
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: SB 419 **Hearing Date:** April 10, 2019
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Urgency: No **Fiscal:** No
Consultant: Brandon Darnell

Subject: Pupil discipline: suspensions: willful defiance.

SUMMARY

This bill extends the prohibition against suspending a pupil enrolled in kindergarten or any of grades 1 to 3 for disrupting school activities or otherwise willfully defied the valid authority of school staff to include grades 4 to 8 permanently, and grades 9 to 12 until January 1, 2025, and applies these prohibitions to charter schools.

BACKGROUND

Existing law:

- 1) Prohibits a pupil from being suspended or recommended for expulsion unless the superintendent of the school district or the principal of the school determines that the pupil has committed certain acts, including, *among other acts*, all of the following:
 - a) Caused, attempted to cause, or threatened to cause physical injury to another person.
 - b) Willfully used force or violence upon the person of another, except in self-defense.
 - c) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, except as specified.
 - d) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance, an alcoholic beverage, or an intoxicant of any kind.
 - e) Committed or attempted to commit robbery or extortion.
 - f) Caused or attempted to cause damage to school property or private property.
 - g) Stole or attempted to steal school property or private property.
 - i) Committed an obscene act or engaged in habitual profanity or vulgarity.

- j) Committed or attempted to commit a sexual assault or committed sexual battery.
 - k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
 - l) Engaged in, or attempted to engage in, hazing.
 - m) Engaged in an act of bullying. (Education Code § 48900)
- 2) Prohibits a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, from being suspended for disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. (EC § 48900(k)(2))
 - 3) Prohibits a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, from being recommended for expulsion for disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. (EC § 48900)(k)(2))
 - 4) Authorizes a pupil enrolled in any of grades 4 to 12, inclusive, to be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment. (EC § 48900.4)
 - 5) Authorizes school district superintendents and school principals to use discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior, as specified. (EC § 48900(v))
 - 6) States that suspension, including supervised suspension, shall be imposed only when other means of correction fail to bring about proper conduct, but authorizes a pupil, including a pupil with exceptional needs, to be suspended upon a first offense for certain acts (*not* including disrupting school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties) or the pupil's presence causes a danger to persons. (EC § 48900.5)
 - 7) Specifies that other means of correction include, but are not limited to:
 - a) A conference between school personnel, the pupil's parent or guardian, and the pupil.

- b) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
 - c) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.
 - d) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a 504 plan.
 - e) Enrollment in a program for teaching prosocial behavior or anger management.
 - f) Participation in a restorative justice program.
 - g) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
 - h) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
 - i) Community service, as specified. (EC §48900.5)
- 8) States that schools should consider implementing at least one of the following if the number of pupils suspended during the prior school year exceeded 30 percent of the school's enrollment:
- a) A supervised suspension program.
 - b) A progressive discipline approach during the schoolday on campus (as an alternative to off-campus suspension), using any of the following activities:
 - i) Conferences between the school staff, parents and pupils.
 - ii) Referral to the school counselor, psychologist, child welfare attendance personnel, or other school support service staff.
 - iii) Detention.
 - iv) Study teams, guidance teams, resource panel teams, or other assessment-related teams. (EC § 48911.2)
- 9) Authorizes teachers to suspend pupils from class for the day and the following day. If the pupil is to remain on campus during that suspension, the pupil must be under appropriate supervision. Teachers must ask the parent to attend a parent-teacher conference regarding the suspension. Pupils are prohibited from

returning to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher and principal.
(EC § 48910)

- 10) Authorizes a petition for the establishment of a charter school to be submitted to the governing board of the school district for review after specified conditions are met. The governing board of the school district is prohibited from denying a petition for the establishment of a charter school unless it makes written factual findings setting forth specific facts to support specific findings, including the procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, must include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:
- a) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present his or her side of the story.
 - b) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:
 - i) Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.
 - ii) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.
 - c) Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform him or her of the right to initiate the specified procedures before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the specified, the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision.

ANALYSIS

This bill extends the prohibition against suspending a pupil enrolled in kindergarten or any of grades 1 to 3 for disrupting school activities or otherwise willfully defied the valid

authority of school staff to include grades 4 to 8 permanently, and grades 9 to 12 until January 1, 2025, and applies these prohibitions to charter schools. Specifically, this bill:

- 1) Prohibits a pupil enrolled in grades 4 to 8, inclusive, from being suspended for disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- 2) Prohibits, until January 1, 2025, a pupil enrolled in grades 9 to 12, inclusive, from being suspended for disrupting school activities or otherwise willfully defying the authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- 3) Prohibits a pupil enrolled in a charter school in kindergarten or any of grades 1 to 8, inclusive, from being suspended on the basis of having disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties, and prohibits those acts from constituting the grounds for a pupil enrolled in a charter school in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion.
- 4) Prohibits, until January 1, 2025, a pupil enrolled in a charter school in kindergarten or any of grades 9 to 12, inclusive, from being suspended on the basis of having disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- 6) Encourages, rather than only authorizing, a superintendent of the school district or principal to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age appropriate and designed to address and correct the pupil's specific misbehavior.
- 7) Retains the authority for teachers to suspend pupils from class for the day and the following day who disrupt school activities or otherwise willfully defied valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- 8) States that it is the intent of the Legislature that the Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.
- 9) States Legislative findings and declarations.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Students in grades 4 through 12 may be suspended from school for minor misbehaviors, such as refusing to take off a hat, talking back, or falling asleep in class. These needless suspensions are referred to as willful defiance and often occur without consideration of the root of the students’ actions.

Further, according to the author, “An overwhelming body of research confirms that suspending students at any age fails to improve student behavior and greatly increases the likelihood that the student will fail, be pushed out of school, and/or have contact with the juvenile justice system. SB 419 helps keep students in school, increases student success rates, and increase high school graduation rates.”

- 2) ***Discretion.*** This bill eliminates the option for schools to suspend a pupil in any grade who disrupted school activities or otherwise willfully defied the authority of school officials. However, this bill retains the authority for teachers to continue to suspend from class for up to two days a pupil in any grade who disrupts school activities or otherwise willfully defies the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. Does additionally eliminating the ability for schools to suspend a pupil in grades 4-12 for disrupting school activities or otherwise willfully defying the authority of school officials provide sufficient discretion to schools?

Is this bill a reasonable compromise between prohibiting suspension and allowing teachers to continue to suspend pupils from class for disrupting school activities or otherwise willfully defying the authority of school officials provide sufficient discretion to schools?

- 3) ***Suspensions are declining.*** The initial prohibition for suspending pupils in kindergarten or grades 1-3 for willful defiance took effect January 1, 2015. According to data from the California Department of Education (CDE), 96,421 pupils were suspended for willful defiance in the 2015-16 school year, the first full school year after implementation, which is a decrease of almost 30,000 suspensions for willful defiance over the previous school year. However, data from the 2011-12 to 2017-18 schools years reveals that suspensions for disruption or willful defiance, and suspensions overall, have been steadily declining, making it difficult to attribute this decline to the prohibition alone. For example, in the 2011-12 school year there 709,702 total suspensions, approximately 47 percent of which were for disruption or willful defiance. For the 2012-13 school year, those numbers fell to 609,810 and 42 percent, respectively. For the 2013-14 school year, those numbers continued to decline to 503,191 and 36 percent, respectively. For the 2014-15 school year, overall suspensions were down to 420,881 and disruption or willful defiance accounted for approximately 30 percent of those suspensions. For the 2015-16 school year, overall suspensions were down to 396,751, and disruption or willful defiance accounted for approximately 24% of those suspensions. For the 2016-17 school year, overall suspensions were down to 381,835, and disruption or willful defiance

accounted for approximately 20 percent of those suspensions. Finally, for the 2017-18 school year, overall suspensions were down to 363,406, and disruption or willful defiance accounted for approximately 14 percent of those suspensions.

To fully illustrate the steep decline in suspensions, and the percentage of which are attributable to willful defiance, one need only compare total suspensions overall in 2017-2018 (363,406) with those for willful defiance only in 2011-12 (335,079). Suspensions for willful defiance are down approximately 82 percent since 2011-12.

- 4) ***Pupil engagement state priority.*** One of the eight state priorities for purposes of local control and accountability plans (LCAPs) and the local control funding formula (LCFF) is pupil engagement, as measured by suspension and expulsion rates. In their LCAPs, school districts, county offices of education, and charter schools have to explain what actions they are taking to achieve the goals they've set for each state priority, including goals for reducing suspension rates. Given that LCAPs were first implemented for the 2014-15 school year, the reduction in suspensions overall, and for disruption/willful defiance specifically, could also be linked to the pupil engagement priority.
- 5) ***Equity concerns in subjective discipline.*** According to the author, "Research and data confirm that Black students, other students of color, students with disabilities, and LGBTQ students are disproportionately suspended for low-level subjective offenses, such as defiance/ disruption. Suspensions also cause California students to lose significant instruction time. A recent study revealed that students lost over 150,000 days of school due to defiance/disruption suspensions in 2016-17." These concerns are supported by data from the California Department of Education (CDE). For example, in 2011-12, African American pupils accounted for 6.8 percent of enrollment, but 18.5 percent of suspensions for willful defiance. Most recently, in 2017-18, African American pupils accounted for 5.6 percent of enrollment, but 15.6 percent of suspensions for willful defiance. Conversely, in 2011-12, white pupils accounted for 25.8 percent of enrollment, but just 19.6 percent of suspensions for willful defiance. Most recently, in 2017-18, white pupils accounted for 23.2 percent of enrollment, but just 20.2 percent of suspensions for willful defiance. These disproportionate figures underscore the concerns surrounding willful defiance suspensions and that neither time, the K-3 prohibition, or LCFF priorities have fully addressed these issues.
- 6) ***Previous legislation.*** SB 607 (Skinner, 2018) would have, commencing July 1, 2019, additionally permanently prohibited the suspension of any pupil in kindergarten or grades 4 and 5, prohibited, until July 1, 2023, the suspension of any pupil or grades 6 to 8, inclusive, for that same act; and made those provisions applicable to charter schools. SB 607 was vetoed by the Governor, whose veto message read:

This bill would permanently eliminate the authority to suspend or recommend for expulsion a student in grades 4-5 who willfully disrupts school activities or defies the valid authority of school officials, and prohibits -- until July 1, 2023 -- the

suspension of a student in grades 6-8 for that same misconduct. These prohibitions would apply to charter schools.

Teachers and principals are on the front lines educating our children and are in the best position to make decisions about order and discipline in the classroom. That's why I vetoed a similar bill in 2012. In addition, I just approved \$15 million in the 2018 Budget Act to help local schools improve their disciplinary practices. Let's give educators a chance to invest that money wisely before issuing any further directives from the state.

AB 1808 (Committee on Budget, Ch. 32, Stats. 2018) deleted the July 1, 2018 sunset dates established by AB 420 below.

AB 420 (Dickenson, Ch.660, Stats. 2014) Eliminated, until July 1, 2018, the authority to suspend a pupil enrolled in grades K-3, inclusive, and the authority to recommend for expulsion a pupil enrolled in grades K-12, inclusive, for disrupting school activities or otherwise willfully defying the valid authority of those school personnel engaged in the performance of their duties, as specified.

AB 2242 (Dickinson, 2012) would have prohibited pupils who are found to have disrupted school activities or otherwise willfully defied the authority of school officials from being subject to extended suspension, or recommended for expulsion. AB 2242 was vetoed by the Governor, whose veto message read:

I cannot support limiting the authority of local school leaders, especially at a time when budget cuts have greatly increased class sizes and reduced the number of school personnel. It is important that teachers and school officials retain broad discretion to manage and set the tone in the classroom.

The principle of subsidiarity calls for greater, not less, deference to our elected school boards which are directly accountable to the citizenry.

SUPPORT

Alliance for Boys and Men of Color
 American Academy of Pediatrics, California
 American Civil Liberties Union of California
 Association of California School Administrators
 Bay Area Legal Aid
 Brothers, Sons, Selves Coalition
 California Public Defenders Association
 California Rural Legal Assistance, Inc. (CRLA)
 California School-Based Health Alliance
 California State PTA
 Children's Defense Fund-California

Children Now
Community Asset Development Redefining Education (CADRE)
Compton Unified School District
Dolores Huerta Foundation
East Bay Community Law Center
Empowering Pacific Islander Communities (EPIC)
Equal Justice Society
Fathers & Families of San Joaquin
Fight Crime: Invest In Kids
Innecity Struggle
Los Angeles Unified School District
Mid-City Community Advocacy Network (CAN)
National Center for Youth Law
Public Counsel
Southeast Asia Resource Action Center
The Education Trust - West
The Mentoring Center
Youth Alive!
Youth Law Center
Several Individuals

OPPOSITION

Charter Schools Development Center

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