

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1165 (McCarty) – As Amended April 17, 2023

SUBJECT: Pupil discipline: hate violence: restorative justice program

SUMMARY: Encourages local educational agencies (LEAs) to refer both the victim and perpetrator of an incident of racist bullying, harassment, or intimidation to a program of restorative justice. Specifically, **this bill:**

- 1) Encourages LEAs, for a pupil who has been suspended, or for whom other means of correction have been implemented, for an incident of racist bullying, harassment, or intimidation, to have both the victim and the perpetrator engage in a restorative justice practice that is found to suit the needs of both the victim and the perpetrator.
- 2) Encourages LEAs to regularly check on the victim of racist bullying, harassment, or intimidation to ensure that the victim is not in danger of suffering from long-lasting mental health issues.
- 3) Encourages LEAs to require perpetrators to engage in culturally sensitive programs that promote racial justice and equity and combat racism and ignorance.

EXISTING LAW:

- 1) States the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, protective hairstyles, 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, equal rights, and opportunities in the educational institutions of the state. (Education Code (EC) 200)
- 2) Prohibits the 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 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) Establishes the Safe Place to Learn Act which requires the CDE to assess whether LEAs have adopted a policy prohibiting discrimination, harassment, intimidation, and bullying based on specified characteristics, and established a process for receiving and investigating complaints of discrimination, harassment, intimidation and bullying based on those characteristics. (EC 234.1)
- 4) Requires the CDE, by June 1, 2024, to develop, in consultation with specified stakeholders, evidence-based best practices for restorative justice practice implementation on a school campus and post these on their website. (EC 49055)

- 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, including bullying. (EC 48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915)
- 6) Defines “bullying” as any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, committed by a student or group of students toward one or more students that places a reasonable student in fear of harm, causes them to experience a substantially detrimental effect on their physical or mental health, causes a substantial interference with their academic performance, or with their ability to participate in, or benefit from, the services, activities, or privileges provided by the school. (EC 48900)
- 7) Authorizes a student to be suspended from school, or recommended for expulsion, if they have caused, attempted to cause, threatened to cause, or participated in an act of hate violence, as defined. (EC 48900.3)
- 8) Authorizes a student in grades 4 to 12 to be suspended from school, or recommended for expulsion, if they have intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment. (EC 48900.4)
- 9) Specifies that suspensions of a pupil shall be imposed only when other means of correction fail to bring about proper conduct. Specifies that other means of correction include, but are not limited to, a conference between school personnel, the pupil's parent or guardian, and pupil; referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support services personnel; study teams or other intervention-related teams; referral for a psychosocial or psychoeducational assessment; participation in a restorative justice program; a positive behavior support approach with tiered interventions; after school programs that address behavior issues; or other alternatives involving community service. (EC 48900.5)
- 10) Authorizes school officials to refer a victim of, perpetrator of, witness to, or other student affected by an act of bullying, to the school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and participation in a restorative justice program. (EC 48900.9)

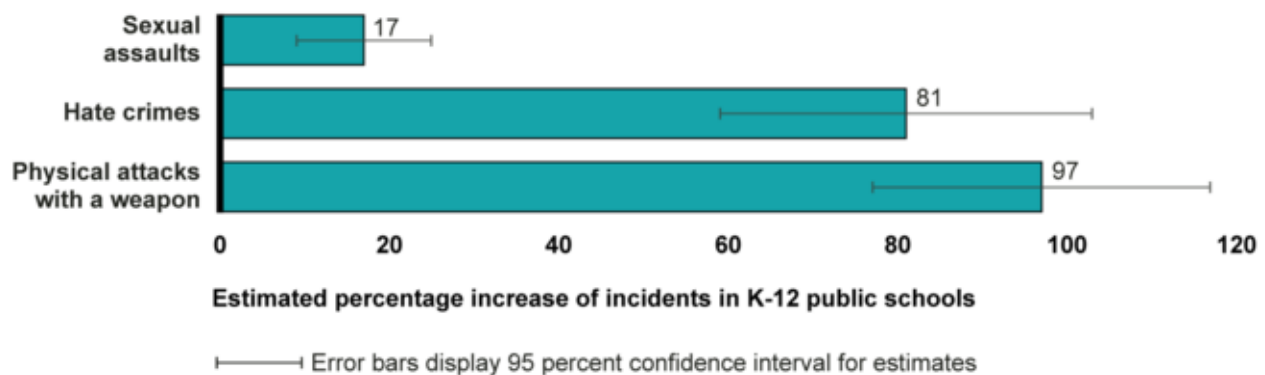
FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “The rise in hate crimes and racist bullying in our schools is unacceptable and must be addressed. It is vital that schools serve as safe spaces for students of all races and ethnicities. Additionally, it is important that students are not unnecessarily taken out of school, especially those that need more targeted attention in terms of both social-emotional learning and education on social justice issues. Restorative justice is a powerful approach to discipline that focuses on repairing harm through inclusive processes that engage all parties by promoting healing and learning. AB 1165 ensures that schools protect

students and address the root issues of racist bullying by implementing restorative justice practices.”

Students are subjected to racist bullying and hate crimes. A 2021 report by the U.S. Government Accountability Office (GAO), *Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*, reports that each year, millions of K-12 students experience hostile behaviors like bullying, hate speech, hate crimes, or assault. In school year 2018-19, about 1.3 million students, ages 12 to 18, were bullied for their race, religion, national origin, disability, gender, or sexual orientation. Of students who were bullied in school year 2018-19, about one in four students experienced bullying related to their race, national origin, religion, disability, gender, or sexual orientation. About one in four of all students aged 12 to 18 saw hate words or symbols written in their schools, such as homophobic slurs and references to lynching. Most hostile behaviors also increased in school year 2017-18. Hate crimes—which most commonly targeted students because of their race and national origin—and physical attacks with a weapon nearly doubled (see figure).



Source: GAO analysis of the Department of Education’s School Survey on Crime and Safety for school years 2015-16 and 2017-18. | GAO-22-104341

The GAO report goes on to state that “Hostile behaviors, including bullying, harassment, hate speech and hate crimes, or other types of victimization like sexual assault and rape, in schools can negatively affect K-12 students' short- and long-term mental health, education, income, and overall well-being. According to Education's guidance, incidents of harassment or hate, when motivated by race, color, national origin, sex (including sexual orientation and gender identity), or disability status can impede access to an equal education. In certain circumstances, these kinds of incidents may violate certain federal civil rights laws, which Education's Office of Civil Rights is tasked with enforcing in K-12 schools.”

A 2022 literature review, *Bullying Victimization Due to Racial, Ethnic, Citizenship and/or Religious Status: A Systematic Review*, concluded that:

Adverse school and community environments that perpetuate negative stereotypes and discrimination put racial/ethnic and religious minorities at increased risk of racist bullying victimization. The review also found that racist bullying victimization is associated with a wide range of negative outcomes including poor mental health, lower academic engagement, and an increased risk of involvement in delinquent behaviors, especially among older pupils. The finding that those bullied due to their race/ethnicity, citizenship and/or religion perceive to be discriminated and disrespected by their teachers highlights the importance of developing anti-bias, anti-racism, and inclusion training materials for educators, and

implementing multi-level interventions that are targeted towards different groups such as teachers and pupils.

What is restorative justice? The use of restorative justice and restorative practices in schools offers a respectful and equitable approach to discipline, as well as a proactive strategy to create a connected, inclusive school culture. Inspired by indigenous values, restorative justice is a philosophy and a theory of justice that emphasizes bringing together everyone affected by wrongdoing to address needs and responsibilities, and to heal the harm to relationships as much as possible. The term “restorative practices” is used by a number of practitioners to describe how the concepts of restorative justice are utilized to create change in school systems. These practices are an alternative to zero-tolerance policies that mandate suspension or expulsion of students from school for a wide variety of misbehaviors that are not necessarily violent or dangerous. (Fix School Discipline, 2022)

According to the Learning Policy Institute (LPI), “Safe, supportive learning environments, where students feel a sense of belonging and where relational trust prevails, are the foundation of a restorative approach to education. Research shows that stable, caring relationships with teachers and other adults are linked to better school performance and engagement. Even one stable relationship with a committed adult can help buffer a child from the effects of serious adversity. Restorative structures, such as advisory systems, support community building and relationships and provide consistent opportunities for teachers to check in on students’ academic, social-emotional, and mental health needs and connect them to appropriate supports.” (LPI, 2021).

According to the LPI, restorative practices in schools include:

- Staff and students have a shared vocabulary that enables them to express feelings in a healthy productive way and to criticize the deed, not the doer;
- Impromptu student conferences are used to redirect a student’s behavior in a way that minimizes disruption to instructional time; and
- Restorative circles are structured processes guided by a trained facilitator with a strong emphasis on the importance of listening, facilitated by using a talking piece.

Successful implementation of restorative practices. Research suggests that integrating restorative approaches into school settings is complex and takes time. Studies have suggested that key elements include:

- Incorporating restorative practices as one of many strategies for improving school culture;
- Utilizing a whole school approach;
- Focusing on building staff buy-in and capacity;
- Developing meaningful accountability and data collection systems;
- Establishing district-level infrastructure; and
- Centering student and community voices. (LPI, 2021)

Impacts of exclusionary discipline policies. Research suggests that harsh discipline practices and the over-policing of students of color that occurs in many schools has 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. (LPI, 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.”

California suspensions have declined, but disproportionality remains. Schools are authorized to suspend or recommend for expulsion, students who have engaged in bullying, harassment, or intimidation. However, many have suggested that this may not be an effective approach, and in fact, tends to disproportionately impact students of color. CDE data shows that while the number of suspensions and expulsions has decreased, the number of African American students suspended or expelled remains significantly above their proportionate enrollment:

- Total suspensions dropped from 420,881 in 2014-15 to 292,423 in 2021-22;
- African American students made up 5.2% of statewide enrollment in 2021-22, but represented 13.1% of students suspended;
- Suspensions for “defiance only” dropped from 125,414 in 2014-15 to 21,465 in 2021-22;
- African American students received 13.8% of all suspensions for “defiance-only” in 2021-22;
- Total expulsions dropped from 5,758 in 2014-15 to 4,191 in 2021-22; and
- African American students accounted for 13.2% of total expulsions in 2021-22.

Holding schools accountable for suspension and expulsion rates. California’s Local Control Funding Formula (LCFF) and Local Control and Accountability Plan (LCAP) requirements include school climate as one of the eight state priorities. All California school districts, county offices of education (COEs), and charter schools, are required to report and examine pupil suspension and expulsion rates on their LCAP and annual updates. This requirement to clearly report disciplinary actions, in the aggregate as well as by subgroup, may increase the pressure on schools to employ alternatives to suspension and expulsion.

Research generally supports the use of restorative practices. A growing body of research suggests that restorative practices are beneficial. Numerous studies have found that restorative practices are not only associated with improvement in student behavior (e.g. decreases in fighting and bullying), but also with a decrease in office referrals, classroom removals, suspensions, and expulsions. Studies also suggest a link between restorative approaches and improved school climate outcomes, including increased levels of student connectedness, improved relationships between students and teachers, and improved perceptions of school climate. (LPI, 2021).

Another review of research on restorative initiatives concluded that results from case studies, district-wide correlational studies, and experimental trials convincingly demonstrate that when schools implement a restorative initiative, their out-of-school suspension rates decrease. The report further concludes that restorative initiatives have promise to narrow racial disparities in suspension as well as to foster positive student development. However mixed findings indicate that the promise is not always realized. (National Education Policy Center, 2020).

Increasing use of alternatives to suspension and expulsion in California. A number of school districts, including some of the largest, have adopted board policies that prohibit the use of willful defiance as the basis for suspension or expulsion and are committing resources to effectively implement alternative models of correction, including restorative justice, Positive Behavior Interventions and Supports (PBIS), and other evidence-based approaches. For

example, San Francisco Unified School District (SFUSD), Los Angeles Unified School District (LAUSD), and Oakland Unified School District (OUSD) have banned the suspension or expulsion of students based solely upon willful defiance and all three districts offer restorative justice programs in their schools.

OUSD is considered a nationwide model for restorative justice, having successfully operated their program since 2006. According to the district website, “Restorative Justice (RJ) is a set of principles and practices inspired by indigenous values used to build community, respond to harm/conflict and provide individual circles of support for students. By building, maintaining and restoring relationships between members of the entire school community, we help to create an environment where all students can thrive. Our program is implemented through a 3-tier, school-wide model:”

- Tier 1: Community Building, characterized by the use of social emotional skills and practice (classroom circles) to build relationships, create shared values and guidelines, and promote restorative conversations following behavioral disruption. The goal is to build a caring, intentional, and equitable community with conditions conducive to learning;
- Tier 2: Restorative Processes, characterized by the use of non-punitive response to harm/conflict such as harm circles, mediation, or family-group conferencing to respond to disciplinary issues in a restorative manner. This process addresses the root causes of the harm, supports accountability for the offender, and promotes healing for the victim(s), the offender, and the school community; and
- Tier 3: Supported Re-Entry, characterized by 1:1 support and successful re-entry of youth following suspension, truancy, expulsion or incarceration. The goal is to welcome youth to the school community in a manner that provides wraparound support and promotes student accountability and achievement.

Existing law supports referral of students involved in bullying for supports, including restorative justice. Existing law authorizes a superintendent or principal of a school to refer a victim, perpetrator, witness, or other student affected by an act of bullying to school support personnel for case management, counseling, and participation in a restorative justice program.

Arguments in support. Teach Plus writes, “Hate crimes and other hateful incidents continue to persist in our education system, causing different kinds of suffering for the targeted students. And many young people reported that they did not feel that their schools and teachers were addressing incidents of racist bullying and harassment adequately. We need to ensure that all students feel safe and supported, particularly in these heightened hate incidents but educators, school and district leaders need support to address the root of the issue in an effective way that prevents patterns of racist behavior.

Restorative justice is a powerful approach to discipline that focuses on repairing harm through inclusive processes that engage all stakeholders. When implemented well, RJ shifts the focus of discipline from punishment to learning and from the individual to the community. It is effective in reducing bullying, while also keeping kids in school and ensuring that the victim’s needs are addressed.”

Related legislation. AB 2598 (A. Weber) Chapter 914, Statutes of 2022, requires the CDE to develop and post on its website by June 1, 2024, evidence-based best practices for restorative justice practices for LEAs to implement to improve campus culture and climate.

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

AB 2698 (S. Weber) of the 2015-16 Session would have established the School Climate and Student Achievement Act, and required low-achieving schools, to begin an assessment of school climate on or before September 1, 2017, and complete this assessment by July 1, 2018; and would have required the CDE to convene an advisory committee comprised of stakeholders and professionals who have participated in the development and expansion of alternative discipline programs, such as restorative justice and positive behavioral interventions and supports. This bill was held in the Assembly Appropriations Committee.

AB 2489 (McCarty) of the 2015-16 Session would have required the CDE to develop a standard model to implement restorative justice practices on a school campus and make the standard model available for use by any school district that chose to implement restorative justice practices as part of its campus culture. This bill was held in the Assembly Appropriations Committee.

AB 1025 (Thurmond) of the 2015-16 Session would have required the CDE to establish a three-year pilot program in school districts to encourage inclusive practices that integrate mental health, special education, and school climate interventions following a multi-tiered framework. This bill was held in the Senate Appropriations Committee.

AB 1455 (Campos) Chapter 229, Statutes of 2014, authorizes school officials to refer a victim of, witness to, or other pupil affected by an act of bullying, committed on or after January 1, 2015, to the school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and participation in a restorative justice program.

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. The bill sunset on July 1, 2018.

SB 1396 (Hancock) of the 2013-14 Session would have apportioned funds, contingent upon available funding, to a designated COE to establish a multi-tiered intervention and support program that includes, but is not limited, the Schoolwide PBIS program and restorative practices. This bill was held in the Assembly Appropriations Committee.

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

Teach Plus

Opposition

None on file

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