

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 740 (McCarty)
Version: May 17, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Foster youth: suspension and expulsion

DIGEST

This bill extends the requirement that a parent be notified of their child's involuntary transfer to a continuation school, suspension, or expulsion to require, in the case of a foster child, that notice also be provided to the foster child's attorney and county social worker.

EXECUTIVE SUMMARY

As noted by the author, children in foster care consistently struggle in the education system at higher rates than non-foster children, particularly in terms of suspension rates. The disproportionate suspension of students in foster care fuels a cycle of negative outcomes for these vulnerable students.

Current law requires a child's parent or guardian to be notified in advance of suspension or expulsion proceedings, regardless of whether the suspension or expulsion is mandatory or discretionary, and involuntary school transfers. But for foster children – who are represented by a court-appointed attorney and, depending on the circumstances, may also have an advocate, educational rights holder, Indian tribal social worker, or other social worker – these additional representatives are given notice only of discretionary suspension proceedings but not of proceedings for mandatory suspensions or expulsions or involuntary school transfers. This means that the team of persons charged with protecting the foster child and helping them navigate the systems around them are not given advance notice of proceedings that could have a significant negative effect on the child and therefore are unable to represent the child and ensure the child's best interests are protected.

This bill modifies existing notice requirements for adverse actions taken by a school to require that a local education agency send a notification to the foster child's attorney,

county social worker, and educational rights holder, or tribal social worker if that child is an Indian child¹ as specified in Welfare and Institutions Code, when an involuntary transfer to a continuation school, suspension, or expulsion proceeding occurs. This is intended to ensure that the foster child's protective team is given advance notice of the proceedings and can intercede on the child's behalf.

This bill was originally triple-referred to the Senate committees on Education, Judiciary, and Human Services. The referral to the Senate Human Services Committee was rescinded because of the limitations placed on committee hearings due to the ongoing health and safety risks of the COVID-19 virus, and this analysis includes input from the Senate Human Services Committee on the matters within its jurisdiction.

This bill is sponsored by the Black Minds Matter Coalition, the Children's Advocacy Institute, the Children's Law Center, and the Law Foundation of Silicon Valley, and is supported by the Los Angeles County Office of Education. There is no known opposition. This bill passed out of the Senate Education Committee with a 6-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes that children in foster care have certain rights, including to be represented by an attorney in juvenile court and to have that attorney appointed for them, if necessary. (Welf. Code, § 16001.9(a)(33).)
- 2) Authorizes the juvenile court to appoint, for a minor deemed a dependent or a ward of the court, a responsible adult to make educational or developmental services decisions for the minor until the minor reaches age of majority or another adult is appointed. (Welf. & Inst. Code, §§ 361(a), 726(b).)
- 3) Requires the California Department of Education (CD), in consultation with the California Foster Youth Education Task Force, to develop a standardized notice of the educational rights of foster children, and requires each local educational agency to designate a staff person as the educational liaison for foster children. (Ed. Code, § 48853.5(b), (c).)
- 4) Requires the principal or the superintendent of schools, except for a charter school, 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 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:

¹ All references to an "Indian child" refer to an Indian child as defined in Welfare and Institutions Code section 224.1.

- a) Causing serious physical injury to another person, except in self-defense.
 - b) Possession of any knife or dangerous object of no reasonable use to the pupil.
 - c) Unlawful possession of any controlled substance, as defined, with exceptions for the first offense for possession of less than one ounce of marijuana and for possession of over-the-counter medication used by the pupil for medical purposes or medication prescribed to the pupil by a physician.
 - d) Robbery or extortion.
 - e) Assault or battery, as defined, upon any school employee. (Ed. Code, § 48915(a)(1).)
- 5) Requires a principal or superintendent of schools to immediately suspend, and recommend expulsion of, a pupil that they determine has committed any of the following acts at a school or at a school activity off school grounds:
- a) Possessing, selling, or otherwise furnishing a firearm, if verified by an employee of a school district, subject to specified exceptions.
 - b) Brandishing a knife at another person.
 - c) Unlawfully selling a controlled substance, as defined.
 - d) Committing or attempting to commit a sexual assault, as defined, or committing a sexual battery, as defined.
 - e) Possession of an explosive. (Ed. Code, § 48915(c).)
- 6) Provides that a principal or superintendent may, at their discretion, recommend a child's suspension or expulsion from school, other than a charter school, for additional enumerated acts, including specified actions of violence, harassment, and bullying; certain acts may be the basis for suspension or expulsion only for children above specified grade levels. (Ed. Code, §§ 48900-48900.4, 48900.7.)
- a) A school may not suspend pupils at grade levels one to five for specified acts of disruption or defiance of the valid authority of supervisors, teachers, administrators, school officials, or other personnel; until January 1, 2025, may not suspend pupils at grade levels six to eight for the same conduct; and may not expel any pupil for the same conduct. (Ed. Code, § 48900(k).)
- 7) Requires a charter school to set forth the procedures by which a pupil can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the school for any reason, which must, at a minimum, include an explanation of how the school will comply with federal and state due process guarantees and substantive due process requirements and provide specified procedural protections. (Ed. Code, §§ 47605(c)(5)(J), 47605.5(b)(5)(J); *see Scott B. v. Board of Trustees of Orange County* (2013) 217 Cal.App.4th 117, 123-124 [Education Code generally exempts charter schools from the laws governing school districts, with narrow specified exemptions not including suspension or expulsion provisions].)
- a) A charter school may not suspend or expel pupils at grade levels one to five for specified acts of disruption or defiance of the valid authority of

- supervisors, teachers, administrators, school officials, or other personnel; and, until January 1, 2025, may not suspend pupils at grade levels six to eight for the same conduct. (Ed. Code, § 48901.1)
- 8) Requires an educational liaison, if designated by the superintendent of the local education agency, to notify a foster child's attorney and the appropriate representative of the county child welfare agency of:
- a) Pending expulsion proceedings if the decision to recommend expulsion is a discretionary act;
 - b) Pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act; and
 - c) If the foster child is an individual with exceptional needs, pending manifestation determinations pursuant to federal law for placement in an alternative school setting if the local education 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 (Ed. Code, § 48855.5(d).)
- 9) Requires a high school district or district with a continuation school to develop rules and regulations for the following, prior to involuntarily transferring a child from a school:
- a) Written notice be provided to the child's parent or guardian informing them of the right to request a meeting with a designee of the superintendent prior to the transfer.
 - b) At the meeting, to be informed of all of the facts and reasons for the supposed transfer and an opportunity to inspect all documents relied on, question any evidence and witnesses presented, and present evidence on the child's behalf.
 - c) Provide, if the decision is made to involuntarily transfer the child, a written decision to transfer to the child's parent or guardian that sets forth the facts and reasons for doing so and that sets forth the procedures for periodic review. (Ed. Code, § 48853.5.)
- 10) Requires, if a student is afforded a conference prior to a review due to specified emergency circumstances, the school to notify the child and the child's parent or guardian of the suspension and allows the parent or guardian to request a conference. The school may not impose penalties for the parent or guardian's failure to request a conference. (Ed. Code, § 48911(c), (d), & (f).)
- 11) Requires, where the school is processing a decision to expel or suspend a student for the balance of the semester from continuation school, a suspension to be extended only if the student's parent or guardian has been notified and invited to a meeting, at which they could participate, to determine whether the child's continued presence at the school presents a danger to persons or property or the disruption of the educational process. If the student is a foster child, the child's attorney and an

appropriate representative of the county child welfare agency must be invited to attend. (Ed. Code, § 48911(g).)

- 12) Requires, when a student with exceptional needs is proposed to be suspended or expelled, for the procedure to follow federal requirements; and, if the student is a foster child and the proposed change involves a change in placement due to a discretionary expulsion, the child's attorney must be invited to be involved in the proceedings. (Ed. Code, § 48915.5)
- 13) Requires, when a school recommends expulsion as a discretionary disciplinary act against a foster child, the school to notify the child's attorney and appropriate representative from county social services of the expulsion hearing at least 10 calendar dates before the hearing; and permits, but does not require, notice to a foster child's attorney and county social services representative when the decision to expel the student is mandatory. (Ed. Code, § 48918.1)

This bill:

- 1) Modifies the requirements for a charter school, or multi-location charter school, to provide notice prior to involuntarily removing a student, with respect to homeless and foster children, to require:
 - a) The written notice of the intent to remove the pupil to be provided in the native language of the homeless or foster child's educational rights holder.
 - b) The written notice to be provided to the foster child's attorney and social worker.
 - c) If the child is an Indian child under the jurisdiction of the juvenile court, the notice to be provided to the child's tribal social worker and, if applicable, county social worker.
 - d) A foster child's attorney or social worker, or an Indian child's tribal social worker or county social worker to be able to initiate a hearing to review the proposed removal.
- 2) Provides that the charter of a charter school or multi-location charter school must establish that a foster child's educational rights holder, attorney, and county social worker and an 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.
- 3) Modifies the requirements for rules and regulations developed by a high school district or a district with a continuation school relating to involuntary transfer proceedings, to extend the rights of receiving notice of the proceeding, to appear, to receive a final decision in writing, and seek review, when the pupil is a foster child, to the student's attorney, educational rights holder, county social worker, or, if the

student is an Indian child, tribal social worker and county social worker if applicable.

- 4) Provides, in connection with the designated educational liaison, that a foster child's educational rights holder, attorney, and county social worker, and an Indian foster child's tribal social worker and, if applicable, county social worker have the same rights as a parent or guardian has to receive a suspension notice, expulsion notice, manifestation determination notice, involuntary transfer notice, and other documents and related information.
- 5) Modifies the provisions relating to suspension and expulsion where a foster student has been suspended without an advanced meeting or where the school is deciding whether to extend a suspension to extend the rights of notice and an opportunity to meet with the school to the foster child's educational rights holder, attorney, and, if the child is an Indian child, tribal social worker and county social worker; and prohibits penalizing the student if the student's educational rights holder, attorney, and, if the child is an Indian child, tribal social worker and county social worker fail to attend the conference.
- 6) Requires that a foster child's attorney, county social worker, and educational rights, or tribal social worker, if that child is an Indian child, 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.
- 7) Requires a local education agency 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, to participate in the individualized education program (IEP) team meeting that makes a manifestation determination, as specified, if a local education agency is proposing a change of placement for a foster child with exceptional needs.
- 8) Requires, rather than authorizes, a school district to provide notice of an expulsion hearing to a foster child's attorney, representative of the county child welfare agency, and Indian tribal worker, where applicable, at least 10 days before an expulsion hearing.

COMMENTS

1. Author's comment

According to the author:

Students in foster care are being failed by California's public school system. Statewide, they are suspended at a rate 331 percent greater than their peers. In Sacramento County, the rate is 500 percent 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.

2. The education system and foster children

CDE reports that there were 46,810 foster youth enrolled in California's schools in the 2018-2019 school year.² Foster youth are more likely than non-foster youth to experience circumstances that are correlated with reduced educational outcomes, such as high mobility that results in school changes during K-12 education and delays in school enrollment (often due to entry into foster care).³ Foster children are also more likely than non-foster children to have experienced maltreatment and trauma that severely interferes with learning; the overall result is that "students in foster care face more challenges in achieving learning success than their peers not in foster care."⁴

The CDE's records of suspension rates for foster children reflects the higher challenges faced by foster children in the education system. In the 2018-2019 school year, 15.2 percent of foster youth were suspended, compared to only 3.4 percent of non-foster youth.⁵ In the same year, the statewide expulsion rate for foster youth was .3 percent;⁶ CDE did not provide the expulsion rate for non-foster youth. Foster youth were also more likely to be chronically absent than non-foster youth, at rates of 27.7 percent and 12.1 percent, respectively.⁷

The overall result is a starkly lower high school graduation rate for foster youth than non-foster youth: the adjusted cohort graduation rate for foster youth in 2019 was 56 percent, compared to 84.9 percent for non-foster youth.⁸

² California Department of Education, Report to the Governor, the Legislature, and the Legislative Analysis's Office: 2020 Foster Youth Services Coordinating Program Report (Jul. 2020) at p. 17.

³ *Id.* at pp. 8-10.

⁴ *Id.* at p. 10.

⁵ *Id.* at p. 28. In some counties, the suspension rate for foster youth is over 20 percent. (*Id.* at pp. 29-30.)

⁶ *Id.* at p. 30.

⁷ *Id.* at p. 39.

⁸ *Id.* at pp. 44-45.

3. This bill requires a local education agency to notify a foster child’s attorney, county social worker, educational rights holder, and/or tribal social worker of certain adverse disciplinary actions and permit those individuals to participate in related procedures

For foster youth and non-foster youth alike, suspension as a punishment can exacerbate, rather than help, student performance problems. Suspensions are also disproportionately imposed against Black students, other students of color, and students with disabilities.⁹ According to the Senate Education Committee in its analysis of this bill, in recent years there has been a movement to limit the use of suspension as a disciplinary measure and instead promote alternatives that are intended to address the root causes of the student’s behavior and improve academic outcomes. CDE reports, however, that “we must do more to reverse the reality that our most vulnerable students are disproportionately removed from their classes.”¹⁰

This bill is intended to improve the outcomes for foster youth subjected to proposed discipline in the form of suspension, expulsion, or an involuntary school transfer, by ensuring that the full team of individuals tasked with protecting the foster child is able to engage with the school to protect the child’s rights and interests. Specifically, the bill adds requirements that a local education agency send a notification to the foster child’s attorney, county social worker, educational rights holder, and/or tribal social worker when an involuntary transfer to a continuation school, suspension, or expulsion proceeding occurs, and allow those individuals to participate in meetings or proceedings addressing the proposed action. While a foster child’s guardian is already provided with the notice, the foster guardian may not be in as good of a position as the child’s other representatives to defend the child’s rights before the school.

4. Comments from the Senate Human Services Committee

This bill was originally referred to the Senate Human Services Committee as the third committee of referral, but the referral was rescinded in light of COVID-19 limitations. The Senate Human Services Committee therefore provides these comments:

Existing state and federal law creates certain rights for foster youth around the school they attend. Specifically, existing law creates the “school of origin” and grants foster youth with the right to remain at their school of origin despite other placement disruptions that might occur during their time in care. A foster youth’s school of origin may be the school they attended when they first entered care, the school they most recently attended, or any school they attended in the last 15 months that they feel the most connected to. California law requires resource families be provided with

⁹ E.g., Losen & Martinez, Report: *Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn*, Learning Policy Institute; Center for Civil Rights Remedies at the Civil Rights Project, UCLA (Oct. 2020), at pp. 9-10.

¹⁰ See, e.g., CDE, Letter, *State Guidance for New Laws on Discipline* (Aug. 19, 2021), <https://www.cde.ca.gov/nr/el/le/yr21ltr0819.asp> (last visited May 30, 2022).

reasonable transportation costs to help ensure youth stay connected to their school of origin. This emphasis on allowing youth to remain at their school despite placement changes or other disruptions is tied to child development research, which has shown that “children need consistency, predictability, and attachment to a caring adult to thrive. This is especially true for children in foster care, who have experienced trauma leading up to and including removal from their home and community.”¹¹ Additionally, multiple placements can lead to delayed permanency outcomes, academic difficulties, among other issues.¹² Foster youth report falling behind and losing important connections to both peers and supportive adults when they are forced to change schools.

This bill does not impact existing school of origin rules, but rather requires certain notice provisions be met when a foster youth faces an involuntary transfer to a continuation school, or when a suspension or an expulsion proceeding occurs. By providing this notice, the child’s attorney, social worker, education rights holder, and, in the case of Indian children, tribal social worker, is aware of the proceeding and has the opportunity to advocate on behalf of the youth. As noted by the author, the child or youth’s resource family may not have the time, training, or background to effectively advocate on the behalf of the youth through this process. By requiring notification of the above listed parties, the child’s attorney or education rights holder will have the opportunity to weigh in on the child’s behalf and perhaps mitigate the situations – enabling the child’s connection to their school, and school community, to be preserved. As noted above in relation to school of origin, stability in education, and thus stability in the relationships a foster child has at their school, is essential to the well-being and overall success of foster children.

5. Arguments in support

According to the Children’s Law Center of California, a co-sponsor of the bill:

Through our daily work, we have seen firsthand that foster youth face more challenges than the average youth. 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.

Foster parents or guardians may lack the time, background, or expertise to advocate for the academic rights of the children in their care. Furthermore,

¹¹ <https://www.casey.org/placement-stability-impacts/>.

¹² Ibid.

students may cycle through multiple placements or be placed in group homes, which makes advocacy at school even less likely.

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.

SUPPORT

Black Minds Matter Coalition (co-sponsor)

Children's Advocacy Institute at the University of San Diego School of Law (co-sponsor)

Children's Law Center of California (co-sponsor)

Law Foundation of Silicon Valley (co-sponsor)

Los Angeles County Office of Education

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 419 (Skinner, Ch. 279, Stats. 2019) extended 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, Ch. 660, Stats. 2014) eliminated 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 authorized schools to suspend a pupil in grades 6-12 who has substantially disrupted school activities or substantially prevented instruction from occurring.

SB 1111 (Lara, Ch. 837, Stats. 2014) required parental consent for referrals to a county community school by a school attendance review board, school district, or probation department, except in situations where a student is expelled or pursuant to a court

order. This bill also established the right of a student to reenroll in their former school or another school upon completion of the term of involuntary transfer to a county community school.

AB 1729 (Ammiano, Ch. 425, Stats. 2012) recast provisions relative to the suspension of a pupil upon a first offense and authorized the use and documentation of other means of correction.

AB 1909 (Ammiano, Ch. 849, Stats. 2012) required schools to notify a foster youth's attorney and representative of the county child welfare agency of specified pending expulsion or other disciplinary proceedings

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 65, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Education Committee (Ayes 6, Noes 0)
