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California State Senate

EDUCATION



CONNIE LEYVA
CHAIR

Staff Director
Lynn Lorber

Principal Consultant
Brandon Darnell
Olgallia Ramirez
Ian Johnson

Committee Assistant
Lauren Robinson
Irma Kam

State Capitol, Room 2083
(916) 651-4105
FAX: (916) 324-0917

AGENDA

Wednesday, June 23, 2021
9 a.m. -- John L. Burton Hearing Room (4203)

MEASURES HEARD IN FILE ORDER

- | | | | |
|-------|---------|-----------------|--|
| 1. | AB 92 | Reyes | Preschool and childcare and development services: family fees. |
| 2. | AB 233 | Boerner Horvath | Public postsecondary education: University of California: admissions. |
| 3. | AB 1215 | Boerner Horvath | Public postsecondary education: University of California: admissions policy: systemwide protocols. |
| * 4. | AB 340 | Ward | Golden State Scholarshare Trust: Personal Income Tax Law: gross income: deductions. |
| 5. | AB 367 | Cristina Garcia | Menstrual products. |
| * 6. | AB 865 | Quirk-Silva | Childcare services: alternative payment programs: direct deposits: reserve funds. |
| 7. | AB 945 | Ramos | Pupils: adornments at school graduation ceremonies: task force. |
| * 8. | AB 1055 | Ramos | Foster youth: tribal pupils. |
| * 9. | AB 1294 | Quirk | Childcare: individualized county childcare subsidy plans.(Urgency) |
| * 10. | AB 1560 | Daly | Distance learning: pupil access: computing devices and broadband internet service. |

*Proposed Consent

SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 92 **Hearing Date:** June 23, 2021
Author: Reyes
Version: June 14, 2021
Urgency: No **Fiscal:** Yes
Consultant: Lynn Lorber

Subject: Preschool and childcare and development services: family fees

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

SUMMARY

This bill (1) requires the Department of Social Services (DSS) to convene a workgroup to develop a fee schedule for low-income families, (2) exempts certain low-income families from family fees, and (3) waives family fees for all families until October 31, 2023.

BACKGROUND

Existing law:

- 1) Requires the Superintendent of Public Instruction (SPI) to establish a fee schedule for families using preschool and child care services. (Education Code § 8273)
- 2) Requires, using the most recently approved family fee schedule, families to be assessed a flat monthly fee based on income, certified family need for full-time or part-time care services, and enrollment. (EC § 8273)
- 3) Prohibits the family fee from being based on actual attendance. (EC § 8273)
- 4) Requires the SPI to design the new family fee schedule based on the most recent census data available on state median family income in the past 12 months, adjusted for family size, as specified. Further requires the Superintendent to first submit the adjusted fee schedule to the Department of Finance for approval. (EC § 8273)
- 5) Prohibits the revised fees from exceed 10% of the family's monthly income. (EC § 8273)
- 6) Exempts the following families from family fees:
 - a) Families receiving CalWORKs cash aid;

- b) Families of children enrolled in a part-day California State Preschool Program; and
- c) Families with children who have been identified as at risk of abuse or neglect, or whose children are receiving Child Protective Services, *may* be exempt from paying a family fee for 12 months. (EC § 8273.1)

ANALYSIS

This bill (1) requires DSS to convene a workgroup to develop a fee schedule for low-income families, (2) exempts certain low-income families from family fees, and (3) waives family fees for all families until October 31, 2023. Specifically, this bill:

Development of a new fee schedule

- 1) Requires DSS, as the “lead agency” for subsidized child care and development programs, to convene a workgroup to develop an equitable fee schedule for families whose adjusted monthly family income is at or above 75 percent of the state median income.
- 2) Requires the workgroup to include parents, childcare providers, advocates, lead agency staff, child development program representatives, and other stakeholders.
- 3) Requires DSS to create a report that includes the proposed fee schedule, the names and association of the workgroup participants, and the criteria used to develop the fee schedule. This bill requires the report to be provided to the Governor, and to the budget and policy committees of both houses of the Legislature.
- 4) Requires DSS to adopt the recommendations in the report prior to the date that the federal government’s allowance for the state to waive family fees for all families expires.
- 5) Prohibits a reduction in family fees collected from being absorbed by direct service contractors or family childcare providers, including family childcare home providers participating in a family childcare home education network and alternative payment program providers. This bill also prohibits the number of childcare vouchers and contracted spaces from being reduced on account of any reduction in the collection of family fees.
- 6) Reduces the amount of a family’s monthly income that the family’s fees cannot exceed, from 10 percent to 1 percent.

Permanent exemption from family fees

- 7) Prohibits a family fee from being charged or assessed to families with an adjusted monthly family income below 75 percent of the state median family income.

Temporary exemption from family fees

- 8) Waives family fees for all families until October 31, 2023.
- 9) Prohibits the cost of waiving family fees from being absorbed by the direct service contractors or family childcare providers, including family childcare home providers participating in a family childcare home education network, and alternative payment program providers. This bill also prohibits the number of childcare vouchers and contracted spaces from being reduced on account of the family fee waiver.

Miscellaneous

- 10) Strikes references to the Superintendent of Public Instruction and instead references "lead agency" to reflect the transfer of child care programs from under the administration of the California Department of Education (CDE) to DSS.

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, "California is one of the most expensive states for parents who need child care services. In Los Angeles County and statewide, the average two-parent working family spends around 20% of their annual income on child care. There is broad consensus among child care experts and economists that spending more than 7% of annual income on child care places economic stress on working families.

"While there are a number of State and Federally funded programs that help families pay for child care, families who need care must still pay family fees which can make subsidized care unaffordable. With limited disposable income, working families struggle to pay high fees and are forced to make difficult decisions about basic needs such as food, shelter, clothing, and keeping up with fee payments. A recent study found that, in Sacramento County, at least 10% of families paying fees are on payment plans for back fees they have been unable to afford.

"These families are at significant risk of losing their subsidized child care which can, in turn, jeopardize their employment or education. This places them at greater risk of reliance on the state's other welfare programs and prevents families from rising out of poverty. As families earn raises and their income rises, so do their family fees, which then erases any economic gains they have made. The current fee structure penalizes families for their hard work.

"Childcare is facing a statewide crisis due to the impacts of the pandemic that has magnified pre-existing disparities and created intense financial insecurity for childcare workers, childcare centers and parents. In light of the public health crisis and economic recession, parents need affordable child care now more than ever in order to continue providing for their families."

- 2) *Family fee schedule.* As noted in the Assembly committee analyses of this bill, the federal Child Care and Development Fund requires states to establish a

sliding fee scale for families that receive childcare services supported by federal funds. The fee: 1) helps families afford childcare and enables choice of a range of childcare options; 2) is based on income and the size of the family and may be based on other factors as appropriate, but shall not be based on the cost of care or amount of subsidy payment; 3) provides for affordable family fees that are not a barrier to families receiving assistance; and 4) at the state's discretion, allows for family fees to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the state.

Existing law requires the SPI to establish a flat monthly fee schedule that differentiates between part-time and full-time care for families using preschool and childcare and development services, based on the most recent census data available on state median family income in the past 12 months, adjusted for family size.

According to the current family fee monthly schedule, effective July 1, 2020, a family of 4 with a monthly income of approximately \$3,500 will be assessed a \$70 monthly family fee for part-time care, or a \$140 monthly family fee for full-time care. A family of 4 with a monthly income of approximately \$6,000 will be assessed a \$236 monthly family fee for part-time care, or a \$471 monthly family fee for full-time care. The current fee schedule will remain in place until the SPI, or DSS pursuant to this bill, designs a new fee schedule.

Reimbursement for a subsidized childcare contract is reduced by the amount of family fees collected by families served, as fees collected from families covers a portion of the cost of care. If a contractor is unable to collect all of the family fees, and performs their due diligence to collect any amounts past due, the contractor is allowed to claim the uncollectable amount as a bad debt expense.

- 3) *Temporary waiver of family fees.* On April 4, 2020, the Governor signed Executive Order N-45-20, enacted in SB 820 (Committee on Budget and Fiscal Review, Chapter 110, Statutes of 2020) to facilitate child care for children of essential critical infrastructure workers by waiving certain programmatic and administrative requirements in response to the COVID-19 pandemic. Amongst the provisions was a waiver of family fees for *all* subsidized children in July and August 2020.

Additionally, SB 820 included a waiver of family fees, from September 1, 2020, to June 30, 2021, for families when all children in the family enrolled in subsidized early learning and care programs remain at home - either for distance learning services when the facility is closed, when all currently enrolled children are not able to receive in-person services due to a public health order, or for families sheltering-in-place due to COVID-19.

Current budget discussions include an extension of the temporary waiver of family fees, from June 30, 2021, to June 30, 2023. Should the final budget agreement include this extension, the identical waiver extension in this bill should be removed, as it would be duplicative and unnecessary.

Although agreement on the final budget has not yet been reached, the CDE recently sent the following message to the field: "The budget conversations between the Legislature and the Governor are ongoing and no version of the budget has been signed by the Governor yet. However, to ensure a greater burden is not placed on the subsidized early learning and care field based on potential changes in the budget, *the CDE asks all contractors to hold off on family fee billing and collection for July 2021, until the final version of the budget is signed by the Governor.* When the final bill language is completed and has been signed by the Governor, the CDE and the California Department of Social Services will issue additional guidance related to family fees."

- 4) *Permanent exemption from family fees.* This bill prohibits a family fee from being charged or assessed to families with an adjusted monthly family income below 75 percent of the state median family income. It is unknown how many additional families would not be required to pay fees; the Assembly Appropriations Committee estimates ongoing annual costs in the tens of millions of dollars.
- 5) *Transition of childcare programs from CDE to DSS.* The Budget Act of 2020 transitions responsibility for certain child care and development programs from CDE to DSS. Effective July 1, 2021, the following programs will transfer administration from CDE to DSS:
 - a) Stages 2 and 3 of the CalWORKs Child Care Programs;
 - b) General Child Care and Development Programs;
 - c) Alternative payment programs;
 - d) Migrant alternative payment programs;
 - e) Migrant Child Care and Development Programs; and
 - f) Child Care and Development services for children with severe disabilities.

This bill makes technical changes related to this transfer, including updating the requirement for DSS to establish a fee schedule, rather than the SPI.

- 6) *Fiscal impact.* According to the Assembly Appropriations Committee, this bill could impose the following costs:
 - a) Estimated costs of \$33.8 million (General Fund (GF) and federal funds) in fiscal year (FY) 2021-22, to waive family fees for all families from January 1, 2022, (when this bill would go into effect) until June 30, 2022.
 - b) Estimated costs of \$67.9 million (GF and federal funds) in FY 2022-23, to waive fees for all families from July 1, 2022, through October 31, 2022, waive fees for families with incomes below 75% of state median income (SMI) starting in November 2022, and reduce fees for families with incomes between 75% and 85% of SMI starting in November 2022.

- c) Estimated costs of \$67.7 million (GF and federal funds) in FY 2023-24, and annually thereafter, to exempt all families with incomes up to 75% of SMI and reduce fees for families required to pay fees.
 - d) CDE estimates annual administrative costs of \$279,000 (GF) in fiscal year (FY) 2021-22 and \$125,000 (GF) ongoing, for staffing and operating expenses to perform duties to implement the provisions in this bill. This workload includes convening and co-leading a workgroup with CDSS to establish a new family fee schedule, developing a recommendations report in collaboration with CDSS and promulgating regulations, among other tasks.
- 7) *Related legislation.* SB 246 (Leyva) requires DSS to establish a single reimbursement rate for early learning and care programs, including variation for regional costs and quality adjustment factors. SB 246 is pending in the Assembly Education Committee.

SUPPORT

Child Care Resource Center (co-sponsor)
 Child Care Law Center (co-sponsor)
 California Child Care Resource and Referral Network (co-sponsor)
 American Association of University Women – California (co-sponsor)
 California Alternative Payment Program Association
 California Association for The Education of Young Children
 California Catholic Conference
 California Commission on The Status of Women and Girls
 California Family Child Care Network
 Child Action, INC.
 Child Care Providers United
 Children Now
 Early Care and Education Consortium
 EveryChild California
 First 5 Association of California
 First 5 California
 First 5 San Bernardino
 Los Angeles Unified School District
 National Association of Social Workers, California Chapter
 San Bernardino County District Advocates for Better Schools
 San Bernardino; County of
 Silicon Valley Community Foundation
 UDW/AFSCME Local 3930
 Women's Foundation California

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 233 **Hearing Date:** June 23, 2021
Author: Boerner Horvath and McCarty
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: Olgallia Ramirez

Subject: Public postsecondary education: University of California: admissions.

SUMMARY

This bill requests the University of California (UC) Regents to adopt a policy directing the UC Office of the President implement various California State Auditor recommendations related to the general student admission procedures to be effective for the UC's 2023 admissions cycle.

BACKGROUND

Existing law:

- 1) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9)(a) of the California Constitution).
- 2) Provides that statutes related to UC (and most other aspects of the governance and operation of UC) are applicable only to the extent that the Regents of UC make such provisions applicable. (Education Code § 67400)
- 3) Establishes the California State University (CSU) system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the power, duties, and functions with respect to the management, administration, and control of the CSU system (EC §66606 and § 89030 et. seq.).
- 4) Prohibits a campus of the CSU and, if adopted by the Regents of the UC by appropriate resolution, the UC, from admitting an applicant by admission by exception, as defined, unless the admission by exception has been approved, before the student's enrollment, by at least 3 senior campus administrators, the applicant is a California resident who is receiving an institution-based scholarship to attend the campus, or the applicant is accepted by an educational opportunity program for admission to the campus. (EC § 66022.5 et. seq.)

ANALYSIS

This bill:

- 1) Requests the UC Regents to do all of the following:

UC Office of the President

- a) Require the UC Office of the President (UCOP) to establish systemwide protocols for admissions processes by April 15, 2022, to be effective in the university's admission cycle beginning August 1, 2022.
- b) Have the protocols developed for admissions process accomplish both of the following:
 - i) Require staff involved in making or informing admissions decisions to report all attempts to influence admissions decisions, as specified.
 - ii) Establish a culture of ethical conduct in admissions by providing regular training, conducting reviews of admissions decisions, and monitoring the admissions office's communications about applicants to ensure no inappropriate factors influence admissions activities.

Campus Actions

- c) Require UCOP to establish systemwide protocols, by April 15, 2022, to be effective in the university's admission cycle beginning August 1, 2022, to require all campuses of the university to take all of the following actions:
 - i) Document and implement a selection methodology that describes how it will choose applicants for admission, particularly when the applicants have received similar ratings from application readers, as specified.
 - ii) Develop and implement processes for identifying applicants whom it has selected for admission and who are not eligible, and record their rationale for admission of those applicants despite their ineligibility.
 - iii) Establish acceptable levels of application reader proficiency, and maintain training and monitoring programs that ensure that a campus's readers attain and sustain those levels.
 - iv) Annually report to the Board of Admissions and Relations with Schools on efforts to maintain acceptable proficiency in their application readers, and on the consistency level of those readers.
 - v) Require each UC campus that does *not* admit *all* eligible transfer

applicants to ensure that two application readers review applications and that the second reviewers cannot see the ratings of first reviews for both freshman and transfer applications.

Office of Undergraduate Admissions Actions

- 2) Require the UCOP, by April 15, 2022, to require the undergraduate admissions office of each UC campus to do all of the following:
 - a) Identify all other campus departments that participate in or provide information that affects admissions decision-making.
 - b) Obtain, evaluate and approve a description of the criteria and processes that the identified departments use in rating and selecting applicants for admission.
 - c) Annually obtain a roster from each of the identified departments of the individuals who will participate in admissions decision-making and ensure that no single individual is responsible for such decisions in any given department.
 - d) Ensure that each individual whom a department includes on the roster it submits has received training on appropriate and inappropriate admission decisions factors, as specified.
- 3) Require UCOP to submit an annual report, beginning by July 1, 2023, to the budget, appropriations, and education committees of both houses of the Legislature on policies and campus-specific standards for admissions, as specified.

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, “The recent audit into the admissions decisions of UC Berkeley, UC Los Angeles, UC San Diego, and UC Santa Barbara Campuses found that ‘inappropriate factors’ in the admissions process resulted in 64 wealthy and well-connected students matriculating in place of more qualified applicants from the years 2013 to 2019.

“The audit findings highlight systemwide fairness and equity issues in the UC admissions process, and identified reviewer training as an additional opportunity for improving admissions fairness. Reviewers were found to be both overly critical and overly lenient in their assessments, thus resulting in ‘chances of admission unduly dependent on which staff members evaluated their applications.’

“Systemwide issues are again identified by the auditor in their assessment of the UC Office of the President. Campus admissions processes were found to lack sufficient oversight into the unfair or inconsistent practices that have taken place for years. AB 233 seeks to address the inherent inequities of the UC student

admissions process of the UC student admissions process, which have been identified by the State Auditor....”

- 2) *UC admission processes.* It appears that this bill aims to address general admissions procedures used to admit students into UC, specifically procedures for undergraduate admissions. Below is a summary of undergraduate admissions policy.

- a) *Undergraduate admissions.* UC Regent policy specifies that entrance requirements established by the University follow the guidelines set by the California Master Plan for Higher Education, which requires that the top one-eighth (12.5%) of the state’s high school graduates, as well as those transfer students who have successfully completed specific college work, be eligible for admission to the UC. Accordingly, UC’s admission guarantee policy, guarantees admission to the system (though not necessarily to the first-choice campus) to all California applicants who are in the top 9 percent of California high school graduates (eligibility in the statewide context), or in the top 9 percent of their respective high school class (eligibility in the local context).

Students who are not in the top 9 percent in the local or statewide context are subject to comprehensive review process by which students applying to UC campuses are evaluated for admission using multiple measures of achievement and promise while considering the context in which each student has demonstrated academic accomplishment. Comprehensive review involves consideration of 14 factors, utilized by all campuses, but the specific evaluation process and weight given to each factor differ from campus to campus, and year to year, based on campus-specific goals and needs. Staff notes that UC recently suspended standardized test requirements for undergraduate admissions.

- b) *UC admission by exception policy.* At the UC, admission by exception is a process whereby a campus has the flexibility to admit a small proportion of students by exception to the traditional eligibility requirements. Students admitted by exception to the eligibility requirements must demonstrate a reasonable potential for success at the University. The proportion of students admitted by exception is capped at 6 percent of newly enrolled freshman and up to 6 percent of newly enrolled advanced standing students at each campus. Within the 6 percent designations, up to 4 percent may be drawn from disadvantaged students and up to 2 percent from other students to include students with special talent (i.e. artist, athletes). “Disadvantaged students,” is defined as students from low socio-economic backgrounds or students having limited educational opportunities. UC policy requires compliance with provisions in state statute established by AB 1383 (McCarty, Chapter 522, Statutes of 2019).
- 3) *Varsity blues scandal.* In 2019, the Department of Justice charged several dozen individuals accused of cheating and accepting bribes to gain student’s unlawful admission to top universities, including UCs. Athletic coaches from Yale, Stanford, University of Southern California, Wake Forest and Georgetown,

among others, were implicated, as well as parents and exam administrators. In response, the Legislature approved AB 1383 (McCarty, Chapter 522, Statutes of 2019) which required approval from three campus administrators, prior to UC or CSU admitting a student through their respective admission by exception policies.

- 4) *California State Audit of the UC admission process.* In September 2020, the California State Auditor (Auditor), published an audit report which reviewed the general admission practices and the admission of athletes at three UC campuses: UC, Berkeley, UC, Los Angeles, UC, San Diego, and the admission of athletes at UC, Santa Barbara. The report concluded over a six-year period, the identified campuses admitted 64 applicants based on their personal or family connections to donors and university staff. Campuses admitted 22 students through their student-athlete admissions process, despite those students lacking the athletic qualifications required to compete at the university. UC, Berkeley admitted the remaining students, most of whom were referred to the admissions office because of their families histories as donors or because they were related or connected to university staff. The Auditor's report asserts that their records did not demonstrate competitive qualifications for admissions to UC, Berkeley.

The Auditor's report issued recommendations; those relevant to the provisions in this bill include the following:

- Establish a culture of ethical conduct in admissions by providing training, conducting reviews of admission decisions and monitoring the admissions office.
 - Document and implement a selection methodology that describes how it will choose applicants for admission.
 - Develop and implement processes to use when selecting applicants for admission for identifying applicants whom it has selected for admission and who are not eligible for admission to the university.
 - Establish acceptable levels of application reader proficiency and maintaining training and monitoring programs. Each campus should report annually to Board of Admissions and Relations with Schools on these efforts.
 - Ensure that the second readers cannot see the ratings of the first readers.
 - Identify all other campus departments that participate in or provide information that affects admissions decisions.
 - Obtain, evaluate and approve a description of the criteria and processes that the identified departments use in rating and selecting applicants to recommend for admission. Annually obtain a roster from the identified departments of admission decision making staff and ensure they are trained in appropriate factors for basing admission decisions.
- 5) *UC's response to the state audit.* In their August 2020 letter, the UC stated it is committed to safeguarding the integrity of its admissions practices and will take prompt action to address issues raised in the State Auditor's draft report. It further states that many of the report's recommendations are similar to those that UC internal audits identified and presented to the Board of Regents over the past

year, and that UC campuses and the Office of the President have largely implemented. The State Auditor, in a follow up letter to UC, stated that its audit recommendations are stronger than those made by the university's internal audit and addresses deficiencies that it did not identify.

Staff understands, since the publication of the Auditor's UC admission audit, the UC has taken action to implement a version of all but three recommendations provided by the Auditor.

- 6) *UC's internal audit.* UC's office of Ethics, Compliance and Audit Services initiated a systemwide internal audit of the University's admissions practices. The internal audit evaluated the process and controls over undergraduate admissions throughout the system, including admission of student athletes and other non-standard admissions, to ensure compliance with relevant policies and regulations and reduce the risk of fraudulent admissions. According to the UC, since the completion of the audit, it has acted to implement a number of important safeguards to strengthen their admission process. In addition to this, President Drake issued a letter in November 2020, that required all campuses to implement numerous new policies or processes related to general and athletic admissions including but not limited to:

- a) Report all attempts to influence admissions decisions, regardless of source.
- b) Formally prohibit consideration of an applicant's familial or other personal relationships to university staff or faculty in an admissions decision.
- c) Prohibit communication between the campus development office and its admission office about prospective applicants.
- d) Tracking participation of recruited student athletes to verify participation.
- e) Implement policy to investigate situations where student athletes remain in a sport for less than a year.
- f) Review of donations made to a campus.

It appears that the UC has taken steps to correct deficiencies in its admission processes that leave it vulnerable to abuse, some of which parallel the changes requested in the bill. In light of these activities and given the UC's constitutional autonomy, the committee may wish to consider whether UC's efforts are satisfactory or whether further legislative oversight is necessary.

- 7) *Related legislation.* AB 251 (Choi, 2021) prohibits certain senior administrators from being one of the three senior administrators tasked with approving students' admission by exception applications to a campus within the CSU and if adopted by the UC Board of Regents, the UC system. AB 251 is pending on the Senate Floor.

AB 1215 (Boerner Horvath, 2021) also requests the UC Regents to adopt a policy directing UCOP implement other various California State Auditor recommendations related to general undergraduate admission, admission by exception and admission of student athletes to be effective for the UC's 2023 admissions cycle. AB 1215 is scheduled to be heard by this committee on June 23, 2021.

SUPPORT

Associated Students of the University of California, Irvine
National Association of Social Workers, California Chapter

OPPOSITION

University of California

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 1215 **Hearing Date:** June 23, 2021
Author: Boerner Horvath, et al.
Version: May 28, 2021
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: Public postsecondary education: University of California: admissions policy: systemwide protocols.

SUMMARY

This bill requests the University of California (UC) Board of Regents (Regents) to adopt policies directing the UC Office of the President (UCOP) by specified dates to establish an array of systemwide protocols pertaining to undergraduate admissions.

BACKGROUND

Existing law:

- 1) Under the California Constitution, establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9)(a) of the California Constitution).
- 2) Under the California Constitution, states the university be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its Regents and in the administration of its affairs. (Constitution of California, Article IX, Section 9 (f)).
- 3) Provides that statutes related to UC (and most other aspects of the governance and operation of UC) are applicable only to the extent that the Regents of UC make such provisions applicable. (Education Code § 67400)
- 4) Prohibits a campus of the California State University (CSU) and, if adopted by the Regents of the UC by appropriate resolution, the UC, from admitting an applicant by admission by exception, as defined, unless the admission by exception has been approved, before the student's enrollment, by at least 3 senior campus administrators, the applicant is a California resident who is receiving an institution-based scholarship to attend the campus, or the applicant is accepted by an educational opportunity program for admission to the campus. (EC § 66022.5 et. seq.)

ANALYSIS

This bill:

- 1) Requests the UC Regents to adopt a policy directing UCOP to establish systemwide protocols for admissions of students, to become effective for the fall 2023 admission cycle of the university, beginning August 1, 2022.

General undergraduate admissions

- 2) Requires that the systemwide protocols for admission established by UCOP accomplish all of the following:
 - a) Establishment of systemwide admission protocols, by February 1, 2022, effective for the 2023 admissions cycle, that *prohibit* both of the following:
 - i) Consideration of an applicant's family or other personal relationship connections to university staff or faculty in any decision related to, or resulting in, that applicant's admission.
 - ii) Communication between any person employed in, or connected with, any campus development office and any admissions office regarding any applicant or prospective applicant.

Athletics admission

- b) Establishment of systemwide athletics admission protocols, by February 1, 2022, effective for the fall 2023 admission cycle that require a UC campus to do all of the following:
 - i) Have at least two qualified UC admissions reviewers verify the talent of all prospective student athlete applicants before a prospective student athlete is admitted, as specified.
 - ii) Track the participation of student athletes in the sport for which they were recruited, as specified.
 - iii) Review all donations to UC athletic programs in order to determine whether those donations made before or after a student athlete's admission may have influenced the athletic department's decision to request the athlete's admission.

Admission by exception

- c) Have, in order to provide assurance that the use of the "admission by exception" policy is aligned with the policy's purposes, beginning on June 1, 2022, UCOP select a random sample of student applicants admitted by exception, and verify that each campus recorded a rationale for each admission, and that each rationale aligns with the guidance issued by UC's Board of Admissions and Relations with Schools (BOARS).

Annual internal audit of undergraduate admissions

- d) Have UCOP, by July 1, 2022, conduct an audit of the undergraduate admissions process by annually auditing two campuses each year and review the admissions process of each campus once every five years. The bill requires that the prescribed audits be conducted by UC audit staff to investigate, among other things, student applicants' special talents, admission staff and inappropriate influence on student admissions that has taken place, as specified.

The bill further requires that the audits conducted pursuant to the bill identify and document any and all inappropriate admissions activity and deficiencies in the admissions process and requires that the information be made public.

- e) Have UCOP determine, no later than 120 days after each admission audit, whether each UC campus has adequately completed all corrective actions identified as a result of any of the prescribed audits, and determine whether each campus has fully adopted systemwide admission policies in accordance with the protocols.

Annual reporting

- f) Have UCOP submit an annual report, beginning on May 1, 2023, to the specified committees of both houses of the Legislature, on the specified information on admissions policies with respect to all of the following subjects:
- i) The established protocols, by campus, for verifying athletic talent.
 - ii) The criteria and documented reasonable standards, by campus, for the level of athletic talent that all prospective student athletes are required to possess.
 - iii) The number of student athletes, by campus, who did not continue participating on the UC team for which they were admitted and why they stopped participating.
 - iv) The criteria, by campus, for the use of "admission by exception," the number of applicants and the rationale for each admission by exception decision.
 - v) Documentation of all donations, by campus, to UC athletic programs and whether the donations were a result of student athlete admissions.
 - vi) Documentation, by campus, of all reports of familial consideration in

admissions decisions, relationship connections of admitted students with UC staff or faculty, and communications between campus development office and a campus admissions office.

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, “In the wake of this nationwide scandal (Varsity Blues), the California State Auditor completed an audit of four UC campuses and found that between the 2013-14 and 2018-19 school years, campus staff took advantage of weaknesses in admissions processes to inappropriately admit 64 students as favors to donors, family, and friends. The majority of these applicants were white and at least half had annual family incomes of \$150,000 or more.” The author further assert, “this fraud not only undermines the public’s trust in the UC’s admissions process, but it further perpetuates the opportunity gaps in our college system...AB 1215 takes steps to improve oversight, fairness, and transparency in the UC athletics admissions process.”
- 2) *UC admission processes.* This bill would impact admissions procedures used to admit students into UC, specifically procedures for undergraduate admissions, admission by exception and admission for student athletes (special talent). Below is a summary of each policy.
 - a) *Undergraduate admissions.* UC Regent policy specifies that entrance requirements established by the University follow the guidelines set by the California Master Plan for Higher Education, which requires that the top one-eighth (12.5%) of the state’s high school graduates, as well as those transfer students who have successfully completed specific college work, be eligible for admission to the UC. Accordingly, UC’s admission guarantee policy, guarantees admission to the system (though not necessarily to the first-choice campus) to all California applicants who are in the top 9 percent of California high school graduates (eligibility in the statewide context), or in the top 9 percent of their respective high school class (eligibility in the local context).

Students who are not in the top 9 percent in the local or statewide context are subject to a comprehensive review process by which students applying to UC campuses are evaluated for admission using multiple measures of achievement and promise while considering the context in which each student has demonstrated academic accomplishment. Comprehensive review involves consideration of 14 factors, utilized by all campuses, but the specific evaluation process and weight given to each factor differ from campus to campus, and year to year, based on campus-specific goals and needs. Staff notes that UC recently suspended standardized test requirements for undergraduate admissions.
 - b) *UC admission by exception policy.* At the UC, admission by exception is a process whereby a campus has the flexibility to admit a small proportion of students by exception to the traditional eligibility requirements. Students admitted by exception to the eligibility requirements must demonstrate a

reasonable potential for success at the University. The proportion of students admitted by exception is capped at 6 percent of newly enrolled freshman and up to 6 percent of newly enrolled advanced standing students at each campus. Within the 6 percent designations, up to 4 percent may be drawn from disadvantaged students and up to 2 percent from other students to include students with special talent. Disadvantaged students is defined as students from low socio-economic backgrounds or students having limited educational opportunities. UC policy requires compliance with provisions in state statute established by AB 1383 (McCarty, Chapter 522, Statutes of 2019).

For context, in 2017-18, UC enrolled 519 total California residents (254 freshmen) and 456 total nonresidents (367 freshmen) under admission by exception, which was 1.5 percent of the total enrollment of 65,646 (1.3 percent of 46,004 enrolled freshmen).

- c) *Admission of student athletes.* As mentioned in the comment above, within the 6 percent designation permitted under the admission by exception policy, up to 2 percent may be drawn from students with special talents including admission of student athletes. UC guidelines define special talent as demonstrated ability in program areas, such as athletics or the arts, for which designated campus personnel offer recommendations that are considered as part of admissions decision making process. UC issued guidelines, among other things, require that special talent admits be tracked if campus process involves faculty or certain departments or personnel in non-academic programs, including but not limited, to athletics and where the application receives supplemental review based on skill or ability and that results in a recommendation for admission.
- 3) *Varsity blues scandal.* In 2019, the Department of Justice charged several dozen individuals accused of cheating and accepting bribes to gain student's unlawful admission to top universities, including UCs. Athletic coaches from Yale, Stanford, University of Southern California, Wake Forest and Georgetown, among others, were implicated, as well as parents and exam administrators. In response, the Legislature approved AB 1383 (McCarty, Chapter 522, Statutes of 2019) which required approval from three campus administrators, prior to UC or CSU admitting a student through their respective admission by exception policies. This bill aims to establish further measures to safeguard the UC admissions process.
- 4) *California State Audit of the UC admission process.* In September 2020, the California State Auditor (Auditor), published an audit report which reviewed the general admission practices and the admission of athletes at three UC campuses: UC, Berkeley, UC, Los Angeles, UC, San Diego, and the admission of athletes at UC, Santa Barbara. The report concluded over a six-year period, the identified campuses admitted 64 applicants based on their personal or family connections to donors and university staff. Campuses admitted 22 students through their student-athlete admissions process, despite those students lacking the athletic qualifications required to compete at the university. UC, Berkeley admitted the remaining students, most of whom were referred to the admissions

office because of their families histories as donors or because they were related or connected to university staff. The Auditor's report asserts that their records did not demonstrate competitive qualifications for admissions to UC, Berkeley.

The Auditor's report issued recommendations; those relevant to the provisions in this bill include the following:

- UCOP should establish systemwide protocols for admissions processes that prohibit consideration of an applicant's familial or other personal relationships to staff or faculty in an admissions decisions and communication between a campus's development office and its admissions office about applicants.
 - UCOP should require each campus athletics admission process: 1) have at least two reviewers verify the athletic talent of all prospective student athletes before their admittance; 2) track student athletes' participation in the sport for which they were recruited and; 3) review donations to athletic programs for admission influence.
 - UCOP should annually select a random sample of applicants admitted by exception to ensure alignment with Board of Admissions and Relations with Schools guidance.
 - UCOP should conduct regular audits of the admission processes.
 - UCOP should ensure campuses adequately address deficiencies in its own internal audit.
- 5) *UC's response to audit.* In their August 2020 letter, the UC stated it is committed to safeguarding the integrity of its admissions practices and will take prompt action to address issues raised in the State Auditor's draft report. It further states that many of the report's recommendations are similar to those that UC internal audits identified and presented to the Board of Regents over the past year, and that UC campuses and the Office of the President have largely implemented. The State Auditor, in a follow up letter to UC, stated that its audit recommendations are stronger than those made by the university's internal audit and addresses deficiencies that it did not identify.

According to the Assembly Higher Education analysis, since the publication of the Auditor's UC admission report, the UC has taken action to implement a version of all but four recommendations provided by the Auditor.

- 6) *UC's internal audit.* UC's office of Ethics, Compliance and Audit Services initiated a systemwide internal audit of the University's admissions practices. The internal audit evaluated the process and controls over undergraduate admissions throughout the system, including admission of student athletes and other non-standard admissions, to ensure compliance with relevant policies and regulations and reduce the risk of fraudulent admissions. According to UC, since the

completion of the audit, it has acted to implement a number of important safeguards to strengthen their admission process. In addition to this, President Drake issued a letter in November 2020, that required all campuses to implement significant changes to UC admissions policies and practices, including but not limited to:

- a) Tracking participation of recruited student athletes to verify participation.
- b) Implement policy to investigate situations where student athletes remain in a sport for less than a year.
- c) Review of donations made to a campus.
- d) Report all attempts to influence admissions decisions, regardless of source.
- e) Formally prohibit consideration of an applicant's familial or other personal relationships to university staff or faculty in an admissions decision.
- f) Prohibit communication between the campus development office and its admission office about prospective applicants.

It appears that the UC has taken steps to correct deficiencies in its admission processes that leave it vulnerable to abuse, some of which parallel the changes requested in the bill. In light of these activities and given the UC's constitutional autonomy, the committee may wish to consider whether UC's efforts are satisfactory or whether further legislative oversight is necessary.

- 7) *Related legislation.* AB 251 (Choi, 2021) prohibits certain senior administrators, from being one of the three senior administrators tasked with approving students' admission by exception applications to a campus within the California State University (CSU) and if adopted by the UC Board of Regents, the UC system. AB 251 is pending on the Senate floor.

AB 233 (Boerner Horvath, 2021) similar to this bill also requests the UC Regents to adopt a policy directing the UC Office of the President implement other various California State Auditor recommendations related to the general student admission process to be effective for the UC's 2023 admissions cycle. AB 233 is scheduled to be heard by this committee on June 23, 2021.

SUPPORT

None received.

OPPOSITION

University of California

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 340 **Hearing Date:** June 23, 2021
Author: Ward
Version: March 29, 2021
Urgency: No **Fiscal:** Yes
Consultant: Olgallia Ramirez

Subject: Golden State Scholarshare Trust: Personal Income Tax Law: gross income: deductions

NOTE: This bill has been referred to the Committees on Education, and Governance and Finance. A “do pass” motion should include referral to the Committee on Governance and Finance.

SUMMARY

This bill conforms the state’s 529 college savings plan statute to recent changes in federal tax law that expand allowable withdrawals from 529 plans to include expenses associated with participation in a registered apprenticeship program and student loan repayment.

BACKGROUND

Existing law:

- 1) Establishes the Golden State Scholarshare Trust Act as the California's state-sponsored college savings plan, pursuant to Section 529 of the Internal Revenue Code. Defines “qualified higher education expenses” to mean the expenses of attendance at an institution of higher education, as specified. (Education Code § 69980, et seq.)
- 2) Establishes the Scholarshare Investment Board, which consists of the Treasurer, the Director of Finance, the Executive Director of the State Board of Education, a member of the Student Aid Commission appointed by the Governor, a member of the public appointed by the Governor, a representative from a California public institution of higher education appointed by the Senate Committee on Rules, and a representative from a California independent college or university or a state-approved college, university, or vocational/technical school appointed by the Speaker of the Assembly. The Treasurer serves as chair of the Board. (EC § 69984)
- 3) Under state Personal Income Tax Law, in conformity with federal income tax law, generally defines “gross income” as income from whatever source derived, except as specifically excluded, and provides various exclusions from gross income. It further excludes from gross income distributions from a qualified tuition program, as defined, for qualified higher education expenses. Existing federal law, the Further Consolidated Appropriations Act of 2020, expanded the definition of “qualified higher education expenses” to include expenses

associated with registered apprenticeship programs and payment on the principal or interest of a qualified education loan. The act also made coordinating changes related to the deduction of interest paid on a qualified education loan. (Revenue and Taxation Code § 17201.7 and 17140.3)

ANALYSIS

This bill:

- 1) Conforms the state's 529 college savings plan statute to recent changes in federal tax law.
- 2) Expands allowable withdrawals from a tax-advantaged 529 college savings plan, including 529 plans administered through the state's ScholarShare program to include expenses associated with participation in a registered apprenticeship program and repayment of student loans.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "In light of the economic hardship that has followed the pandemic and the continued uncertainty that it will bring in the coming years, the ScholarShare Investment Board believes that expanding the use of Qualified Tuition Plans (QTP), such as California's ScholarShare 529, to cover expenses related payments on a qualified education loan and eligible apprenticeship programs will provide account owners with the flexibility they need to overcome challenges and achieve their educational objectives now and in the future."

The author further asserts, "While the amendments related to the expansion of the use of distributions from QTPs brought forth by the (federal) SECURE Act of 2019 provide owners of 529 plan accounts with favorable tax treatment at the federal level, they do not provide similar benefits at the state level. Generally, state law does not automatically conform to changes in federal tax law, except for specific retirement provisions. Instead, the Legislature must affirmatively conform to federal changes. Therefore, legislation will be necessary to bring about tax conformity."

- 2) ***529 college savings plans.*** Section 529 of the Internal Revenue Code allows individuals to save in tax-advantaged plans for their children's future higher education expenses, including tuition, books, fees and equipment required for study at an accredited college university or vocational school. 529 college saving plans, such as state-sponsored ScholarShare 529, offer federal and state income tax-free benefits for qualified withdrawals. Other types of withdrawals are subject to a penalty.
- 3) ***State administered 529 college savings plan.*** The Golden State ScholarShare Trust Program, administered by the State Treasurer's Office, offers California families a tax-advantaged college tuition savings plan that allows them to invest and save for a college education with state tax-deferred and federal tax-free benefits. Under this program, a participant opens an account on behalf of a

designated named beneficiary. The money contributed by the participant to the account is placed in a trust, and invested in special investment portfolios designed to meet the needs of differently aged beneficiaries, and different kinds of investors. The program offers federal and California income tax-free treatment for qualified withdrawals from a ScholarShare account. A qualified withdrawal is one that is used to pay for qualified higher education expenses at any eligible postsecondary educational institution throughout the United States. (and even some outside the U.S.) including many vocational schools. Under the Scholarshare program, loan payments and apprenticeship registration fees are not considered qualified withdrawals.

- 4) **Federal expansion of 529 plans.** Congress approved and the President signed into law H.R. 1865, also known as the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, which expands the use of distributions from qualified tuition plans (also known as 529 plans). Specifically, among other things, it allows distributions to be used for: 1) fees, books supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program registered and certified with the federal government and; 2) loan repayment for designated beneficiaries or their sibling up to \$10,000. This bill conforms to those changes.
- 5) **Apprenticeship programs.** According to the Legislative Analyst's Office's California Community College Analysis for the 2021-22 Budget, there are more than 93,000 apprentices in various trades, mostly in construction trades and public safety (including firefighting) sectors. Apprenticeship programs consist of two components: (1) on-the-job training completed under the supervision of skilled workers and 2) classroom learning, known as related and supplemental instruction. Traditionally, apprenticeships typically are sponsored by employers and labor unions. Sponsors typically cover the majority of the costs of instructing and training apprentices, often maintaining a training trust fund to support those costs. In certain situations, sponsors may receive reimbursement for costs from the state. The state has a longstanding California Community College categorical program that reimburses sponsors that partner with a school or community college for a portion of their instructional costs. It appears that reimbursement is limited to cost of instruction, rather the fees or expenses incurred by the student. Under this measure, apprentices would have the ability to use their California 529 plans to pay for the expenses associated with their apprenticeship programs, including equipment, supplies, and any fees.
- 6) **Student loans.** In addition to apprenticeship programs, this bill adds payments toward student loans, up to \$10,000, as a qualified higher education expense to the state's 529-college-savings plan statute. The change gives students a new tool to pay down college debt. According to The Institute for College Access and Success (TICAS) and its Project on Student Debt, 62 percent of seniors who graduated from public and private nonprofit colleges in 2019 had student loan debt, with an average nationally of \$28,950 per borrower. TICAS reports that the share of graduates with debt declined very slightly (less than 1%) from the 2018 average of 29,200. TICAS also reports that average debt in California is \$21,485 at public and private non-profit colleges and that about 47 percent of students graduate with debt, ranking California fourth lowest nationally. For-profit colleges

are not included in the state averages because few of these colleges report relevant debt data. The report notes, although student loan debt is slowing, the public health crisis has already reshaped the higher education landscape in important ways and has placed profound financial pressures on states, colleges, and students that could already be making college less affordable and increase reliance on student debt.

SUPPORT

California Professional Firefighters
California Student Aid Commission
Plumbing-heating-cooling Contractors Association of California

OPPOSITION

None received.

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 367 **Hearing Date:** June 23, 2021
Author: Cristina Garcia
Version: June 15, 2021
Urgency: No **Fiscal:** Yes
Consultant: Brandon Darnell

Subject: Menstrual products.

SUMMARY

This bill, the Menstrual Equity for All Act of 2021, (1) beginning with the 2022-23 school year, requires all public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms at all times with an adequate supply of menstrual products in all women's restrooms and all-gender restrooms, and in at least one men's restroom; and (2) requires the California State University (CSU) and each community college district (CCD), and encourages the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus.

BACKGROUND

Existing law:

- 1) Requires public and private schools enrolling students from Kindergarten through 12th grade to ensure that every restroom is maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap and paper towels or functional hand dryers. (Education Code § 35292.5)
- 2) Requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records. (EC § 221.5)
- 3) Requires a public school maintaining any combination of grades 6 to grade 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a federal Title I schoolwide program, to stock at least 50 percent of the school's restrooms with feminine hygiene products all times and prohibits those schools from charging for any menstrual products provided to pupils, including feminine hygiene products. (EC § 35292.6)
- 4) Requires a California community college (CCC) campus that has shower facilities for student use to grant access, as specified, to those facilities to any homeless student who is enrolled in coursework, has paid enrollment fees, and is in good standing with the community college district. (EC § 76011)

- 5) Requires the CCC and the CSU, and encourages the UC, to provide reasonable accommodations on their respective campuses for a lactating students to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding, and requires any new building or renovation of an existing building regularly used by students, to provide reasonable accommodations including a sink for lactating students. (EC § 66271.9)
- 6) Requires any business establishment, place of public accommodation, or state or local government to identify all single – user facilities as all-gender toilet facilities and for the signage to comply with Title 24 of the California Code of Regulations. (Health & Safety Code Section § 118600)
- 7) Exempts consumers from being charged a sales tax on the purchase of menstrual hygiene products until July 1, 2023. (Rev. & Tax. Code § 6363.10)

ANALYSIS

This bill, the Menstrual Equity for All Act of 2021, (1) beginning with the 2022-23 school year, requires all public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms at all times with an adequate supply of menstrual products in all women's restrooms and all-gender restrooms, and in at least one men's restroom; and (2) requires the California State University (CSU) and each community college district (CCD), and encourages the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus. Specifically, this bill:

- 1) Requires, on or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms at all times with an adequate supply of menstrual products in all women's restrooms and all-gender restrooms, and in at least one men's restroom.
- 2) Prohibits a public school from charging for any menstrual products provided to pupils.
- 3) Requires a public school to post a notice regarding the requirements of this bill in a prominent and conspicuous location in every restroom required to stock menstrual products.
- 4) Requires the notice to include the text of these provisions and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.
- 5) Defines "menstrual products" to mean menstrual pads and tampons for use in connection with the menstrual cycle.
- 6) Makes the provisions above operative on July 1, 2022.

- 7) Extends the existing requirement on public schools to include a charter school and a school operated by a county superintendent of schools, and replaces references to feminine hygiene products with references to menstrual products.
- 8) Requires the CSU and each CCD to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus.
- 9) Requires the CSU and each CCD to post a notice regarding these requirements in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.
- 10) Encourages the Regents of the UC, independent institutions of higher education, and private postsecondary educational institutions to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus.
- 11) Further encourages the Regents of the UC, independent institutions of higher education, private postsecondary educational institutions, if they implement these provisions, to post a notice regarding these provisions in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.
- 12) For purposes of all of these provisions defines "menstrual products" mean to menstrual pads and tampons for use in connection with the menstrual cycle.
- 13) Includes the following Legislative findings and declarations:
 - a) California recognizes that access to menstrual products is a basic human right and is vital for ensuring the health, dignity, and full participation of all Californians in public life.
 - b) California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.
 - c) Inadequate menstrual support is associated with both health and psychosocial issues, particularly among low-income people. A lack of access to menstrual products can cause emotional distress, physical infection, and disease.
 - d) Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.

- e) California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat racism, sexism, and other forms of bias.
 - f) Research shows that students lacking access to menstrual products experience higher rates of absences and are less able to focus and engage in the classroom. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood.
 - g) The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.
 - h) Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.
 - i) Expanding student access to menstrual products can also result in cost savings due to increased funding associated with student attendance and reduced administrative costs and expenses from charging for menstrual products.
- 14) States that it is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Having convenient and free access to menstrual products will help students in our schools, similar to the way that toilet paper is provided to respond to routine biological functions. By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status."
- 2) ***Adolescent experience relating to menstruation and school.*** A 2019 Harris Interactive poll of 2,000 teens aged 13 to 19 in the United States commissioned by the nonprofit organization PERIOD and a menstrual products company found:
 - Two-thirds of teens have felt stress due to lack of access to period products.
 - 20% have struggled to afford period products or were not able to purchase them at all.

- 61% have worn a tampon or pad for more than 4 hours because they did not have enough access to period products (which puts them at risk of infection and toxic shock syndrome (TSS)).
- 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 25% have missed class because of lack of access to period products.
- 83% think lack of access to period products is an issue that is not talked about enough.
- 66% do not want to be at school when they are on their period.
- 69% feel embarrassed when they have to bring period products to the bathroom.
- The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.

3) ***Current accessibility of menstrual products on campus.*** As noted by the Assembly Higher Education Committee, “For the last several years the Legislature, in partnership with public institutions of higher education, has dedicated resources to alleviate hunger and homelessness by securing access for college students to basic needs supports. Throughout the years the definition of basic needs has evolved beyond food and housing to include other basic needs supports such as technology and feminine hygiene products. In January 2021, BMC Women’s Health published a peer-reviewed study regarding the impact of period poverty and mental health implications among college-aged women in the United States. This report found 14.2% of college – aged women have experienced period poverty in the past year. To combat period poverty, the CCC, the CSU, and the UC along with student organizations on campuses have worked to provide free menstrual products on campus. In 2016, the Student Senate of the California Community Colleges (SSCCC) issued a resolution in which the lead organization for student voices on campus encouraged the CCC to implement personal hygiene products dispensers to ‘secure the necessities of all students with needs of basic personal health items.’ Based on data collected prior to the COVID – 19 pandemic, the CCC Chancellor’s office indicated a number of community colleges offer free feminine hygiene products as part of the campus food pantries or the student health centers. CSU campuses currently provide free menstrual products on all student health centers. The menstrual products are also available in campus food pantries and Basic Needs Centers, but the availability may vary as these are stocked by donations the campus receives from community partners. For the UC system each campus has a different method of providing free menstrual products to students. For example, UC Davis and UC Irvine provide free menstrual products in half of the restrooms on campus.”

4) ***Dangers of toxic shock syndrome.*** While some pupils who menstruate may choose to reduce the cost of menstrual products by reducing the time between changing the product, this choice can have deathly health consequences caused by TSS. In 1980, the Center for Disease Control established a close association between incidents of TSS and tampon use. The potentially fatal disease causes fever, shock, low blood pressure, skin rashes and liver and kidney abnormalities. In 1982 the Federal Drug Administration required that menstrual tampon packages contain a brief statement alerting consumers to the dangers of TSS, including the risk to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls. The package warnings were also to include information on the incidence of TSS of 6 to 17 per 100,000 menstruating women and girls per year and the risk of death from contracting TSS.

4) ***Fiscal impact.*** According to the Assembly Appropriations Committee:

- One-time Proposition 98 General Fund (GF) costs of about \$2 million to local educational agencies to install or modify menstrual product dispensers and ongoing Proposition 98 GF costs of about \$1.3 million to provide free menstrual products. This estimate uses assumptions from the Commission on State Mandates (CSM) evaluation of the cost per female student at certain K-12 schools to provide free menstrual products in 50% of restrooms, as required by current law (described in more detail below). According to that evaluation, costs are \$3.70 per female student one-time to install or retrofit menstrual product dispensers and about \$2.36 per female student annually to provide free menstrual products. However, the costs of this bill would likely be slightly higher because it requires all-gender restrooms and one men's restroom to supply free menstrual products. Accordingly, this analysis increases by 10% the amount of one-time and ongoing costs, though there may be additional costs of an unknown amount.

According to data from the California Department of Education, about 1.2 million females were enrolled in grades 6-12 in the 2018-19 school year. Subtracting the number of students already receiving free menstrual products through existing law, about 500,000 female students remain.

If the CSM determines the bill's requirements to be a reimbursable state mandate, the state would need to reimburse these costs to schools or provide funding through the K-12 Mandate Block Grant.

- One-time Proposition 98 GF costs of about \$5.3 million to CCC campuses to install or modify menstrual product dispensers and ongoing Proposition 98 GF costs of about \$3.4 million to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described above.

According to data collected by the CCC Chancellor's office, in the 2018-19 academic year, about 1.3 million women attended CCCs.

The state would need to reimburse these costs to CCC, if the CSM determines the bill's requirements to be a reimbursable state mandate.

- One-time GF costs of about \$1.2 million to CSU to install or modify menstrual product dispensers and ongoing GF costs of about \$765,000 to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described above. This estimate is further adjusted by an additional 10% to account for providing free menstrual products at CSU housing when the campus is open to the general public, though the amount of costs to provide products in these locations is unknown.

According to data collected by the CSU Chancellor's office, in the 2018-19 academic year, about 270,000 women attended a CSU.

- One-time GF costs of about \$700,000 to UC to install or modify menstrual product dispensers and ongoing GF costs of about \$450,000 to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described above. This estimate is further adjusted by an additional 15% to account for providing free menstrual products at UC housing and medical centers when the campus is open to the general public, though costs to provide products in these locations are unknown.

According to data collected by the UC, in the 2018-19 academic year, about 150,000 women attended a UC.

- 5) ***Previous legislation.*** AB 2785 (Rubio, Chapter 947, Statutes of 2018) requires the CCC and the CSU, and encourages a satellite campus of CCC or CSU, and the UC, to provide reasonable accommodations on their respective campuses for a lactating student to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding.

AB 10 (Cristina Garcia, Chapter 687, Statutes of 2017) requires a public school serving grades 6 to grade 12 that meets the 40% pupil poverty threshold required to operate a schoolwide Title 1 program to stock at least 50% of the school's restrooms with feminine hygiene products at all times.

AB 9 (Cristina Garcia, 2017-18 Session) would have exempted the sale of tampons, sanitary napkins, menstrual sponges, and menstrual cups from sales taxes. AB 9 was held in the Assembly Appropriations Committee.

AB 1561 (Cristina Garcia, 2015-2016 Regular Session) would have exempted the sale of tampons, sanitary napkins, menstrual sponges, and menstrual cups from sales taxes during the period from 2017 through 2022. AB 1561 was vetoed by Governor Brown, who stated:

"I am returning the following seven bills without my signature:

Assembly Bill 717
Assembly Bill 724
Assembly Bill 1561
Assembly Bill 2127
Assembly Bill 2728
Senate Bill 898
Senate Bill 907

Each of these bills creates a new tax break or expands an existing tax break. In total, these bills would reduce revenues by about \$300 million through 2017-18.

As I said last year, tax breaks are the same as new spending -- they both cost the General Fund money. As such, they must be considered during budget deliberations so that all spending proposals are weighed against each other at the same time. This is even more important when the state's budget remains precariously balanced.

Therefore, I cannot sign these measures."

SUPPORT

ACLU California Action
Alliance for Girls
American Association of University Women - California
American College of Obstetricians and Gynecologists District IX
Anti-Defamation League
Black Women for Wellness Action Project
California Alternative Payment Program Association
California Association of Student Councils
California Commission on the Status of Women and Girls
California Faculty Association
California Latinas for Reproductive Justice
California School Boards Association
California School Nurses Organization
California State Student Association
California Teachers Association
California Women's Law Center
County of Santa Clara
Feminist Majority Foundation
Ignite
NARAL Pro-choice California
National Association of Social Workers, California Chapter
Planned Parenthood Affiliates of California
Religious Coalition for Reproductive Choice California
Student Senate for California Community Colleges
Training in Early Abortion for Comprehensive Healthcare
University of California Student Association
Women's Foundation California

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 865 **Hearing Date:** June 23, 2021
Author: Quirk-Silva
Version: February 17, 2021
Urgency: No **Fiscal:** Yes
Consultant: Lynn Lorber

Subject: Childcare services: alternative payment programs: direct deposits: reserve funds

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

SUMMARY

This bill (1) requires alternative payment programs (APPs) to reimburse childcare providers based on the maximum certified hours of need, rather than actual hours of care provided, and (2) increases the percentage of funds APPs may retain as reserves.

BACKGROUND

Existing law:

- 1) Defines "alternative payments" to include payments made by one childcare agency to another agency or provider for the provision of childcare and development services, and payments that are made by an agency to a parent for the parent's purchase of childcare and development services. (Education Code § 8208)
- 2) Defines "alternative payment program" (APP) as a local government agency or nonprofit organization that has contracted with the California Department of Education (CDE) to provide alternative payments and to provide support services to parents and providers. (EC § 8208)
- 3) Authorizes the use of childcare and development funds for APPs in order to maximize parental choice in selecting an appropriate childcare setting, and establishes requirements regarding APPs. (EC § 8220 et seq.)
- 4) Requires childcare providers authorized to provide services using alternative payments to submit to the APP a monthly attendance record or invoice for each child who received services that, at a minimum, documents the dates and actual times care was provided each day. (EC § 8221.5)
- 5) Requires APPs to reimburse providers in accordance with a biennial Regional Market Rate survey (care costing no more than 1.5 market standard deviations above the mean cost of care for that region), and prohibits payments in excess of

the applicable regional market rate (RMR). (EC § 8222)

- 6) Authorizes licensed childcare providers to alter rate levels for subsidized children once per year. (EC § 8222)
- 7) Requires APPs to verify provider rates at least once a year, by randomly selecting 10 percent of licensed childcare providers serving subsidized families, to confirm that the rates reported to APPs reasonably correspond to those charged to nonsubsidized families for equivalent levels of service. (EC § 8222)
- 8) Requires the CDE to request the State Controller, upon the request of a childcare contractor, to make payments via direct deposit by electronic funds transfer through the Financial Information System for California (Fi\$Cal) into the contractor's account at the financial institution of the contractor's choice, on or after the date on which the Superintendent of Public Instruction (SPI) determines that the Fi\$Cal project has been implemented within the CDE. (EC § 8262.3)
- 9) Authorizes a contractor to retain a reserve fund balance for alternative payment model and certificate childcare contracts, and prohibits a contractor from retaining a reserve fund balance for these contracts of the greater of:
 - a) \$1,000, or
 - b) Two percent of the administration and supportive services portion of the contract. (EC § 8450)

ANALYSIS

This bill (1) requires alternative payment programs (APPs) to reimburse childcare providers based on the maximum certified hours of need, rather than actual hours of care provided, and (2) increases the percentage of funds APPs may retain as reserves. Specifically, this bill:

Reimbursement

- 1) Modifies the basis for which APPs reimburse childcare providers as follows:
 - a) Eliminates the current criteria of (i) hours of service provided consistent with certified hours of need, and (ii) actual days and hours of attendance for families with variable schedules and for license-exempt providers of part-time care (up to the maximum certified hours).
 - b) Establishes a new basis of reimbursement as the maximum certified hours of need, as documented on the certificate or voucher.
- 2) Provides that contractors are not required to document non-operational days, in addition to the existing prohibition against requiring contractors from track absences.

- 3) Deletes the authority for licensed childcare providers to alter rate levels for subsidized children once per year.
- 4) Deletes the requires that APPs verify provider rates at least once a year by randomly selecting 10 percent of licensed child care providers serving subsidized families.

Reserve fund balance

- 5) Increases the reserve amount allowed for alternative payment model and certificate childcare contracts, from 2 percent to 15 percent, of the administration and supportive services portion of the contract, or \$1,000 (whichever is greater).

Direct deposit

- 6 Removes the reference to Fi\$Cal in relation to direct deposit payments.

Miscellaneous

- 7) Makes technical changes, such as updating “a digital signature” to “an electronic signature.”

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, “California’s child care and early learning system is carried mainly on the backs of low-income Black and Brown women who are struggling more than ever to make ends meet. Our subsidized child care system further harms the fiscal health of these family child care providers by only allowing for reimbursement when a family actually shows up. It does not factor in that a family child care provider must hold the slot for a child regardless of whether the child is in attendance or not. In the private sector, a payment for a child care slot is paid in full regardless of usage.

“AB 865 would allow for family child care providers and centers to be reimbursed based on a family’s maximum certified hours of need and not based on attendance. Further, it would require the State make direct deposit of contractor allocations and greater use of electronic communications to best support the needs of families. AB 865 will lessen the financial hardships imposed on California’s family childcare providers. Further, it will remove discrepancies on family childcare providers that accept subsidized families and allow for parity with private pay providers. “

- 2) *Alternative Payment Programs (APPs).* APP providers include licensed centers, licensed family childcare homes, and license-exempt care (family, friend, and neighbor). Licensed programs must adhere to the requirements of Title 22 of the California Code of Regulations and are reimbursed at the levels that are based on RMR. License-exempt providers must meet minimum health and safety standards. APPs are also referred to as “voucher” programs, as this system allows parents to be provided with a childcare voucher which the parent may use at the childcare provider of the parents’ choice (not every type of childcare

provider accepts a voucher).

- 3) *Maximum certified hours of need.* This bill modifies the basis for which APPs reimburse childcare providers to require they be reimbursed for the maximum certified hours of need, as documented on the certificate or voucher, rather than based upon hours/days of care provided (attendance). Childcare providers cannot predict the actual hours that a child will be in attendance, and therefore cannot predict the reimbursement that will be generated for this subsidized care. These providers often experience fiscal difficulties when actual reimbursements are below the "value" of the voucher, while fixed costs remain for the provider. This bill provides some parity with "slots" that are used by full-pay families, as the "slot" is paid for regardless of whether the child attends. This bill will likely result in the payment for subsidized slots for the hours or days when the child does not attend up to the maximum certified hours of need.
- 4) *Reserve funds.* This bill increases the reserve amount allowed for alternative payment model and certificate childcare contracts, from 2 percent to 15 percent, of the administration and supportive services portion of the contract, or \$1,000 (whichever is greater). The author notes that increasing the allowable amount of reserves is necessary because APPs experience delays in contract augmentations, lost payments through the mail, and other unavoidable events.
- 5) *Executive Order EO-N-45-20:* On April 4, 2020, the Governor signed Executive Order N-45-20, enacted in SB 820 (Budget and Fiscal Review Committee, Chapter 110, Statutes of 2020) which, among other things, authorized family child care providers to be reimbursed the amount on a childcare certificate, regardless of attendance.
- 6) *Fiscal impact.* According to the Assembly Appropriations Committee, this bill could impose:
 - a) Estimated costs to CDE of approximately \$68 million (General Fund (GF)) annually to pay providers at maximum certified hours for children enrolled with variable schedules. CDE indicates it lacks sufficient data to determine an exact cost. However, using information from its April 2020 survey, CDE believes the \$61.25 million allocated pursuant to last year's budget per the Governor's executive order, along with a subsequent allocation of \$6.5 million necessary to cover all eligible contractors will be sufficient to cover costs for a full fiscal year.
 - b) No costs to the DSS to reimburse providers for authorized hours of care, rather than actual hours of care, under the CalWORKs Stage One childcare program. DSS indicates that under the current subsidized child care governance structure, these costs are borne by CDE.
 - c) Unknown potential costs (GF) from deleting the authorization for licensed child care providers to alter rates for subsidized children only once per year. CDE indicates there is insufficient data on individual provider rates to determine a cost estimate, but notes an increase in a provider's rate will not

exceed the reimbursement rate ceiling in existing law.

- d) No state costs associated with the use of electronic signatures or increasing the reserve account maximum limits for APP contractors. The reserve account requirement would not result in a need for additional funds above the current budget act appropriations.
 - e) Unknown costs associated with the State Controller's Office (SCO) providing funds to AP contractors via direct deposit. The SCO has not yet implemented direct deposit for this purpose.
- 7) *Prior legislation.* AB 2883 (Quirk-Silva, 2020), was similar to this bill. AB 2883 was not heard in the Senate Education Committee due to the compressed legislative timelines.

SUPPORT

California Alternative Payment Program Association (sponsor)
 California Child Care Resource and Referral Network
 California Legislative Women's Caucus
 Child Action, INC.
 Child Care Providers United
 Children Now
 Children's Resource & Referral of Santa Barbara County
 Community Action Partnership of San Luis Obispo County, INC.
 Community Child Care Council of Alameda County
 Council for A Strong America
 Crystal Stairs, INC.
 Early Care and Education Consortium
 Fight Crime: Invest in Kids
 First 5 California
 Mexican American Opportunity Foundation
 Options for Learning
 ReadyNation
 Valley Oak Children's Services, INC.
 Women Democrats of Sacramento County
 YMCA of San Diego County, Childcare Resource Service

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No:	AB 945	Hearing Date:	June 23, 2021
Author:	Ramos		
Version:	May 24, 2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Brandon Darnell		

Subject: Pupils: adornments at school graduation ceremonies: task force

NOTE: This bill has been referred to the Committees on Education and Judiciary. A “do pass” motion should include referral to the Committee on Judiciary.

SUMMARY

This bill establishes a task force to, among other things, develop recommendations for best practices, protocols, proposed legislation, and other policies that will address how to comprehensively implement all aspects of a student’s authority to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies, as specifically authorized by existing law.

BACKGROUND

Existing law:

- 1) Authorizes the governing board of school districts to adopt a reasonable dress code policy that requires pupils to wear a schoolwide uniform or prohibits pupils from wearing “gang-related apparel” if the governing board of the school district approves a plan that may be initiated by an individual school’s principal, staff, and parents, and it determines that the policy is necessary for the health and safety of the school environment. (Education Code § 35183)
- 2) Authorizes individual schools to include a reasonable dress code as part of its school safety plan. (EC § 35183)
- 3) Specifies that a pupil has the right to wear a dress uniform, issued by a branch of the United States Armed Forces, during his or her high school graduation ceremony if he or she has met the graduation requirements and is an active member of the United States Armed Forces. (EC § 35183.3)
- 4) Authorizes a pupil to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies. (EC § 35183.1)
- 5) Prohibits the authorization in #4 above from being construed to limit a local educational agency’s (LEA’s) discretion and authority to prohibit an item that is likely to cause a substantial disruption of, or material interference with, the ceremony. (EC § 35183.1)

- 6) Provides the following definitions for these purposes:
 - a) "Adornment" means something attached to, or worn with, but not replacing, the cap and gown customarily worn at school graduation ceremonies.
 - b) "Cultural" means recognized practices and traditions of a certain group of people.
 - c) "Local educational agency" means a school district, county office of education, or charter school. (EC § 35183.1)
- 7) Prohibits a school district, charter school, or private secondary school from making or enforcing a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution. (EC § 48950)

ANALYSIS

This bill establishes a task force to, among other things, develop recommendations for best practices, protocols, proposed legislation, and other policies that will address how to comprehensively implement all aspects of a student's authority to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies, as specifically authorized by existing law.

Specifically, this bill:

- 1) Establishes the Task Force to Study and Develop Best Practices to Protect Pupil Rights to Wear Traditional Tribal Regalia or Recognized Objects of Religious or Cultural Significance as an Adornment at School Graduation Ceremonies (the task force) to do all of the following:
 - a) Gather public comments from people impacted by noncompliance with Section 35183.1 of the Education Code.
 - b) Develop information and report findings to the California Department of Education (CDE) and to the Legislature regarding continuing violations of the rights of pupils to wear traditional tribal regalia or recognized items of religious or cultural significance as an adornment at graduation ceremonies.
 - c) Develop recommendations for best practices, protocols, proposed legislation, and other policies that will address how to comprehensively implement all aspects of Section 35183.1 of the Education Code.
 - d) Submit a report to the Legislature that includes the information and recommendations described above.

- 2) Requires the CDE to convene the task force and provide staff support for required public meetings and the creation of the required report.
- 3) Requires the task force to consist of 10 members, appointed on or before March 1, 2022, as follows:
 - a) Nine task force members shall be representatives of California Native American tribes and shall be appointed by the Governor's Tribal Advisor as follows:
 - i) Two task force members each shall be from the southern, central, northern, and eastern geographical areas of the state.
 - ii) For each of the four geographical areas, one representative shall be from a nonfederally recognized California Native American tribe on the list maintained by the Native American Heritage Commission.
 - iii) One task force member shall be a representative of a California Native American tribe who may be from any geographical area in the state.
 - b) One task force member shall be appointed by the Superintendent.
- 4) Requires the task force to hold its first meeting on or before April 1, 2022 and thereafter to conduct at least four public meetings annually at geographically diverse sites across the state.
- 5) Requires meetings of the task force to be conducted in accordance with all of the following:
 - a) The Bagley-Keene Open Meeting Act.
 - b) Time allowed for public comment.
 - c) Members of the public may also submit written comments for consideration by the task force.
 - d) Six members of the task force constitute a quorum.
- 6) Prohibits members of the task force from receiving compensation or any other payment for their service on the task force, but authorizes reimbursement for their actual and necessary expenses incurred in connection with attending task force meetings.
- 7) Requires the task force, on or before April 1, 2023, to submit a report to the Legislature that includes its findings and policy recommendations to ensure full implementation of Section 35183.1 of the Education Code.
- 8) States all of the following Legislative findings and declarations:

- a) According to the 2010 United States Census, California is home to approximately 720,000 individuals who identify as Native American, representing the largest statewide population of Native Americans in the United States. There are over 150 tribal communities in California, including 109 tribal communities that are federally recognized.
- b) Over 300,000 Native American or Alaska Native pupils attended California public schools during the 2019–20 school year.
- c) Wearing traditional tribal regalia or recognized items of religious or cultural significance as an adornment at graduation ceremonies is a protected civil right under the United States Constitution, the California Constitution, and Section 35183.1 of the Education Code.
- d) High school graduation is a joyful and important ceremony for pupils, families, and tribal nations. It is a time for celebration, not only of the individual pupil and what they have accomplished, but one shared by all those who supported the pupil along their way. It is also the marking of an important transition, and pupils marking that transition should, consistent with their constitutional rights, be free to honor and celebrate their heritage by wearing the tribal regalia central to their cultural identity.
- e) Despite the clear language of Section 35183.1 of the Education Code, civil rights organizations continue to receive complaints from Native American pupils and their families about school districts that refuse to allow Native American pupils to wear traditional tribal regalia at school graduation ceremonies. Tribal nations, and the tribally affiliated organizations that work with them, also consistently receive concerns from pupils who are told by school administrators that they may not wear traditional tribal regalia or recognized objects of religious or cultural significance such as sashes with traditional designs, basket caps, beading, and feathers during their graduation ceremonies.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "Native American students and their families continue to be told by school districts that the students cannot wear tribal regalia at commencement or face restrictions that interfere with this right. In Spring 2020, for example, the ACLU received a complaint from a member of the Amah Mutsun Tribal Band who was told by the San Bernardino Unified School District that he was not allowed to wear an eagle feather on his graduation cap. Tribal Nations also receive complaints from students and families each year, who are told by school administrators that students may not wear tribal regalia, or recognized objects of religious or cultural significance such as sashes with traditional designs, basket caps, beading and feathers, during commencement ceremonies."
- 2) ***Significance of Eagle feathers and high school graduation.*** According to a 2015 National Congress of American Indians resolution, American Indian and

Alaska Native high school students from across the country are given eagle feathers to be worn at graduation ceremonies as a form of practice and expression of spiritual and religious beliefs. The feathers are also given for the students' leadership and academic achievement, as a sign of maturity, to signify the achievement of this important educational journey, to honor the graduate and his or her family, community, and tribal nation. American Indian and Alaska Native high school students seek to express and practice their religious and spiritual beliefs and celebrate their personal academic achievement, leadership, and transition into adulthood by wearing an eagle feather at their graduation ceremony. Moreover, according to many Native religious and spiritual traditions, eagle feathers are given only in times of great honor and often to mark significant personal achievement, and for many Native students, receiving an eagle feather in recognition of high school graduation is as significant as earning the diploma. Accordingly, the National Congress of American Indians resolution supports "the right of American Indian and Alaska Native high school students to practice and express their traditional religious and spiritual beliefs and honor their academic and other achievements by wearing an eagle feather at their commencement ceremonies" and urges "all schools to respect traditional tribal religious and spiritual beliefs by allowing Native students to wear an eagle feather at graduation."

- 3) ***Governor establishes Truth and Healing Council.*** On June 18, 2019, Governor Newsom issued an apology through executive order (N-15-19) on behalf of California to California Native American Peoples "for the many instances of violence, mistreatment and neglect inflicted upon California Native Americans throughout the state's history." The Governor also announced the creation of a Truth and Healing Council to provide an avenue for California Native Americans to clarify the record – and provide their historical perspective – on the troubled relationship between tribes and the state. According to the Governor's office, it was the first time the state had taken dual action to correct the historical record and acknowledge wrongdoing through executive order mandate and a tribally-led, consultation-informed council.
- 4) ***Overzealous enforcement continues?*** There is no question that school districts are empowered to enforce reasonable dress codes. It is equally clear that students do not completely shed their constitutional right to self-expression at the schoolhouse gate. A school may only infringe upon student expression if it "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school." As these concepts relate to tribal regalia and cultural adornments at graduation, the Legislature passed, and the Governor signed, AB 1248 (Gloria, Chapter 804, Statutes of 2018) in response documented instances of overzealous enforcement of school dress codes against some Native American and African American students at graduation because they choose to wear sacred eagle feather or kente cloth.

In enacting AB 1248, the state expressly provided students the authority to wear these religiously or culturally important items during graduation ceremonies. According to anecdotal evidence from the author's office, apparently the state was not explicit enough.

Moreover, many high school graduates are adults at the time of graduation. It is apparent that high school graduation is one of the seminal moments of a young person's life. Preventing students from participating in such a momentous event because of something they choose to wear as part of their graduation attire should be reserved for instances that are truly disruptive to the ceremony as a whole, which is a celebratory event, not an academic undertaking in and of itself. It seems prudent to err on the side of participation and trust that the vast majority of graduates who add an important adornment to their graduation attire do so sincerely.

- 5) ***California has nation's highest concentration of Native American/Alaska Native people.*** According to most recent census data, California is home to more people of Native American/ Alaska Native heritage than any other state in the Country. There are currently 109 federally recognized Indian tribes in California and several non-federally recognized tribes petitioning for federal recognition through the Bureau of Indian Affairs.

According to the California Department of Education (CDE), in 2019-20, there were 30,282 pupils enrolled in California public schools identified as American Indian or Alaska Natives.

- 6) ***Related and previous legislation.*** AB 516 (Megan Dahle, 2021) adds "for the purpose of participating in a cultural ceremony or event" to the list of categories of excused absences for purposes of school attendance. AB 516 is pending in the Senate Appropriations Committee.

AB 1248 (Gloria, Chapter 804, Statutes of 2018) authorizes a student to wear tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies.

AB 233 (Gloria, 2017) was similar to AB 1248 and was vetoed by Governor Brown, who stated:

"This bill provides that a student has the right to wear specific adornments at school graduation ceremonies.

Students in California have a well-established right to express their views through symbolic acts under the state Education Code and the Free Speech Clause of the First Amendment. See Tinker v. Des Moines Independent Community School Dist. (1969) 393 U.S. 503, 506. Under these precedents, student expression is clearly protected.

To the extent that there is a dispute about what a student can wear at school graduation ceremonies, I believe those closest to the problem -- principals and democratically elected school boards -- are in the best position to make wise judgments."

SUPPORT

Yocha Dehe Wintun Nation

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No:	AB 1055	Hearing Date:	June 23, 2021
Author:	Ramos		
Version:	June 16, 2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Lynn Lorber		

Subject: Foster youth: tribal pupils

NOTE: This bill has been referred to the Committees on Education and Human Services. A “do pass” motion should include referral to the Committee on Human Services.

SUMMARY

This bill modifies the definition of “students in foster care” to eliminate the requirement that a dependent child of the court of an Indian tribe also meet the definition of a dependent child of a county court, and to include a child of an Indian tribe who is the subject of a voluntary placement agreement.

BACKGROUND

Existing law references dependents of the court, foster youth, foster child, student in foster care in the following contexts:

- 1) For purposes of the local control funding formula (LCFF), includes in the definition of “foster youth” a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court, provided that the child would also meet one of the descriptions in Section 300 of the Welfare and Institutions Code describing when a child may be adjudged a dependent of the juvenile court. (Education Code § 42238.01)
- 2) Relative to educational rights, educational liaisons, and continuation in the school of origin, defines “foster child” as a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. (EC § 48853.5)
- 3) Relative to the timely transfer of students and records, and the calculation of grades and credits, defines “pupil in foster care” as a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. (EC § 49069.5)

- 4) Relative to acceptance of coursework completed at another school and the application of course credit, defines “pupil in foster care” as a child who has been removed from their home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from their home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. (EC § 51225.2)

ANALYSIS

This bill modifies the definition of “pupils in foster care” and “foster child” to eliminate the requirement that a dependent child of the court of an Indian tribe also meet the definition of a dependent child of a county court, and to include a child of an Indian tribe who is the subject of a voluntary placement agreement. Specifically, this bill:

Identifying “unduplicated pupils” for the LCFF

- 1) Deletes the requirement that, for purposes of identifying “unduplicated pupils” for the LCFF, a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court, would also meet one of the descriptions in Section 300 of the Welfare and Institutions Code (WIC) when a child may be adjudged a dependent child of the juvenile court.
- 2) Adds an Indian child who is the subject of a voluntary placement agreement, as defined in subdivision (p) of Section 11400 of the Welfare and Institutions Code.

Academic achievement and educational options

- 3) Defines “pupils in foster care” as the same as “foster youth,” as that term is defined for purposes of the LCFF.

Educational rights, educational liaisons, and continuation in the school of origin

- 4) Modifies the definition of “foster child” to strike references to being removed from the child’s home and/or subject of a petition filed pursuant to the Welfare and Institutions Code, to instead provide that “foster child” has the same meaning as “foster youth,” as that term is defined in for purposes of the LCFF.

Timely transfer of students and records, and the calculation of grades and credits

- 5) Modifies the definition of “pupil in foster care” to strike references to being removed from the pupil’s home and/or subject of a petition filed pursuant to the Welfare and Institutions Code, to instead provide that “pupil in foster care” has the same meaning as “foster youth,” as that term is defined in for purposes of the LCFF.

Data sharing

- 6) Relative to the existing data sharing agreement between the California Department of Education and the Department of Social Services for data and information on children and youth in foster care:
 - a) For purposes of a dependent child of an Indian tribe, consortium of tribes, or tribal organization, authorizes the tribe to notify a local educational agency (LEA) about the student's status as a dependent child under the court of an Indian tribe, consortium of tribes, or tribal organization.
 - b) Prohibits a LEA from requiring an Indian tribe or tribal court representative to certify that any student is a dependent of an Indian tribe, consortium of tribes, or tribal organization.
 - c) Requires a LEA to include information about the data match in notifications to parents as part of school-level parent and family engagement and annually required outreach to all parents and family members.

Acceptance of coursework and application of credits

- 7) Modifies the definition of "pupil in foster care" to strike references to being removed from the pupil's home and/or subject of a petition filed pursuant to the Welfare and Institutions Code, to instead provide that "pupil in foster care" has the same meaning as "foster youth," as that term is defined in for purposes of the LCFF.

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, "Two groups of children are not properly / correctly included in the definition of Foster youth for purposes of Education Code benefits that assist Foster youth. 1) This bill would delete the requirement that a dependent tribal child subject to the jurisdiction of a tribal court also meet specified state law standards for purposes of the definition of foster youth for purposes of the local control funding formula. 2) This bill would add children who are subjects of voluntary placement agreements, as specified, to the definition of foster youth for purposes of the local control funding formula.

"Additionally, Covid-19 disproportionately impacts American Indian communities and native and non-native foster youth. Any and all educational related benefits that assist these youth must be clearly stated in the law and include the correct definitions so that no foster youth are left of these protections. AB 1055 will ensure that youth under the authority of a Tribal Court will not only be included in the definition of a student in foster care, but that they also are eligible for the same support resources as their non-tribal counterparts."

- 2) *Tribal foster youth and the LCFF.* As noted in the Assembly Education Committee analysis of this bill, AB 1962 (Wood, Chapter 748, Statutes of 2018) amended the definition of foster youth for purposes of the LCFF by including a student who is in foster care under the placement and care responsibility of an Indian tribe *provided that* the child would also meet one of the descriptions in Section 300 of the Welfare and Institutions Code describing when a child may be

adjudged a dependent child of the juvenile court. The prior definition of foster youth included non-minors who had been so designated by an Indian tribe, consortium of tribes, or tribal organization, but excluded students under 18 years of age. The requirement that students also meet one of the descriptions in Welfare and Institutions Code Section 300 was intended to provide consistency in the identification of foster youth for purposes of this entitlement. This change was intended to ensure that the attendance of students in foster care who were dependents of a court of an Indian tribe would generate the same additional LCFF funding as other students in foster care who were dependents of a county juvenile court. However, according to the author, tribal courts' processes do not meet the descriptions in Section 300 of the Welfare and Institutions Code.

- 3) *Extends existing rights of foster youth to children who are dependents of an Indian tribe, consortium of tribes, or tribal organization.* By including tribal foster youth in existing definitions of "foster youth" and "pupils in foster care," this bill thereby extends to these youth existing educational rights (such as remaining in the school of origin, transfer of school records, and exemption from local graduation requirements) that are afforded to foster youth under the jurisdiction of a county juvenile court.
- 4) *Fiscal impact.* According to the Assembly Appropriations Committee, this bill could impose the following costs:
 - a) Ongoing Proposition 98 General Fund (GF) costs, of an unknown amount, to increase funding for supplemental Local Control Funding Formula (LCFF) funding and for LEAs to provide a fifth year of high school for certain foster youth. Costs would depend on the number of students newly designated as foster youth and the number of newly designated foster youth students who require a fifth year of high school to graduate. Supplemental LCFF funding for newly designated foster youth students who would not otherwise receive supplemental funding would range between \$1,564 and \$1,914 per student, with potential additional funding depending on the LEA the student attends. Increases in funding for designated foster youth students to attend a fifth year of high school would be \$11,486 per student, with potential additional funding depending on the local educational agency the student attends.
 - b) Minor ongoing GF costs to CDE and DSS to include additional students in its data matching system. According to CDE, it already is making these changes in time for the 2021-22 academic year.
 - c) Ongoing Proposition 98 GF costs to LEAs to extend certain educational rights to a greater number of students. Costs would depend on the number of students newly eligible for these rights under this bill.

SUPPORT

Alliance for Children's Rights
California Charter Schools Association
Children Now
Yocha Dehe Wintun Nation

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No:	AB 1294	Hearing Date:	June 23, 2021
Author:	Quirk		
Version:	April 15, 2021		
Urgency:	Yes	Fiscal:	Yes
Consultant:	Lynn Lorber		

Subject: Childcare: individualized county childcare subsidy plans

NOTE: This bill has been referred to the Committees on Education and Human Services. A “do pass” motion should include referral to the Committee on Human Services.

SUMMARY

This bill, an urgency measure, allows the individualized county child care pilot programs for the counties of Alameda and Santa Clara to continue beyond their statutory sunset dates, thereby potentially making those “pilots” permanent.

BACKGROUND

Existing law:

- 1) 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. (Education Code § 8263)
- 2) Defines “income eligible,” for purposes of establishing initial income eligibility for subsidized child care services to mean that a family’s adjusted monthly income is at or below 85% of the state median income (SMI), adjusted for family size. Existing law defines “ongoing income eligible” to mean that a family’s adjusted monthly income is at or below 85% of the SMI, adjusted for family size. (EC § 8263.1)
- 3) Authorizes an individualized county child care subsidy plan for each of the City and County of San Francisco and San Mateo County to allow for greater flexibility in subsidized child care programs to ensure that subsidies received by these counties are used to address local needs, conditions, and priorities of working families in their respective communities. (EC § 8335-8335.6, § 8347-8347.5)
- 4) Establishes the individualized county child care subsidy plan pilot projects in the Counties of Alameda, Contra Costa, Fresno, Marin, Monterey, San Benito, San Diego, Santa Clara, Santa Cruz, Solano, and Sonoma. (EC § 8332)

- 5) Sunsets the pilot projects for the County of Alameda on July 1, 2021, and for the County of Santa Clara on July 1, 2022. (EC § 8332.7)

ANALYSIS

This bill, an urgency measure, allows the individualized county child care pilot programs for the counties of Alameda and Santa Clara to continue beyond their statutory sunset dates, thereby potentially making those “pilots” permanent. Specifically, this bill:

- 1) Authorizes the Counties of Alameda and Santa Clara to continue the individualized county child care subsidy plan initially developed and approved under the pilot project beyond the conclusion of the pilot project (leaving the sunset dates in place).
- 2) Declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique circumstances in the Counties of Alameda and Santa Clara. This bill states that existing law does not reflect the fiscal reality of living in the County of Alameda or the County of Santa Clara, both high-cost counties where the cost of living is well beyond the state median level, resulting in reduced access to quality child care. This bill further declares, in recognition of the unintended consequences of living in a high-cost county, which have been intensified by the impact of the COVID-19 pandemic, this bill is necessary to provide children and families in the Counties of Alameda and Santa Clara proper and continued equitable access to child care and support the counties’ economic recovery through individualized county child care subsidy plans.
- 3) Provides that this bill is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution, and requires it to go into immediate effect. This bill states that the facts constituting the necessity are in order for this bill to take effect prior to the conclusion of the pilot project authorized in the County of Alameda, thereby ensuring continuity in the County of Alameda’s individualized child care subsidy plan.

STAFF COMMENTS

- 1) *Need for the bill.* According to the author, “Existing law does not reflect the fiscal reality of living in the County of Alameda or the County of Santa Clara. The cost of living in both these counties is well beyond the state median level, resulting in reduced access to quality childcare. In recognition of the unintended consequences of living in a high-cost county, which have been intensified by the impact of the COVID-19 pandemic, this pilot program is necessary to provide children and families in the Counties of Alameda and Santa Clara proper and continued equitable access to childcare, and support the counties’ economic recovery through individualized county childcare subsidy plans.

“AB 833 authorized Alameda County to develop and implement a five-year individualized county childcare subsidy pilot plan which maximizes allocated funding and efficiently uses childcare subsidy funds to meet local conditions,

providing children and families access to quality child care. The pilot enabled Alameda County to retain an estimated \$5 million in 17-18 and serve more than 12,000 children and contract with 30 agencies. More than half (53%) of children that received childcare were Hispanic/Latino. Black or African American and Asian children represented the second and third largest shares.

“For the FY 2019, the Santa Clara county pilot served 10,228 children. More than 50% of the children served under this pilot came from families at or under 50% of state median income.”

- 2) *What are county pilots and how do they help?* Individualized county child care plans ensure that child care subsidies received by the specified counties are used to address local needs, conditions, and priorities of working families in their respective communities. Participating counties do not receive additional funding for the flexibilities allowed; rather, these counties are able to retain and use more of their funding for subsidized child care, which would otherwise revert to the state's general fund.

Participating counties are authorized to have local plans to address their child care needs in ways that supersede state law in specific areas, such as:

- a) Eligibility criteria (allowing eligibility for over-income families).
- b) Fees (allowing lower family fees).
- c) Reimbursement rates (higher rates and adjustment factors).

Counties using these flexibilities must be able to demonstrate their need and that they will increase access to care to reach a greater number of families served.

- 3) *Reports on both county pilots.* Preliminary findings from the first full fiscal year of the Santa Clara County pilot's implementation (2018-19) found that the pilot served a total of 10,228 children - 280 more children served than the previous fiscal year. In the first full year of the pilot's implementation, Santa Clara County “earned” \$47,775,256 of its contracted funds, which was \$3,834,573 more than the previous year

A total of 6,876 children received care through Alameda County's pilot in fiscal year 2018-19. From the 2015-16 baseline fiscal year, Alameda County was able to increase “earned” child days of enrollment by 2.5 percent. In fiscal year 2018-19, contractors earned 93 percent of the \$70,470,697 contract funds allocated to Alameda County, the highest amount retained over five years.

- 4) *Are individualized county plans the appropriate remedy?* The Legislature has authorized 13 counties to have individualized county subsidized child care plans. While allowing counties to preserve funds for child care purposes is reasonable, the issues raised (single statewide income eligibility criteria, reimbursement and fund restrictions) with regard to the state's child care subsidy system are not necessarily unique to those counties, but appear to impact counties statewide. Rather than adding and extending pilots on an individual county basis, the

Legislature may wish to consider allowing such flexibility statewide or adjusting statutes more broadly to allow localities to account for high cost areas and unique needs of their communities.

- 5) *Fiscal impact.* According to the Assembly Appropriations Committee, this bill:
- a) Allows Alameda and Santa Clara counties to continue to retain and use millions of dollars of otherwise unspent child care funds that would otherwise revert to the General Fund (GF). By allowing for individualized eligibility requirements and provider rates in high cost counties, this program allows these counties to spend a greater share of their already-allocated subsidized childcare funding on childcare, rather than returning it to the state. This funding is a combination of GF, Proposition 98 funding and federal funds. Historically, such reversions have been redistributed for child care purposes in subsequent budget years.
 - b) Costs to the California Department of Education of \$124,000 (GF) in fiscal year 2021-22 and ongoing, to maintain the staff position associated with the pilot. This position will continue to monitor and oversee the administrative functions of the program.

SUPPORT

County of Alameda (co-sponsor)
County of Santa Clara (co-sponsor)
Child Care Providers United
Silicon Valley Community Foundation
UDW/AFSCME Local 3930

OPPOSITION

None received

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SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2021 - 2022 Regular

Bill No: AB 1560 **Hearing Date:** June 23, 2021
Author: Daly
Version: March 11, 2021
Urgency: No **Fiscal:** Yes
Consultant: Brandon Darnell

Subject: Distance learning: pupil access: computing devices and broadband internet service

NOTE: This bill has been referred to the Committees on Education, Governmental Organization, and Judiciary. A "do pass" motion should include referral to the Committee on Governmental Organization.

SUMMARY

This bill: (1) requires the Superintendent of Public Instruction (SPI) to survey each local educational agency (LEA) and report to the Legislature on the number of pupils without computing devices that meet the minimum performance standard for distance learning, as determined by the SPI; (2) authorizes the SPI, contingent upon an appropriation, to provide each eligible student with a computing devices that meets that standard; and (3) authorizes the California Department of Technology, upon an appropriation, to enter into a sponsored service agreement on behalf of any LEA with a broadband service provider for the purpose of providing free or reduced-cost residential broadband service to eligible students.

BACKGROUND

Existing law:

- 1) Requires LEAs that offer distance learning for the 2020–21 school year to comply with, among other things, all the following:
 - a) Confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work.
 - b) Content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.
 - c) Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness, which is authorized to take the form of internet or telephonic communication, or by other means permissible under public health orders. If daily live interaction is not feasible as part of regular instruction, the governing board or body of the LEA is required to develop, with parent and stakeholder input, an alternative plan for frequent live interaction that

provides a comparable level of service and school connectedness.
(Education Code § 43503)

- 2) Requires LEAs offering in-person instruction for the 2020-21 school year to include all prioritized pupil groups, which include all of the following:
 - a) Pupils at risk for abuse, neglect, or exploitation;
 - b) Homeless pupils;
 - c) Foster youth;
 - d) English learners; and
 - e) Pupils without access to a computing device, software, and high-speed internet necessary to participate in online instruction, as determined by the LEA. (EC § 43521)

ANALYSIS

This bill SPI to survey each LEA and report to the Legislature on the number of pupils without computing devices that meet the minimum performance standard for distance learning, as determined by the SPI; (2) authorizes the SPI, contingent upon an appropriation, to provide each eligible student with a computing devices that meets that standard; and (3) authorizes the California Department of Technology, upon an appropriation, to enter into a sponsored service agreement on behalf of any LEA with a broadband service provider for the purpose of providing free or reduced-cost residential broadband service to eligible students. Specifically, this bill:

- 1) Requires the SPI, on or before April 1, 2022, and annually thereafter, to survey each school district, county office of education, and charter school and report to the Legislature on the number of pupils without computing devices that meet the minimum performance standard for distance learning, as established by the SPI, and on the number of pupils from households without residential broadband service.
- 2) Authorizes the SPI, contingent upon an appropriation, to provide each eligible pupil in kindergarten or any of grades 1 to 12, inclusive, of a school district, county office of education, or charter school with a computing device that meets the minimum performance standard for distance learning, as established by the SPI, in order to participate in distance learning.
- 3) Requires the SPI to develop a standard to determine which pupils are eligible to receive a computing device under these provisions, but requires, at a minimum, that a pupil who qualifies for the federal National School Lunch Program to be eligible.
- 4) Requires the SPI to maintain a list of broadband service options available for eligible low-income Californians, including service options offered voluntarily by broadband service providers and broadband service options offered by providers

participating in the state lifeline program administered by the Public Utilities Commission.

- 5) Requires the SPI to maintain that list on the SPI's internet website and to distribute the list to the CDE, county offices of education, school districts, charter schools, and other education organizations with the request that the list be distributed to all pupils and their families connected to those entities.
- 6) As a condition for inclusion on the list maintained and distributed by the SPI, requires a provider that voluntarily offers broadband service to eligible low-income Californians to provide the SPI current information about the terms of service offerings, and update that information as necessary.
- 7) Authorizes the California Department of Technology, contingent upon an appropriation, to enter into a sponsored service agreement on behalf of any LEA with a broadband service provider for the purpose of providing free or reduced-cost residential broadband service to eligible pupils in kindergarten or any of grades 1 to 12, inclusive, of an LEA.
- 8) Requires the California Department of Technology, in consultation with the CDE and any participating LEA, to develop a standard to determine which pupils are eligible to receive broadband service under a sponsored service agreement. At a minimum, a pupil who qualifies for the federal National School Lunch Program shall be eligible.
- 9) Requires an LEA that elects to participate in a sponsored service agreement to provide the broadband service provider with information on eligible pupil households that consent to providing the information so the provider can determine if the household is within the provider's service area and does not currently subscribe to broadband service. The information provided shall be limited to only that information, such as an address, required to provide service, to verify eligibility, and to prevent fraud.
- 10) Provides that information provided by an LEA to a broadband service provider for purposes of a sponsored service agreement is confidential and shall not be publicly disclosed or used by the provider for any purpose unrelated to providing service under the sponsored service agreement.
- 11) Includes the following definitions:
 - a) "Local educational agency" means a school district, county office of education, or charter school.
 - b) "Sponsored service agreement" means a contract that enables the Department of Technology to purchase broadband service from a broadband service provider at a bulk rate, and enables eligible pupils in kindergarten or any of grades 1 to 12, inclusive, to receive the service without the pupils or their families being billed by the provider.
- 12) States the following Legislative findings and declarations:

- a) To close the digital divide in California, it is critical for the state to take a leadership role and do all it can to encourage Californians to adopt broadband in order to effectively implement distance learning for K–12 pupils during the COVID-19 pandemic, assist the unemployed and underemployed Californians to seek employment opportunities, allow employees to work from the home, and use telemedicine to the greatest extent possible.
- b) Education is a fundamental right under the California Constitution. The equal protection clauses of the California Constitution, subdivision (a) of Section 7 of Article I and subdivision (a) of Section 16 of Article IV, bar the state from maintaining the public school system in a manner that denies some pupils the basic educational necessities provided to other pupils. The SPI bears the ultimate responsibility to provide clear guidance on the standards and quality of an effective distance learning program.
- c) Pre-pandemic, the California cable industry offered low-cost broadband service to qualifying California residents without any government assistance or monetary subsidies for several years. The SPI should take an active role in working with LEAs to connect qualifying K–12 households.
- d) All state agencies and departments must proactively use the resources available to them to encourage Californians to adopt broadband. As part of its mission, the Department of Technology should partner with educational entities to identify K–12 pupils needing residential broadband service and ensure they get connected in order to effectively participate in a distance learning program.
- e) The COVID-19 pandemic has exposed California’s vulnerabilities to major social and economic disruptions. Those persons, businesses, and entities that adopted broadband before the pandemic have fared significantly better than those that have not accepted the digital world. It is the intent of the Legislature that government take an active role to close the digital divide by connecting as many Californians as possible with the internet using the resources available.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author’s office, “Broadband is essential to modern life. It is an engine of economic possibility, educational opportunity, civic engagement, and access to health care. People and communities that lack broadband and the means to use it are falling behind.

“Although broadband adoption rates have been steadily increasing over the recent years, over 2 million California households still do not subscribe to broadband service even though it is available to them. K-12 students in households without broadband are at an educational disadvantage.

“Some of the issues contributing to this problem are cost of service, lack of devices, lack of awareness of reduced-cost service options, and lack of digital skills.”

- 2) ***Students’ access to broadband in California.*** On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of the COVID-19 virus. An Executive Order issued on March 13, 2020 authorized, but did not require, LEAs to close schools for in-person instruction to help stop the spread of COVID-19. The State subsequently began using a color-coded tiered system to determine when schools could reopen for in-person instruction. Except for LEAs located in the highest tier of virus spread, the decision regarding whether to close or re-open schools was left to each LEA in consultation with local public health officials. The vast majority of California public schools closed for in-person instruction through the end of the 2019-20 school year, and many began the 2020-21 school year by offering only, or mostly, remote instruction. As of January 2021, due to increasing surges in the rates of COVID-19, many schools throughout the State, including those in the largest school districts, remained closed for in-person instruction.

According to the Public Policy Institute of California, in the spring of 2020 more than 25% of California students did not always have internet access available. The share was larger among children in low-income (43%), African American (39%), and Latino (33%) families. A third of all households did not always have a device available for learning, including half of low-income households. In spite of efforts to improve access, the Public Policy Institute of California reports that “internet access remains a widespread problem. More than 30% of Latino students still lack reliable home internet, as do nearly 40% of low-income students—essentially unchanged from the spring.”

- 3) ***Internet infrastructure access in California.*** According to a presentation given by the Legislative Analyst’s Office at a Joint Informational Hearing of the Assembly Communications and Conveyance and Education Committees in August 2020, more than 97% of households in California have access to broadband internet, defined as having download speeds of 6 megabits per second (mbps) and upload speeds of 1 mbps. Rural availability varies depending on benchmark speed used when using standard of 25/3 mbps, rural availability decreases to 67%. The majority of unserved households are in urban areas: using the 25/3 mbps benchmark, California has 263,000 unserved households in urban areas and 227,000 unserved households in rural areas.

According to the California Public Utilities Commission, California has an 80% broadband adoption rate, defined as the share of households with available broadband internet that subscribe to a broadband internet service. There is a high correlation between household income and adoption rates: a 53% adoption rate in the Census tracts with a median annual household income less than \$20,000, and an 86% adoption rate in census tracts with a median annual household income greater than \$80,000. Latino and limited English-speaking households have lower adoption rates.

- 4) ***Closing the Digital Divide Task Force.*** Upon the closure of schools to in-person instruction in March of 2020, the CDE worked quickly to conduct surveys of each school district to determine individual student needs with regard to devices and connectivity, as well as serve as a clearinghouse of sorts to initiate donations and facilitate delivery to schoolsites. There was no statewide plan or regional system of support in place to serve as a basis for this work.

Additionally, the SPI formed the Closing the Digital Divide Task Force in spring 2020 to identify needed resources, strengthen partnerships to support distance learning, and equip all California students with computing devices and connectivity. <https://www.cde.ca.gov/eo/in/digitaldivide.asp>

- 5) ***Education Technology Task Force and the Blueprint for California Education Technology.*** As the local control funding formula was being implemented and program funding was flexed, former SPI Torlakson formed the Education Technology Task Force in 2012, which submitted recommendations to the SPI to begin the process of preparing an education technology blueprint: <https://www.cde.ca.gov/eo/in/documents/efftmemo.pdf>, which was released in 2014: Empowering Learning: A Blueprint for California Education Technology 2014-2017 <https://www.cde.ca.gov/eo/in/documents/yr14bp0418.pdf>.

Among other recommendations, the blueprint recommended all of the following:

- Aggressively pursue statewide and regional partnership opportunities to enhance broadband connectivity and access to Internet-connecting devices.
 - Monitor and expand network bandwidth to support the move toward deployment of one-to-one computing.
 - Pursue measures to close the digital divide among California students and promote broadband adoption among California residents.
 - Explore the deployment of statewide cloud computing data centers.
- 6) ***Distance learning winding down?*** For the 2021-22 school year, in-person instruction will be default format for LEAs, as the authority to offer distance learning expired with the end of the 2020-21 school year. However, the Governor's May Revise does propose utilizing independent study as a means to giving families a high-quality option for non-classroom based instruction, and to provide LEAs with an option to generate state funding by serving students outside the classroom in response to parent requests. Specifically, the May Revise authorizes LEAs to provide non-classroom based instruction using the existing traditional and course-based independent study models, but with additional requirements to: (1) provide access to technology, internet connectivity, and a dedicated and rigorous curriculum; (2) develop and implement a framework of tiered re-engagement strategies for students not meaningfully participating in instruction; and (3) track and record daily student participation and interaction with teachers. While the Governor's proposal

requires LEAs to provide devices and connectivity to students participating by choice in independent study, this bill would go further in authorizing the SPI to provide a device to any eligible student, if funding is appropriated.

- 7) ***California Department of Technology oversees contracts for the acquisition of information technology goods and services.*** According to the Assembly Privacy and Consumer Protection Committee, “The Legislature has charged the Department of General Services (DGS) and the California Department of Technology (CDT) with overseeing the State’s procurement of goods and services on a statewide level. Specifically, DGS is responsible for overseeing the majority of the State’s procurements, while CDT is responsible for overseeing acquisitions of information technology (IT) and telecommunications goods and services. Although noncompetitive contracts are appropriate in some situations, state law generally requires agencies to use the competitive bidding process when possible in order to ensure fair competition and to eliminate favoritism, fraud, and corruption. Further, economic experts agree that competition in public procurement benefits taxpayers and consumers by providing lower prices, greater innovation, and improved products and services.”

“LEAs, however, as a function of local government, are generally not required or permitted to use CDT for IT procurement, and as a result, do not benefit from the competitive bidding process the State has mandated for statewide IT projects. This bill seeks to use both the bargaining power multiple LEAs can leverage when banded together, along with the expertise of CDT in procuring IT contracts, to provide cost-efficient broadband to unserved students within California’s public school system.”

- 8) ***Related and previous legislation.*** SB 767 (Becker, 2021) (a) establishes the Digital Education Equity Program to be administered by the California Department of Education (CDE) to provide a regionalized network of technical assistance to schools and school districts on the implementation of education technology; (b) requires the State Board of Education to authorize grants to fund lead county offices of education to administer the services to school districts and county offices of education located within that region; (c) requires the Superintendent of Public Instruction (SPI) to develop guidelines and criteria for including local education technology plans as a component of a local control and accountability plan; (d) requires CDE to establish an Office of Educational Technology; (e) require the newly established Office of Educational Technology to prepare a comprehensive State Digital Equity Plan. SB 767 is scheduled to be heard in the Assembly Education Committee on June 23, 2021.

ACR 268 (Thurmond, Resolution Chapter 221, Statutes of 2018) resolved that the Legislature considers education technology of the highest priority and that the Legislature convene a state level summit conference to address improvements in education technology and related topics.

SUPPORT

None received

OPPOSITION

None received

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