

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2598 (Akilah Weber) – As Amended April 18, 2022

SUBJECT: Pupil rights: restorative justice practices

SUMMARY: Requires the California Department of Education (CDE) to work with an advisory committee to develop a standard model to implement restorative justice practices on K-12 school campuses by January 1, 2024, and requires local educational agencies (LEAs) to implement restorative justice practices using this model by June 30, 2024. Specifically, **this bill:**

- 1) Requires the CDE to develop a standard model to implement restorative justice practices on a school campus by January 1, 2024.
- 2) Require the CDE to do all of the following in developing the standard model:
 - a) Consult with all of the following to identify best practices for effective, evidence-based restorative justice practices in elementary and secondary schools:
 - i) School-based restorative justice practitioners;
 - ii) Educators from public schools serving kindergarten through grade 12;
 - iii) Pupils from public schools serving kindergarten through grade 12;
 - iv) Community stakeholders; and
 - v) Nonprofit and public entities.
 - b) Select an advisory committee of eleven members by January 31, 2023, made up of the following:
 - i) One educator employed by an institution of higher education who trains other teachers, appointed by the CDE;
 - ii) One parent of a K-12 pupil appointed by the CDE. In selecting this parent or guardian, the CDE is required to give preference to a parent who is not involved with lobbying efforts or other organizations addressing education in California; and who is the parent or guardian of a pupil who has been the focus of restorative justice practices;
 - iii) One pupil currently enrolled in kindergarten through grade 12, appointed by the CDE, and requires the CDE to give preference to a pupil who is not involved with lobbying efforts or other organizations addressing education in California, and a pupil who has been the focus of restorative justice practices;
 - iv) One school counselor or social worker appointed by the CDE, and requires the CDE to give preference to an individual whose work primarily involves social, emotional, behavioral, and attendance supports and interventions;

- v) One teacher of K-12 pupils appointed by the CDE and who is not involved with lobbying efforts or other organizations addressing education in California;
 - vi) One administrator from a public school other than a charter school, appointed by the CDE;
 - vii) One administrator from a charter school, appointed by the CDE;
 - viii) One representative from a community-based organization, appointed by the CDE;
 - ix) One member of an underrepresented group, appointed by the Speaker of the Assembly;
 - x) One member of an underrepresented group, appointed by the President pro Tempore of the Senate; and
 - xi) One member of an underrepresented group, appointed by the Governor.
- 3) Requires LEAs to use the standard model developed by the CDE to implement restorative justice practices by June 30, 2024, as part of efforts to improve campus culture and climate.
- 4) Defines “local educational agency” for purposes of the act as a school district, county office of education (COE), or charter school.

EXISTING LAW:

- 1) Authorizes or requires a principal or a superintendent of schools to suspend or expel a student committing any of a number of specified acts. (Education Code (EC) Sections 48900, 48900.2, 48900.3, 48900.4, 48900.7, 48915)
- 2) 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 Section 48900.5)
- 3) Prohibits a pupil in kindergarten through 5th grade from being suspended for disrupting school activities or otherwise willfully defying the valid authority of school personnel and prohibits these acts from being grounds for any pupil from kindergarten through 12th grade to be recommended for expulsion. (EC 48900).
- 4) Prohibits a pupil in 6th through 8th grade from being suspended for disrupting school activities or otherwise willfully defying the valid authority of school personnel until July 1, 2025. (EC 48900)

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

COMMENTS:

This bill requires the CDE to work with an advisory committee of eleven members, as specified, to develop a standard model of restorative justice practices by January 1, 2024 and for all school districts to implement these practices using this standard model by June 30, 2024. *The Committee may wish to consider:*

- 1) Although there are likely common elements and key pillars to the wide range of restorative justice models, whether it is reasonable to assume that there is a single model of restorative justice that would be appropriate for the over 10,000 schools in California given the tremendous diversity among pupils and schools across the state.
- 2) Whether it is possible to have the eleven members of the advisory committee in place in less than 30 days from the date that the bill would take effect.
- 3) Whether there should be greater representation on the advisory committee of professional staff in schools who will be the ones implementing these practices.

Need for the bill. According to the author, “AB 2598 would give California schools the tools necessary to allow the use of restorative justice best practices as an alternative to suspension, expulsion, or arrest. Restorative practices and methods allow for greater understanding and community healing in addressing youth behavior. These practices also emphasize building strong relationships among students, staff, teachers, administrators, and parents while creating safe, productive learning environments for all.”

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, March 2021).

According to the LPI research, 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 (LPI, October 2021):

- 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.

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, March 2021).

One study, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, (Rosenbaum 2018) notes that “school suspensions aim to obtain better behavior from the punished student and maintain school norms by removing students. Suspension removes disruptive students from schools temporarily and may improve school climate by reducing peer influences to engage in deviant behavior.” The study goes on to note that a body of research has found that suspended students are more likely to:

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

The study also cites various longitudinal research findings, including:

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

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

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

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

Disparities in the rate of school suspensions. The disproportionate incidence of suspensions and expulsions among certain populations of students, including African American students, has gained nationwide attention in recent years. A 2018 report by the U.S. Government Accountability Office (GAO), *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, found that black students, boys, and students with disabilities were disproportionately disciplined in K-12 schools, based upon an analysis of Civil Rights Data Collection (CRDC) data.

CRDC data show that there was an overall 2% decline in the use of exclusionary discipline practices in public schools in the U.S. from the 2015-16 school year to the 2017-18 school year. However, there was an increase during this period of school-related arrests, expulsions with educational services, and referrals to law enforcement. The data also shows a continued disproportionality in exclusionary practices during the 2017-18 school year:

- Black students accounted for 15.1% of total student enrollment in the U.S. and received 38.8% of expulsions with educational services and 33.3% of expulsions without educational services;
- Students with disabilities represented 13.2% of enrollment and received 23.3% of expulsions with educational services and 14.8% of expulsions without educational services;
- Boys accounted for 51.4% of enrollment and received 69.5% of in-school suspensions and 70.5% of out-of-school suspensions;

- 31.4% of Black students received one or more in-school suspensions and 38.2% received one or more out-of-school suspensions;
- 20.5% of students with disabilities received one or more in-school suspensions and 24.5% received one or more out-of-school suspensions;
- Black students with disabilities represent 2.3% of student enrollment, 6.2% received one or more in-school suspensions and 8.8% received one or more out-of-school suspensions; and
- Black students accounted for 28.7% of all students referred to law enforcement and 31.6% of all students arrested at school or during a school-related activity.

The GAO report review of research on the topic of disproportionate disciplinary actions suggest that “implicit bias on the part of teachers and staff may cause them to judge students’ behaviors differently based on the students’ race and sex. Teachers and staff sometimes have discretion to make case-by-case decisions about whether to discipline, and the form of discipline to impose in response to student behaviors, such as disobedience, defiance, and classroom disruption.”

Research on student behavior, race, and discipline has found no evidence that African American over-representation in school suspension is due to higher rates of misbehavior. African American students were referred more often for behaviors that seem to require more subjective judgement on the part of the person making the referral (e.g. disrespect, excessive noise, threatening behavior, and loitering). (Losen, 2011)

California suspensions have declined, but disproportionality remains. CDE data shows that while the number of suspensions and expulsions decreased from 2017-18 to 2019-20, the number of African American students suspended or expelled remains significantly above their proportionate enrollment:

- Total suspensions dropped from 363,406 in 2017-18 to 233,753 in 2019-20;
- African American students made up 5.6% of enrollment in 2017-18 and 5.4% in 2019-20, but received 17.3% of total suspensions in 2017-18 and 17.2% in 2019-20; and
- Suspensions for “defiance only” dropped from 59,808 in 2017-18 to 24,920 in 2019-20;
- African American students received 15.6% of all suspensions for “defiance-only” in 2017-18 and 18.7% in 2019-20;
- Total expulsions dropped from 5,369 in 2017-18 to 3,263 in 2019-20;
- African American students accounted for 14.5% of total expulsions in 2017-18 and 12.9% in 2019-20.

Get Out! Black Male Suspensions in California Public Schools, (Wood, 2018), reports the following findings:

- The statewide suspension rate for Black males is 3.6 times greater than the statewide rate for all students;

- Black male students are 3.3 times more likely to be suspended for defiance-only;
- The highest suspension disparity by grade level occurs in early childhood education (kindergarten through grade three) where Black boys are 5.6 times more likely to be suspended than the state average;
- Black male students who are classified as “foster youth” are suspended at noticeably high rates at 27.4%, with black foster youth in seventh and eighth grades at 41%;
- The highest total suspensions occurred in large urban counties; and
- The highest suspension rates for Black males occur in rural counties that have smaller Black enrollments.

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, COEs, and charter schools, are required to report and examine pupil suspension and expulsion rates on their LCAP and annual updates. It has been suggested that this requirement to clearly report disciplinary actions, in the aggregate as well as by subgroup, increases the pressure on schools to employ alternatives to suspension and expulsion.

Alternatives to suspension and expulsion. Schoolwide strategies employed by school districts to improve school climate and reduce exclusionary discipline include Positive Behavior Interventions and Support (PBIS), which is a schoolwide approach to discipline that is intended to create safe, predictable, and positive school environments. When PBIS is practiced, schools see fewer students with serious behavior problems and an overall improvement in school climate. The key PBIS practices include:

- Clearly defining behavioral expectations of the school community;
- Proactively teaching what those expected behaviors look like in various school settings, on a regular basis;
- Frequently recognizing students who comply with behavioral expectations;
- Administering a clearly defined continuum of consequences for behavioral violations; and
- Continuously collecting and analyzing data to assess students’ responsiveness to the behavioral supports provided.

Implementation of PBIS follows a multi-tiered response to intervention model:

- Tier 1 – Universal support is provided to all students by being exposed to explicit instruction on behavioral expectations;
- Tier 2 – Students who do not respond sufficiently to Tier 1 receive additional support, often in the form of a check-in/check-out program;

- Tier 3 – Students with significant behavioral challenges receive individualized support by a behavioral support team, or are referred for additional services.

Restorative practices in schools are also considered a non-punitive approach as an alternative to harsh zero tolerance policies.

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, October 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, 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.

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

Recent state budgets have included numerous investments related to student supports and school climate, including but not limited to:

- \$3 billion in Community School grants, to establish and expand community schools, defined to include “Collaborative leadership and practices for educators and administrators, including professional development to transform school culture and climate, that centers on pupil learning and supports mental and behavioral health, trauma-informed care, social-emotional learning, and restorative justice;”
- \$1.5 billion for an Educator Effectiveness Block Grant for LEAs to provide professional learning for educators in a range of areas, including “practices to create a positive school climate, including, but not limited to, restorative justice, training around implicit bias, providing positive behavioral supports, multitiered systems of support, transforming a schoolsite’s culture to one that values diverse cultural and ethnic backgrounds, and preventing discrimination, harassment, bullying, and intimidation based on actual or perceived characteristics, including disability, gender, gender identity, gender expression, language, nationality, race or ethnicity, religion, or sexual orientation;”
- \$100 million in competitive grants to LEAs to increase the number of teachers available to serve California state preschool and transitional kindergarten pupils and to provide teachers with training in inclusive practices, culturally responsive instruction, supporting dual language learners, enhancing social-emotional learning, implementing trauma-informed and restorative practices, and mitigating implicit biases to eliminate exclusionary discipline;
- \$50 million to the Orange County Office of Education for support of MTSS efforts, including grants to LEAs to “provide ongoing training and support in the use of trauma screening tools and mental health service referrals, and school climate surveys,;”
- \$6 million for training LEAs on interpreting data from their local school climate surveys of pupils, families, and educators to inform continuous improvement efforts and better assess community needs stemming from the COVID-19 pandemic and distance learning; and for the CDE to develop an optional trauma-informed practice module to be used with school climate surveys.

Recommended Committee amendments. Staff recommends that the bill be amended to:

- 1) Delete the requirement that CDE develop a single standard model for restorative justice and instead require CDE to develop and share evidence-based best practices for restorative practice implementation within a multi-tiered system of support in a variety of school settings, and extend the deadline for the CDE to post the best practices to June 1, 2024.
- 2) Remove the mandate for school districts to adopt the standard restorative justice model.
- 3) Amend the composition of the working group, so that it would be made up of 15 members, as follows:
 - a) Increase the number of school counselors or social workers from one to two;
 - b) Increase the number of K-12 teachers from one to five, including representatives of each of elementary, middle, and high school teachers;
 - c) Increase the number of representatives from community-based organizations specializing in restorative justice from one to three, appointed by the Governor; and
 - d) Strike the members of underrepresented groups appointed by the Speaker, President pro Tempore, and the Governor.
- 4) Extend the timeline to appoint the members of the working group to March 31, 2023.

Arguments in support. The California Charter School Association notes “Widespread concern about the climate and culture of our schools has caused some schools to implement restorative justice as an alternative way to deal with student behavior and conflict. However, there is no clear consensus about the best practices in developing, implementing, or measuring the outcomes of a restorative justice school program.

AB 2598 would ensure that our educators and schools are equipped to effectively implement Restorative Justice Practices as an alternative to suspensions and expulsions. This bill would help address existing inequities within our public education system and improve school climate, which leads to increased attendance, reduced feelings of isolation, bullying, classroom disruption, truancy, antisocial behavior, and disputes among students.”

Related legislation. 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 (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 Positive Behavior Intervention and Support 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

Disability Rights California (Sponsor)
California Association for Bilingual Education
California Catholic Conference
California Charter Schools Association
California State Parent Teacher Association
Californians Together
One individual

Opposition

None on file

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