

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 744

Introduced by Senator Lara

February 22, 2013

An act to amend Sections 1981, 1983, 48660.1, 48662, and 48918 of, to add Sections 1981.5 and 48662.5 to, and to repeal Section 1981.2 of, the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, as amended, Lara. Pupils: involuntary transfer: county community schools and community day schools.

(1) Existing law authorizes a county board of education to establish and maintain one or more community schools into which the county board of education may enroll specified pupils, including, but not limited to, pupils who are expelled for specified reasons, referred as the result of the recommendation by a school attendance review board, probation referred, or homeless children.

This bill would revise the list of pupils who may be involuntarily enrolled in a county community school to limit the kind of probation referrals and remove homeless children. The bill would require the consent of the pupil's parent or guardian for the enrollment of a pupil who is referred as the result of a recommendation by a school attendance review board. The bill would allow enrollment of certain other pupils

in a county community school with the consent of the pupil's parent or guardian. The bill would authorize, with respect to certain probation referrals to a county community school, certain persons, including the attorney for a pupil who is under the jurisdiction of a delinquency court, to take specified actions related to the enrollment of a pupil in a county community school.

(2) Existing law requires a county community school to prescribe an individually planned educational program based on an educational assessment for each pupil. Existing law requires the course of study of a county community school to be adopted by the county board of education to enable each pupil to continue academic work leading to the completion of a regular high school program.

~~This bill would require an individually planned educational program to include specified services to be provided either at the school or through community organizations~~ *county boards of education operating county community schools to ensure, among other things, that appropriate services and programs specified in a pupil's individualized education program are provided.*

(3) Existing law authorizes the governing board of a school district to establish one or more community day schools for pupils in any of kindergarten and grades 1 to 12, inclusive. Existing law authorizes the governing board of a school district to assign a pupil to a community day school only if the pupil meets specified conditions, including, but not limited to, being expelled, being referred by a school attendance review board or other district-level referral process, and being probation referred pursuant to specified law.

This bill would revise the list of pupils who may be involuntarily transferred to a community day school to limit the kind of probation referrals. The bill would impose certain conditions on the involuntary transfer of a pupil referred by the school attendance review board or other district-level referral process if there is no school attendance review board. The bill would allow enrollment of certain other pupils in a community day school with the consent of the pupil's parent or guardian. The bill would authorize, with respect to certain probation referrals to a community day school, certain persons, including the attorney for a pupil who is under the jurisdiction of a delinquency court, to take specified actions related to the enrollment of a pupil in a community day school.

(4) Existing law states the intent of the Legislature that community day schools include specified program components, including, but not limited to, individualized instruction and assessment.

This bill would state the intent of the Legislature that, if an individualized assessment shows that the pupil requires additional educational services that are not available at the community day school, the parent, guardian, or responsible adult of the pupil should be notified, and that the probation officer relative to a pupil ordered placed in a community day school by court order should also be notified. The bill would require school districts operating community day schools to ensure that appropriate services and programs, as provided, are provided to certain pupils, as specified.

(5) This bill would provide a pupil who is involuntarily enrolled in a county community school or a community day school the right to reenroll in his or her former school or another comprehensive school immediately after being readmitted from expulsion or court-ordered placement. The bill would prohibit the pupil from being denied readmission to the school district of residence based on his or her failure to comply with any additionally imposed criteria beyond the terms of the initial or subsequent expulsion order. The bill would prohibit additional academic or behavioral criteria or conditions that would extend the duration of the placement of a pupil in a county community school or a community day school beyond the terms of the initial or subsequent expulsion order from being added.

(6) Existing law requires the governing board of each school district to establish rules and regulations governing procedures for the expulsion of pupils. Existing law requires the adopted rules and regulations to require, if a hearing officer or administrative panel decided not to recommend expulsion, the expulsion proceedings to be terminated and the pupil to be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs.

This bill would require the adopted rules and regulations to instead require that the pupil be permitted to return only to the classroom instructional program from which the expulsion referral was made unless a parent, guardian, or responsible adult requests another school placement in writing. The bill would, before the placement decision is made by the parent, guardian, or responsible adult, require the superintendent of schools or the superintendent's designee to consult with the parent, guardian, or responsible adult regarding any other

school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. By requiring the governing board of a school district to establish or revise the rules and regulations governing procedures for the expulsion of pupils, the bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1981 of the Education Code is amended
2 to read:

3 1981. The county board of education may enroll in a county
4 community school pupils who are any of the following:

5 (a) Expelled from a school district for any reason other than
6 those specified in subdivision (a) or (c) of Section 48915.

7 (b) Recommended to attend by a school attendance review board
8 with the written consent of the parent or guardian. No pupil shall
9 be required to attend a county community school based on the
10 recommendation of the school attendance review board. That
11 attendance is voluntary and consent may be rescinded.

12 (c) (1) (A) On probation, with or without the supervision of
13 a probation officer and consistent with an order of a juvenile court,
14 who are considered to be wards of the court under Sections 601
15 and 602 of the Welfare and Institutions Code and ordered placed
16 pursuant to Sections 725, 729.2, and 791 of, and paragraph (2) of
17 subdivision (a) of Section 727 of, the Welfare and Institutions
18 Code.

19 (B) Under the supervision of a probation officer, with the
20 consent of the minor and the minor’s parent or guardian, pursuant
21 to Section 654 of the Welfare and Institutions Code.

1 (C) Under the supervision of a probation officer pursuant to
2 Section 726 and paragraph (3) of subdivision (a) of Section 727
3 of the Welfare and Institutions Code with the consent of the pupil's
4 parent, guardian, or responsible adult appointed by the juvenile
5 court to make educational decisions for the pupil. The enrollment
6 of a minor covered by this paragraph in a county community school
7 shall be consistent with paragraph (2) of subdivision (c) of Section
8 726 of the Welfare and Institutions Code, which provides that all
9 educational and school placement decisions shall seek to ensure
10 that the youth is in the least restrictive educational program, has
11 access to the academic resources, services, and extracurricular and
12 enrichment activities that are available to all pupils, and are based
13 on the best interests of the minor.

14 (D) Unless specifically ordered by a juvenile court, nothing in
15 this subdivision shall be construed to conflict with the existing
16 rights of a parent, guardian, or responsible adult appointed by the
17 juvenile court pursuant to Section 726 of the Welfare and
18 Institutions Code to make educational placement decisions for the
19 minor.

20 (E) With respect to a pupil's enrollment in a county community
21 school pursuant to subparagraph (B) or (C), and consistent with
22 paragraph (2) of subdivision (c) of Section 726 of the Welfare and
23 Institutions Code and California Rule of Court 5.651, all of the
24 following shall apply:

25 (i) The attorney for, or the person holding the educational rights
26 of, a pupil who is under the jurisdiction of the delinquency court
27 may use the procedures set forth in California Rule of Court 5.651
28 to address any change of placement that results in the enrollment
29 of the pupil in a county community school that is not his or her
30 school of origin.

31 (ii) The attorney or the person holding the educational rights
32 appointed by the court for a pupil who is under the jurisdiction of
33 the delinquency court may, during a regularly scheduled hearing,
34 raise any concerns with respect to whether the enrollment of the
35 pupil in a county community school is meeting the educational
36 needs of the pupil.

37 (iii) Nothing in this subparagraph is intended to limit in any
38 way the rights or responsibilities of any person as set forth in
39 paragraph (2) of subdivision (c) of Section 726 of the Welfare and
40 Institutions Code and California Rule of Court 5.651.

1 (2) On probation or parole and not in attendance at any school,
 2 where enrollment is with the consent of the parent, guardian, or
 3 responsible adult, or the pupil, if he or she is 18 years of age or
 4 older. Nothing in this subdivision shall impact the provision of
 5 services or funding for youth up to 25 years of age pursuant to
 6 subdivision (b) of Section 1982.

7 (3) Expelled for any of the reasons specified in subdivision (a)
 8 or (c) of Section 48915.

9 (4) Enrollment in a county community school pursuant to this
 10 subdivision shall be consistent with Section 48645.5.

11 (d) Pupils whose school districts of attendance, or, for pupils
 12 who do not have school districts of attendance, school districts of
 13 residence, have, at the request of the pupil’s parent, guardian, or
 14 responsible adult, approved the pupil’s enrollment in a county
 15 community school, subject to the following:

16 (1) A pupil shall not be enrolled in a county community school
 17 pursuant to this subdivision unless the school district determines
 18 that the placement will promote the educational interests of the
 19 pupil.

20 (2) A parent, guardian, or responsible adult of a pupil enrolled
 21 in a county community school pursuant to this subdivision may
 22 rescind the request to the placement, and the pupil shall be
 23 immediately reenrolled in the school that the pupil attended at the
 24 time of the referral, or, with the consent of the parent, guardian,
 25 or responsible adult, another appropriate school.

26 (e) The procedures outlined in subdivisions (b) to (e), inclusive,
 27 of Section 51225.2 govern the transfer of credits, records, including
 28 special education records, and grades required pursuant to
 29 subdivision (a) of Section 48645.5 and Section 49068 when the
 30 pupil transfers to and from the county community school.

31 SEC. 2. Section 1981.2 of the Education Code is repealed.

32 SEC. 3. Section 1981.5 is added to the Education Code, to
 33 read:

34 1981.5. (a) A pupil who is involuntarily enrolled in a county
 35 community school pursuant to subdivision (a) of, or subparagraph
 36 (A) of paragraph (1) or paragraph (3) of subdivision (c) of, Section
 37 1981 shall have the right to reenroll in his or her former school or
 38 another comprehensive school immediately after being readmitted
 39 from the expulsion order pursuant to Section 48916 or
 40 court-ordered placement. Nothing in this section is intended to

1 limit the school placement options that a school district may
2 recommend for a pupil being readmitted.

3 (b) A pupil shall not be denied readmission to the school district
4 of residence based on the pupil's failure to comply with any
5 additionally imposed criteria beyond the terms of the initial order
6 or any subsequent order to expel issued pursuant to Section 48916.

7 (c) Additional academic or behavioral criteria or conditions
8 shall not be added that would extend the duration of the placement
9 of a pupil in a county community school beyond the terms of the
10 initial order or any subsequent order to expel issued pursuant to
11 Section 48916.

12 SEC. 4. Section 1983 of the Education Code is amended to
13 read:

14 1983. (a) Pupils enrolled in county community schools shall
15 be assigned to classes or programs deemed most appropriate for
16 reinforcing or reestablishing educational development.

17 (b) These classes or programs may include, but need not be
18 limited to, basic educational skill development, on-the-job training,
19 school credit recovery assistance, tutorial assistance, and individual
20 guidance activities.

21 (c) To the extent that independent study is determined to satisfy
22 the individually planned educational program described in
23 subdivision (d) for a pupil attending a county community school,
24 it shall meet all the requirements of Section 51745 and following,
25 including the requirement that entry into that program is voluntary.

26 (d) An individually planned educational program based upon
27 an educational assessment shall be prescribed for each pupil. ~~If
28 the educational assessment or rehabilitation plan shows that the
29 pupil needs any of the following, the pupil shall be enrolled in or
30 have access to these programs either at the school or through
31 community organizations: counseling, mental health counseling,
32 or other support services, access to services necessary to transition
33 a pupil back to his or her prior school or to another comprehensive
34 school, mediation, conflict resolution, alternative behavior
35 interventions as described in subdivision (b) of Section 48900.5,
36 supplemental services to assist with passage of the high school
37 exit examination, or extracurricular or other enrichment activities.
38 For pupils who are under an expulsion order, nothing in this section
39 is intended to require participation in the school district's
40 extracurricular or other similar programs.~~

1 (e) The course of study of a county community school shall be
2 adopted by the county board of education and shall enable each
3 pupil to continue academic work leading to the completion of a
4 regular high school program.

5 (f) County boards of education operating county community
6 schools shall ensure that assessments in all areas of suspected
7 disability and appropriate services and programs specified in a
8 pupil’s individualized education program are provided in
9 compliance with all applicable laws.

10 (g) County boards of education operating county community
11 schools shall ensure that appropriate services and programs
12 designed to address the language needs of pupils identified as
13 English learners are provided in compliance with all applicable
14 laws.

15 SEC. 5. Section 48660.1 of the Education Code is amended to
16 read:

17 48660.1. (a) It is the intent of the Legislature that school
18 districts operating community day schools, to the extent possible,
19 include the following program components:

20 (1) School district cooperation with the county office of
21 education, law enforcement, probation, and human services
22 agencies personnel who work with at-risk youth.

23 (2) Low pupil-teacher ratio.

24 (3) Individualized instruction and assessment. If an
25 individualized assessment shows that the pupil requires additional
26 educational services, supports, such as mental health counseling,
27 or classes, such as college preparatory classes, that are not available
28 at the community day school, the parent, guardian, or responsible
29 adult of the pupil should be notified. If the pupil has been placed
30 pursuant to a court order as described in paragraph (2) of
31 subdivision (a) of Section 48662, the probation officer should also
32 be notified.

33 (4) Maximum collaboration with school district support service
34 resources, including, but not limited to, school counselors and
35 psychologists, academic counselors, and pupil discipline personnel.

36 (5) A course of study that enables each pupil to continue
37 academic work leading to the completion of a regular high school
38 program.

39 (b) For an expelled pupil, if the plan of rehabilitation required
40 pursuant to subdivisions (b) and (c) of Section 48916 requires

1 access to a particular service or program for the pupil to meet its
2 conditions, that service or program shall be made available to the
3 pupil free of cost or the rehabilitation plan shall be amended by
4 the governing board of the school district that ordered the expulsion
5 to remove the condition and reflect that the service or program is
6 not available to the pupil.

7 (c) School districts operating community day schools shall
8 ensure that assessments in all areas of suspected disability and
9 appropriate services and programs specified in a pupil's
10 individualized education program are provided in compliance with
11 all applicable laws.

12 (d) School districts operating community day schools shall
13 ensure that appropriate services and programs designed to address
14 the language needs of pupils identified as English learners are
15 provided in compliance with all applicable laws.

16 SEC. 6. Section 48662 of the Education Code is amended to
17 read:

18 48662. (a) A pupil may be involuntarily transferred to a
19 community day school by a school district only if he or she meets
20 one or more of the following conditions:

21 (1) The pupil is expelled for any reason.

22 (2) The pupil is on probation with or without the supervision
23 of a probation officer and consistent with an order of a juvenile
24 court, and is considered to be a ward of the court under Sections
25 601 and 602 of the Welfare and Institutions Code and is ordered
26 placed pursuant to Sections 725, 729.2, and 791 of, and paragraph
27 (2) of subdivision (a) of Section 727 of, the Welfare and Institutions
28 Code.

29 (3) The pupil is referred by the school attendance review board,
30 or other district-level referral process if there is no school
31 attendance review board, with the approval of and a determination
32 by the school district that the proposed placement will meet the
33 educational needs of the pupil, including any needs related to the
34 referral to the school attendance review board in the first instance,
35 and that the proposed placement is accessible by the pupil without
36 incurring any transportation costs above and beyond the costs to
37 attend his or her school of residence. The term for an involuntary
38 transfer under this paragraph shall be no longer than the end of the
39 semester following the semester during which the acts leading to
40 the referral occurred, regardless of whether the pupil is successful

1 at the placement, at which time the parent, guardian, or responsible
2 adult may choose whether to continue the pupil's enrollment at
3 the community day school or to return the pupil to the prior school
4 or another appropriate school. If the parent, guardian, or responsible
5 adult has concerns at any time about the appropriateness of the
6 proposed placement, he or she may raise those concerns with the
7 school attendance review board or the school district, and those
8 concerns shall be taken into consideration with regard to whether
9 the placement shall continue.

10 (b) A pupil may be voluntarily transferred to a community day
11 school only if he or she meets one of the following conditions:

12 (1) Under the supervision of a probation officer, with the consent
13 of the minor and the minor's parent or guardian, pursuant to Section
14 654 of the Welfare and Institutions Code.

15 (2) Under the supervision of a probation officer pursuant to
16 Section 726 of, and paragraph (3) of subdivision (a) of Section
17 727 of, the Welfare and Institutions Code with the consent of the
18 pupil's parent, guardian, or responsible adult appointed by the
19 juvenile court to make educational decisions for the pupil. The
20 enrollment of a minor covered by this paragraph in a community
21 day school shall be consistent with paragraph (2) of subdivision
22 (c) of Section 726 of the Welfare and Institutions Code and
23 subdivision (h) of Section 48853, which provide that all educational
24 and school placement decisions shall seek to ensure that the minor
25 is in the least restrictive educational program, has access to the
26 academic resources, services, and extracurricular and enrichment
27 activities that are available to all pupils, and that the decisions are
28 based on the best interests of the minor.

29 (3) The parent or guardian of the pupil has approved or requested
30 the pupil's placement in a community day school.

31 (4) A pupil who is recommended to attend a community day
32 school by a school district shall not be enrolled in a community
33 day school pursuant to paragraph (3) unless the school district has
34 made a finding that the placement will promote the educational
35 interests of the pupil.

36 (5) The parent, guardian, or responsible adult of a pupil enrolled
37 in a community day school pursuant to paragraph (3) may rescind
38 the request to the placement, and the pupil shall be immediately
39 reenrolled in the school the pupil attended at the time of the

1 referral, or, with the consent of the parent, guardian, or responsible
2 adult, in another appropriate school.

3 (c) The procedures outlined in subdivisions (b) to (e), inclusive,
4 of Section 51225.2 govern the transfer of credits, records, including
5 special education records, and grades required pursuant to
6 subdivision (a) of Section 48645.5 and Section 49068 when the
7 pupil transfers to and from the community day school.

8 (d) First priority for assignment to a community day school
9 shall be given to a pupil expelled pursuant to subdivision (d) of
10 Section 48915, second priority shall be given to pupils expelled
11 for any other reasons, and third priority shall be given for
12 placement to all other pupils pursuant to this section, unless there
13 is an agreement that the county superintendent of schools shall
14 serve any of these pupils.

15 (e) Unless specifically ordered by a juvenile court, nothing in
16 this section shall be construed to conflict with the existing rights
17 of a parent or guardian or responsible adult appointed by the
18 juvenile court pursuant to Section 726 of the Welfare and
19 Institutions Code to make educational placement decisions for the
20 minor.

21 (f) Enrollment in a community day school pursuant to this
22 section shall be consistent with Section 48645.5.

23 (g) With respect to a voluntary transfer under paragraph (1) or
24 (2) of subdivision (b), and consistent with paragraph (2) of
25 subdivision (c) of Section 726 of the Welfare and Institutions Code
26 and California Rule of Court 5.651, all of the following shall apply:

27 (1) The attorney for, or the person holding the educational rights
28 of, a pupil who is under the jurisdiction of the delinquency court
29 may use the procedures set forth in California Rule of Court 5.651
30 to address any change of placement that results in the enrollment
31 of the pupil in a community day school that is not his or her school
32 of origin.

33 (2) The attorney or the person holding the educational rights
34 appointed by the court for a pupil who is under the jurisdiction of
35 the delinquency court may, during a regularly scheduled hearing,
36 raise any concerns with respect to whether the enrollment of the
37 pupil in a community day school is meeting the educational needs
38 of the pupil.

39 (3) Nothing in this subdivision is intended to limit in any way
40 the rights or responsibilities of any person as set forth in paragraph

1 (2) of subdivision (c) of Section 726 of the Welfare and Institutions
2 Code and California Rule of Court 5.651.

3 SEC. 7. Section 48662.5 is added to the Education Code, to
4 read:

5 48662.5. (a) A pupil who is involuntarily enrolled in a
6 community day school shall have the right to reenroll in his or her
7 former school or another comprehensive school immediately after
8 being readmitted from the expulsion order pursuant to Section
9 48916 or court-ordered placement. Nothing in this section is
10 intended to limit the school placement options that a school district
11 may recommend for a pupil being readmitted.

12 (b) A pupil shall not be denied readmission to the school district
13 of residence based on the pupil's failure to comply with any
14 additional criteria imposed beyond the terms of an initial or
15 subsequent order to expel issued pursuant to Section 48916.

16 (c) Additional academic or behavioral criteria or conditions
17 shall not be added that would extend the duration of the placement
18 of a pupil in a community day school beyond the terms of an initial
19 or subsequent order to expel issued pursuant to Section 48916.

20 (d) Any school created for the purpose of enrolling pupils that
21 may be assigned to a community day school pursuant to Section
22 48662 shall follow the same procedures for the involuntary transfer
23 of pupils to a community day school set forth in this article.

24 SEC. 8. Section 48918 of the Education Code is amended to
25 read:

26 48918. The governing board of each school district shall
27 establish rules and regulations governing procedures for the
28 expulsion of pupils. These procedures shall include, but are not
29 necessarily limited to, all of the following:

30 (a) (1) The pupil shall be entitled to a hearing to determine
31 whether the pupil should be expelled. An expulsion hearing shall
32 be held within 30 schooldays after the date the principal or the
33 superintendent of schools determines that the pupil has committed
34 any of the acts enumerated in Section 48900, unless the pupil
35 requests, in writing, that the hearing be postponed. The adopted
36 rules and regulations shall specify that the pupil is entitled to at
37 least one postponement of an expulsion hearing, for a period of
38 not more than 30 calendar days. Any additional postponement may
39 be granted at the discretion of the governing board of the school
40 district.

1 (2) Within 10 schooldays after the conclusion of the hearing,
2 the governing board of the school district shall decide whether to
3 expel the pupil, unless the pupil requests in writing that the decision
4 be postponed. If the hearing is held by a hearing officer or an
5 administrative panel, or if the governing board of the school district
6 does not meet on a weekly basis, the governing board of the school
7 district shall decide whether to expel the pupil within 40 schooldays
8 after the date of the pupil's removal from his or her school of
9 attendance for the incident for which the recommendation for
10 expulsion is made by the principal or the superintendent, unless
11 the pupil requests in writing that the decision be postponed.

12 (3) If compliance by the governing board of the school district
13 with the time requirements for the conducting of an expulsion
14 hearing under this subdivision is impracticable during the regular
15 school year, the superintendent of schools or the superintendent's
16 designee may, for good cause, extend the time period for the
17 holding of the expulsion hearing for an additional five schooldays.
18 If compliance by the governing board of the school district with
19 the time requirements for the conducting of an expulsion hearing
20 under this subdivision is impractical due to a summer recess of
21 governing board meetings of more than two weeks, the days during
22 the recess period shall not be counted as schooldays in meeting
23 the time requirements. The days not counted as schooldays in
24 meeting the time requirements for an expulsion hearing because
25 of a summer recess of governing board meetings shall not exceed
26 20 schooldays, as defined in subdivision (c) of Section 48925, and
27 unless the pupil requests in writing that the expulsion hearing be
28 postponed, the hearing shall be held not later than 20 calendar days
29 before the first day of school for the school year. Reasons for the
30 extension of the time for the hearing shall be included as a part of
31 the record at the time the expulsion hearing is conducted. Upon
32 the commencement of the hearing, all matters shall be pursued
33 and conducted with reasonable diligence and shall be concluded
34 without any unnecessary delay.

35 (b) Written notice of the hearing shall be forwarded to the pupil
36 at least 10 calendar days before the date of the hearing. The notice
37 shall include all of the following:

38 (1) The date and place of the hearing.

39 (2) A statement of the specific facts and charges upon which
40 the proposed expulsion is based.

1 (3) A copy of the disciplinary rules of the school district that
2 relate to the alleged violation.

3 (4) A notice of the parent, guardian, or pupil’s obligation
4 pursuant to subdivision (b) of Section 48915.1.

5 (5) Notice of the opportunity for the pupil or the pupil’s parent
6 or guardian to appear in person or to be represented by legal
7 counsel or by a nonattorney adviser, to inspect and obtain copies
8 of all documents to be used at the hearing, to confront and question
9 all witnesses who testify at the hearing, to question all other
10 evidence presented, and to present oral and documentary evidence
11 on the pupil’s behalf, including witnesses. In a hearing in which
12 a pupil is alleged to have committed or attempted to commit a
13 sexual assault as specified in subdivision (n) of Section 48900 or
14 committing a sexual battery as defined in subdivision (n) of Section
15 48900, a complaining witness shall be given five days’ notice
16 before being called to testify, and shall be entitled to have up to
17 two adult support persons, including, but not limited to, a parent,
18 guardian, or legal counsel, present during their testimony. Before
19 a complaining witness testifies, support persons shall be
20 admonished that the hearing is confidential. This subdivision shall
21 not preclude the person presiding over an expulsion hearing from
22 removing a support person whom the presiding person finds is
23 disrupting the hearing. If one or both of the support persons is also
24 a witness, the provisions of Section 868.5 of the Penal Code shall
25 be followed for the hearing. This section does not require a pupil
26 or the pupil’s parent or guardian to be represented by legal counsel
27 or by a nonattorney adviser at the hearing.

28 (A) For purposes of this section, “legal counsel” means an
29 attorney or lawyer who is admitted to the practice of law in
30 California and is an active member of the State Bar of California.

31 (B) For purposes of this section, “nonattorney advisor” means
32 an individual who is not an attorney or lawyer, but who is familiar
33 with the facts of the case, and has been selected by the pupil or
34 pupil’s parent or guardian to provide assistance at the hearing.

35 (c) (1) Notwithstanding Section 35145, the governing board of
36 the school district shall conduct a hearing to consider the expulsion
37 of a pupil in a session closed to the public, unless the pupil
38 requests, in writing, at least five days before the date of the hearing,
39 that the hearing be conducted at a public meeting. Regardless of
40 whether the expulsion hearing is conducted in a closed or public

1 session, the governing board of the school district may meet in
2 closed session for the purpose of deliberating and determining
3 whether the pupil should be expelled.

4 (2) If the governing board of the school district or the hearing
5 officer or administrative panel appointed under subdivision (d) to
6 conduct the hearing admits any other person to a closed deliberation
7 session, the parent or guardian of the pupil, the pupil, and the
8 counsel of the pupil also shall be allowed to attend the closed
9 deliberations.

10 (3) If the hearing is to be conducted at a public meeting, and
11 there is a charge of committing or attempting to commit a sexual
12 assault as defined in subdivision (n) of Section 48900 or
13 committing a sexual battery as defined in subdivision (n) of Section
14 48900, a complaining witness shall have the right to have his or
15 her testimony heard in a session closed to the public when
16 testifying at a public meeting would threaten serious psychological
17 harm to the complaining witness and there are no alternative
18 procedures to avoid the threatened harm, including, but not limited
19 to, videotaped deposition or contemporaneous examination in
20 another place communicated to the hearing room by means of
21 closed-circuit television.

22 (d) Instead of conducting an expulsion hearing itself, the
23 governing board of the school district may contract with the county
24 hearing officer, or with the Office of Administrative Hearings
25 pursuant to Chapter 14 (commencing with Section 27720) of Part
26 3 of Division 2 of Title 3 of the Government Code and Section
27 35207 of this code, for a hearing officer to conduct the hearing.
28 The governing board of the school district may also appoint an
29 impartial administrative panel of three or more certificated persons,
30 none of whom is a member of the governing board of the school
31 district or employed on the staff of the school in which the pupil
32 is enrolled. The hearing shall be conducted in accordance with all
33 of the procedures established under this section.

34 (e) Within three schooldays after the hearing, the hearing officer
35 or administrative panel shall determine whether to recommend the
36 expulsion of the pupil to the governing board of the school district.
37 If the hearing officer or administrative panel decides not to
38 recommend expulsion, the expulsion proceedings shall be
39 terminated and the pupil immediately shall be reinstated and
40 permitted to return to the classroom instructional program from

1 which the expulsion referral was made, unless the parent, guardian,
2 or responsible adult of the pupil requests another school placement
3 in writing. Before the placement decision is made by the parent,
4 guardian, or responsible adult, the superintendent of schools or
5 the superintendent's designee shall consult with the parent,
6 guardian, or responsible ~~adult~~, *adult* regarding any other school
7 placement options for the pupil in addition to the option to return
8 to his or her classroom instructional program from which the
9 expulsion referral was made. The decision not to recommend
10 expulsion shall be final.

11 (f) (1) If the hearing officer or administrative panel recommends
12 expulsion, findings of fact in support of the recommendation shall
13 be prepared and submitted to the governing board of the school
14 district. All findings of fact and recommendations shall be based
15 solely on the evidence adduced at the hearing. If the governing
16 board of the school district accepts the recommendation calling
17 for expulsion, acceptance shall be based either upon a review of
18 the findings of fact and recommendations submitted by the hearing
19 officer or panel or upon the results of any supplementary hearing
20 conducted pursuant to this section that the governing board of the
21 school district may order.

22 (2) The decision of the governing board of the school district
23 to expel a pupil shall be based upon substantial evidence relevant
24 to the charges adduced at the expulsion hearing or hearings. Except
25 as provided in this section, no evidence to expel shall be based
26 solely upon hearsay evidence. The governing board of the school
27 district or the hearing officer or administrative panel may, upon a
28 finding that good cause exists, determine that the disclosure of
29 either the identity of a witness or the testimony of that witness at
30 the hearing, or both, would subject the witness to an unreasonable
31 risk of psychological or physical harm. Upon this determination,
32 the testimony of the witness may be presented at the hearing in
33 the form of sworn declarations that shall be examined only by the
34 governing board of the school district or the hearing officer or
35 administrative panel. Copies of these sworn declarations, edited
36 to delete the name and identity of the witness, shall be made
37 available to the pupil.

38 (g) A record of the hearing shall be made. The record may be
39 maintained by any means, including electronic recording, so long

1 as a reasonably accurate and complete written transcription of the
2 proceedings can be made.

3 (h) (1) Technical rules of evidence shall not apply to the
4 hearing, but relevant evidence may be admitted and given probative
5 effect only if it is the kind of evidence upon which reasonable
6 persons are accustomed to rely in the conduct of serious affairs.
7 A decision of the governing board of the school district to expel
8 shall be supported by substantial evidence showing that the pupil
9 committed any of the acts enumerated in Section 48900.

10 (2) In hearings that include an allegation of committing or
11 attempting to commit a sexual assault as defined in subdivision
12 (n) of Section 48900 or committing a sexual battery as defined in
13 subdivision (n) of Section 48900, evidence of specific instances,
14 of a complaining witness' prior sexual conduct is to be presumed
15 inadmissible and shall not be heard absent a determination by the
16 person conducting the hearing that extraordinary circumstances
17 exist requiring the evidence be heard. Before the person conducting
18 the hearing makes the determination on whether extraordinary
19 circumstances exist requiring that specific instances of a
20 complaining witness' prior sexual conduct be heard, the
21 complaining witness shall be provided notice and an opportunity
22 to present opposition to the introduction of the evidence. In the
23 hearing on the admissibility of the evidence, the complaining
24 witness shall be entitled to be represented by a parent, guardian,
25 legal counsel, or other support person. Reputation or opinion
26 evidence regarding the sexual behavior of the complaining witness
27 is not admissible for any purpose.

28 (i) (1) Before the hearing has commenced, the governing board
29 of the school district may issue subpoenas at the request of either
30 the superintendent of schools or the superintendent's designee or
31 the pupil, for the personal appearance of percipient witnesses at
32 the hearing. After the hearing has commenced, the governing board
33 of the school district or the hearing officer or administrative panel
34 may, upon request of either the county superintendent of schools
35 or the superintendent's designee or the pupil, issue subpoenas. All
36 subpoenas shall be issued in accordance with Sections 1985,
37 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement
38 of subpoenas shall be done in accordance with Section 11455.20
39 of the Government Code.

1 (2) Any objection raised by the superintendent of schools or the
2 superintendent’s designee or the pupil to the issuance of subpoenas
3 may be considered by the governing board of the school district
4 in closed session, or in open session, if so requested by the pupil
5 before the meeting. Any decision by the governing board of the
6 school district in response to an objection to the issuance of
7 subpoenas shall be final and binding.

8 (3) If the governing board of the school district, hearing officer,
9 or administrative panel determines, in accordance with subdivision
10 (f), that a percipient witness would be subject to an unreasonable
11 risk of harm by testifying at the hearing, a subpoena shall not be
12 issued to compel the personal attendance of that witness at the
13 hearing. However, that witness may be compelled to testify by
14 means of a sworn declaration as provided for in subdivision (f).

15 (4) Service of process shall be extended to all parts of the state
16 and shall be served in accordance with Section 1987 of the Code
17 of Civil Procedure. All witnesses appearing pursuant to subpoena,
18 other than the parties or officers or employees of the state or any
19 political subdivision thereof, shall receive fees, and all witnesses
20 appearing pursuant to subpoena, except the parties, shall receive
21 mileage in the same amount and under the same circumstances as
22 prescribed for witnesses in civil actions in a superior court. Fees
23 and mileage shall be paid by the party at whose request the witness
24 is subpoenaed.

25 (j) Whether an expulsion hearing is conducted by the governing
26 board of the school district or before a hearing officer or
27 administrative panel, final action to expel a pupil shall be taken
28 only by the governing board of the school district in a public
29 session. Written notice of any decision to expel or to suspend the
30 enforcement of an expulsion order during a period of probation
31 shall be sent by the superintendent of schools or his or her designee
32 to the pupil or the pupil’s parent or guardian and shall be
33 accompanied by all of the following:

34 (1) Notice of the right to appeal the expulsion to the county
35 board of education.

36 (2) Notice of the education alternative placement to be provided
37 to the pupil during the time of expulsion.

38 (3) Notice of the obligation of the parent, guardian, or pupil
39 under subdivision (b) of Section 48915.1, upon the pupil’s

1 enrollment in a new school district, to inform that school district
2 of the pupil's expulsion.

3 (k) (1) The governing board of the school district shall maintain
4 a record of each expulsion, including the cause for the expulsion.
5 Records of expulsions shall be a nonprivileged, disclosable public
6 record.

7 (2) The expulsion order and the causes for the expulsion shall
8 be recorded in the pupil's mandatory interim record and shall be
9 forwarded to any school in which the pupil subsequently enrolls
10 upon receipt of a request from the admitting school for the pupil's
11 school records.

12 SEC. 9. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.