

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1038 (Reyes) – As Introduced February 15, 2023

[Note: This bill was double referred to the Assembly Human Services Committee and was heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: California state preschool programs: expulsion

SUMMARY: Requires that the California Department of Social Services (DSS) to withdraw all citations or civil penalties imposed on a child daycare facility that presents evidence that they were in the process of complying with certain expulsion or suspension processes, as specified in current law. Specifically, **this bill:**

- 1) Requires the DSS to, within 30 days, withdraw all citations or civil penalties from a childcare and development program, including a California State Preschool Program (CSPP), if the operator provides evidence that they were in the process of complying with expulsion and suspension procedures as specified in current law.

EXISTING LAW:

- 1) Establishes the “Child Care and Development Services Act” to provide childcare and development services as part of a comprehensive, coordinated, and cost-effective system serving children from birth to 13 years old and their parents, including a full range of supervision, health, and support services through full- and part-time programs. (Welfare and Institutions Code (WIC) 10207 *et seq.*)
- 2) Establishes the Early Education Act to provide an inclusive and cost-effective preschool program that provides high-quality learning experiences, coordinated services, and referrals for families to access health and social-emotional support services through full and part-day programs. (Education Code (EC) 8201)
- 3) Prohibits a contracting agency, as part of the CSPP, from expelling or unenrolling a child, or persuading or encouraging a child’s parents to voluntarily unenroll from the program due to the child’s behavior, except as specified. (EC 8484.1)
- 4) Requires a CSPP contractor to expeditiously pursue and document reasonable steps to address a child’s persistent and serious behaviors to maintain the child’s safe participation in the program, including:
 - a) Consulting with the child’s parent or guardian and teacher;
 - b) Engaging an early childhood mental health consultant, if available;
 - c) Completing a comprehensive screening to identify the needs of the child, if appropriate, including screening the child’s social and emotional development, referring the child’s parents or guardians to community resources, and implementing behavior supports within the program; and

- d) If the child has an individualized family service plan (IFSP) or an individualized education program (IEP), contacting the agency responsible for the IFSP or IEP to seek consultation on serving the child. (EC 8489.1)
- 5) Requires a program that has pursued and documented reasonable steps to maintain the child's safe participation in the program and determines, in consultation with the parents or guardians, the child's teacher, and if applicable the agency responsible for the child's IFSP or IEP, that the child's continued enrollment would present a serious safety threat to the child or other enrolled children, to refer the family to other potentially appropriate placements, and then to unenroll the child. (EC 8489.1)
- 6) Requires that suspensions from CSPP programs only be used as a last resort in extraordinary circumstances when there is a serious safety threat that cannot be reduced or eliminated without the removal of the child. Specifies the steps that must be taken by the program before a decision is made to suspend a child, and the steps required to help the child return to full participation in all program activities as quickly as possible. (EC 8489.1)
- 7) Requires the CDE to include the limitations on expulsion and suspension in each contract for CSPP service beginning July 1, 2023, and requires the CDE to publish aggregate data on suspensions and expulsions annually, subject to an appropriation for this purpose. (EC 8489.1)
- 8) Extends the prohibitions and procedures regarding suspension and expulsion for childcare and development programs identified above to childcare programs overseen by the DSS, including general childcare and development programs, childcare and development services for children with severe disabilities, and migrant childcare and development programs. (WIC 10491.1)
- 9) Requires the DSS to consider, in determining whether to issue a citation or impose a civil penalty to a child daycare facility that contracts with the DSS or the CDE, whether the facility is in the process of complying with EC 8498.1 or WIC 10491.1.
- 10) Prohibits, in federal regulations, a Head Start program from expelling or un-enrolling a child based on the child's behavior, and requires a program to prohibit or severely limit the use of suspension due to a child's behavior, as specified. (45 Code of Federal Regulations (CFR) 1302.17)
- 11) Establishes the "California Child Daycare Facilities Act" to provide a comprehensive, quality system for licensing child daycare facilities to ensure that working families have access to healthy and safe childcare providers and that childcare programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (Health and Safety Code (HSC) 1596.70 et seq.)
- 12) Defines "child daycare facility" as a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child daycare facility includes daycare centers, employer-sponsored childcare centers, and family daycare homes. (HSC 1596.750)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “Students who are suspended or expelled are more likely to experience worse academic and social outcomes than their peers who do not face such disciplinary action, and it is recognized that young people of color are disproportionately overrepresented in suspension and expulsion rates.

California’s childcare system is currently facing a crisis in availability and affordability, and many providers struggle to stay afloat amidst record inflation and significant workforce challenges. California has taken steps to address racial disparities among suspension and expulsion rates, and has put protections in place for childcare providers who comply with requirements in the law when a suspension or expulsion is warranted.

This bill would alleviate financial strain on childcare facilities by placing a timeframe of 30 days on the existing requirement that the DSS withdraw all citations or civil penalties upon the presentation of evidence that a childcare facility was in the process of complying with the statutorily required steps of a suspension or expulsion.”

California has a complex system of early childhood programs. California’s subsidized early care and education (ECE) is made up of a complex array of programs serving children from birth through 13 years, funded through a mix of federal and state dollars, and administered through a mixed delivery system by local educational agencies (LEAs) and community-based providers. The major ECE programs include, but are not limited to, the following:

Program	Overseen by	Ages of children served	# slots in 2022-23
Full-day state preschool (CSPP)	CDE	3-4 years	69,000
Part-day preschool (CSPP)	CDE	3-4 years	142,000
Alternative Payment (AP)	DSS	0-13 years	161,300
General Childcare (CCTR)	DSS	0-13 years	78,500
CalWORKs Stages 1-3	DSS	0-13 years	127,800

Source: Legislative Analyst Office (LAO), 2023

According to the LAO, since 2021-22, the state has added 146,600 childcare slots, which has more than doubled the number of slots statewide. California had approximately 560,000 licensed center spaces for all children from birth to 6 years, and 268,000 licensed family childcare home spaces for all children from birth to 12 in 2021. Despite this, California still lacks the licensed capacity to meet the need for childcare and preschool services.

DSS’s role in childcare licensing. The DSS is responsible for issuing licenses for childcare programs and facilities and for monitoring compliance with relevant statute and regulations. According to the DSS website:

The core mission of the Childcare Licensing Program is to ensure the health and safety of children in care. The Childcare Licensing Program strives to provide preventive, protective, and quality services to children in care by ensuring that licensed facilities meet established health and safety standards through monitoring facilities, providing technical assistance, and establishing partnerships with providers, parents, and the childcare community.

The Childcare Licensing Program provides oversight and enforcement for licensed childcare centers and family childcare homes through 19 Regional Offices located throughout California. All children and families, regardless of age, ethnicity, cultural background, gender, socioeconomic status, or ability, are afforded the same protections under law and regulations for childcare facilities.

The DSS has the authority to issue citations for licensing violations and provides information to the public on which facilities have been inspected, any complaints received, and whether any citations have been issued for that facility. Type A citations are for the most serious type of violations in which there is an immediate risk to the health, safety, or personal rights of those in care. A type B citation is for a violation, that if not corrected, may result in an immediate risk to the health, safety, or personal rights of those being served.

Research highlights the negative impacts of suspension and expulsion. While evidence of the disproportionate suspension and expulsion of school-age students of color has been recorded and analyzed for some time, more recently, similar concerning trends have been observed in preschool and early learning populations. Preschoolers are expelled at three times the rate of K-12 students and boys and children of color are disproportionately affected. Black children make up 19% of preschool enrollment nationally but account for 47% of suspended preschoolers and three-quarters of expelled preschoolers are boys. (U.S. Department of Education's Office of Civil Rights)

Suspensions and expulsions can have significantly negative, lasting impacts for children. In 2015, the U.S. Departments of Health and Human Services and Education released a *Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings*, which states:

Suspension and expulsion can influence a number of adverse outcomes across development, health, and education. Young students who are expelled or suspended are as much as 10 times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not. While much of this research has focused on expulsion and suspension in elementary, middle, and high school settings, there is evidence that expulsion or suspension early in a child's education is associated with expulsion or suspension in later school grades.

The policy statement goes on to acknowledge that, not only do suspensions and expulsions hold the potential to negatively impact social-emotional and behavioral development, but they also pull children out of the very settings that could benefit them the most: early learning environments. Not only do suspended and expelled children then miss out on the benefits they could gain in those environments, but education professionals lose access to those children and thus, the opportunity to identify the underlying sources of their behavior and the ability to help those children address those underlying issues. Additionally, suspension and expulsion can add to family stresses and burdens. The policy statement contends:

In many cases, families of children who are expelled do not receive assistance in identifying an alternative placement, leaving the burden of finding another program entirely to the family. There may be challenges accessing another program, particularly an affordable high-quality program. Even in cases where assistance is offered, often there is a lapse in service which leaves families, especially working families, in difficult situations.

The *California Master Plan for Early Learning and Care* (2020), building on the work of the Assembly Blue Ribbon Commission, and other efforts, emphasizes the need for the equitable treatment of all children and the need to eliminate bias through practices and training. The report notes that while 75% of California's young children are nonwhite, 60% speak a home language other than English, and 13% receive special education supports, caregivers often lack the support they need to provide these children with culturally relevant experiences in both English and the child's home language.

The Master Plan further notes, "It is vital that our early learning and care environments proactively include and serve the diverse children and families of this state while not excluding any children, through inequitable disciplinary practices that punish children experiencing poverty – especially Black boys-at disproportionate rates. While California has made significant strides by adopting legislation prohibiting publicly supported preschool programs from expelling or disenrolling a child due to behavior, there is a need for greater accountability, as well as training for the workforce in bias prevention, mental health, and positive behavior supports."

California currently prohibits expulsions from childcare programs. California's subsidized childcare programs, including CCTR, CSPP, childcare for children with severe disabilities, and migrant childcare programs, are prohibited from expelling or unenrolling a child because of the child's behavior, other than other specific circumstances. Operators of programs must pursue and document specific steps taken in response to a child's persistent and serious challenging behaviors, including consulting with the child's parents and teacher, engaging an early childhood mental health consultant, considering completing a comprehensive screening, and if the child has an IEP or IFSP, consulting with the appropriate agency prior to unenrolling the child.

Providers may be cited under the DSS's licensing authority for suspending, expelling, or unenrolling a child if they have not followed the procedures outlined in statute prior to taking action to remove the child from the program. This bill would require the DSS to remove any citations or civil penalties resulting from such a finding if the provider is able to demonstrate that they were in the process of complying with the specified requirements.

Children with exceptional needs are protected from expulsion through federal law, which states that a child with an IEP or IFSP cannot be expelled if the challenging behavior has a direct and substantial relationship to the child's disability or is the result of a failure to implement the child's IEP or IFSP. In addition, a child cannot be suspended for more than 10 days without reconvening the IEP/IFSP team to consider special education supports and services.

Arguments in support. Pathways LA writes "CSPP contractors are prohibited from expelling or disenrolling a child due to a child's behavior, except under specific circumstances, and only when CSPP contractors have followed specific steps aimed at reducing unwarranted suspensions or expulsions. State law permits DSS to issue citations or civil penalties when a child daycare facility violates the law, and facilities may appeal any citation or civil penalty. Finally, DSS is required to withdraw all citations or civil penalties upon presentation of the evidence that the

facility was in the process of complying with current law. AB 1038 would alleviate the financial pressure on childcare facilities by placing a timeframe of 30 days on the requirement that DSS withdraw citations or civil penalties upon presentation of evidence that a facility was in the process of complying with statutorily required steps of a suspension or expulsion.”

Related legislation. AB 2806 (B. Rubio) Chapter 915, Statutes of 2022, revises and recasts provisions related to expulsion and suspension of a child from the CSPP and broadens the provisions to include general childcare and development programs and family childcare home education network programs.

AB 1361 (B. Rubio) of the 2021-22 Session would have required ECE programs to use suspension or expulsion only as a last resort in responding to a child’s behavior, required specific actions to be taken prior to dis-enrolling or suspending a child due to a behavior issue and provided additional funding and requirements for early childhood mental health consultations. This bill was held in the Assembly Appropriations Committee.

AB 568 (R. Rivas) of the 2021-22 Session would have required the DSS to develop and maintain an Early Learning and Care Dashboard to provide data on suspensions and expulsions in California’s early learning and care programs, and established a grant program to offer anti-bias training to childcare providers, contingent upon funding being available for this purpose. This bill was held in the Assembly Appropriations Committee.

AB 752 (B. Rubio), Chapter 708, Statutes of 2017, prohibits a contracting agency from expelling or disenrolling a child from a CSPP due to a child’s behavior unless the contracting agency has expeditiously pursued and documented reasonable steps to maintain the child’s safe participation in the program. Further, the bill requires the DSS to consider, in determining whether to issue a citation to or impose a civil penalty on a child daycare facility that contracts with the CDE, whether the child daycare facility is in the process of complying with the outlined procedure.

REGISTERED SUPPORT / OPPOSITION:

Support

Pathways LA

Opposition

None on file

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