

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1038 (Reyes) – As Introduced February 15, 2023

**SUBJECT:** California state preschool programs: expulsion.

**SUMMARY:** Modifies the existing requirement that the California Department of Social Services (CDSS) withdraw all citations or civil penalties imposed on a child daycare facility that presents evidence that the facility was in the process of complying with certain expulsion or suspension processes, as specified in current law, by requiring all citations or civil penalties be withdrawn by CDSS within 30 days.

**EXISTING LAW:**

- 1) Establishes the “Child Care and Development Services Act” (CCDSA) to provide childcare and development services as part of a coordinated, comprehensive, and cost-effective system serving children from birth to 13 years old and their parents including a full range of supervision, health, and support services through full- and part-time programs. (Welfare and Institutions Code Section [WIC] 10207 *et seq.*)
- 2) Establishes the “Early Education Act” to provide an inclusive and cost-effective preschool program that provides high-quality learning experiences, coordinated services, and referrals for families to access health and social-emotional support services through full- and part-day programs and that all families have equitable access to a high-quality preschool program, regardless of race or ethnic status, cultural, religious, or linguistic background, family composition, or children with exceptional needs. (Education Code Section [EDC] 8200 *et seq.*)
- 3) Establishes the “California Child Day Care Facilities Act” to provide a comprehensive, quality system for licensing child daycare facilities to ensure that working families have access to healthy and safe childcare providers and that childcare programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (Health and Safety Code Section [HSC] 1596.70 *et seq.*)
- 4) Defines “child daycare facility” to mean a facility that provides nonmedical care to children under 18 years of age, as specified, including daycare centers, employer-sponsored childcare centers, and family daycare homes. (HSC 1596.750)
- 5) Defines “childcare and development services” to mean services designed to meet a wide variety of children’s and families’ needs while parents and guardians are working, in training, seeking employment, incapacitated, or in need of respite and states that these services may include direct care supervision, instructional activities, resource and referral programs, and alternative payment arrangements. (WIC 10213.5(j))
- 6) Requires the State Superintendent of Public Instruction to administer all state preschool programs, which include, but are not limited to, part-day age- and developmentally appropriate programs designed to facilitate the transition to kindergarten for three- and four-

year-old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. (EDC 8207)

- 7) Establishes the federal “Individuals with Disabilities Education Act” to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. (20 U.S. Code 1400 et seq.)
- 8) Prohibits, in federal regulations, a Head Start program from expelling or un-enrolling a child from Head Start based on the child’s behavior and requires a program to prohibit or severely limit the use of suspension due to a child’s behavior, as specified. (45 Code of Federal Regulations 1302.17)
- 9) Prohibits a contracting agency, as part of the state preschool program, from expelling or unenrolling a child because of the child’s behavior, except as specified. (EDC 8222)
- 10) Enumerates the policies and procedures with which a childcare and development services programs must comply when moving to expel, unenroll, or suspend a child due to the child’s behavior, which include, but are not limited to: pursuing and documenting reasonable steps such as consulting with the child’s parents or legal guardians and teacher, and, if available, engaging an early childhood mental health consultant, to maintain the child’s safe participation in the program, among other requirements, as specified. (EDC 8489.1 *et seq.*, WIC 10491.1 *et seq.*)
- 11) Requires CDSS to consider, in determining whether to issue a citation or impose a civil penalty to a child daycare facility that contracts with CDSS or the California Department of Education (CDE), whether the child daycare facility is in the process of complying with EDC 8489.1 or WIC 10491.1. (HSC 1596.893c(a))
- 12) Permits a child daycare facility to appeal a citation or civil penalty issued by CDSS that is related to the behavior of a child, including actions of the facility or its staff to the behavior of a child, if the facility is in the process of complying with EDC 8489.1 or WIC 10491.1. Further, requires CDSS to withdraw all citations or civil penalties upon the presentation of evidence by the facility that it was in the process of complying with EDC 8489.1 or WIC 10491.1. (HSC 1596.893c(b))

**FISCAL EFFECT:** Unknown, this bill has not been analyzed by a fiscal committee.

**COMMENTS:**

**Background:** *Subsidized childcare:* One of the goals of subsidized childcare in California is to provide childcare to children whose parents or guardians are: working; in training; seeking employment; incapacitated; or, in need of respite. Subsidized childcare is made available to families through a number of programs, including, among others:

- California Work Opportunity and Responsibility to Kids (CalWORKs), which provides childcare in three “stages” to families receiving CalWORKs benefits, but also to families who are transitioning from or are no longer receiving CalWORKs aid;

- The California State Preschool Program (CSPP), which provides culturally, developmentally, and linguistically appropriate curriculum to eligible three- and four-year olds;
- General Child Care, which includes contracted centers and family childcare homes; and,
- Alternative Payment Programs (APPs), which provide vouchers to families who are then enabled to obtain childcare in a center, family childcare home, or from a license-exempt provider.

A February 2023 report from the Legislative Analyst's Office states, in Budget Year 2022-23, California is providing funding to serve approximately 713,000 children through the following childcare slot allocations: 127,800 slots for all three stages of CalWORKs; 211,000 total slots for full- and part-time CSPP; 78,500 slots for General Child Care; and, 161,300 slots allocated for APPs.

*Suspensions and expulsions in preschool:* In July 2021, the United States Department of Education Office (DOE) for Child Rights' Civil Rights Data Collection issued a report on discipline practices in preschool. The report found that, of the 1.5 million students enrolled in preschool during the 2017-18 school year, Black preschoolers received one or more suspensions at a rate 2.5 times greater than their share of the total preschool population. Additionally, American Indian and Alaska Native and multiracial preschoolers received one or more suspensions at a rate of 1.5 times greater than their share of the total preschool population. Among girls, Black preschool girls were the only group where a disparity was observed: Black preschool girls accounted for 8.6% of total preschool enrollment but received 9.1% of one or more out-of-school suspensions. As it relates to expulsions, according to the U.S. DOE report, 306 preschoolers were expelled during the 2017-18 school year despite their age, and Black preschoolers were expelled two times greater than their share of the total preschool enrollment. Additionally, preschoolers with disabilities also experienced disproportionalities as preschoolers served under the Individuals with Disabilities Education Act (IDEA) were expelled at a rate of 2.5 times greater than their share of the total preschool population.

*Master Plan on Childcare:* In December 2020, the California Health and Human Services Agency (CalHHS) released the Master Plan for Early Learning and Care. The Master Plan included a roadmap and recommendations for improving the state of childcare in California, and contained a number of proposals around addressing equity in early learning and care programs. In particular, one of the key recommendations was to "Guarantee equitable access to learning and care for all...Providers should also agree to a no-exclusionary-practice clause [banning suspensions and expulsions] as a condition of state or federal funding, as these practices disproportionately affect children of color and children with disabilities." To ensure that disproportionalities in suspension and expulsion rates are monitored and ultimately reduced, the Master Plan also recommended "...we collect suspension, expulsion, and discipline data, disaggregated by gender, age, race, ethnicity, home language, and disability, to focus on support for providers, including technical assistance, anti-bias training, and early childhood mental health consultation."

*Assembly Blue Ribbon Commission on Early Childhood Education:* Prior to the Master Plan on Childcare, the Assembly Blue Ribbon Commission (BRC) on Early Childhood Education was established with the goal to "transcend year-to-year, short-term discussions...[and] lay out a long-term vision for the future, with sequenced steps to achieve its vision of an early care and

education system linked to comprehensive supports that works for children, families, and providers and improves outcomes for young learners.” The final report, released in April 2019, made a number of recommendations based on 10 key areas: Governance and Administration; Family Engagement; Access for Children and Families; Workforce; Quality Improvement; Systems and Infrastructure; Facilities and Supply; Coordination and Alignment; Financing; and, a Parent Focus Group Recommendation Summary. As part of the section on Access for Children and Families, the report makes the following recommendations:

“Report evidence-based, anti-bias training for all people connected to [Early Childhood Education] from policy makers to those providing services and to all ECE providers. Integrate anti-bias component in all training, coaching and other interventions to eliminate bias. Provider training should include positive reinforcement practices for how to help improve a child’s behavior instead of using suspensions, expulsions, and other forms of punitive disciplinary measures. Child care providers and teachers need to be trained in other disciplinary options that will support a child’s healthy development.”

*Expulsion procedures:* As a result of disproportionalities in preschool suspension and expulsion rates, and in keeping with recommendations made by both the BRC and the Master Plan on Childcare, California statute includes a number of procedures and protocols aimed at reducing unnecessary suspensions and expulsions. Beginning in 2018, CSPP contractors are prohibited from expelling or unenrolling a child because of the child’s behavior, except in instances where the program has pursued and documented reasonable steps to maintain the child’s safe participation in the program and determined that the child’s continued enrollment would present a serious threat to the child or other enrolled children. Additionally, contractors are required to follow specific procedures in the event that a child exhibits persistent and serious behaviors, including documenting reasonable steps, such as consulting with the child’s parents or legal guardians and teacher, and providing certain information in writing, as specified in current law. Only if these processes and procedures are complied with may a program unenroll or suspend a child.

Current law also permits CDSS, as the entity responsible for licensing childcare facilities and ensuring compliance with licensing standards, to issue citations or impose civil penalties when it has reason to believe that a daycare facility is in violation of the law. Additionally, in determining whether to issue a citation or impose a civil penalty on a child daycare facility, CDSS is required to consider whether the child daycare facility was in the process of complying with the aforementioned suspension and expulsion procedures. Finally, current law permits a child daycare facility to appeal a citation or civil penalty issued by CDSS if the facility is in the process of complying with these policies and procedures, and CDSS is required to withdraw all citations or civil penalties upon the presentation of evidence by the facility that it was in the process of complying with the suspension and expulsion processes. The provisions of this bill would place a 30-day timeframe on this requirement that CDSS withdraw all citations or civil penalties upon the presentation of evidence that the facility was in the process of complying with the law.

**Author’s Statement:** According to the author, “Students who are suspended or expelled are more likely to experience worse academic and social outcomes than their peers who do not face such disciplinary action, and it is recognized that young people of color are disproportionately overrepresented in suspension and expulsion rates.

“California’s childcare system is currently facing a crisis in availability and affordability, and many providers struggle to stay afloat amidst record inflation and significant workforce challenges. California has taken steps to address racial disparities among suspension and expulsion rates, and has put protections in place for childcare providers who comply with requirements in the law when a suspension or expulsion is warranted.

“This bill would alleviate financial strain on childcare facilities by placing a timeframe of 30 days on the existing requirement that CDSS withdraw all citations or civil penalties upon the presentation of evidence that a childcare facility was in the process of complying with the statutorily required steps of a suspension or expulsion.”

**Need for this bill:** The provisions of this bill seek to expedite the time with which CDSS must withdraw all citations or civil penalties when a child daycare facility appeals a citation or civil penalty and the facility has presented evidence that it was in the process of complying with the suspension and expulsion processes enumerated in current law. By implementing a 30-day timeframe, this bill seeks to ensure daycare facilities are not financially burdened for extended periods when the facility is able to demonstrate its compliance with the law. Additionally, by requiring CDSS to withdraw citations within 30-days, this may incentivize daycare facilities to comply.

**Equity Implications:** While current law does require CDSS to withdraw all citations or civil penalties when data is presented that a daycare facility complied with the law, there is currently no timeframe within which the withdrawal must occur. This bill builds upon previous legislation that aimed at preventing unnecessary suspensions and expulsions of children from preschool programs; children who, as data have demonstrated, are often minorities. Given the disproportional rate that black children are being suspended, ensuring compliance is critical. One way to ensure compliance is compelling childcare facilities to rectify violations in a timely manner. Adding a clear timeframe for CDSS to withdraw citations further incentivizes compliance and will inherently reduce unnecessary suspension and expulsions.

**Double referral:** This bill will be referred to the Assembly Education Committee should it pass out of this committee.

## **RELATED AND PRIOR LEGISLATION:**

**AB 2806 (B. Rubio), Chapter 915, Statutes of 2022**, revised and recasted provisions related to expulsion and suspension of a child from the CSPP and broadened the provisions to include general childcare and development programs and family childcare home education network programs.

**AB 568 (R. Rivas) of 2021**, would have established a process related to discriminatory practices around the suspension or expulsion of a child in childcare and would have required CDSS to create a Dashboard to collect data for publicly reporting specified race, and suspension and expulsion data from early learning and care programs. *AB 568 was held on the Assembly Appropriations Committee suspense file.*

**AB 1361 (B. Rubio) of 2021**, would have prohibited a childcare facility from expelling or suspending a child unless specified expulsion and suspension guidelines were followed. *AB 1361 was held on the Assembly Appropriations Committee suspense file.*

***AB 752 (B. Rubio), Chapter 708, Statutes of 2017***, prohibited a contracting agency from expelling or unenrolling a child from a state preschool program because of a child's behavior unless the contracting agency has expeditiously pursued and documented reasonable steps to maintain the child's safe participation in the program. Further, required CDSS to consider, in determining whether to issue a citation to, or impose a civil penalty on, a child day care facility that contracts with CDE, whether the child day care facility is in the process of complying with the outlined procedure.

***AB 2698 (B. Rubio), Chapter 946, Statutes of 2018***, amongst other things, established the early childhood mental health consultation service in California to serve infants, toddlers, and children in a general childcare and development program or family childcare home education network.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Pathways LA

**Opposition**

None on file

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