

Date of Hearing: January 12, 2022

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 740 (McCarty) – As Amended April 8, 2021

SUBJECT: Foster youth: suspension and expulsion

SUMMARY: Extends requirements for parental notification of pupils involuntary transfer to a continuation school, suspension, or expulsion, in the case of a foster child, to the foster child's attorney and county social worker. Specifically, **this bill:**

- 1) Requires a school district to provide written notice to a foster child's attorney and county social worker of a decision to transfer the foster child to a continuation school, stating the facts and reasons for the decision, informing them of the opportunity to request a meeting with the district prior to a student being transferred, and indicating whether the decision is subject to periodic review and the periodic review procedure.
- 2) Requires that the foster child's attorney or county social worker be informed of the specific facts and reasons for the proposed transfer, and have the opportunity to inspect all documents relied upon, question any evidence and witnesses presented, and present evidence on the pupil's behalf.
- 3) Requires that an involuntary transfer to a continuation school not extend beyond the end of the semester following the acts leading to the involuntary transfer occurred unless the school district adopts a procedure for yearly review of the involuntary transfer at the request of the foster child's attorney or county social worker.
- 4) Specifies that a foster child's attorney and county social worker have the same rights as a parent or guardian to receive notice of suspension, expulsion, manifestation determination, involuntary transfer, and other documents and related information.
- 5) Requires that a foster child's attorney and county social worker be notified of the pupil's right to a conference if a foster child is suspended without the opportunity for an informal conference, as specified.
- 6) Requires that a school employee make a reasonable effort to contact a foster child's attorney and county social worker in person, by email, or by telephone at the time of the suspension of the foster child, and if the foster child is suspended from school, requires the school to notify the foster child's attorney and county social worker in writing.
- 7) Requires the foster child's attorney and county social worker to respond without delay to a request from school officials to attend a conference regarding the foster child's behavior.
- 8) Prohibits the imposition of penalties on the pupil if the foster child's attorney and county social worker fail to attend a conference with school officials, and requires that reinstatement of the suspended pupil not be contingent upon attendance of the attorney or social worker at the conference.

- 9) Requires that a foster child's attorney and county social worker be notified by a school employee in person, by email, or by telephone if a foster child is assigned to a supervised suspension classroom, and that if the suspension is for longer than one class period, the notification must be in writing.
- 10) If a local educational agency (LEA) is proposing a change of placement for a foster child with exceptional needs, requires the LEA to invite the foster child's attorney and county social worker to participate in the individualized education program (IEP) team meeting that makes a manifestation determination, as specified.
- 11) Repeals existing law that authorizes, but does not require, a school district to provide notice of an expulsion hearing to a foster child's attorney and a representative of the county child welfare agency at least 10 days before an expulsion hearing, and instead requires such notification to the attorney and county social worker at least 10 days before the hearing.

EXISTING LAW:

- 1) Confers certain rights on all children placed in foster care, including the right to be represented by an attorney to advocate for the child's protection, safety, and well-being. (Welfare and Institutions Code (WIC) 16001.9(a)(33))
- 2) Requires each LEA to designate a staff person as the educational liaison for foster children. (Educational Code (EC) 48853.5)
- 3) Requires an LEA to notify a foster child's attorney and the appropriate representative of the county child welfare agency of pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, if the foster child is an individual with exceptional needs, pending manifestation determinations if the LEA has proposed a change in placement due to an act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools. (EC 48853.5)
- 4) Requires an LEA to, prior to making a recommendation to move a foster child from their school of origin, to provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how it serves the foster child's best interests. (EC 48843.5)
- 5) Prohibits the suspension of any pupil in kindergarten or grades one to five, inclusive, and the expulsion of any pupil in kindergarten through 12th grade inclusive, who disrupts school activities or otherwise willfully defies the valid authority of supervisors, teachers, administrators, or school officials; prohibits, from July 1, 2020, until July 1, 2025, the suspension of any pupil or grades six to eight, inclusive, for that same act; and applies these provisions to charter schools. Encourages the use of research-based alternatives to suspension or expulsion to improve behavioral and academic outcomes. (EC 48900)
- 6) Prohibits a pupil from being suspended from school or recommended for expulsion, unless the superintendent of the school district, or the principal of the school, determines that the pupil has committed any of the following offenses:

- Causing, attempting to cause, or threatening to cause physical injury to another person, or willfully using force or violence upon another person, except in self-defense;
- Possessing, selling, or otherwise furnishing a firearm, knife, explosive, or other dangerous object, unless the student had obtained prior written permission to possess the item;
- Unlawfully possessing, using, selling, or otherwise furnishing a controlled substance;
- Unlawfully offering, arranging, or negotiating to sell a controlled substance, alcoholic beverage, or an intoxicant of any kind;
- Committing or attempting to commit robbery or extortion;
- Causing or attempting to cause damage to school property or private property;
- Stealing or attempting to steal school property or private property;
- Possessing or using tobacco, or products containing tobacco or nicotine products;
- Committing an obscene act or engaging in habitual profanity or vulgarity;
- Unlawfully possessing or unlawfully offering, arranging or negotiating to sell drug paraphernalia;
- Disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials or other school personnel engaged in the performance of their duties; (Grades 4-12 only)
- Knowingly receiving stolen school property or private property;
- Possessing an imitation firearm;
- Committing or attempting to commit a sexual assault or sexual battery;
- Harassing, threatening, or intimidating a pupil who is a complaining witness or a witness in a school disciplinary proceeding in order to prevent the pupil from being a witness or retaliating against that pupil for being a witness, or both;
- Unlawfully offering, arranging to sell, or negotiating to sell the prescription drug Soma;
- Engaging in or attempting to engage in hazing; and
- Engaging in the act of bullying, including, but not limited to, bullying committed by means of an electronic act. (EC 48900)

- 7) Requires the principal or superintendent of schools to recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless it is determined that the expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:
- Causing serious physical injury to another person, except in self-defense;
 - Possession of any knife or other dangerous object of no reasonable use to the pupil;
 - Unlawful possession of any controlled substance, as specified;
 - Robbery or extortion; and
 - Assault or battery, as defined, upon any school employee. (EC 48915)
- 8) Authorizes a teacher to suspend a pupil from that class for any of the acts identified in (4) above, for the day of the suspension and the day following, and to refer a pupil to the principal for consideration of a suspension from the school. (EC 48910)
- 9) Specifies additional grounds for suspension or recommendations for expulsion:
- Committing sexual harassment (grades 4 through 12 only);
 - Causing or attempting to cause, threatening to cause, or participating in an act of hate violence (grades 4 through 12 only);
 - Engaging in harassment, threats, or intimidation against school district personnel or pupils that have the effect of disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment (grades 4 through 12 only); and,
 - Making a terroristic threat against school officials or school property, or both. (EC 48900.2, 48900.3, 48900.4, 48900.7)
- 10) Authorizes the principal of a school or the district superintendent to suspend a pupil from a school for any of the reasons identified above for no more than five consecutive days, and requires that suspension be preceded by an informal conference where the pupil must be informed of the reasons for the disciplinary action, including other means of correction that were attempted before the suspension, and the evidence against them, and must be given the opportunity to present their own version and evidence in their defense. Also requires a school employee to make a reasonable effort to contact the pupil's parent or guardian in person or by telephone, and if the pupil is suspended from school, requires that the parent or guardian be notified in writing. (EC 48911)
- 11) Requires a school employee to notify the pupil's parent or guardian when a pupil is assigned to a supervised suspension classroom, and if the assignment is for longer than one class period, the employee must notify the parent or guardian in writing. (EC 48911.1)

12) Requires that a suspension only be imposed when other means of correction fail to bring about proper conduct. Specifies that other means of correction may include, but are not limited to, the following:

- A conference between school personnel, the pupil's parent or guardian, and the pupil;
- Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling;
- Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents;
- Referral for a comprehensive psychosocial or psychoeducational assessment;
- Enrollment in a program for teaching prosocial behavior or anger management;
- Participation in a restorative justice program;
- A positive behavior support approach with tiered interventions that occur during the schoolday on campus; and,
- After school programs that address specific behavioral issues or expose pupils to positive activities and behaviors. (EC 48900.5)

13) Requires a teacher to provide homework that would have otherwise been assigned to any pupil in any of grades 1 to 12 who has been suspended from school for two or more schooldays upon the request of a parent, legal guardian, or other person holding the rights to make educational decisions for the pupil. (EC 48913.5)

14) Requires, within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP team must review all relevant information provided by the parent to determine if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP. If either of these conditions are met, the conduct must be determined to be a manifestation of the child's disability. (Individuals with Disabilities Act (IDEA) Section 300.530 (e)).

FISCAL EFFECT: Unknown

COMMENTS:

Notifications for foster pupils. This bill requires an LEA employee, typically the foster youth liaison, to notify a foster pupil's court-appointed attorney and county social worker of any suspensions, pending suspensions, involuntary school transfers, expulsion proceedings, or pending proceedings to extend a suspension until an expulsion decision is rendered. Currently

the requirement to notify a foster child's attorney or county child welfare agency only applies in the case of discretionary expulsion proceedings.

Current law requires schools to notify a student's parent or guardian regarding suspensions, expulsions, and changes in placements. According to the author, "a foster parent may not be in a position to advocate effectively for a foster student, especially for children in group or transitional settings. Having a trained legal advocate notified in these circumstances will help ensure that foster students are not suspended unnecessarily or unduly."

Need for the bill. The author states, "Students in foster care are being failed by California's public school system. Statewide, they are suspended at a rate 331% greater than their peers. In Sacramento County, the rate it is 500% greater, and the data is even more alarming when broken down by gender, race and ethnicity. Excluding these vulnerable students from the classroom fuels a cycle of negative academic outcomes and causes lasting harm. AB 740 will ensure more foster youth stay in school and have an experienced advocate working on their behalf."

Foster youth outcomes often lag behind those of other students. There were 46,810 foster youth enrolled in California public schools in 2018-19. According to CDE, students in foster care represent one of the most vulnerable and academically at-risk student groups enrolled in California schools. The instability in home and school placements often negatively impacts students' learning achievement. In California, foster youth perform lower on all educational outcomes than any other student group in the state including homeless youth, English learners, and socioeconomically disadvantaged students. Foster youth are identified as a separate student subgroup on the California School Dashboard. Parents, educators, and the public are able to track the progress of schools through the annual reports to verify the performance of districts, schools, and student groups, including foster youth. LEAs must specify in their local control accountability plans (LCAPs) how resources will be leveraged to best serve this population.

According to CDE data, in 2018-19:

- 27.7% of foster youth were chronically absent versus 11% of non-foster pupils;
- 15.1% of foster pupils were suspended from school one or more times versus 3.4% of non-foster pupils;
- 170 foster pupils or .4% of the foster pupils enrolled were expelled from California public schools;
- 23.6% of foster pupils met or exceeded the state standard on the Smarter Balanced Assessment in English Language Arts (up from 22.1% in 2017-18);
- 14.6% of foster pupils met or exceeded the state standard on the Smarter Balanced Assessment in Mathematics (up from 13.8% in 2017-18);
- 64.2% of foster pupils graduated from high school in 2018-19 versus 85.9% of non-foster pupils; and
- 27.9% of foster pupils dropped out of high school versus 8.7% of non-foster pupils.

A 2021 report by the CDE, *California Foster Youth Outcomes: Recommended Practices from Four Successful School Districts* identifies key factors negatively impacting student success of foster youth, including:

- “Changing schools hinders academic achievement. Students in foster care experience school changes more than their non-foster care peers. School mobility has negative effects on academic achievement, school attendance, and the likelihood of earning a high school diploma or equivalent. Students who experience frequent school changes face challenges in developing and sustaining supportive relationships with teachers or with peers;
- Delays in school enrollment for foster youth, often due to entry into foster care, change of placement, or failure to transfer records in a timely manner, can cause adverse consequences such as lowering school attendance, having to repeat courses, failure to address special education needs, and enrollment in appropriate classes; and
- Behavioral problems manifested by childhood maltreatment and traumatic experience severely interfere with learning. There is a large percentage of children and youth placed in foster care who experience physical and emotional trauma as a result of abuse, neglect, separation from family, and impermanence. Although youth are placed in foster care for their safety, foster youth often do not find the security and stability they need through the foster care system. Most children who enter foster care have been exposed to many conditions that have undermined their chances for healthy development. The detrimental effects of environmental, social, biological, and psychological risk factors such as abuse and neglect, exposure to illicit drugs, and poverty have significantly undermined the well-being of foster youth mental health. Therefore, students in foster care face more challenges in achieving learning success than their peers not in foster care.”

Given the multitude of challenges faced by foster youth, it is important to ensure these pupils remain enrolled in school and that disruptions to their education caused by changes in placement or suspensions and expulsions are minimized.

Alternatives to suspension and expulsion. A meta-analysis of school suspension data found a significant inverse relationship between suspensions and achievement, along with a significant positive relationship between suspensions and dropout. (Noltemeyer, 2019)

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.” Schoolwide strategies employed by school districts include the following:

- 1) *Positive Behavior Interventions and Support (PBIS)*. Schools are increasingly adopting PBIS as alternatives to more punitive disciplinary policies. PBIS 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. 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.

2) *Restorative Practices*. According to a 2014 publication sponsored by the Advancement Project, the American Federation of Teachers, and the National Education Association, *Restorative Practices: Fostering Healthy Relationships & Promoting Positive Discipline in Schools*, “Restorative practices are processes that proactively build healthy relationships and a sense of community to prevent and address conflict and wrongdoing. This allows individuals who may have committed harm to take full responsibility for their behavior by addressing the individual(s) affected by the behavior. These practices are not intended to replace current initiatives and evidence-based programs like PBIS or social and emotional learning models. Restorative practices work when they are implemented schoolwide and integrated into the fabric of the school community.”

Restorative practices in schools are considered a non-punitive approach as an alternative to harsh zero tolerance policies. A number of studies suggest positive outcomes of implementing restorative practices in schools, including lower suspension rates, improved school climate, and improved student attendance. However, some question the validity of the studies as many failed to use experimental methods.

The State has invested in alternatives to suspension and expulsion. In recent years, the Legislature has allocated resources specifically designed to improve school climate and reduce exclusionary disciplinary practices. These include the following:

1) *Multi-Tiered System of Support (MTSS)*. Since 2015, the Legislature has appropriated over \$45 million 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.

In 2015, the CDE conducted a competitive grant process and awarded \$10 million of the initial round of funding to the Orange County Department of Education (OCDE) for their Scaling Up MTSS Statewide (SUMS) Initiative. The focus of the SUMS Initiative is to develop resources for MTSS within an LEA that align the academic, behavioral, and social-emotional supports in an LEA in order to serve the whole child. It involves family and community engagement, administrative leadership, integrated education frameworks, and inclusive policy and practice.

The OCDE has provided subgrants to LEAs to engage them in a process to assess their strengths, coordinate supports to their LCAP and align their MTSS efforts with the eight state priorities. The OCDE has distributed the grant funding into three separate cohorts with up to \$6 million awarded in each round of applications. For the third and most recent funding

phase of the SUMS grant, the OCDE and the BCOE partner with the University of California, Los Angeles (UCLA) Center for the Transformation of Schools to expand the State's MTSS framework. Through this collaborative effort, they are developing evidence-based tools and training for educators and school systems. Their work expands restorative justice, bullying prevention and positive behavior interventions and minimize the use of emergency interventions. Their joint effort also establishes a pilot program to help LEAs to promote positive school climates by improving student-teacher relationships, increasing student engagement, and promoting alternative discipline practices.

- 2) The 2021-22 Budget included significant investments to address student mental health and improve school climate, including the following:
- \$100 million in competitive grants to LEAs for pre-K and Kindergarten teacher training, including trauma-informed practices;
 - \$3 billion for community school grants with an emphasis on integrated support services including coordination of trauma-informed health, mental health and social services; as well as training for teachers re: trauma-informed practices;
 - \$1.5 billion for educator effectiveness block grants, including funding to train teachers on trauma-informed practices;
 - \$50 million for MTSS grants to LEAs to implement trauma-informed practices;
 - \$6 million to CDE to develop an optional trauma-informed practice module as a supplement for school climate surveys;
 - \$700,000 in ongoing funding to CDE to establish Office of School-Based Health;
 - \$5 million to CDE for a School Health Demonstration Project to increase access to school-based health & mental health services and increase federal reimbursements;
 - Youth & Behavioral Health Initiative – over \$4 billion invested in a wide range of youth behavioral health initiatives, including many efforts to foster partnerships between schools and county/community-based providers to improve access to mental health services in schools.

Holding schools accountable for suspension and expulsion rates. California's Local Control Funding Formula (LCFF) and LCAP requirements include school climate as one of the eight state priorities. All California school districts, county offices of education (COEs), and charter schools, are required to report and examine pupil suspension and expulsion rates on their LCAP and annual updates. It has been suggested that this requirement to clearly report disciplinary actions, in the aggregate as well as by subgroup, including foster youth, will increase pressure on schools to employ alternatives to suspension and expulsion.

Recommended Committee Amendments. Staff recommends that the bill be amended to require charter schools to notify a foster child's attorney and county social worker in the case of any involuntary removal of the pupil from the charter school, including suspensions and expulsions.

Arguments in support. The Children’s Law Center of California, a co-sponsor, notes, “Parents are commonly the most committed advocates for their children. But, by definition, foster children have been separated from their parents. By requiring a foster child’s state-appointed attorney to be notified of suspensions, expulsions, or involuntary school transfers in the same fashion as parents are notified, AB 740 will ensure that all foster children have someone to advocate on their behalf in school discipline proceedings. Foster parents or guardians may lack the time, background, or expertise to advocate for the academic rights of the children in their care. Furthermore, students may cycle through multiple placements or be placed in group homes, which makes advocacy at school even less likely.

Students in foster care are suspended at disproportionately high rates. Statewide, the suspension rate for foster children is more than four times the suspension rate for their non-foster peers. Breaking this data down by race, gender, and ethnicity reveals even more alarming inequities. Black male students are suspended at six times the statewide average rate. Missing valuable class time due to school suspensions deepens existing opportunity gaps for foster students and fuels a cycle of negative academic outcomes. Children in foster care are assigned a court-appointed attorney to advocate on their behalf. Ensuring that a foster child’s attorney is notified of school discipline proceedings is a simple and necessary step to safeguard the educational rights of these vulnerable students.”

Related legislation. SB 860 (Beall) Chapter 231, Statutes of 2020, requires each COE Foster Youth Services (FYS) Coordinating Program to ensure the students they serve in foster care fill out the forms necessary to receive financial aid for college. It also requires the Superintendent of Public Instruction (SPI) to report financial aid form completion information

AB 854 (Weber) Chapter 781, Statutes of 2015, restructures the existing Foster Youth Services (FYS) program by shifting the primary function from direct services to coordination, and allows program funds to be used to support all students in foster care, irrespective of placement.

AB 379 (Gordon) Chapter 772, Statutes of 2015 made complaints regarding the educational rights of students in foster care subject to the Uniform Complaint Procedures process.

AB 224 (Jones-Sawyer) Chapter 554, Statutes of 2015 requires that a standardized notice of educational rights of foster youth be created and disseminated.

AB 1909 (Ammiano) Chapter 849, Statutes of 2012, requires schools to notify a foster youth’s attorney and representative of the county child welfare agency of pending expulsion or other disciplinary proceedings.

SB 933 (Thompson) Chapter 311, Statutes of 1998, expanded the FYS program statewide through county offices of education, and targeted funding to students residing in licensed children’s institutions.

AB 1808 (Steinberg) Chapter 75, Statutes of 2006, expanded the FYS program to serve youth in foster family homes, foster family agencies, and juvenile detention facilities.

AB 2489 (Leno) of the 2005-06 Session would have expanded the FYS program and required that each program identify a foster youth educational services advocate.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Black Minds Matter Coalition
California State NAACP
Children's Advocacy Institute
Children's Law Center of California
Foster Care Counts
Greater Sacramento Urban League
Law Foundation of Silicon Valley
Los Angeles County Office of Education
The Center at Sierra Health Foundation
1 individual

Opposition

None on file

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