

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1361 (Blanca Rubio) – As Amended April 5, 2021

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

SUBJECT: Childcare and developmental services: preschool: expulsion and suspension: mental health services: reimbursement rates

SUMMARY: Requires early learning and care programs to use suspension or expulsion only as a last resort in responding to a child's behavior, requires specific actions to be taken prior to disenrolling or suspending a child due to a behavior issue, and provides additional funding and requirements for early childhood mental health consultations. Specifically, **this bill:**

- 1) Defines in the Education Code, for purposes of this article:
 - a) "Expulsion" as the permanent dismissal of a child from a program in response to a child's behavior;
 - b) "Program" as a California State Preschool Program (CSPP), general childcare and development programs serving children from 0-5 years of age, and family childcare home education networks serving children from 0-5 years of age;
 - c) "Suspension" as the removal of a child from all or part of the program day, or the prevention of a child from attending the program for one or more days, in response to the child's behavior; and
 - d) "Persistent and serious challenging behaviors" as repeated patterns of behavior that interfere with learning or engagement in prosocial interactions with peers and adults and that are not responsive to the use of developmentally appropriate guidance procedures including, but not limited to, physical aggression and disruptive motor behavior including stereotypic movements, property destruction, and self-injury.
- 2) Repeals existing law which prohibits the expulsion or unenrollment of a child from a CSPP due to a child's behavior, except under specified conditions.
- 3) Prohibits specified childcare programs from expelling or unenrolling a child because of the child's behavior, or persuading or encouraging a child's parent to voluntarily unenroll from the program due to a child's behavior, except as authorized.
- 4) Requires that if a child exhibits persistent and serious challenging behaviors, a program must expeditiously pursue and document reasonable steps, including consulting with the child's parents and teacher, and, if available, engaging an early childhood mental health consultant, to maintain the child's safe participation in the program. In addition:
 - a) Requires the program to inform the parents of a child exhibiting persistent and serious challenging behaviors, including a description of the behavior and the program's plan for maintaining the child's safe participation in the program;

- b) Requires, if the child has an individualized family service plan (IFSP) or individualized education program (IEP), the program to contact the agency responsible for the IFSP or IEP to seek consultation on serving the child; and
 - c) Requires the program to consider a universal screening of a child who does not have an IFSP or IEP, including screening the child's social and emotional development, referring the child's parents to community resources, and implementing behavior supports within the program before referring the child's parents or legal guardians to the regional center or the local agency responsible for implementing the federal Individuals with Disabilities Education Act (IDEA).
- 5) Authorizes a program to unenroll a child if they have pursued and documented reasonable steps to maintain the child's safe participation in the program and to determine, in consultation with the child's parents, the child's teacher, and, if applicable, the local agency responsible for implementing the IDEA, that the child's continued enrollment would present a continued serious safety threat to the child or other enrolled children.
- 6) Requires that if a program unenrolls a child, it must refer the parents to other potentially appropriate placements, the local childcare resource and referral agency (R&R), or any other referral service available in the local community, and, to the greatest extent possible, support a direct transition to a more appropriate placement.
- 7) Requires the program to complete the entire process described above in 180 days or less.
- 8) Prohibits a program from suspending a child due to a child's behavior, or encouraging or persuading a child's parents to prematurely pick up a child due to a child's behavior before the program day ends, and requires that suspension only be used as a last resort in extraordinary circumstances, when there is a serious safety threat that cannot be reduced or eliminated without removal.
- 9) Requires a program to ensure the full participation of enrolled children in all program activities, to the extent possible.
- 10) Requires a program, before determining that a suspension is necessary, to collaborate with the child's parents, engage with a mental health consultant, if available, and use appropriate community resources such as behavior coaches, psychologists, other appropriate specialists, or other resources, as needed to determine that no other reasonable option is appropriate, and to provide written notice to the child's parents within 24 hours.
- 11) Requires a program, if suspension is deemed necessary, to help the child return to full participation in all program activities as quickly as possible while ensuring the child's safety by:
- a) Continuing to engage with the parents and, if available, a mental health consultant, and continuing to use appropriate community resources;
 - b) Developing a written plan to document the action and supports needed;
 - c) Providing referrals to appropriate community services; and

- d) Determining whether a referral to a regional center or local agency responsible for implementing the federal IDEA, is appropriate.
- 12) Requires the California Department of Education (CDE) and the State Department of Social Services (DSS) to include the limitations on expulsion and suspension in each contract for childcare service with a program.
- 13) Requires a program to notify a child's parent in writing of the limitations on disenrollment, including expulsion and suspension, upon enrollment of a child in the program.
- 14) Requires the notification to the parent to include resources to submit a complaint or appeal a decision made by a program to suspend or expel a child.
- 15) Requires a written notice of action to include information on expulsions and suspensions and resources to submit a complaint or file an appeal a decision made by a program to suspend or expel a child.
- 16) Requires a program to maintain records, and requires the CDE to annually collect from contracting agencies and include in the Cradle-to-Career Data System, all of the following:
- a) The number of times the unenrollment process is initiated during a program year and the outcome of the process;
 - b) The number of times the suspension process is initiated, the outcome of the process, and how long a child was excluded from the program, if applicable; and
 - c) For each child to whom (a) or (b) applies, the age, sex, race and ethnicity, foster status, home language, disability, and whether the child has an IFSP or IEP.
- 17) Requires the CDE and the DSS, by January 1, 2024, to collaborate to publish aggregate data, on both a statewide and county level, on how many times during the most recent program year the suspension and expulsion processes as described above were initiated and the outcomes of the processes, disaggregated by student demographics, as well as how many appeals or complaints were received from parents regarding suspension or expulsion.
- 18) Requires the CDE and the DSS to collaborate to create guidelines for offering additional support and requiring additional staff training for programs with exceptionally high numbers of reported suspensions and expulsions.
- 19) Redefines "early childhood mental health consultation service" as mental health service that develops the capacity of programs to serve and benefit a child enrolled in the program, and includes all of the following:
- a) Support for providers, parents, and caregivers to create mental health promoting environments and to respond effectively to all children, including young children with disabilities, challenging behaviors, and other special needs;
 - b) Assistance through individual site consultations, provision of resources, formulation of training plans, referrals, and other methods that address the unique needs of programs and providers;

- c) Aid to providers, parents, and caregivers in the encouragement and facilitation of collaboration and communication in developing the skills and tools needed to be successful as they support the mental and emotional well-being, development and early learning of all children, including observing environments, facilitating the development of action plans, and supporting site implementation of those plans;
 - d) The development of strategies for addressing prevalent child mental health concerns, including internalizing problems, such as appearing withdrawn, and externalizing problems, such as exhibiting challenging behaviors;
 - e) If a child exhibits persistent and serious challenging behaviors, support with the pursuit and documentation of reasonable steps to maintain the child's safe participation in the program, as described;
 - f) Face-to-face interactions or video-based platforms and other modes of communication that are compliant with privacy protections, such as the telephone; and
 - g) Group or individual consultations of any of the actions above.
- 20) Requires the cost to the provider offering an early childhood mental health consultation service to be reimbursable only if all of the following apply:
- a) The service is provided on a sufficient and consistent frequency throughout the program year to significantly contribute to all of the following:
 - i) Improving interpersonal relationships and child outcomes;
 - ii) Increasing the confidence, competence, and well-being of those consulted; and
 - iii) Eliminating suspensions and expulsions.
 - b) Each classroom receives, on average, at least one hour of consultation service during each week of program operation, not including working with one or more individual children or families.
 - c) The service is provided by one of the following persons:
 - i) A licensed mental health professional, including a marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, a licensed child and adolescent psychiatrist, or a credentialed school psychologist, and requires that each have at least three years of experience providing mental health services to children 0 to 5 years of age, training in infant, family, and early childhood mental health, adequate insurance, have held their respective license for a minimum of two years, and be in full compliance with all continuing education requirements applicable to their profession;
 - ii) A license-eligible marriage and family therapist, a license-eligible clinical social worker, a license-eligible professional clinical counselor, a license-eligible

psychologist, or a license-eligible child and adolescent psychiatrist, who is supervised by a person meeting all of the requirements described in (i);

- iii) A person holding, at a minimum, a master's degree in a field related to mental health or human services, including marriage and family therapy, clinical social work, professional clinical counseling, infant mental health, human development, human services, psychology, school psychology, child and adolescent psychiatry or occupational therapy, speech and language pathology, and education, who has at least two years of experience working with children 0 to 5 years of age, and who is supervised by a person meeting all of the requirements described in (i); and
 - iv) A person meeting all of the requirements described in (i) who is providing supervision pursuant to (ii) or (iii) may be an employee of a contracting agency, including on a temporary or part-time basis, or engaged as an external contractor, provided that supervision takes place on a regular basis that is sufficient to offer professional guidance and support.
- d) Within the first 30 days upon hire or start of consultation service, the provider agency ensures that the consultant is trained in all of the following:
- i) California law and professional ethics for early childhood mental health consultation, including all of the following:
 - Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of early childhood mental health consultation;
 - The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of early childhood mental health consultation;
 - The current legal patterns and trends in the mental health profession;
 - Confidentiality and the treatment of minors with and without parental consent;
 - A recognition and exploration of the relationship between a practitioner's sense of self and human values and the practitioner's professional behavior and ethics; and
 - The application of legal and ethical standards in different types of work settings.
 - ii) Child abuse and neglect mandated reporting laws;
 - iii) Best practices and foundations of early childhood mental health consultation; and
 - iv) All relevant laws and regulations regarding state and federal childcare programs.
- e) Consultants and supervisors are required to participate in continuing professional development and education for at least 18 hours per program year in at least 3 of a list of 25 specified topics.

- f) The consultation service uses a relationship-based model emphasizing strengthening relationships among early childhood education providers, parents, children, and representatives of community systems and resources, and integrates reflective practice into the onsite consultation model, including all of the following:
 - i) At least twice per program year, conducting early care- and education setting-based mental health assessments, such as the “Climate of Healthy Interactions for Learning & Development (CHILD)” or other appropriate instrument;
 - ii) Recordkeeping that adequately documents all consultation activities; and
 - iii) With consent from parents or legal guardians, at least one screening of each enrolled child for adverse childhood experiences (ACEs) and screening for buffering factors including resilience.
- 21) Increases the adjustment factor for the provision of early childhood mental health services provided in a program from 1.05 to 1.1.
- 22) Authorizes alternative payment programs (APP) and agencies administering CalWORKs programs serving children 0-5 years of age to use administrative and support services funds to provide early childhood mental health consultation services.

Health and Safety Code:

- 23) Requires the DSS to consider in determining whether to issue a licensing citation or impose a civil penalty to a child daycare facility, whether the facility is in the process of complying with guidelines on expulsion or suspension.
- 24) Prohibits the DSS from issuing a citation or imposing a civil penalty related to the behavior of a child when the facility is in the process of complying with, or is following the guidelines on expulsion and suspension.
- 25) Authorizes a facility to appeal a citation or civil penalty issued by the DSS related to the behavior of a child, or the actions of staff related to the behavior of a child, if the facility is in the process of complying with the suspension and expulsion guidelines, and requires the DSS to withdraw all citations and penalties upon presentation of evidence by the facility that it was in the process of complying with these guidelines.
- 26) Defines the following terms:
- a) “Expulsion” means the permanent dismissal of a child from a program in response to a child’s behavior;
 - b) “Suspension” means any removal of a child from all or part of the program day, or prevention of a child from attending the program for one or more days, in response to a child’s behavior;
 - c) “Program” means childcare services provided by a licensed child daycare facility, as defined in Section 1596.750, serving children zero to five years of age; and

- d) “Persistent and serious challenging behaviors” means repeated patterns of behavior that interfere with learning or engagement in prosocial interactions with peers and adults and that are not responsive to the use of developmentally appropriate guidance procedures. This includes, but is not limited to, physical aggression and disruptive motor behavior including stereotypic movements, property destruction, and self-injury.
- 27) Requires programs to use positive, age-appropriate behavior management strategies, and to the greatest extent possible, refrain from exclusionary disciplinary measures including removing children from group activities.
- 28) Requires programs to develop guidelines for expulsion and suspension including:
- a) A statement of the program’s philosophy regarding suspension and expulsion;
 - b) Information on the steps a program will take to address persistent and serious challenging behaviors, including behavior support offered, with the understanding that suspension and expulsion shall only be used as a last resort;
 - c) Information on how parents or legal guardians will be involved when children exhibit persistent and serious challenging behaviors;
 - d) Policies for transitioning a child to an alternative, more appropriate setting if that would be in the best interest of the child; and
 - e) Information on how a parent may file a concern or complaint regarding a decision on suspension or expulsion by the program including contacting the DSS.
- 29) Requires a program to provide the parent with a copy of the guidelines for expulsion and suspension upon enrollment of a child.
- 30) Requires the DSS to issue guidance for programs on implementing these requirements including a model set of guidelines on suspension and expulsion by July 1, 2022, and to engage a diverse group of stakeholders and experts, including families and providers, to inform this guidance.

EXISTING LAW:

- 1) Establishes the “Child Care and Development Services Act” to provide child care and development services as part of a coordinated, comprehensive, 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. (Education Code (EC) 8200 et seq)
- 2) Defines “childcare and development services” to mean services designed to meet a wide variety of children’s and families’ needs while parents and guardians are working, in training, seeking employment, incapacitated, or in need of respite and states that these services may include direct care supervision, instructional activities, R&Rs, and APPs. (EC 8208)

- 3) Requires families to meet certain criteria in order to be eligible for federal and state subsidized child development services, including that a family must be either a current aid recipient, income eligible, homeless, or one whose children are recipients of protective services or have been identified as being abused, or neglected, as specified. (EC 8263)
- 4) Requires the State Superintendent of Public Instruction (SPI) to administer all CSPPs, which include, but are not limited to, part-day age- and developmentally appropriate programs designed to facilitate the transition to kindergarten for three- and four-year-old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. (EC 8235)
- 5) 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.)
- 6) 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)
- 7) Defines “alternative payments” (AP) to include payments made by one child care agency to another agency or provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services. (EC 8208)
- 8) Defines “alternative payment program” (APP) as a local government agency or nonprofit organization that has contracted with the CDE to provide alternative payments and to provide support services to parents and providers. (EC 8208)
- 9) Prohibits, in federal regulations, a Head Start program from expelling or un-enrolling a child from Head Start 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 CFR 1302.17)
- 10) Prohibits a contracting agency, as part of the CSPP, from expelling or unenrolling a child because of the child’s behavior, except as specified. (EC 8239.1)
- 11) Establishes the federal “Individuals with Disabilities Education Act” (IDEA) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. (20 U.S. Code 1400 et seq.)
- 12) Prohibits the expulsion of a child with an IEP or IFSP 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 IEP. Requires a child’s IEP/IFSP team be reconvened to consider special

education supports and services if a child is suspended for more than 10 days. (Section 300.530 (e) Title 34 Code of Federal Regulations).

- 13) Transfers, effective July 1, 2021, the responsibility for specified childcare programs, responsibilities, services, and systems from the CDE and the SPI to the DSS, including APPs; Migrant APPs; California Work Opportunity and Responsibility to Kids (CalWORKs) Stage 2 and Stage 3 childcare; General childcare and development programs; Migrant childcare and development programs; and Childcare and development services for children with severe disabilities. (Welfare and Institutions Code (WIC) 10203)
- 14) Requires the DSS, by March 31, 2021, to submit to the appropriate budget and policy committees of the Legislature, the Department of Finance, and the Early Childhood Policy Council, a plan that describes how the department will achieve the transfer of responsibilities specifying, amongst other things, how a cradle-to-career, interagency data system will provide improved state-level reporting, support the goals of the Master Plan for Early Learning and Care, and support the achievement of parents making an informed childcare choice that best meets their child's and family's needs. (WIC 10205)
- 15) Establishes the "Cradle-to-Career Data System Workgroup" to assess and recommend data system structural components, processes, and options for expansion and enhancement of data system functionality, to be outlined in specified reports; and, advise ongoing efforts to develop, administer, and enhance the data system. (EC 10853)
- 16) Defines "early childhood mental health consultation service" as a service benefiting a child who is served in a California state preschool program, an infant or toddler who is 0 to 36 months of age and is served in a general childcare and development program, or a child who is 0 to 5 years of age and is served in a family childcare home education network setting that includes:
 - a) Support to respond effectively to all children, with a focus on young children with disabilities, challenging behaviors, and other special needs;
 - b) Assistance through individual site consultations, provision of resources, formulation of training plans, referrals, and other methods that address the unique needs of programs and providers;
 - c) Aid to providers in developing the skills and tools needed to be successful as they support the development and early learning of all children, including observing environments, facilitating the development of action plans, and supporting site implementation of those plans;
 - d) The development of strategies for addressing prevalent child mental health concerns, including internalizing problems, such as appearing withdrawn, and externalizing problems, such as exhibiting challenging behaviors; and,
 - e) If a child exhibits persistent and serious challenging behaviors, support with the pursuit and documentation of reasonable steps to maintain the child's safe participation in the program. (EC 8265.2)

- 17) Provides that the early childhood mental health consultation service is supervised and provided by a licensed marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, a licensed child and adolescent psychiatrist, or others, as determined by the CDE. (EC 8265.2)
- 18) Establishes adjustment factors to reimbursement rates for childcare and development services, applied by multiplying the applicable adjustment factor by the provider agency's reported child days of enrollment for the child to whom the adjustment factor applies, in order to reflect the additional expense of serving children of specific ages and with certain needs including infants and toddlers served in child day care centers or family child care homes, children between the ages of 0 and 21 with exceptional needs or severe disabilities, children between the ages of 0 and 14 at risk of neglect abuse or exploitation, and limited-English-speaking and non-English-speaking children between 2 years of age and kindergarten age. (EC 8265.5)
- 19) Establishes the adjustment factor for specified programs where mental health consultation services are provided at 1.05 of the applicable reimbursement rate. (EC 8265.5 (b)(7))

FISCAL EFFECT: The Office of Legislative Counsel has keyed this as a possible state-mandated local program.

COMMENTS:

This bill places strict limits on suspension, expulsion, and disenrollment of children aged 0-5 years from contracted childcare programs, including the CSPP, general childcare and development centers, and family childcare homes which are part of an education network. Prior to taking any action to exclude a child from a program due to the child's behavior, this bill requires a program operator to complete a series of specified actions within a 180-day period. A provider would be authorized to exclude a child only when there is a serious safety threat that cannot be reduced or eliminated.

The bill also sets out specific parameters for early childhood mental health consultations in contracted childcare settings in order for a program to qualify for the increased rate of reimbursement for these services, as proposed by this bill.

For family childcare home providers, or others operating under the APP, CalWORKs, or other programs where an APP provides a voucher to eligible low-income families to access subsidized childcare offered in a family childcare home, a childcare center, or a license-exempt setting, this bill requires these programs to also refrain from exclusionary disciplinary measures, including removing children from group activities, but is much less prescriptive than is the case for the contracted programs operating primarily in, or linked to, childcare centers. The bill also requires the DSS to develop guidelines for expulsion and suspension from the voucher programs, and authorizes providers to use their administrative and support services funding, to provide early childhood mental health consultation services, if they choose to do so.

Finally, this bill requires that contracted programs collect and report data for inclusion in the proposed Cradle-to-Career Data System regarding the number of times suspension and/or expulsion processes were undertaken, the outcomes achieved, and key demographics of the children involved. The author may wish to consider whether an interim step is warranted

regarding the reporting of data given that the implementation of the Cradle-to-Career Data System, and particularly the inclusion of data from the early learning and care sector is many years away.

Need for the bill. According to the author, “National data indicates that children are expelled, suspended, and counseled out of early learning and childcare programs at much higher rates than in K-12 education. African American and Latino children, especially boys, are disproportionately impacted by this detrimental practice. This begins in preschool and persists throughout their educational journey. When children are excluded from early learning classrooms, they miss out on the opportunity to develop key social, emotional, and academic skills. As a former teacher myself, I believe we need to ensure all our children are given a fair opportunity to succeed in their earliest school years. This bill helps address structural inequities in our early childhood education system by not only prohibiting suspensions and expulsions, but also by providing needed support to staff.”

California has an extensive and complex early learning and care system: California’s subsidized childcare system is designed to provide assistance to parents and guardians who are working, in training, seeking employment, incapacitated, or in need of respite. This childcare is available through a number of programs. Parents participating in California Work Opportunity and Responsibility to Kids (CalWORKs), as well as families transitioning from and no longer receiving CalWORKs aid, can be eligible for childcare, which is offered in three “stages.” The CDSS administers Stage 1, and the CDE administers Stages 2 and 3. The CDE also administers non-CalWORKs child care. The largest programs are: General Child Care, which includes contracted centers and family child care homes; the CSPP which provides developmentally, culturally, and linguistically appropriate curriculum to eligible three- and four-year olds; and, APPs which provide vouchers that can be used to obtain childcare in a center, family childcare home, or from a license-exempt provider.

Certain eligibility and prioritization rules apply to subsidized childcare in California. Families are eligible for non-CalWORKs subsidized childcare if they meet at least one requirement in each of two areas: eligibility and need. First, they must meet one of the eligibility criteria, which are currently receiving aid, being income-eligible, being homeless, or having children who are recipients of protective services or who have been identified as being, or at risk of being, abused, neglected, or exploited. Secondly, the family must meet one of the need requirements: the child has to have been identified by a legal, medical, or social services agency or emergency shelter as being a recipient of protective services or being (or at risk of being) abused, neglected or exploited, or the parents need to be employed or seeking employment, engaged in vocational training, seeking permanent housing for family stability, or incapacitated.

In Fiscal Year 2020-21, there are over 400,000 subsidized childcare slots in California including:

- 178,000 in CalWORKs Stages 1, 2, and 3;
- 75,000 in APPs;
- 32,000 in General Child Care; and
- 143,000 in part-day and full-day CSPP.

Transition of childcare programs from CDE to DSS. According to the CDE, California is committed to building a system of early learning and care which is more integrated and coordinated to promote a high-quality, affordable, early childcare system designed to comprehensively and effectively serve the children and families in our state. The enacted state budget for Fiscal Year 2020-21 transitions responsibility for certain childcare and development programs and nutrition program from the CDE to the DSS, effective July 1, 2021. Other programs supporting early education, including CSPP and transitional kindergarten (TK), as well as the school and summer child nutrition meal programs currently administered by CDE, remain under the responsibility of CDE.

COVID-19 has had severe impacts on California's early childhood system. Prior to the disruptions caused by COVID-19, more than 1.2 million children in California were enrolled in early learning and care programs across the state. As of June 2020, more than 1/3 of early learning and care programs were closed for in-person care and those that were open were operating at reduced enrollment. Program closures and restrictions on group sizes due to the pandemic have displaced large numbers of children. Based on the survey data, nearly 8 of 10 children (78%) enrolled in licensed early learning programs prior to COVID-19 were no longer receiving care in those programs, as of June or July 2020 (American Institutes for Research [AIR] 2021).

According to data from the R&R Network, the number of family childcare home licenses dropped 14% from January 2020 to January 2021, representing a loss of 3,635 facilities. The number of childcare center licenses dropped 33% during the same period, representing a loss of 4,873 centers. Although some of these facilities may reopen post-pandemic, it is clear that there has been a severe impact on the availability of childcare in California.

Programs wishing to reopen have faced significant barriers to doing so. Providers have identified critical needs for their programs, including funding for basic operating expenses like staff salaries and supplies, protections for their health and the health of their staff and families, and guidance on how to follow new regulations and protocols.

Impacts of COVID-19 on young children and families. In addition to the impact on the supply of childcare facilities in California, the COVID-19 pandemic has had severe impacts on the well-being of children and families. The pandemic and resulting economic insecurity has only exacerbated the significant strain on families with young children and the early care and education field. Children and families are experiencing unprecedented levels of stress, depression and isolation. According to national research, many more young children are experiencing high levels of social and emotional difficulties than expected. (Barnett 2021). A recent poll found that 70% of parents are worried about their family's mental health (EdTrust West, 2021). Even before the pandemic, early childhood providers have increasingly voiced concerns about young children showing signs of serious emotional distress and have expressed the need for training and assistance around managing challenging behaviors.

According to California early childhood organizations, over the course of the next several months, as vaccinations are rolled out and parents and children increasingly return to work and school, experts predict that children and families may begin to realize the full extent of the trauma and toxic stress they have experienced related to the pandemic. Child development experts anticipate increased acting-out behaviors, separation anxiety, and inconsolable sadness as children once again have their routines upended, and experience shifts in their relationships

and time spent with adults. These reactions are normal responses to change for young children, but will be difficult for adults to respond to at the level needed to prevent a wave of toxic stress experienced by young children. In other words, while we may be in a crisis of family mental health conditions now, one should expect that crisis will continue to build over the next year, not recede.

Significant mental health problems occur in young children. Children can exhibit characteristics of anxiety disorders, attention-deficit/hyperactivity disorder, depression, post-traumatic stress disorder, and neurodevelopmental disabilities, such as autism, at an early age. Research suggests that approximately 9 to 14% of children from birth to 5-years-old experience emotional or behavioral disorders.

Factors such as persistent poverty, recurrent abuse or chronic neglect, exposure to domestic violence, parental mental health issues or substance abuse, as well as poor child care conditions increase the risk of serious mental health problems among young children.

Left untreated, early mental health disorders can impact every aspect of a child's development, including physical, cognitive, communication, sensory, emotional, social, and motor skills. These negative impacts can affect a child's ability to succeed in school and in life and increase the risk of poor educational outcomes, ill health, and juvenile delinquency later in life. (Harvard University, 2013).

Adverse childhood experiences (ACEs) have broad impact. ACEs are defined as including 10 traumatic experiences that can occur before age 18 and include physical and emotional abuse, neglect, substance abuse, caregiver mental illness and household violence. This bill would require a contracted childcare program receiving reimbursement for early childhood mental health consultations to screen each enrolled child for ACEs.

Even prior to the pandemic, research data demonstrates that 25% of children in California have at least one ACE, 8% have 2 ACEs, and 7% have 3-8 ACEs (Child Trends, 2016). Some families were particularly vulnerable to the COVID-19 crisis, including those already struggling to make ends meet, hourly workers and those with unstable employment, families of color (who faced inequities in health outcomes and access to care before the pandemic), and families with young children or children with special health care needs. The pandemic's effects on young people are of particular concern, as adverse childhood experiences, especially in early childhood, can have negative, long-term impacts on health and well being (Sacks, 2018). The more traumatic events a child experiences, the more likely the impact will be substantial and long lasting.

It is generally accepted that to reduce ACEs the medical community must partner with other sectors to address the root causes of childhood trauma by promoting, safe, stable, nurturing relationships through equity in access to important resources like high quality childcare, education, and healthcare for all children and caregivers.

Early intervention is critical in addressing early mental health concerns. Research finds that early prevention and treatment of mental health disorders is considered to be more beneficial and cost-effective than attempting to treat emotional difficulties and their effects on learning and health after they become more serious. During the infant and toddler years, there are opportunities to treat mental health problems before they manifest into more severe problems

later in life. It is critical to treat young children's mental health issues within the context of their families, homes, and communities. The emotional well-being of young children is directly connected to the functioning of their families and caregivers. This bill would authorize providers to support children's mental health needs through an early childhood mental health consultation model and increase reimbursement for the use of these services.

Federal Head Start Programs must meet mental health performance standards. Head Start and Early Head Start programs are guided by federal law and regulations and, unlike state-subsidized programs, require providers to adhere to a number of program standards, including those addressing early childhood mental health. In order to support a program-wide culture that promotes children's mental health, social and emotional well-being, and overall health, program providers are required to:

- a) Provide supports for effective classroom management and learning environments, supportive teacher practices, and strategies for supporting children with challenging behaviors and other social, emotional and mental health concerns;
- b) Secure mental health consultation services on a schedule of sufficient and consistent frequency to ensure a mental health consultant is available to partner with staff and families in a timely and effective manner;
- c) Obtain parental consent for mental health consultation services at enrollment; and
- d) Build community partnerships to facilitate access to additional mental health resources and services as needed.

Infant and Early Childhood Mental Health Consultation. According to Zero to Three, "Infant and Early Mental Health Consultation (ECMHC) is a multi-level preventative intervention to improve children's social, emotional, and behavioral health and development. A mental health professional partners with an early childhood professional or program staff to infuse activities and interactions that promote health social and emotional development, prevent the development of problem behaviors, and intervene to reduce the occurrence of challenging behaviors. Sometimes consultation is focused on a specific child, helping the adults support the child's development more effectively. Other times, consultation is focused on systemic issues such as improving the classroom environment to provide predictable schedules, creating smooth transitions between activities, and offering spaces and support for children and staff to calm down in times of stress."

Empirical evidence has found that ECMHC is effective in increasing children's social skills, reducing children's challenging behavior, preventing preschool suspensions and expulsions, improving child-adult relationships, and identifying child concerns early, so that children get the supports they need as soon as possible. In addition, the model has been found effective in reducing teacher stress, burnout, and turnover. Preschool teacher stress and burnout have been previously associated with increased risk of expelling and suspending young children (Gilliam 2006).

California's ECMHC was established with the passage of AB 2698 (B. Rubio) in 2018. These services are available, but not required, for use by contracted providers within CSPPs, general child care and development programs, and family child care home education networks. The services are currently authorized to be provided only by specified professionals, including a

licensed marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, a licensed child and adolescent psychiatrist, or others as determined by CDE; however, CDE has not added other individuals to the list of qualified service providers to date. This bill would significantly expand the list of authorized providers, as well as requiring years of experience providing mental health supports to young children, participation in certain continuing education requirements, and specified training and practices.

ECMHC funding. Currently, contracted early learning and care providers may choose to use a portion of their contract to fund ECMHC through use of an adjustment factor, which is set at 1.05. This is applied to the provider's reimbursement rate by multiplying the applicable adjustment factor by the provider agency's reported child days of enrollment for the children to whom the adjustment factor applies, in order to reflect the additional expense of providing ECMHC. As this adjustment factor was only enacted in 2019, there is no data readily available on the number of providers being reimbursed for ECMHC services.

This bill proposes to increase the adjustment factor from 1.05 to 1.1 for those providers meeting the requirements of providing mental health consultation services. It should be noted that this does not increase the overall funding provided to a contractor, but rather allows them to use a portion of their existing allocation for this purpose. As a result, the contractor could conceivably be serving fewer children within their contract allocation if they choose to offer the service. ***The Committee may wish to consider*** whether this increase to the adjustment factor would be sufficient to incentivize contracted agencies to offer this service, or if only larger contractors would generate sufficient funding for this purpose.

This bill also allows non-contracted providers, under the voucher system, to use a portion of their administrative and support services funding to provide ECMHC if they choose to do so. Again, this raises a question of whether these agencies have sufficient room within their administrative and support services budgets to provide mental health services.

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.

This bill would enforce strict limits on exclusionary practices across all settings and require specific protocols for contracted providers to use prior to suspending or expelling a child. One of the requirements in addressing a child's persistent and serious challenging behavior is for the program to consider a universal screening of a child who does not have an IEP or IFSP. It is not clear what is meant by the term "universal screening". It is also unclear whether the bill's requirement that specified actions be undertaken prior to referring a child to the appropriate agency for an evaluation of the need for services and supports is consistent with federal law.

The Master Plan for Early Learning and Care addresses the need for equity. The 2019-20 Budget included \$5 million for a "long-term strategic plan to provide a roadmap to comprehensive, quality, and affordable child care and preschool for children from birth through age twelve, with particular focus on early December 2020.

The Master Plan, 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 CSPP. As of 2018, CSPP programs are prohibited from expelling or unenrolling a child because of the child's behavior, other than other specific circumstances. Operators of CSPP 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, teacher, and if the child has an IEP or IFSP, with the appropriate agency.

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.

Other than for children with IEPs or IFSPs, California has no publicly available data on suspensions or expulsions from CSPP or any disproportionality of such actions. This bill would require the collection and reporting of data on these processes across all contracted early childcare programs.

California lacks an integrated data system for the ECE system. At the present time there is no single data system that maintains data on the State's myriad childcare and development programs. Both the CDE and the DSS maintain various information systems to track program enrollment, funding levels, licensure status, notices of licensing violations, among other elements. In addition, LPCs and R&Rs at the county level are required to maintain specified elements of data relating to child care and development programs.

In its application for a federal Preschool Development Grant Renewal, the California Health and Human Services Agency notes that California lacks a comprehensive early childhood data system. California's main data system for subsidized early learning and care (ELC), CDE's Childcare Management Information System, collects certain data but lacks a unique identifier for children, providers, and settings. They note that data collection is siloed at the state level or left to local communities, making it impossible to accurately determine the qualifications and characteristics of the ELC workforce, where children receive care, and how many children attend each type of program or are enrolled in more than one program.

California is taking action to update the state's data infrastructure to provide information about the children, families, and teachers with the development of a Cradle-to-Career Data System (see discussion in later section).

Master Plan for Early Learning and Care calls for the creation of an integrated data system.

The Master Plan notes that early learning and care services are administered by multiple agencies and there is a lack of coordination of services and data sharing. The report calls for support of statewide data integration through a new early childhood integrated data system to "promote timely data-driven policies, practices, and resource allocation to support better outcomes for children and families inclusive of all races, ethnicities, incomes, languages spoken, and communities." It is further noted that the integration of an early learning and care data system into the Cradle-to-Career statewide longitudinal data system would inform key state actions such as policy-making, program funding, eligibility and enrollment of families, registration, and tracking of workforce competencies.

The Master Plan also recommends the use of data to advance equity by increasing transparency and accountability through the design of dashboards and reports for use by state leaders and the public. They suggest that population-based data will validate child-focused data that affects outcomes, such as access to early learning and care, inclusion, and suspension rates.

The Cradle-to-Career Data System Act of 2019. The Budget Act of 2019 established the California Cradle-to-Career Data System Act, which sets out requirements for the development of a statewide data infrastructure. The Act requires that this data system ensure that educational, workforce, financial aid, and social service information is fully leveraged to address disparities in opportunities and improve outcomes for all students from cradle to career. The 2019 Budget Act appropriated \$10 million to the Office of Planning and Research for initial work related to developing an integrated education data system. Of this amount, \$4 million was for work group planning and matching student records between K-12 and higher education.

The proposal for phase one of the implementation includes a recommended five-year process, in which the inclusion of ELC data would be incorporated in year four. A second report including additional implementation specifications, including an estimate of ongoing costs for the data system is due by June 30, 2021.

Recommended Committee amendments. Staff recommends that this bill be amended as follows:

- 1) Amend the requirement to complete a universal screening of a child exhibiting persistent and serious challenging behavior prior to suspension or expulsion, and instead reference a comprehensive screening; and remove references to steps that must be taken before referral to the agency responsible for implementing IDEA, consistent with federal law.
- 2) Require that reporting of disaggregated data on suspensions and expulsions from early learning and care programs be subject to all applicable state and federal privacy protections.
- 3) Clarify that both the CDE and the DSS must report on appeals and complaints received regarding expulsion and suspension from early learning and care programs.
- 4) Authorize rather than require that disaggregated data on suspension and expulsion rates be included in the Cradle-to-Career Data System.
- 5) Require both the CDE and the DSS to issue guidance on the suspension and expulsion requirements for the contracted programs under their purview by July 1, 2022.
- 6) Remove the requirement that Early Mental Health Consultation must include at least one hour of consultation per week with an early learning and care program in order for the provider to receive reimbursement.
- 7) Clarify that mental health consultation providers include those with an appropriate credential issued by the Commission on Teacher Credentialing.
- 8) Require that any person providing consultation have a valid, current satisfactory background check.
- 9) Delete the list of 25 topics that providers must choose from in fulfilling the requirement for 18 hours of continuing education annually and instead specify the broad categories that would qualify.

Arguments in support. Kidango, a cosponsor of the bill states: “It is counterproductive for our state to allow early learning and care settings to exclude children at a time when they are most in need of support, care, and guidance. Expulsions in early childhood education vastly outnumber

those in K-12. Too often preschoolers and toddlers of color are pushed out of early learning settings, thus impacting their lives. AB 1361 will help reduce the disparities in overly harsh treatment for children in preschool and early care settings, allow California to collect and publish data on preschool discipline while ensuring California’s early learning and care system, administrators and teachers have the tools they need to begin correcting injustices by increasing access to early childhood mental health consultation supports.”

Related legislation. AB 568 of this Session would require the DSS to develop and maintain an Early Learning and Care Dashboard to provide publicly available data on California’s early learning and care programs, and would establish a grant program to provide an anti-bias training program for childcare providers.

AB 99 (Irwin) of this Session, would establish the Cradle-to-Career Data System, a statewide data infrastructure that integrates data from various partner entities.

AB 2698 (B. Rubio), Chapter 946, Statutes of 2018, defines early childhood mental health consultation service, declares Legislative intent encouraging the provision of such services in CSPP, general child care and development programs, and family childcare home education networks, and requires under certain circumstances the application of a reimbursement rate adjustment factor for children served in programs where these services are provided.

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.

SB 75 (Committee on Budget and Fiscal Review), Chapter 51, Statutes of 2019, established the Cradle-to-Career Data System Act which set out requirements for the development of a statewide data infrastructure to address disparities in opportunities and improve outcomes for all students from cradle to career.

REGISTERED SUPPORT / OPPOSITION:

Support

Black Leadership Kitchen Cabinet
Black Men for Educational Equity (Sponsor)
California Access Coalition
California Association of Black School Educators
California Charter Schools Association
Child Care Resource Center
Compton Unified School District
Early Edge California
First 5 Association of California
Global Urban Nomads
Grace
Kidango (Sponsor)
Los Angeles County Office of Education

Mission Strategy Group
National Association of Social Workers, California Chapter
San Diego Unified School District
San Jose, City of
Santa Clara County Office of Education (Sponsor)
Silicon Valley Community Foundation
Tandem, Partners in Early Learning
United Ways of California
Numerous individuals

Opposition

None on file

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087