

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 805 (Galgiani) – As Amended May 26, 2017

SENATE VOTE: 26-7

SUBJECT: Pupil discipline: expulsions: assault or battery: intradistrict transfers

SUMMARY: Extends the requirement for a principal or superintendent of schools to recommend a pupil for expulsion on the grounds that he or she committed assault or battery upon a school employee, to include staff members contracted to provide services to pupils. Requires that a student, who is not expelled for such an offense be transferred to another school if the offense resulted in serious bodily injury. Specifically, **this bill:**

- 1) Requires the principal or superintendent to recommend the expulsion of a pupil who committed assault or battery upon a staff member contracted to provide services to pupils, unless the principal or superintendent determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the pupil's conduct.
- 2) Requires the governing board of the school district to transfer the pupil to another school in the district, if any, if the principal or superintendent determines that expulsion of the pupil should not be recommended, and if the pupil's conduct resulted in serious bodily injury.

EXISTING LAW:

- 1) Requires the principal or the superintendent of schools to recommend the expulsion of a pupil for certain acts committed at school or at a school activity off school grounds, unless the principal or superintendent determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct. Those acts include:
 - a) Causing serious physical injury to another person, except in self-defense.
 - b) Possession of any knife or other dangerous object of no reasonable use to the pupil.
 - c) Unlawful possession of any controlled substance, except for either of the following:
 - (i) The first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis.
 - (ii) The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.
 - d) Robbery or extortion.

- e) Assault or battery, as defined in the Penal Code, upon any school employee. (EC 48915)
- 2) Requires the principal or superintendent of schools to immediately suspend and recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:
- a) Possessing, selling, or otherwise furnishing a firearm, as specified.
 - b) Brandishing a knife at another person.
 - c) Unlawfully selling a controlled substance.
 - d) Committing or attempting to commit a sexual assault committing a sexual battery.
 - e) Possession of an explosive. (EC 48900)
- 3) Specifies that alternative means of correction include, but are not limited to:
- b) A conference between school personnel, the pupil's parent or guardian, and the pupil.
 - c) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
 - d) 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.
 - e) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a 504 plan.
 - f) Enrollment in a program for teaching prosocial behavior or anger management.
 - g) Participation in a restorative justice program.
 - h) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
 - i) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
 - j) Community service, as specified. (EC 48900.5)
- 4) Authorizes the governing board of a school district to transfer to another school in the school district a pupil who has been convicted of a violent felony or misdemeanor, if that pupil and the victim of the crime are enrolled at the same school. These provisions require that the

school district has adopted a policy regarding due process provisions for such a transfer. (EC 48929)

- 5) Requires governing boards of school districts which assign students to continuation schools to adopt rules and regulations governing procedures for the involuntary transfer of pupils to continuation schools, including certain due process requirements. Specifies that involuntary transfer to a continuation school is to be imposed only when other means fail to bring about pupil improvement. Authorizes involuntary transfers for specified acts if the principal determines that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process. (EC 48432.5)
- 6) Requires governing boards of school districts which establish community day schools to adopt policies that provide procedures for the involuntary transfer of pupils to a community day school. (EC 48662)
- 7) Defines assault as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (Penal Code 240)
- 8) Defines battery as any willful and unlawful use of force or violence upon the person of another. (PC 242).
- 9) Federal regulations require the determination of a manifestation determination within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. (FCR Title 34, Part 300, Section 300.530)

FISCAL EFFECT: According to the Senate Appropriations Committee, “unknown reimbursable state mandated costs, potentially in the low hundreds of thousands in Proposition 98 General Fund, to modify the existing mandated suspension and expulsion procedures for school districts.”

COMMENTS:

Purpose of the bill. This bill extends a provision in current law which pertains to school employees to staff members contracted to provide services to pupils. Namely, that a student would be recommended for expulsion for committing assault or battery upon the contracted staff member, unless the principal or superintendent determines that the pupil should not be recommended for expulsion under the circumstances or that an alternative means of correction would address the conduct.

The bill also requires that, if the pupil is not recommended for expulsion as a result of an assault or battery upon a school employee or staff member contracted to provide services to pupils and the victim suffers serious bodily injury, the pupil must be transferred to another school in the district if one exists.

Need for the bill. According to the author, “Like students, staff must feel safe in their work environment. If a student who assaulted or battered a school employee returns to the same school the school employees feel unsafe and do not provide the same level of support to the pupils due to fear of continued violence. That same student will most likely be labeled by their classmates

as violent, hampering their ability to reform. Having a student transferred to a new school provides the student the opportunity to have a new start without the reputation of being violent.

This bill also extends the classification of potential victims to include staff contracted from an outside entity, such as school police officers under contract from a local municipal police or sheriff department.”

Incidences of violent incidents in schools. According to the most recent data from the California Department of Education, in the 2014/15 school year, the following numbers of students were sanctioned for violent incidents involving physical injury:

- 1,053 students were expelled
- 4,190 students received one or more in-school suspensions
- 37,413 students received one or more out-of-school suspensions.

The available data does not identify whether the victims of such incidents were staff members or pupils and does not identify the severity of the physical injuries suffered. The author has not provided any data on the scope of the issue that this bill is attempting to address.

Changing views on school discipline. 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. Suspensions are associated with negative student outcomes such as lower academic performance, higher rates of dropout, failures to graduate on time, decreased academic engagement, and future disciplinary exclusion. Interventions, school-wide and individual, that use proactive, preventative approaches, address the underlying cause or purpose of the behavior, and reinforce positive behaviors, have been associated with increases in academic engagement, academic achievement, and reductions in suspensions and school dropouts.”

This bill would remove the ability of the principal or superintendent, once it is determined that expulsion is not warranted, to determine if the transfer of a student who has committed assault or battery resulting in serious bodily injury upon a school employee or contractor, is in the best interest of the student involved as well as the overall safety of the school environment for pupils and staff.

Options for involuntary transfer limited under current law. California law allows for the involuntary transfer of a pupil in only three circumstances, and in each of these, school districts must adopt policies that include specified provisions in order to implement such transfers:

- In the case of a student who is convicted of a violent felony or specified misdemeanor, the school district may transfer the pupil to another school in the school district, if the pupil convicted of the crime and the victim of the crime are enrolled at the same school. Prior to taking such actions, the school board must adopt a policy that specifies: parental notification requirements; that the school attempt to resolve the conflict before transferring a pupil; whether the decision to transfer the pupil is subject to periodic

review; and the due process to be used to approve or disapprove the recommendation to transfer the pupil.

- A school district that assigns pupils to continuation schools must adopt rules and regulations governing procedures for the involuntary transfer of pupils. These include: parental notification; provision of opportunity for a meeting prior to the transfer to discuss the reasons for the proposed transfer and a review of the evidence; opportunities for periodic reviews of transfer decisions; right of return to original school; and the requirement that involuntary transfer only be imposed when other means fail to bring about pupil improvement.
- A pupil may be involuntarily transferred to a community day school upon the adoption of policies that specify that the pupil has been expelled, is on probation, or is referred to the community day school by a school attendance review board or other district level referral process.

This bill does not require the adoption of any provisions regarding parental notification, the requirement to attempt alternate means of correction, or other due process requirements.

Potential conflict with federal law for children with disabilities. Federal regulations specify that within 10 school 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 local education agency (LEA), parent, and relevant members of the child Individualized Education Plan (IEP) team must meet and review all relevant information to determine if the conduct was a manifestation of the child's disability. This determination guides the placement of the student in an alternative setting, if warranted, and specifies the length of such a placement.

This bill does not address the need for consideration of the federal requirements prior to transferring a student with a disability on the grounds of assault or battery of a school employee or staff member contracted to serve pupils.

The committee may wish to consider whether the removal of the discretion from school officials and the mandate to transfer a student, regardless of the circumstances, and without the inclusion of any due process requirements, is warranted. **Staff recommends** the bill be amended to remove the provision requiring the transfer of a student who has committed assault and battery upon a school employee or staff member contracted to provide services to pupils.

As the author's intent is to protect staff members and contractors at all public schools, **staff recommends** that the bill be amended to specify that the inclusion of staff member contracted to provide services to pupils applies to charter schools as well as regular public schools.

Arguments in support. The Peace Officers Research Association, sponsors of the bill, note that schools once exercised a zero tolerance approach to student discipline, but now overlook various offenses in order to decrease the number of suspensions and expulsions. The sponsor contends that this lack of disciplinary action leads staff to feel unsafe and to be in constant fear and thus unable to successfully serve the needs of the pupils of the school.

Arguments in opposition. Organizations in opposition to the bill note that it would roll back due process rights for all students; eliminate the many layers of discretion around expulsions in current law; contravene existing protections for students with special needs; and fail to provide

an exception for students acting in self-defense. They also note that current law requires schools to address school climate and student engagement, including the handling of student discipline and encourages the reduction of the use of exclusionary disciplinary practices in favor of restorative practices and positive behavior interventions, whereas this bill would take the state back to a zero tolerance approach.

Prior and related legislation. SB 1343 (Wolk) Chapter 154, Statutes of 2016 authorizes a school district to transfer a pupil convicted of a violent felony or a specified misdemeanor to another school in the school district if the pupil and the victim of the crime are enrolled at the same school, if the governing board has adopted a policy regarding due process and notification requirements for such transfers.

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

Peace Officers Research Association of California (Sponsor)
Los Angeles County Office of Education

Opposition

American Civil Liberties Union of California
Association of California School Administrators
Public Advocates
Public Counsel

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