

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2635 (Weber) – As Introduced February 15, 2018

SUBJECT: Education finance: local control funding formula: supplemental grants: lowest performing pupil subgroup or subgroups

SUMMARY: Augments the definition of "unduplicated pupil" for Local Control Funding Formula (LCFF) purposes by adding a pupil who is classified as a member of the lowest performing subgroup or subgroups, as defined. Specifically, **this bill:**

- 1) Provides that, for school districts, charter schools, and county offices of education, the LCFF definition of "unduplicated pupil" shall include a pupil who is classified as a member of the lowest performing subgroup or subgroups.
- 2) Requires the Superintendent of Public Instruction (SPI) to annually identify the lowest performing subgroup or subgroups based on the most recently available mathematics or language arts results on the California Assessment of Student Performance and Progress (CAASPP).
- 3) Requires the SPI to use 2017 CAASPP results for the 2018-19 fiscal year.
- 4) Excludes the following subgroups from being identified pursuant to this calculation:
 - a) A subgroup already identified for LCFF supplemental funding (English learners, low income pupils, and foster youth)
 - b) Any subgroup specifically receiving supplemental funding on a per-pupil basis through state or federal resources received from a source other than LCFF (pupils with disabilities).
- 5) Requires county superintendents of schools to annually report the enrollment of pupils in schools operated by them who are classified as members of the lowest performing group or subgroups.
- 6) Provides that a subgroup identified in the 2018–19 fiscal year as a lowest performing subgroup shall continue to receive supplemental funding until its performance meets or exceeds the highest performing subgroup of pupils in the state.
- 7) Provides that its provisions shall be contingent upon the appropriation of funds for its purpose in the annual Budget Act or other statute.

EXISTING LAW: Establishes the LCFF, which provides school districts, charter schools, and county offices of education with a base level of funding plus additional funding based on the enrollment of pupils who are either English learners, low income, or in foster care. Pupils that fall into more than one category are counted only once for LCFF purposes, hence the term "unduplicated pupil."

FISCAL EFFECT: Unknown

COMMENTS: The LCFF was established in the 2013-14 fiscal year to address the achievement gap by providing more equitable funding among local education agencies (LEAs), that is, to provide a higher level of funding to LEAs that enroll larger numbers of unduplicated pupils so they could provide those pupils with additional services and support. The LCFF consists of three primary components:

- A base grant of the following amounts in 2017-18:
 - \$7,942 for grades K-3, which includes a 10.4% grade span adjustment for class size reduction;
 - \$7,301 for grades 4-6;
 - \$7,518 for grades 7-8; and
 - \$8,938 for grades 9-12, which includes a 2.6% grade span adjustment for college and career readiness.
- A supplemental grant equal to 20% of the base grant for each unduplicated pupil.
- A concentration grant based on the number of unduplicated pupils in excess of 55% of the district or charter school total enrollment.

This bill adds a pupil who is classified as a member of the lowest performing subgroup or subgroups as defined by Education Code §52052 to the definition of unduplicated pupil. That section defines subgroups to include the following:

- Ethnic subgroups
- Socioeconomically disadvantaged pupils
- English learners
- Pupils with disabilities
- Foster youth
- Homeless youth

However, the bill also exempts the following subgroups from its expanded definition of unduplicated pupil:

- A subgroup already identified for supplemental funding under LCFF (this includes socioeconomically disadvantaged pupils, English learners, Foster youth, and homeless youth)
- Any subgroup specifically receiving supplemental funding on a per-pupil basis through state or federal resources received from a source other than the LCFF (this includes pupils with disabilities)

In effect, then, an ethnic subgroup is the only subgroup that would be added to the LCFF definition of unduplicated pupil.

The California Department of Education (CDE) reports test scores for the following subgroups:

- Black or African American
- American Indian or Alaska Native
- Asian
- Filipino
- Hispanic or Latino
- Native Hawaiian or Pacific Islander
- White
- Two or more races

According to data provided by the California Department of Education (CDE) and the author's office, the lowest-performing ethnic group is Black/African American. Therefore, this bill would add Black/African American pupils to the unduplicated pupil count for LCFF purposes. Tables 1 and 2 show the 2017 test results in English/language arts and mathematics for all pupil subgroups.

About 350,000 pupils in K-12 schools identify as Black/African American, comprising about 5.6% of the total K-12 population. According to the CDE, about 92,000 pupils identified as Black/African American are not also low income. Accordingly, this bill would add about 92,000 pupils to the total number of unduplicated pupils for purposes of the LCFF.

The black-white achievement gap. Studies show that the black-white achievement gap has persisted, but changed over time. It narrowed in both reading and math from the early 1970s to the late 1980s, then widened in the early 1990s, but has been narrowing consistently since 1999.¹ Tables 1 and 2 (appended) show that the scores of Black/African American pupils are the lowest among the reported racial subgroups. In addition, even though the Black/African American subgroup includes pupils at all income levels, its scores are below the scores of economically disadvantaged pupils, which suggests that poverty alone does not explain this outcome. According to Reardon, et al.:

"A relatively common question addressed in studies of racial/ethnic achievement gaps (particularly the black-white gap) is the extent to which the observed gaps can be explained by socioeconomic differences between the groups. [Research shows] that socioeconomic factors explain almost all (85 percent) of the black-white math gap, and all of the reading gap at the start of kindergarten....By the third grade, however, ...the same socioeconomic factors account for only about 60 percent of both the math and reading black-white gaps. This finding suggests that socioeconomic factors explain, in large part, the black-white differences in cognitive skills at the start of formal schooling, but do not account for the growth of the black-white gap as children progress through elementary school."²

The academic achievement gap has consequences beyond school. A recent report from the Equality of Opportunity Project at Stanford University found that "black children born to parents

¹ Sean F. Reardon, et al., "Patterns and Trends in Racial/Ethnic and Socioeconomic Academic Achievement Gaps," in *Handbook of Research in Education Finance and Policy* (Helen A. Ladd and Margaret E. Goertz, eds.), New York, NY: Routledge, 2014.

² Ibid

in the bottom household income quintile have a 2.5% chance of rising to the top quintile of household income, compared with 10.6% for whites," and "American Indian and black children have a much higher rate of *downward* mobility than other groups [emphasis in original]."³

Possible conflict with the California Constitution. In 1996 California voters approved Proposition 209, which added Section 31 of Article I to the California Constitution. This section states, in part, "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting," and defines "state" to include school districts. The author's office argues that this bill does not violate this prohibition for two reasons:

- It targets a subgroup based on test scores, not ethnicity
- It provides supplemental funding to school districts, not to pupils

Although the bill does not name a specific ethnic group, it does use test scores to identify an additional category of unduplicated pupils from only among ethnic groups. The effect, therefore, is to ultimately target an ethnic group for supplemental funding. If, by contrast, the bill created a new subgroup based only on test scores to receive supplemental funding, then low scoring pupils of all ethnicities would be included, and one ethnic group would not be singled out for preferential treatment.

In addition, while the LCFF is used to allocate funds to local education agencies (LEAs), the LEAs must use them to "increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned..." In other words, existing law requires LEAs to give preferential treatment to the pupils who generate the supplemental funds, potentially violating the constitution, if the pupils receiving the preferential treatment have been identified because of ethnicity.

The author's office also cites as precedent for this bill's approach a legal decision in a 2009 case, *American Civil Rights Foundation v. Berkeley Unified School District*, which challenged the constitutionality of the district's method of assigning pupils to schools in order to "promote the values of socioeconomic and racial diversity." That method uses the following priorities to determine a pupil's admission to a school:

1. Pupils currently attending the school who live within its attendance zone
2. Pupils currently attending the school who live outside its zone
3. Siblings of pupils currently attending the school
4. Pupils not attending the school who live within its attendance zone
5. District residents not attending the school who live outside its zone
6. Nonresidents wanting an interdistrict transfer

Within a given priority, the district determines a pupil's "diversity category," which is based on (1) the average household income of the pupil's neighborhood (or "planning area," usually between four and eight blocks), (2) the average education level attained by adults in the pupil's

³ Raj Chetty and Nathaniel Hendren, "Race and Economic Opportunity in the United States," the Equality of Opportunity Project, Stanford University, March 2018.

neighborhood, and (3) the percentage of pupils of color living in the pupil's neighborhood. All pupils in the same neighborhood receive the same diversity rating regardless of their own ethnicity. Therefore, the court ruled that this system did not violate the constitution, because, as it is applied, "every student within a given neighborhood receives the same treatment, regardless of his or her individual race." **This bill** is different. Grouping pupils by test scores is analogous to grouping pupils by neighborhood planning areas. But whereas all pupils in the same neighborhood are treated the same, regardless of ethnicity, this bill provides preferential treatment to only one subgroup of low performing pupils, based on ethnicity. While test scores are used to identify the subgroup, only an ethnic subgroup can be identified for supplemental funding under this bill. If the method proposed in this bill paralleled the Berkeley Unified example, then all low scoring pupils, regardless of ethnicity, would receive supplemental funding. It is not clear, therefore, that the *Berkeley* decision supports the constitutionality of this bill.

The subgroup identified in year one is treated differently than other subgroups that may be identified in future years. This bill provides that the subgroup identified for the 2018-19 fiscal year based on 2017 CAASPP scores (which is the Black/African American subgroup) shall be included within the unduplicated pupil count until its scores equals or exceeds the highest performing subgroup (Asians, in 2017). Other subgroups that may be identified in future years would generate additional funding only if they remain the lowest scoring group. This means that black pupils could be the second-highest performing subgroup and still receive additional funding on the basis of their prior status as the lowest performing subgroup. The committee may wish to consider why additional funding provided to a subgroup solely on the basis of low scores should continue to be provided when its scores are no longer low.

Ambiguous funding requirement. This bill provides that the implementation of the expanded definition of unduplicated pupils "shall be contingent upon the appropriation of funds for its purpose in the annual Budget Act or other statute." However, LCFF funds are continuously appropriated—they are not appropriated in the Budget Act. Accordingly, a strict reading of this provision could mean that this bill would never be funded absent a Budget Act appropriation specifically for its purposes. The author's intent, however, is to include the new category of unduplicated pupil within the LCFF formula only if the additional cost is specifically included within the continuous appropriation. The author's office has indicated that, if the bill moves forward, it will propose language to clarify this.

Arguments in support. Supporters point out that African American students are the lowest performing ethnic subgroup, with only 31% meeting English language arts standards and 19% meeting math standards, compared to a state average of 49% and 38%, respectively. They argue that about 92,000 African American students are neither low income nor English learners, and therefore do not generate supplemental LCFF funding. This bill "would ensure that every African American student within the state is generating additional supplemental funding to provide resources to increase their academic performance, [and] would additionally ensure that school districts and charter schools are being held accountable to provide additional services and improve academic performance among African American students."

REGISTERED SUPPORT / OPPOSITION:

Support

Academica California
Black American Political Association of California
Black Parallel School Board
California Alliance of African American Educators
California Black Chamber of Commerce
California Charter School Association
California Policy Solutions
California School Boards Association
California State Conference of the NAACP
Children Now
EdVoice
Education Trust - West
Greater Sacramento Urban League
ICEF Public Schools
KIPP LA Public Schools
Los Angeles County Office of Education
Magnolia Science Academy 3
National Coalition of 100 Black Women - Sacramento
New West Charter
Oakland Unified School District
Resolute Academy
Sacramento Black Chamber of Commerce
United Negro College Fund
Vox Collegiate
Wilder's Preparatory Academy Charter School\
Two individuals

Opposition

None received

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Table 1
Mean Scale Score for English Language Arts/Literacy by Subgroup, 2017

Subgroup	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11
Students with Disabilities	2339.8	2367.9	2387.2	2416.8	2436.5	2447.3	2468.8
English Learners	2361.0	2386.3	2404.9	2432.9	2447.1	2449.5	2472.0
Black or African American	2378.3	2414.9	2445.7	2475.8	2494.9	2515.1	2549.5
Economically Disadvantaged	2381.4	2419.8	2449.6	2488.0	2508.1	2524.4	2563.3
American Indian or Alaska Native	2388.6	2428.5	2456.8	2487.8	2508.5	2527.1	2571.6
Hispanic or Latino	2392.0	2431.3	2463.7	2493.1	2514.1	2531.5	2574.5
Native Hawaiian or Pacific Islander	2403.1	2441.6	2480.9	2507.9	2527.0	2542.4	2580.1
All	2406.3	2446.2	2479.3	2512.8	2537.3	2552.2	2549.2
White	2448.8	2491.4	2526.7	2553.8	2579.8	2593.3	2636.9
Two or More Races	2447.8	2492.8	2528.0	2556.4	2581.6	2592.5	2637.4
Filipino	2456.3	2501.6	2539.2	2567.4	2592.2	2604.1	2651.1
Asian	2472.9	2518.6	2556.5	2586.6	2614.4	2630.5	2674.2

Table 2
Mean Scale Score for Mathematics by Subgroup, 2017

Subgroup	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11
Students with Disabilities	2354.9	2384.7	2399.1	2397.2	2412.4	2416.6	2429.5
English Learners	2387.4	2411.1	2423.0	2429.1	2436.1	2434.7	2454.5
Black or African American	2387.4	2419.5	2437.9	2452.5	2466.3	2478.1	2500.9
Economically Disadvantaged	2397.5	2432.4	2452.9	2478.7	2494.2	2504.2	2525.3
American Indian or Alaska Native	2403.7	2436.6	2456.4	2473.0	2488.7	2503.8	2527.4
Hispanic or Latino	2407.2	2439.3	2459.4	2477.6	2489.5	2503.0	2527.1
Native Hawaiian or Pacific Islander	2417.5	2452.2	2478.3	2496.0	2508.7	2525.1	2544.7
All	2419.3	2455.5	2478.9	2506.4	2526.3	2531.9	2560.1
White	2455.6	2494.6	2521.4	2548.1	2567.4	2583.6	2603.7
Two or More Races	2456.3	2496.0	2521.8	2549.9	2569.5	2581.2	2601.5
Filipino	2462.9	2502.0	2532.1	2561.5	2580.6	2597.4	2617.1
Asian	2491.9	2533.1	2564.0	2600.6	2627.4	2652.2	2682.8