
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

Bill No: SB 322

Author: Leno

Version: April 13, 2015

Hearing Date: April 22, 2015

Urgency: No

Fiscal: Yes

Consultant: Lenin Del Castillo

Subject: Charter schools: pupils: suspension and expulsion: admissions: departures

SUMMARY

This bill would prohibit a charter school from establishing admission preferences and also requires charter schools to comply with the existing pupil suspension and expulsion provisions for traditional public schools. Additionally, this bill would require a charter school, upon a student's expulsion or departure, to report the reason within 10 days.

BACKGROUND

Charter Schools

Under existing law, the Charter Schools Act of 1992 provides for the establishment of charter schools in California for the purpose, among other things, to improve student learning and expand learning experiences for pupils who are identified as academically low achieving. A charter school may be authorized by a school district, a county board of education, or the State Board of Education, as specified. Some charter schools are new while others are conversions from existing schools. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to schools and school districts. The legislative intent of the Charter Schools Act was to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from a school district structure that would afford parents and pupils with expanded educational choices, offer new professional opportunities for teachers to be responsible for the learning program at the school site, and create competition within the public school system to stimulate continual improvements in all public schools.

Current law requires that charter schools: 1) are nonsectarian in their programs, admission policies, employment practices, and all other operations; 2) not charge tuition; and 3) not discriminate against any pupil on the basis of the characteristics, as specified. Admission to a charter school may not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian, within the state, except that an existing public school converting to a charter school must adopt and maintain a policy giving admissions preference to pupils who reside within the former attendance area of that public school. (Education Code § 47605, et. seq.)

According to the California Department of Education, there were over 1,100 charter schools with an enrollment of approximately 514,000 pupils operating in the state in 2013-14.

Parents, teachers, or community members may initiate a charter petition, which is typically presented to and approved by a local school district governing board. The law also allows, under certain circumstances, for county boards of education and the State Board of Education to authorize charter schools. The specific goals for a charter school are detailed in the agreement (charter) between the authorizing entity and the charter developer. The charter petition is also required to include a description of the educational program of the school and several other policies and procedures relating to employees, pupils, and finances. Current law establishes procedures for the renewal of charter schools, not to exceed five years.

If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school is required to notify the superintendent of the school district of the pupil's last known address within 30 days, and shall upon request provide that school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information. This provision applies only to pupils subject to compulsory full-time education.

Suspension Requirements

Existing law prohibits a pupil from being suspended or recommended for expulsion unless the principal of the school determines that the pupil has committed certain acts, and gives schools the discretion to take action for most offenses. A suspension shall be imposed only when other means of correction fail to bring about proper conduct.

Suspension by the principal must be preceded by an informal conference between the principal, pupil and whenever practicable, the teacher, supervisor or school employee who referred the pupil to the principal. School principals may suspend a pupil without first holding an informal conference with the pupil if an emergency situation exists. A school employee is required to make a reasonable effort to contact the pupil's parents at the time of suspension; however, whenever a pupil is suspended from school (as opposed to suspension from a class) the parent must be notified in writing.
(Education Code § 48900, et. seq.)

Schools may suspend a pupil for violating any number of acts, some of which include:

1. Attempting to cause or threatening to cause physical injury to another person. (Expulsion must be recommended for causing serious physical injury.)
2. Being under the influence of a controlled substance. (Expulsion must be recommended for possession or the sale of controlled substances.)
3. Caused or attempted to cause damage to school property.
4. Possessed or used tobacco.
5. Committed an obscene act or engaged in habitual profanity or vulgarity.
6. Possessed, offered, arranged or negotiated to sell drug paraphernalia.
7. Engaged in, or attempted to engage in, hazing.

8. Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
9. Engaged in an act of bullying.

Pupils may be suspended for a first offense if the school principal determines that the pupil committed certain acts or that a pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process or the pupil committed certain acts. (EC § 48900.5)

The governing board of a school district is required, unless a request has been made to the contrary, to hold closed sessions if the board is considering suspending or taking other disciplinary action (other than expulsion) if a public hearing would lead to the release of confidential information. School districts are required to notify, in writing, the pupil and the pupil's parent of the intent to call and hold a closed session. (EC § 48912)

School district superintendents and school principals are authorized to use discretion to provide alternatives to suspension or expulsion, including counseling and an anger management program. (EC § 48900(v))

Teachers may suspend pupils from class for the day and the following day. If the pupil is to remain on campus during that suspension, the pupil must be under appropriate supervision. Teachers must ask the parent to attend a parent-teacher conference regarding the suspension. Pupils are prohibited from returning to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher and principal. (EC § 48910)

The number of days that a pupil may be suspended from school is capped at five consecutive schooldays. With some exception, the total number of days for which a pupil may be suspended is capped at 20 schooldays per school year, unless the pupil enrolls in or is transferred to another regular school, an opportunity school or a continuation school, in which case the cap is 30 schooldays per school year. School districts are authorized to count suspensions that occur while a pupil is enrolled in another school district toward the maximum numbers of days for which a pupil may be suspended in any school year. (EC § 48903 and 48911)

Expulsion Requirements

Schools may expel pupils for various offenses, including disruption and defiance, upon finding either of the following:

1. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
2. Due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.
(EC § 48915(e))

If the governing board of a school district receives a request from an individual who has been expelled from another school district for enrollment, the school board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. A district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment.

If a pupil has been expelled from his or her previous school, as specified, the parent, guardian, or pupil shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided and the school district later determines the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing.

School district governing boards are required to set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school within the district or the school the pupil last attended. (EC § 48916(a))

ANALYSIS

This bill:

1. Adds the intent of the Legislature to do all of the following:
 - A. Ensure equal access to interested pupils at charter schools and prohibit practices that discourage enrollment or disproportionately push out segments of already enrolled pupils.
 - B. Ensure that charter school discipline policies are fair and transparent.
 - C. Ensure that a pupil's constitutional right to due process is protected at charter schools.
 - D. Consistent with Section 5 of Article IX of the California Constitution, ensure that charter schools operate within the system of common schools by remaining "...free, nonsectarian and open to all students...", as stated in *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1137-38
2. Removes "admission requirements" from the petition for the establishment of a charter school that a proposed charter school is required to provide a comprehensive description of.
3. Removes "other preferences" from being permitted by a charter school in the event a public random drawing is necessary in determining the admission of students to the school, and instead provides that preferences shall be limited to pupils currently attending the charter (current law), siblings of pupils currently attending, children of employees at the charter, and pupils who reside in the school district (current law).

4. Requires a charter school, upon a student's expulsion or departure, to report the reason for the expulsion or departure to the superintendent of the school district of the pupil's last known address within 10 days.
5. Reduces the timeline (from 30 days to 10 days) in which a charter school is currently required to notify the school district if a student is expelled or leaves the charter school and also requires the charter school to provide a copy of the cumulative record of the pupil, including a transcript of grades or report card and health information.
6. Provides that charter schools shall not be exempt from the existing pupil suspension and expulsion laws governing school districts, as specified, and defines a school to include a charter school for purposes of that article. Removes the specification of "pupil" as including a pupil's parent or guardian or legal counsel.
7. Requires school districts to draft and implement a policy to annually collect data about teacher turnover at each of its schools and at each charter school it authorizes. Provides that the data collected shall be classified as public records subject to the California Public Records Act and subject to existing state and federal law regarding privacy and personal directory information.
8. Adds legislative findings and declarations, as specified, regarding the public's interest in charter school operation and transparency.

STAFF COMMENTS

1. **Need for the bill.** According to the author's office, "some charter schools establish admission requirements and preferences designed to allow only the most "desirable" students and to screen out students who may have lower standardized test scores. Examples of discriminatory admission policies include mandatory parental volunteer hours, minimum English proficiency requirements or a minimum GPA. Additionally, some students are "counseled out" during the school year in order to boost test scores. The California Department of Education recently weighed in on one such practice by issuing an advisory opinion stating that California law forbids charter schools from requiring mandatory parental volunteer hours as a criterion for admission or continued enrollment. These discriminatory practices are systematically harming students of color and students from low-income families. Data shows that low-income students, English language learners, and populations in need of special education services are served far less often at public charter schools than at traditional public schools. These students deserve equal access to all public schools and should not have any barriers to their academic success."
2. **Guidance on the federal Charter School Program.** Federal guidance provides that charter schools receiving federal Charter Schools Program (CSP) funds must use a lottery if more students apply for admission to the charter school than can be admitted. Weighted lotteries, which give preference to one set of students over another, are permitted only when they are necessary to comply with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments

of 1972, section 504 of the Rehabilitation Act of 1973, the equal protection clause of the Constitution, or applicable State law.

In addition, a charter school may weight its lottery in favor of students seeking to change schools under the public school choice provisions of title I, part A of the Elementary and Secondary Education Act for the limited purpose of providing greater choice to students covered by those provisions. For example, a charter school could provide each student seeking a transfer under title I with two or more chances to win the lottery, while all other students would have only one chance to win. (20 U.S.C. 7221i(1)(H))

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply. Specifically, the following categories of applicants may be exempted from the lottery on this basis:

- A. Students who are enrolled in a public school at the time it is converted into a public charter school;
 - B. Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;
 - C. Siblings of students already admitted to or attending the same charter school;
 - D. Children of a charter school's founders, teachers, and staff (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and
 - E. Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).
3. **Admission policies.** While eliminating the authority of a charter authorizer to permit admission preferences may reduce the authority of some schools to screen out students, this bill could reduce the flexibility of charter schools to target certain student populations that may benefit from the unique educational programs offered at a particular charter school. Notwithstanding the concerns some have raised about racial and income imbalances in some charter schools, should charter authorizers continue to have the discretion to allow charter schools to serve specific populations such as students with special needs, low-income students, English learners or low-performing students who need to focus on credit recovery? **Staff recommends amendments** that would authorize the chartering authority to also permit admission preferences on an individual school basis, provided that the preferences: 1) are approved in a public hearing; 2) ensure students with disabilities, academically low-achieving pupils, English learners, and low income students who are eligible for free and reduced price meals will be served; 3) are consistent with federal law and the California

Constitution; and 4) do not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

4. **Charter school requirements.** Charter schools are exempt from most laws governing school districts and schools in order to allow the charter school the flexibility to innovate and be responsive to the educational needs of the student population served. Charter schools are required however, to have credentialed teachers in core and college preparatory courses, meet statewide standards, and consult with parents, guardians, and teachers regarding the school's programs.

Charter schools establish their own student discipline procedures and articulate those procedures in their charter petition. School districts, as charter authorizers, are responsible for ensuring that the suspension and expulsion procedures described in the charter are reasonably comprehensive. An argument could be made that a district could require charter petitions to include suspension and expulsion procedures that provide for pupils' due process and appeal rights. A school district and charter school could also articulate additional expectations with regard to how the charter school and school district will communicate about students who are referred back to the district in a Memorandum of Understanding that specifies operational agreements between the charter and the district. Given these avenues already exist, could this bill unnecessarily subject all charter schools to a set of statutes that may limit their ability to operate independently from school district structures as the Legislature intended in enacting the Charter School Act?

5. **What is the problem?** It is not clear if the root of the problem is the inadequacy of the procedures or schools that do not follow the procedures. If the problem is that students in some charter schools do not have due process rights when they are to be suspended or expelled, would it be more appropriate to amend the Charter School Act to require a charter's description of the procedures by which pupils can be suspended or expelled to specifically address the offenses for which a student may be suspended or expelled as well as a description of a student's due process and appeal rights during those procedures? An argument can also be made that charter schools are already required by state and federal constitutional law to afford a pupil due process when he or she has been recommended for expulsion.

If the problem is that some charter schools are not complying with the provisions of their charter or the notification provisions of the Charter School Act, is that a problem that requires a different remedy? If the problem is that current law does not provide sufficient guidance to charter schools and school district governing boards, amending the Charter Schools Act may be a more appropriate remedy. Additionally, while requiring charter schools to comply with the expulsion and suspension provisions of the Education Code could provide greater consistency regarding student discipline, could it limit a charter school's flexibility to require students to follow rules that are integral to the theme, culture, or focus of the school? For example, would a charter school that requires its students to wear uniforms be precluded from expelling a pupil who refuses to wear the uniform?

For these reasons, as the bill moves forward, the author may wish to consider amending the bill to delete the requirement that charter schools comply with the existing expulsion and suspension provisions for traditional public schools and instead require charters under the Charter School Act, in outlining the procedures by which pupils can be suspended or expelled, to specify the acts for which a pupil may be suspended or expelled and a pupil's due process rights.

6. ***Related and prior legislation.***

SB 329 (Mendoza) would authorize a school district and county office of education to deny a petition for the establishment of a charter school if it finds the charter school would have a negative fiscal impact on the school district (or a district within the county), as specified. This bill is also scheduled to be heard in this Committee on April 22, 2015.

SB 433 (Liu, 2012) would have required charter schools to comply with state statutes governing the suspension and expulsion of pupils. This bill failed passage in this Committee.

AB 1034 (Gatto, 2011) proposed to require charter schools to report specified pupil data and make changes to statutes governing charter school admission practices. AB 1034 passed this Committee but was eventually vetoed by Governor Brown with the following veto message:

Charter schools are established to encourage the widest possible range of innovation and creativity. Their governing charters reflect the ideas and aspirations of those willing to undertake this profoundly difficult challenge. It is critical that they have the flexibility to set admission criteria and parent involvement practices that are consistent with the school's mission.

SUPPORT

California Federation of Teachers
California Labor Federation
California School Employees Association
California Teachers Association
GSA Network of California
San Francisco Unified School District

OPPOSITION

California Center for Parent Empowerment
California Charter Schools Association
Camino Nuevo Charter Academy
Charter Schools Development Center
EdVoice
Letters from individuals