

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Blanca Rubio, Chair

AB 752 (Rubio) – As Amended April 18, 2017

**SUBJECT:** Child care: expulsion

**SUMMARY:** Prohibits a California State Preschool Program contracting agency from expelling or unenrolling a child due to behavior unless certain steps are taken, and prohibits the Department of Social Services (DSS) from issuing a citation or civil penalty for a violation solely related to the behavior of a child while those steps are being taken.

Specifically, **this bill:**

- 1) Makes Legislative findings and declarations related to high rates of preschool expulsion, the negative impacts of these expulsions, and the state's current lack of guidelines or regulations regarding expulsion in the California State Preschool Program (State Preschool), and states Legislative intent to significantly reduce the expulsion or unenrollment of children from State Preschool due to challenging behaviors.
- 2) Prohibits a State Preschool contracting agency from expelling or unenrolling a child because of a child's behavior except in instances when the contracting agency has explored and documented reasonable steps to maintain the child's safe participation in the program and determined, in consultation with specified entities including the child's parents or legal guardians, that the child's continued enrollment would present a serious safety threat to the child or other enrolled children, at which point the contracting agency must refer the parents or legal guardians to other resources or placements, as specified, and then may unenroll the child.
- 3) Requires a State Preschool contracting agency, if a child exhibits continuing and serious challenging behaviors, to pursue and document reasonable steps to maintain the child's safe participation in the program and to do the following:
  - a) For a child with an individualized family service plan (IFSP) or individualized education program (IEP), with written parental consent, contact the agency responsible for the IFSP or IEP to seek consultation on serving the child; or
  - b) For a child that does not have an IFSP or IEP, refer the child's parents or legal guardians to the local agency responsible for implementing the Individuals with Disabilities Education Act (IDEA).
- 4) Requires a State Preschool contracting agency to complete the process of exploring, pursuing, and documenting reasonable steps to maintain a child's safe participation in the program, and taking other related steps as proposed by this bill, within 180 days.
- 5) Prohibits the Department of Social Services (DSS) from issuing a citation or imposing a civil penalty pursuant to the California Child Day Care Facilities Act to a State Preschool contracting facility for a violation that is solely related to the behavior of a child when the facility is in the process of complying with the provisions of this bill that require a State

Preschool contracting agency to complete the process of exploring, pursuing, and documenting reasonable steps to maintain the safe participation in the program of a child demonstrating challenging behaviors, as specified.

- 6) Permits a State Preschool contracting facility to appeal a citation or civil penalty issued by DSS that is related to the behavior of a child when the facility is in, and requires DSS to withdraw a citation or civil penalty that is solely related to the behavior of a child upon presentation of evidence by the facility that it was in, the process of exploring, pursuing, and documenting reasonable steps to maintain the safe participation in the program of a child demonstrating challenging behaviors, as specified.
- 7) Maintains DSS's authority to issue a citation or impose a civil penalty for a violation related to a child's behavior if a State Preschool contracting agency is not pursuing and documenting reasonable steps to maintain the child's safe participation in the program.

#### **EXISTING LAW:**

- 1) Defines "California State Preschool Program" to mean part-day and full-day educational programs for low-income or otherwise disadvantaged three- and four-year olds, and includes the California State Preschool Program under the definition of "child care and development programs" which offer a full range of services for children from 0 to 13 years of age, as specified. (EDC 8208 (i) and (ad))
- 2) Requires the Superintendent of Public Instruction to administer all state preschool programs, which include, but are not limited to, part-day age- and developmentally appropriate programs designed to facilitate the transition to kindergarten for three- and four-year-old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. (EDC 8235(a))
- 3) Authorizes a part-day state preschool program to provide services to children in families with incomes up to 15% above the income eligibility threshold, as specified, provided all other eligible three- and four-year-olds have been enrolled. Further specifies that no more than 10% of the children enrolled under a provider's entire contract can be children in families above the income eligibility threshold. (EDC 8235(c))
- 4) Requires families to meet certain criteria in order to be eligible for federal and state subsidized child development services, including that a family must be either a current aid recipient, income eligible, homeless, or one whose children are recipients of protective services or have been identified as being abused, or neglected, as specified. (EDC 8263)
- 5) Establishes the California Child Day Care Facilities Act to provide a comprehensive, quality system for licensing child day care facilities to ensure that working families have access to healthy and safe child care providers and that child care programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (HSC 1596.70 *et seq.*)
- 6) Subjects all licensed child day care centers to unannounced inspections by DSS, and provides that the department shall visit facilities as often as necessary to ensure the quality of care provided. (HSC 1597.09)

- 7) Requires annual unannounced inspections when a license is on probation, when required by the terms of a facility compliance plan, when an accusation against a licensee is pending, or to verify that a person who has been ordered out of the facility is no longer present. (HSC 1597.09)
- 8) Requires DSS to perform random inspections each year in no fewer than 30% of facilities not subject to annual inspections, and requires DSS to visit every licensed child care facility no less than every 3 years. (HSC 1597.09)
- 9) Prohibits, in federal regulations, a Head Start program from expelling or un-enrolling a child from Head Start based on the child's behavior and requires a program to prohibit or severely limit the use of suspension due to a child's behavior, as specified. (45 CFR §1302.17)
- 10) Establishes in federal law the Individuals with Disabilities Education Act (IDEA) to ensure the provision of free appropriate public education to children with disabilities that is tailored to meet their needs. (20 U.S.C. §1400 *et seq.*)
- 11) Defines "individualized family services plan" or "IFSP" in federal law to mean a written plan for each infant or toddler with a disability that is developed by a multidisciplinary team, including the infant's or toddler's parents, and that includes a description of the appropriate transition services for the infant or toddler, as specified. (20 U.S.C. §1436)
- 12) Defines "individualized education program" or "IEP" in federal law to mean a written statement for each child with a disability that is developed, reviewed, and revised as specified. (20 U.S.C. §1414 (d))

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**California State Preschool Program:** AB 2759 (Jones), Chapter 308, Statutes of 2008, consolidated funding for State Preschool, Prekindergarten and Family Literacy, and General Child Care serving eligible three- and four-year-olds into the California State Preschool Program (State Preschool). State Preschool provides both part-day and full-day services to eligible three- and four-year-olds, including: developmentally appropriate curriculum, parent education, meals and snacks, and referral to social and health services for families. State Preschool can be offered in various settings, including child care centers, family child care network homes, school districts, or county offices of education. Approximately two-thirds of children in State Preschool are served by local education agencies (LEAs), and the remaining one-third are served by community-based organizations. State Preschool programs must have a 1:8 adult-to-child ratio, and a 1:24 teacher-to-child ratio; teachers must have a Child Development Teacher Permit, which includes 24 units in early childhood education and/or child development and 16 general education units.

Children are eligible for state preschool if their families are one of the following: current aid recipients, income eligible, homeless, or one in which children are recipients of protective services or children have been identified as being, or at risk of being, abused, neglected, or exploited. These eligibility standards are the same as they are for other components of the subsidized child care system in California. However, there are also some differences between

CSPP and other subsidized child care. For one, state preschool prioritizes four-year-olds for enrollment, and then serves three-year-olds if slots remain after enrolling all eligible four-year-olds. Additionally, parents do not have to be working (or meeting related criteria) to be eligible for state preschool; however, this is a requirement for other child care programs. State preschool also may allow up to 10% of children served to be from families whose incomes exceed the eligibility cut-off by up to 15%.

For 2016-17, there are an estimated 101,598 part-day state preschool slots, and an estimated 62,005 full-day slots. State Preschool slots have been increased in the state budget in recent years, with the 2014 Budget Act providing 11,500 part-day slots, the 2015 Budget Act providing 7,000 full-day slots, and the 2016 Budget Act providing 3,000 full-day slots (however, CDE has issued a number of part-day slots in lieu of full-day slots due to low provider application rates for full-day slots).

***Child care licensing:*** The Community Care Licensing Division (CCLD) within DSS licenses a variety of non-medical facilities, both residential and non-residential, serving vulnerable individuals throughout the state. These facilities include: child care centers, family child care homes, adult day care facilities, foster family care homes, other children's residential facilities, and adult and senior residential facilities. There are over 73,000 licensed care facilities in the state, with the capacity to serve 1.7 million Californians.

Within CCLD, the Child Care Licensing Program, through 14 Regional Offices located across the state, is engaged in oversight and enforcement for child care centers and family day care homes. According to DSS:

“The core mission of the Child Care Licensing Program is to ensure the health and safety of children in care. The Child Care Licensing Program strives to provide preventive, protective, and quality services to children in care by ensuring that licensed facilities meet established health and safety standards through monitoring facilities, providing technical assistance, and establishing partnerships with providers, parents, and the child care community....All children and families, regardless of age, ethnicity, cultural background, socioeconomic status, or ability, are afforded the same protections under the law and regulations for child care facilities.”

State Preschool programs must therefore comply with CCLD's health and safety standards. (They must also adhere to rules set by CDE regarding the classroom environment.) CCLD typically conducts site inspections once every three years to monitor compliance with regulations; they also investigate complaints. Licensees may receive two types of citations: “Type A” citations are for the most serious types of violations, ones which pose an immediate risk to the health, safety, or personal rights of the children in care (these can include lack of care and supervision, access to dangerous chemicals, lack of a fire clearance, for example); “Type B” citations are those that, if not corrected, might pose an immediate risk to the health, safety, or personal rights of the children in care (examples include inadequate training of staff and faulty record keeping).

***Impacts of suspension and expulsion:*** While evidence of the disproportionate suspension and expulsion of school-age students of color has been recorded and analyzed for some time, more recently, similar concerning trends have been observed in preschool populations. For the first time, in 2011-12, the U.S. Department of Education Office for Civil Rights' Civil Rights Data

Collection included data on preschool suspensions and expulsions, and the findings were troubling. Black children were determined to represent 18% of preschool enrollment, yet constituted 48% of all preschool children receiving more than one out-of-school suspension. Overall, 6% of school districts with children participating in preschool programs reported placing at least one child in out-of-school suspension.

Suspensions and expulsions can have significantly negative, lasting impacts for children. In 2015, the U.S. Departments of Health and Human Services and Education released a “Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings.” This statement claims that:

“Suspension and expulsion can influence a number of adverse outcomes across development, health, and education. Young students who are expelled or suspended are as much as 10 times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not. While much of this research has focused on expulsion and suspension in elementary, middle, and high school settings, there is evidence that expulsion or suspension early in a child’s education is associated with expulsion or suspension in later school grades.”

The policy statement goes on to acknowledge that, not only do suspensions and expulsions hold the potential to negatively impact social-emotional and behavioral development, but they also pull children out of the very settings that could benefit them the most: early learning environments. Not only do suspended and expelled children then miss out on the benefits they could gain in those environments, but education professionals lose access to those children and thus, the opportunity to identify the underlying sources of their behavior and the ability to help those children address those underlying issues. Additionally, suspension and expulsion can add to family stresses and burdens. The policy statement contends that:

“In many cases, families of children who are expelled do not receive assistance in identifying an alternative placement, leaving the burden of finding another program entirely to the family. There may be challenges accessing another program, particularly an affordable high-quality program. Even in cases where assistance is offered, often there is a lapse in service which leaves families, especially working families, in difficult situations.”

***Head Start program rules:*** Since 1965, the U.S. Department of Health and Human Services’ Head Start program has provided early childhood education, nutrition, health, and parent involvement services to low-income families; in 2014-15, Head Start Served 1.1 million children ages 0 to 5 and pregnant women across the nation. New requirements related to suspension and expulsion were included in the Head Start Program Performance Standards as of November 7, 2016. A memo released by the U.S. Department of Health and Human Services on that date not only highlighted the new requirements, but also encouraged Head Start grantees and delegates to adopt practices set forth in the “Policy Statement on Expulsion and Suspension in Early Childhood Settings,” described above.

The new requirements, 45 CFR §1302.17, did two main things: they placed limitations on suspensions and they prohibited expulsions. Regarding suspensions, Head Start programs must now prohibit or severely limit the use of them due to a child’s behavior; when they are used, they must be temporary in nature and used only as a last resort in extraordinary circumstances where there is a serious safety threat. Prior to a program determining whether a temporary suspension is necessary, it must engage with a mental health consultant, work with parents, and utilize other

appropriate community resources, such as behavior coaches. A Head Start program must help a suspended child return to full participation in all activities as quickly as possible while ensuring child safety.

Regarding expulsions, a Head Start program is prohibited from expelling or unenrolling a child due to the child's behavior. Instead, when a child exhibits continued and serious challenging behaviors, the program must explore all possible steps and document those steps taken to address the issues, and work to facilitate the child's continued safe participation in the program. If after exploring and documenting these steps, it is determined that the child's enrollment in the program presents a continued serious safety threat and that the program is not the most appropriate placement for the child, the Head Start program is required to work to facilitate the child's transition to a more appropriate placement.

***Need for this bill:*** According to the author:

“Recent data shows expulsion occurs frequently in preschool programs across the United States. Nationally, three and four year olds enrolled in Pre-K are expelled 3.2 times more frequently than K-12 students, while California's Pre-K expulsion rates are even higher than the national average.

Furthermore, Pre-K expulsion disproportionately affects children of color. Recent studies show that African American children are twice as likely to be expelled as Latino and white children, and five times more likely to be expelled than their Asian American peers. The disparity is severe for African American four-year-old boys. This demographic is more likely to be ‘pushed out’ of Pre-K at a time when their need for support is crucial.

Without adequate safeguards for children enrolled in preschool and other child care and developmental services, cycles of inequity will continue to persist for lower income communities. High quality preschool programs are aiming to close the achievement gap between low income students and their middle and high income peers; however, it is deeply concerning that Pre-K expulsions occur at such a high rate.

[This bill] will help prevent children from being unnecessarily expelled or unenrolled from the California State Preschool Program. It prohibits California State Preschool from expelling or unenrolling a child for challenging behaviors except in narrow circumstances. The bill creates a process, modeled after recently adopted US Department of Health and Human Services' guidelines for the federal Head Start programs, for addressing persistent and serious challenging behaviors and reduces other incentives to expel a child. The process includes participation from the child's parents, teacher, and other appropriate agencies, to ensure steps are taken to maintain the child's safe participation in the program. However, the bill allows for a more suitable placement if continued enrollment would present a serious safety threat. Additionally, the bill reduces other incentives to expel children with challenging behaviors, including prohibiting provider penalties related to a child's behavior while the process is underway.”

#### **PRIOR LEGISLATION:**

***AB 2759 (Jones), Chapter 308, Statutes of 2008,*** established the California State Preschool Program, consolidating the State Preschool program, and the portion of the general child care and development program that served three- and four-year-olds into one preschool program.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Children's Defense Fund  
Congregation Beth Am  
Early Edge California  
Fight Crime: Invest in Kids  
Kidango (Sponsor)  
MALDEF  
National Association of Social Workers, CA Chapter

**Opposition**

None on file.

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