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## SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	AB 740	<b>Hearing Date:</b>	June 1, 2022
<b>Author:</b>	McCarty		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Kordell Hampton		

**Subject:** Foster youth: suspension and expulsion.

**Note:** This bill has been referred to the Committees on Education, Judiciary, and Human Services. A "do pass" motion should include a referral to the Committee on Judiciary.

### SUMMARY

This bill requires a Local Education Agency (LEA) to send a notification to the foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code when an involuntary transfer to a continuation school, suspension, or expulsion proceeding occurs.

### BACKGROUND

Existing law:

#### *Education of Pupils in Foster Care and Pupils Who Are Homeless*

- 1) Requires each local educational agency to designate a staff person as the educational liaison for foster children (Education Code § 48853.5 (c))
- 2) Requires an educational liaison shall notify a foster child's attorney and 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 local educational agency 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 (d))
- 3) 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)

#### *Suspension or Expulsion*

- 4) 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)
- 5) Specifies a pupil shall not be suspended from school or recommended for expulsion unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed specified acts in subdivision (a) – (r). (EC § 48900)
- 6) 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 enumerated in subdivision (a) – (r). (EC § 48915)
- 7) 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)
- 8) Requires that a suspension only be imposed when other means of correction fail to bring about proper conduct. Specifies that other means of correction enumerated in subdivision (a) – (h). may include, but are not limited to, the following: (EC § 48900.5)

## ANALYSIS

This bill requires a LEA to send a notification to the foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code when an involuntary transfer to a continuation school, suspension, or expulsion proceeding occurs. Specifically, this bill:

- 1) Requires a school district to provide written notice to a foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code 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, county social worker, and educational rights holder, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code 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 educational rights holder, attorney, and county social worker and a Indian child's tribal social worker and, if applicable, county social worker shall have the same rights a parent or guardian of a child has to receive a suspension notice, expulsion notice, manifestation determination notice, involuntary transfer notice, and other documents and related information.
- 5) Requires that a foster child's attorney, county social worker, and educational rights holder, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code 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, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code 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, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code to respond without delay to a request from school officials to attend a conference regarding the foster child's behavior.
- 8) Prohibits penalties on the pupil if the foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code fail to attend a conference with school officials, and specifies 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, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code 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) Requires an LEA to invite the foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child as specified in Welfare and Institutions Code participate in the individualized education program

(IEP) team meeting that makes a manifestation determination, as specified if a LEA is proposing a change of placement for a foster child with exceptional needs.

- 11) Requires, rather than authorizes, 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.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author "Students in foster care receive lower grades, are less likely to graduate high school or attend college, have higher rates of chronic absenteeism, and are suspended more often than their non-foster peers. In California, students in foster care are suspended at four times the statewide average rate. In Sacramento County, one in every five students in foster care was suspended at least once in the 2018-19 academic year. When broken down by student demographic, this disparity is even starker: the suspension for Black foster students is more than six times the statewide average. Research shows a strong connection between high suspension rates, poor academic achievement, and high school dropout rates. The disproportionate suspension of students in foster care fuels a cycle of negative outcomes for these vulnerable students. Foster youth faced additional challenges during the COVID-19 pandemic including lack of access to technology and support needed for distance learning. Studies predict that the pandemic will widen the significant achievement gap between foster kids and their peers even further.

"When a child is placed into the California foster care system they are assigned a court appointed attorney to advocate on their behalf. Current law requires that a foster student's attorney be notified of any pending discretionary expulsion proceedings. However, there is no such requirement for other disciplinary proceedings such as mandatory expulsions, involuntary school transfers, or suspensions – all of which can have serious negative impacts on students. Guardians of students in foster care often lack the time, training, or background to advocate for the educational rights of students in their care. Furthermore, foster youth may cycle through multiple placements, which disrupts their education and makes advocacy within a school even less likely. In 2014, 75% of foster students in the U.S. experienced at least one unscheduled school change

"AB 740 protects the educational rights of students in foster care by requiring their state-appointed attorney to be notified of disciplinary proceedings in order to ensure the student has a qualified person advocating on their behalf."

- 2) ***California Department of Education (CDE).*** In recent years there have been other statutory provisions designed to limit the use of suspensions and promote alternatives to suspension. These provisions aim to address the root causes of the student's behavior and to improve academic outcomes:

- a) **Minimize Suspension for Attendance Issues:** It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.
- b) **Instead of Suspension, Support:** A superintendent of the school district or principal is encouraged to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age-appropriate and designed to address and correct the pupil's misbehavior.

The state has also established a Multi-Tiered System of Supports (MTSS), which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, that may be used to help students gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.

- c) **Suspension as a Last Resort:** Suspension shall be imposed only when other means of correction fail to bring about proper conduct and then continues to provide an extensive list of suggested positive, non-exclusionary alternative practices. Other means of correction may include additional academic supports, to ensure, for example, that instruction is academically appropriate, culturally relevant, and engaging for students at different academic levels and with diverse backgrounds.
- 3) ***Equity concerns in subjective discipline.*** Research and data confirm that Black students, other students of color, students with disabilities, and LGBTQ students are disproportionately suspended for low-level subjective offenses, such as defiance/disruption. Suspensions also cause California students to lose significant instruction time. A recent study revealed that students lost over 150,000 days of school due to defiance/disruption suspensions in 2016-17. These concerns are supported by data from CDE. For example, in 2011-12, African American pupils accounted for 6.8 percent of enrollment, but 18.5 percent of suspensions for willful defiance. Most recently, in 2017-18, African American pupils accounted for 5.6 percent of enrollment, but 15.6 percent of suspensions for willful defiance. Conversely, in 2011-12, white pupils accounted for 25.8 percent of enrollment, but just 19.6 percent of suspensions for willful defiance. Most recently, in 2017-18, white pupils accounted for 23.2 percent of enrollment, but just 20.2 percent of suspensions for willful defiance. These disproportionate figures underscore the concerns surrounding willful defiance suspensions and that neither time, the prohibition on K-3 suspensions, or Local Control Funding Formula (LCFF) priorities have fully addressed these issues.
- 4) ***Argument in support.*** According to the Children Advocacy Institute "Education is essential to living a life of economic stability and self-sufficiency. A quality education system has long been understood as essential to every child's prosperity. That is why the State guarantees free education to every child. The opposite is also true. When a child is denied educational opportunities, that child is

being set-up for life-long failure, even the much-discussed “school-to-prison” pipeline.

A child who is being parented by their legal parents, especially children of parents of means, have ready-made, emotionally motivated, and, often, competent advocates for them when it comes to suspensions and expulsions. Foster parents or guardians (often relatives of the parents) 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. [...] Every child in foster care is already 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, the least-we-should-be-doing kind of step to safeguard the educational rights of these children; our children.”

- 5) **Related Legislation. SB 419 (Skinner)** Chapter 279, Statutes of 2019, extends the prohibition against suspending a pupil enrolled in kindergarten or any of grades 1 to 3 for disrupting school activities or otherwise willfully defied the valid authority of school staff to include grades 4 to 8 permanently, and grades 9 to 12 until January 1, 2025, and applies these prohibitions to charter schools.

**AB 420 (Dickerson)** Chapter 660, Statutes of 2014, eliminates the option to suspend or recommend for expulsion a pupil who disrupted school activities or otherwise willfully defied the authority of school officials and instead authorizes schools to suspend a pupil in grades 6-12 who has substantially disrupted school activities or substantially prevented instruction from occurring.

**SB 1111 (Lara)** Chapter 837, Statutes of 2014, requires parental consent for referrals to a county community school by a school attendance review board (SARB), school district, or probation department, except for situations where a student is expelled or pursuant to a court order. This bill also establishes the right of a student to reenroll in his/her former school or another school upon completion of the term of involuntary transfer to a county community school.

**AB 1729 (Ammiano)** Chapter 425, Statutes of 2012, recasts provisions relative to the suspension of a pupil upon a first offense, and authorizes the use and documentation of other means of correction.

**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.

## SUPPORT

Alliance For Children’s Rights  
 Black Minds Matter  
 California Alliance of Child and Family Services  
 California Federation of Teachers  
 Center For Public Interest Law/Children’s Advocacy Institute/ University of San Diego  
 Children’s Law Center of California

Los Angeles County Office of Educations  
National Association of Social Workers, California Chapter

**OPPOSITION**

None on file

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