

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 2351 (Lowenthal) – As Introduced February 12, 2024

[This bill is double referred to the Assembly Judiciary Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Suspensions and expulsions: acts occurring outside of school hours

SUMMARY: Authorizes a student to be suspended from school or recommended for expulsion on the basis of specified acts taking place outside of school hours, if specified conditions are met. Specifically, **this bill:**

- 1) Authorizes a student to be suspended from school or recommended for expulsion on the basis of specified acts taking place outside of school hours, provided that conduct that is speech or other communication, when engaged in outside of the campus, is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, or invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment, and specifies these acts include:
 - a) Causing, attempting to cause, or threatening to cause physical injury to another person, or willfully using force or violence upon another person, except in self-defense;
 - b) Possessing, selling, or otherwise furnishing a firearm, knife, explosive, or other dangerous object, unless the student had obtained prior written permission to possess the item;
 - c) Unlawfully possessing, using, selling, or otherwise furnishing a controlled substance;
 - d) Unlawfully offering, arranging, or negotiating to sell a controlled substance, alcoholic beverage, or an intoxicant of any kind;
 - e) Committing or attempting to commit robbery or extortion;
 - f) Causing or attempting to cause damage to school property or private property;
 - g) Stealing or attempting to steal school property or private property;
 - h) Possessing or using tobacco, or products containing tobacco or nicotine products;
 - i) Committing an obscene act or engaging in habitual profanity or vulgarity;
 - j) Unlawfully possessing or unlawfully offering, arranging, or negotiating to sell drug paraphernalia;
 - k) Disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the

performance of their duties. This subdivision does not apply to a student enrolled in kindergarten through grade 5; or to a student enrolled in grades 6 to 12 until July 1, 2029; and does not allow a student enrolled in grades kindergarten through 12th grade to be recommended for expulsion on this basis.

- l) Knowingly receiving stolen school property or private property;
 - m) Possessing an imitation firearm;
 - n) Committing or attempting to commit a sexual assault or sexual battery;
 - o) Harassing, threatening, or intimidating a student who is a complaining witness or a witness in a school disciplinary proceeding in order to prevent the student from being a witness or retaliating against that student for being a witness, or both;
 - p) Unlawfully offering, arranging to sell, or negotiating to sell the prescription drug Soma;
 - q) Engaging in or attempting to engage in hazing;
 - r) Engaging in the act of bullying, including bullying committed by means of an electronic act and defines “electronic act” as the “creation or transmission originated on or off the schoolsite, by means of an electronic device, including but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, including but not limited to any of the following: a message, text, sound, video, or image; a post on a social network website, including, but not limited to any of the following: posting or creating a burn page; creating a credible impersonation of another actual pupil; creating a false profile; and an act of cyber sexual bullying.”
 - s) Committing sexual harassment (grades 4 through 12 only);
 - t) Causing or attempting to cause, threatening to cause, or participating in, an act of hate violence (grades 4 through 12 only);
 - u) Engaging in harassment, threats, or intimidation against school district personnel or students that have the effect of disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment (grades 4 through 12 only); and,
 - v) Making a terroristic threat against school officials, school property, or both.
- 2) Prohibits a student from being suspended or expelled solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution or conduct that is otherwise constitutionally protected.

EXISTING LAW:

- 1) Declares that all students have the right to participate fully in the educational process, free from discrimination and harassment, and that harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution. Also expresses the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity. (Education Code (EC) 201)
- 2) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. (EC 220)
- 3) Declares that every person may freely speak, write, and publish his or her sentiments on all subjects, being responsible for the abuse of this right, and that a law may not restrain or abridge liberty of speech or press. (California Constitution, Article 2, Section 2)
- 4) States the policy of the State of California to ensure that all local educational agencies (LEAs) continue to work to reduce discrimination, harassment, violence, intimidation, and bullying. It is further the policy of the state to improve pupil safety at schools and the connections between pupils and supportive adults, schools, and communities. (EC 234)
- 5) Requires LEAs to adopt policies and procedures for preventing acts of bullying, including cyberbullying by December 31, 2019. (EC 234.4)
- 6) Requires LEAs to ensure that specified information is readily accessible in a prominent location on the LEA's website, including the LEA's anti-cyberbullying procedures. (EC 234.6)
- 7) Requires the California Department of Education (CDE) to display current information, and periodically update information, on curricula and other resources that specifically address bias-related discrimination, harassment, intimidation, cyber sexual bullying, and bullying on its website. (EC 234.2)
- 8) Requires the CDE to develop, and post on its website, a model handout describing the policies addressing bias-related discrimination, harassment, intimidation, and bullying in schools. (EC 234.3)
- 9) Requires school districts and county offices of education (COEs) to develop a comprehensive school safety plan for its schools, and encourages all plans, to the extent that resources are available, to include policies and procedures aimed at the prevention of bullying, including cyberbullying. (EC 32282)

- 10) Requires a charter school to include in its petition to establish the charter school the procedures that the charter school will follow to ensure the safety of students and staff (EC 47605 and 47605.6).
- 11) Requires the CDE to develop and post on its website an online training module to assist all school staff, administrators, parents, students, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying. (EC 32283.5)
- 12) Prohibits a student from being suspended from school or recommended for expulsion, unless the superintendent of the school district, or the principal of the school, determines that the student has committed specified offenses, while on school grounds, while going to or coming from school, during the lunch period whether on or off the campus, or during or while going to or coming from a school sponsored activity. (EC 48900, 48900.2, 48900.3, 48900.4, 48900.7)
- 4) Includes the prohibition on suspension and expulsions for specified offenses to apply to students in charter schools. (EC 48901.1)
- 5) Requires the principal or superintendent of schools to recommend the expulsion of a student for any of the following acts committed at school or at a school activity off school grounds, unless it is determined that the expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:
 - a) Causing serious physical injury to another person, except in self-defense;
 - b) Possession of any knife or other dangerous object of no reasonable use to the student;
 - c) Unlawful possession of any controlled substance, as specified;
 - d) Robbery or extortion; and
 - e) Assault or battery, as defined, upon any school employee. (EC 48915)
- 6) Requires that a suspension only be imposed when other means of correction fail to bring about proper conduct. Specifies that other means of correction may include, but are not limited to, the following:
 - a) A conference between school personnel, the student's parent or guardian, and the student;
 - b) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support personnel for case management and counseling;
 - c) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, develop and implement individualized plans to address the behavior in partnership with the student and his or her parents;
 - d) Referral for a comprehensive psychosocial or psychoeducational assessment;
 - e) Enrollment in a program for teaching prosocial behavior or anger management;

- f) Participation in a restorative justice program;
 - g) A positive behavior support approach with tiered interventions that occur during the schoolday on campus; and,
 - h) After school programs that address specific behavioral issues or expose students to positive activities and behaviors. (EC 48900.5)
 - i) Community service including but not limited to, work performed in the community or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer, or youth assistance programs. (EC 48900.6)
- 7) Requires that a student who has been determined to have been the victim of bullying be given priority for an inter-district transfer. (EC 46600)

FISCAL EFFECT: This bill has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. According to the author, “Acts of bullying, harassment, and intimidation between pupils are now taking place 24 hours a day, 365 days a year. A pupil who is being bullied at school can no longer simply go home to escape their oppressor. In fact, the bully is now empowered to continue their harassment and intimidation via social media platforms, text messages, and email, circulating harmful, humiliating, harassing, and intimidating content to not only the pupil they are bullying, but to a much wider audience of the pupil’s peers. These circumstances create an undeniably hostile educational environment for the pupils who are experiencing this type of harassment and intimidation. Students who are engaging in harassment and intimidation of their fellow pupils should be held accountable for their actions, regardless of whether the act takes place on campus or during regular school hours, and it is essential that superintendents and principals are empowered with the appropriate tools to address these issues when they do arise, as well as a full understanding of their jurisdiction over activities that have an impact on pupils in their schools.

AB 2351 is designed to ensure that superintendents and principals have clear-cut authority in statute to take the action they deem appropriate for behavior and actions that, when engaged in outside of the campus, are sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, or invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment. The bill does not require a superintendent or principal to suspend or expel a pupil for these activities, but clarifies a superintendent’s or principal’s authority to do so regardless of whether these activities take place during or after school hours or while on or off of school grounds.”

Current law authorizes school officials to address bullying. California law authorizes administrators to suspend, or recommend for expulsion, a student who has engaged in bullying at school or during school activities. This includes bullying by an electronic act originating on or off the schoolsite. This would suggest that school administrators have the authority to address cyberbullying actions regardless of whether the actions take place on the schoolsite or not. This

bill would extend the authorization to suspend or expel a student for certain acts which have taken place outside of school hours under specified conditions.

What is electronic bullying? Electronic bullying, or cyberbullying is defined as “bullying that takes place over digital devices like cell phones, computers, and tablets. Cyberbullying can occur through SMS, Text, and apps, or online in social media, forums, or gaming where people can view, participate in, or share content. Cyberbullying includes sending, posting, or sharing negative, harmful, false, or mean content about someone else. It can include sharing personal or private information about someone else causing embarrassment or humiliation. Some cyberbullying crosses the line into unlawful or criminal behavior.” (Stopbullying.gov)

In 2021, 16% of U.S. high school students were electronically bullied, including through texting, Instagram, Facebook, or other social media, during the past year. Female students were more likely than male students to be electronically bullied. American Indian or Alaska Native and White students were more likely than students from most other racial and ethnic groups to be electronically bullied. Nearly one-quarter of LGBTQ+ students were bullied at school and nearly 30% were electronically bullied. (Centers for Disease Control and Prevention (CDC), 2023)

Research identifies adverse impacts of suspensions and expulsions. The trend in recent years, in California as well as nationally, has been to reduce the rates of suspension and expulsion. A large body of research has identified adverse impacts of suspensions and expulsions, including the following.

- Students who experience out-of-school suspensions and expulsions are 10 times more likely to ultimately drop out of high school;
- Students who are suspended or expelled are much more likely to become involved in the juvenile justice system;
- Students who are excluded from classes lose instructional time;
- A student’s suspension or expulsion can have harmful effects on the family, including loss of wages or employment for the parent, particularly for single parents; and
- Students who are suspended or expelled are often less likely to have supervision at home and are subject to the risk of further behavioral problems.

Impacts of exclusionary discipline policies. Research suggests that harsh discipline practices and the over-policing of students of color that occurs in many schools have undermined the creation of safe and inclusive learning environments. Disproportionalities in suspension and expulsion rates between students of color and their white peers appear as early as preschool and continue through the K-12th grades. Black youth often receive harsher punishments for minor offenses and are more than twice as likely as white students to receive a referral to law enforcement or be subject to a school-related arrest. (Learning Policy Institute (LPI), March 2021).

One study, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, (Rosenbaum, 2018) notes that “school suspensions aim to obtain better behavior from the punished student and maintain school norms by removing students. Suspension removes

disruptive students from schools temporarily and may improve school climate by reducing peer influences to engage in deviant behavior.” The study goes on to note that a body of research has found that suspended students are more likely to:

- Engage in antisocial behavior;
- Have involvement with the criminal justice system;
- Be arrested both during the month of suspension and within a year of suspension; and
- Use marijuana and tobacco.

The study also cites various longitudinal research findings, including:

- Youth suspended in ninth grade were less likely to graduate high school, graduate on time, and enroll in postsecondary education; and
- Twelve years after suspension, suspended youth were less likely to have earned degrees or high school diplomas and were more likely to have been arrested or on probation.

Some researchers conclude that “suspensions may act more as a reinforcer than a punisher for inappropriate behavior. Other research raises doubts as to whether harsh school discipline has a deterrent value. Frequent use of suspension alone has no measureable positive deterrent or academic benefit to either the students who are suspended or to non-suspended students.” (Losen, 2011). The American Academy of Pediatrics states, “Without the services of trained professionals, such as pediatricians, mental health professionals, and school counselors, and without a parent at home during the day, students with out-of-school suspensions and expulsions are far more likely to commit crimes.”

Researchers have pointed out that “many suspended students find school to be challenging and experience suspension from school as a reward. Suspensions may be reinforcing and even incentivizing the very behavior they are meant to correct.” (Rumberger, 2017)

According to the U.S. Department of Education: “Teachers and students deserve school environments that are safe, supportive, and conducive to teaching and learning. Creating a supportive school climate—and decreasing suspensions and expulsions—requires close attention to the social, emotional, and behavioral needs of all students. Evidence does not show that discipline practices that remove students from instruction—such as suspensions and expulsions—help to improve either student behavior or school climate.”

Rates of suspension/expulsion have dropped dramatically. According to CDE data on discipline in California public schools, over the ten-year period from 2011-12 to 2021-22:

- Total suspensions for all offenses dropped 58%, from 709,702 to 292,423; and
- Total expulsions for all offenses dropped 57%, from 9,758 to 4,191.

California has invested in alternatives to suspension and expulsion to improve school climate and culture. In recent years, the Legislature has allocated significant resources specifically designed to improve school climate and reduce exclusionary disciplinary practices. These include significant investments in Multi-Tiered Systems of Support (MTSS) to encourage LEAs to establish and align school wide, data-driven systems of academic and behavioral supports to more effectively meet the needs of California’s diverse learners in the most inclusive environment.

The state has also invested significant funding for the establishment and expansion of community schools. A community school is a public school that serves prekindergarten through grade twelve and has community partnerships that support improved academic outcomes, whole-child engagement, and family development. Community school partnership strategies include integrated support services, extended learning time, and collaborative leadership and practices for educators and administrators. Community schools can increase equitable student learning outcomes by addressing the conditions for teaching and learning. Community schools support the needs of the whole child by strengthening family and community foundations with approaches that sustain mental and behavioral health through healing-centered practices, social-emotional learning, and restorative justice. ***The Committee may wish to consider*** whether expanding the scope of an administrator’s ability to suspend or expel students on the basis of acts taking place outside of school hours is counter to recent efforts to reduce the number of suspensions and expulsions. ***Further, the Committee may wish to consider*** the capacity of school administrators to take on the added burden of monitoring or investigating acts occurring outside of school hours.

Recommended Committee Amendments. Staff recommends that the bill be amended as follows:

- 1) Remove references to free speech and communications protected by the First Amendment.
- 2) Restate the conditions by which an administrator would be authorized to suspend or recommend for expulsion a student having committed specified acts outside of school hours as follows: “outside of school hours when the act is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, or creating an intimidating or hostile educational environment.”
- 3) Other technical and conforming changes.

Arguments in support. The Office of the Kern County Superintendent of Schools writes, “It is our collective responsibility to provide a safe learning environment, free from threats and distractions for all students so they can thrive socially, emotionally, and academically. AB 2351 takes a necessary step towards ensuring that all students feel safe and welcome at school.”

Arguments in opposition. A large group of advocacy organizations, including ACLU and Public Counsel, among others, writes:

This bill perpetuates ineffective responses to student behavior, reverses precedent around the scope of schools’ authority, presents First Amendment concerns, threatens students’ access to justice, and will reintroduce a level of subjectivity to the Education Code that will inevitably

increase the disproportionate suspension and expulsion of Black, Brown, and disabled students.

AB 2351's approach conflicts with California school discipline reform efforts of the past ten years. Educators nationwide, statewide, and the California Legislature have steadily moved away from relying on suspension and expulsion as a response to student behavior seen as defiant or disruptive, recognizing that these punishments are ineffective in resolving behavioral issues and can have long-lasting consequences on students. Instead, our state has focused on the establishment and investment in effective alternative supports that address the root causes of behavior.

An overwhelming body of research confirms that suspending students at any age greatly increases the likelihood that the student will fail, be pushed out of school, and/or have contact with the juvenile justice system. Furthermore, suspended or expelled students are 5 times more likely to drop out of school and to fall into the school-to-prison pipeline, costing the state an estimated \$2.7 billion a year.

As written, AB 2351 places a huge onus on individual districts to examine and investigate a wide range of incidents occurring outside of school and covered under Education Code 48900. Incidents occurring off campus and after school hours would now come under the purview of school districts. This means that even a fight that occurs after school, off campus and with no connection to school would become an incident that school administrators would need to investigate and take appropriate disciplinary action against students leading to additional suspensions or expulsions for situations about which the schools may not even be able to get full information.

Related legislation. SB 274 (Skinner) Chapter 597, Statutes of 2023, prohibits the suspension or expulsion of a student enrolled in 6th through 12th grade in a public school on the basis of willful defiance until July 1, 2029, authorizes employees to refer students to school administrators for in-school interventions or supports, and requires that administrators document the actions taken in the student's record and inform the referring employee of those actions.

AB 1165 (McCarty) Chapter 22, Statutes of 2023, encourages LEAs to refer both the victim and perpetrator of an incident of racist bullying, harassment, or intimidation to a restorative justice program that suits the needs of both the victim and the perpetrator.

SB 419 (Skinner), Chapter 279, Statutes of 2019, commencing July 1, 2020, extends the permanent prohibition against suspending a pupil enrolled in kindergarten or any of grades 1 to 3 for disrupting school activities or otherwise willfully defied the valid authority of school staff to include grades 4 and 5 permanently; and to include grades 6 to 8, inclusive, until July 1, 2025; and applies these prohibitions to charter schools.

AB 34 (Ramos) Chapter 282, Statutes of 2019, requires LEAs, commencing with the 2020-21 school year, to provide specified bullying and harassment prevention information in a prominent location on their existing websites.

AB 1808 (Committee on Budget) Chapter 32, Statutes of 2018, removed the sunset on the prohibition on suspending a student in kindergarten through third grade, or recommending a student in kindergarten through 12th grade for expulsion, on the basis of willful defiance, making these prohibitions permanent.

AB 667 (Reyes) Chapter 445, Statutes of 2017, requires that, at the informal conference required before a student is suspended from school, the pupil be informed of other means of correction that were attempted before the suspension was imposed.

AB 2845 (Williams) Chapter 621, Statutes of 2016, requires the CDE to assess whether LEAs have provided information to staff serving students in grades 7 through 12 on resources related to bullying due to religious affiliation, and requires the CDE to post on its website a list of resources that support students who have been subject to school-based discrimination on the basis of actual or perceived religious affiliation, nationality, race, or ethnicity.

AB 420 (Dickinson), Chapter 660, Statutes of 2014, eliminated the authority to suspend a pupil enrolled in kindergarten through 3rd grade, and the authority to recommend for expulsion a pupil enrolled in grades kindergarten through 12th grade, for disrupting school activities or otherwise willfully defying the valid authority of school personnel engaged in the performance of their duties. These requirements sunset on July 1, 2018.

AB 1729 (Ammiano), Chapter 425, Statutes of 2012, reaffirmed that superintendents and school principals have the discretion to implement alternatives to suspension and expulsion and expanded the list of other means of correction that must be implemented prior to suspension or expulsion to address most student misbehavior.

REGISTERED SUPPORT / OPPOSITION:

Support

Kern County Superintendent of Schools Office

Opposition

ACLU California Action

Alliance for Boys & Men of Color

Alliance for Children's Rights

Black Parallel School Board

Cancel the Contract Antelope Valley

Center for Leadership, Equity, and Research

Children's Rights Clinic At Southwestern Law School

Coleman Advocates for Children and Youth

Disability Rights California

Dolores Huerta Foundation

East Bay Community Law Center

Empowering Marginalized Asian Communities

Equal Justice Society

Pacific Juvenile Defender Center

Public Advocates

Public Counsel

The Collective for Liberatory Lawyering

Youth Justice Education Clinic, Center for Juvenile Law and Policy, Loyola Law School

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