency requirements of a minimum GPA. Additionally, some students are 'counseled out' during the school year in order to boost test scores.

"A charter school is not required to delineate in detail its policies for suspending or expelling pupils in its petition to become a charter school. Section 47605(b)(5)(J) does require that '[t]he procedures by which pupils can be suspended or expelled.' However, this does not necessarily ensure that the constitutional due process required by the US Supreme Court for student is being respected. Charter schools are exempted from following the existing statutory due process

protections relating to the suspension and expulsion of students at public schools....As a result, charter school students can be denied their right to due process."

**Arguments in opposition.** The California Charter Schools Association Advocates (CCSAA) states that this bill "would strip away a charter schools' ability to establish their own suspension and expulsion practices and apply new far-reaching code that prescribes strictly detailed steps a charter school must take when suspending or expelling a student." CCSAA further states, "The author asserts that charter schools are not required to delineate their expulsion and suspension policies. That is simply not true. Education Code 47605 lists all 16 elements of a petition that must be approved by the authorizer, including "The procedures by which pupils can be suspended or expelled." If these procedures are not included or if the school district has objections, the petition can be denied or the district can work with the petitioner to refine the procedures to the district's satisfaction."

**Prior related legislation.** AB 2032 (Mendoza), held in the Assembly Appropriations Committee suspense file in 2012, 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.

AB 1034 (Gatto), vetoed by the Governor in 2011, makes changes to the requirements for charter schools regarding student admissions requirements that are similar to those proposed by this bill. 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), which, among others, would have required charter schools to comply with the provisions governing the suspension and expulsion of pupils. The bill was held in the Senate Education Committee in 2011.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union (co-sponsor)  
California Federation of Teachers (co-sponsor)  
California Labor Federation  
California School Employees Association (co-sponsor)  
California State PTA  
California Teachers Association (co-sponsor)  
GSA Network of California  
John Muir Charter School  
Public Advocates  
Public Counsel



San Francisco Unified School District  
SIATech  
YouthBuild Charter School

**Opposition**

California Charter Schools Association Advocates  
Charter Schools Development Center  
EdVoice Board of Directors

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