

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 1055 (Ramos) – As Amended April 13, 2021

SUBJECT: Foster youth: tribal pupils.

SUMMARY: Revises the definition of students in foster care for purposes of the Local Control Funding Formula (LCFF); additionally, for specified educational rights of students in foster care, eliminates 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 includes a child who is the subject of a voluntary placement agreement. Specifically, **this bill:**

- 1) Deletes the requirement that, for purposes of the LCFF, in order to be considered a 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 pursuant to the tribal court's jurisdiction, as specified, must also meet one of the statutory descriptions of dependent children when a child may be adjudged a dependent child of the juvenile court.
- 2) Adds a child who is the subject of a voluntary placement agreement to who is considered a "foster youth" for purposes of the LCFF.
- 3) Includes in the definition of "unduplicated pupils," a child who is the subject of a voluntary placement agreement, as specified, for the purposes of the LCFF.
- 4) Defines "pupils in foster care" as described in state code relating to the provisions for elementary and secondary education for the purposes of the LCFF.
- 5) Includes a dependent child of an Indian tribe, consortium of tribes, or tribal organization who is subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction, as specified, in the definition of "foster child" for the purposes of granting educational rights eligible to dependent youth; additionally, includes a child who is the subject of a voluntary placement agreement.
- 6) Includes a dependent child of an Indian tribe, consortium of tribes, or tribal organization who is subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction, as specified, in the definition of "pupil in foster care" for the purposes of the data-sharing agreement between the California Department of Education (CDE) and the California Department of Social Services (CDSS) for identifying students in foster care; additionally, includes a child who is the subject of a voluntary placement agreement.
- 7) Provides that a tribe may notify a local educational agency, as specified, about a tribal youth's status as a dependent child under the court of an Indian tribe, consortium of tribes, or tribal organization; further, prohibits a local educational agency from requiring an Indian tribe or tribal court representative to certify that any pupil is a dependent of an Indian tribe, consortium of tribes, or tribal organization.

- 8) Includes a dependent child of an Indian tribe, consortium of tribes, or tribal organization who is subject of a petition filed in the tribal court pursuant to the tribal court's jurisdiction, as specified, in the definition of "pupil in foster care" for the purposes of granting educational rights eligible to dependent youth; additionally, includes a child who is the subject of a voluntary placement agreement.
- 9) Makes technical changes.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services (CWS), including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) States Legislative intent to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative. (WIC 16000)
- 3) Requires out-of-home placement of a child in foster care to be based upon the selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs, as specified. (WIC 16501.1(d)(1))
- 4) Defines "nonminor dependent" as a foster child who is a dependent child or ward of the juvenile court, or who is a nonminor under the transition jurisdiction of the juvenile court, and satisfies all criteria, as specified. (WIC 11400 (v))
- 5) Clarifies the purpose of provisions regarding dependent children as to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 6) Establishes the Indian Child Welfare Act (ICWA), which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and custody proceedings involving the removal of Indian children from their parents' custody. (25 United States Code Section [USC] 1901 *et seq.*)
- 7) Requires ICWA to apply to any proceedings regarding an unmarried minor who is either the member of an Indian tribe or who is eligible for membership in an Indian tribe and a biological child of a member or citizen of an Indian tribe, as specified. (WIC 224(c))
- 8) States the commitment of California to protecting the essential tribal relations and best interest of an Indian child by promoting practices in accordance with federal law, as specified. (WIC 224 (a))
- 9) Defines "voluntary placement agreement" as a written agreement between the county welfare department, probation department, or Indian tribe that has entered into an agreement allowed under current law, licensed public or private adoption agency, or entity acting as an adoption

agency, and the parents or guardians of a child that includes relevant information, as specified. (WIC 11400 (p))

- 10) Provides that a voluntary placement be established for no longer than 180 days; further, clarifies that federally eligible children may have this timeline extended for an additional six months, as specified. (WIC 16507.3 (a))
- 11) Establishes the “Local Control Funding Formula”, which provides school districts, charter schools, and county offices of education with a base level of funding plus additional funding based on the enrollment of pupils who are either English learners, low income, or in foster care. (Education Code Section [EDC] 2574 *et seq.*)
- 12) Establishes in federal law the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 to ensure educational rights and protections for youth experiencing homelessness. (42 USC 11431)
- 10) Provides definitions for pupils in elementary and secondary education for purposes of the LCFF. (EDC 49069.5)
- 13) Provides definitions for pupils in elementary and secondary education for purposes of data-sharing agreement between CDE and CDSS for identifying students in foster care. (EDC 49085)
- 14) Provides definitions for pupils in elementary and secondary education for the purposes of granting educational rights eligible to dependent youth. (EDC 51225.2)
- 15) Delineates the educational rights and protections of foster youth, including:
 - a) School placement;
 - b) Right to remain enrolled in their school of origin when a placement change occurs;
 - c) Support from the educational liaison for foster children;
 - d) Transfer of records within specified timelines;
 - e) Rights related to absences for court appearances;
 - f) Right to full or partial credit for coursework satisfactorily completed while attending other schools, and the right to not be required to retake a course satisfactorily completed in another school;
 - g) Exemption of students in foster care who transfer between schools any time after the completion of the student's second year of high school from all coursework and other requirements that are in addition to state graduation requirements, unless a local education agency (LEA) makes a finding that a student is reasonably able to complete the school district's graduation requirements in time to graduate from high school by the end of the student's fourth year of high school;
 - h) The requirement that LEAs allow students who can meet local graduation requirements in five years to stay enrolled for a fifth year;

- i) Right to immediate enrollment in a new school of a student in foster care, even if the student has outstanding fees, fines, textbooks, or money due to the prior school, or is unable to produce clothing or records required for enrollment; and,
- j) Right to meet residency requirements for participation in interscholastic sports or other extracurricular activities. (EDC 48853.5)

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services: California's CWS system is established with the goal of protecting youth from abuse and neglect. The system works through collaboration to provide for the safety, health, and overall well-being of children. When a child is identified as being at risk of abuse or neglect, reports can be made to either law enforcement or a county child welfare agency. Often, reports are submitted by mandated reporters who are legally required to report any suspicion of child abuse or neglect due to their profession. When a mandated reporter submits a report to either law enforcement or the county child welfare agency, a social worker determines whether the allegation is of suspected abuse, neglect, or exploitation. The child's social worker and the court collaborate throughout evaluating and reviewing the circumstances of each individual's case. As of January 1, 2021, there were 59,716 youth placed in the CWS system.

Voluntary placement agreements: Without a child becoming a dependent of the court through CWS judicial proceedings, the state provides options for youth in need of care in specific circumstances for short periods of time. A youth is eligible for foster care support payments temporarily through a voluntary placement agreement, with the agreement lasting no more than 180 days. Voluntary placement agreements are used when a parent is unable to care for a child temporarily, such as when a parent is recovering from a health emergency or is incarcerated, and only utilized if no other adults are available to care for the child. If it is determined that a child will need to remain in care for more than six months, social workers must utilize existing court processes to adjudicate the child as a dependent of the juvenile court.

Indian Child Welfare Act: In 1978, Congress passed ICWA to address the disproportionate rate at which tribal youth were being removed from their homes. The legislation resulted from a series of investigations on unnecessary termination of parental rights done earlier in the decade, which found 25-35% of tribal children had been removed from their homes and placed as foster youth outside the tribe. ICWA was a federal attempt towards protecting the civil rights and interests of tribal children when interaction with the CWS system is deemed appropriate. Within ICWA are minimum standards for state courts to meet; however, states are authorized to establish higher standards above the federal baseline.

California codified the provisions of ICWA in 2006 with the passage of SB 678 (Ducheny), Chapter 838, Statutes of 2006, known as Cal-ICWA. This legislation codified the state's intent to preserve a child's connection to their tribal culture and community whenever possible and contains provisions on the process for tribal child custody proceedings. In addition to codifying ICWA practices into state law, SB 678 clarifies that ICWA applies to probate guardianships and conservatorships; imposes a duty to inquire whether a child in a child-custody proceeding may be a tribal child; and requires that available tribal resources be used when trying to meet ICWA's placement preferences.

Since the passage of Cal-ICWA, the state continues to enact policies that seek to improve the process of collaboration for the state and tribes regarding child welfare.

Continuum of Care Reform (CCR): In recent years, California has enacted legislation, known as CCR, to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, AB 819 (Stone), Chapter 777, Statutes of 2019, and AB 2944 (Stone), Chapter 104, Statutes of 2020.

Coronavirus Pandemic: In March of 2020, Governor Gavin Newsom declared a statewide state of emergency in response to the global COVID-19 pandemic. With over 500,000 deaths resulting from coronavirus across our country, the impact of this virus has touched almost every aspect of everyday life. We have watched as the effects of COVID-19 have added strain on California's public programs, healthcare system, and the financial security of many. As our state begins the road to recovery, many youth who have been isolated will make their way back to classrooms and communal settings, allowing mandated reports to resume contact and creating an anticipated spike in reports of suspected abuse and neglect.

Need for this bill: This bill would expand educational rights and protections to tribal youth and children subject to a voluntary placement agreement and redefine the term "foster youth" for purposes of the LCFF. As California continues to update our child welfare policies, we must ensure that all children across jurisdictions are given adequate supports, rights, and protections in our state law. Including tribal youth and children involved in voluntary placement agreements in LCFF and educational rights codified in law could bring further equity to code in line with the state's child welfare policy goals.

According to the author, "It is important to support students in foster care who are the most vulnerable and lowest-performing student groups in California and nationwide. This bill 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 also are eligible for the same support resources as their non-tribal counterparts. In addition, it will enable all students in out-of-home placement and subject to a Voluntary Placement Agreement to also be included in the definition of a student in foster care. In doing so, this bill will create better opportunities for support and resources to be given to help improve the educational outcomes of tribal foster youth."

Recommended Committee Amendments: In order to ensure consistency in child welfare code, the committee staff recommends the following amendments:

- 1) ***On page 6, beginning on line 3, strike "agreement." and insert "agreement, as defined in subdivision (p) of Section 11400 of the Welfare and Institutions Code."***
- 2) ***On page 8, beginning on line 13, strike "agreement." and insert "agreement, as defined in subdivision (p) of Section 11400 of the Welfare and Institutions Code."***

- 3) *On page 15, beginning on line 15, strike "agreement." and insert "agreement, as defined in subdivision (p) of Section 11400 of the Welfare and Institutions Code."*
- 4) *On page 17, beginning on line 27, strike "agreement." and insert "agreement, as defined in subdivision (p) of Section 11400 of the Welfare and Institutions Code."*

Double referral: This bill passed out of the Assembly Education Committee on April 7, 2021, with a 7-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 685 (Reyes) of 2019, would have required the State Bar of California to administer grants to nonprofit legal service organizations to provide support and technical assistance related to the implementation of ICWA. AB 3076 was substantially amended to remove provisions relating to ICWA.

AB 3176 (Waldron), Chapter 833, Statutes of 2018, makes a number of changes to court proceedings related to tribal children in CWS.

AB 3076 (Reyes) of 2018, would have required the State Bar of California to administer grants to nonprofit legal service organizations to provide support and technical assistance related to the implementation of ICWA. AB 3076 was held on the Senate Appropriations Committee suspense file.

AB 1962 (Wood), Chapter 748, Statutes of 2018, amends the definition of foster youth for LCFF purposes by including a student in foster care under the placement and care responsibility of an Indian tribe.

AB 854 (Weber) Chapter 781, Statutes of 2015, restructures the existing Foster Youth Services program by shifting the primary function from direct services to coordination and allows program funds to support all students in foster care, irrespective of placement.

SB 678 (Ducheny), Chapter 838, Statutes of 2006, codifies provisions of the federal ICWA in California law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance of Child and Family Services
California Charter Schools Association
Children Now
Yocha Dehe Wintun Nation

Opposition

None on file

Analysis Prepared by: Emmalynn Mathis / HUM. S. / (916) 319-2089