

AMENDED IN ASSEMBLY JUNE 18, 2013

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**

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**Introduced by Senator Lara**

February 22, 2013

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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, with regard to pupils referred as the result of a recommendation by the school attendance review board, would require that the office of education has space for the pupil, the pupil's educational needs will be met by the placement, the pupil does not incur transportation costs above and beyond those at his or her prior school, and that the parent does not expressly object to the referral. The bill would also provide that the pupil has the right to return to his or her previous school, or other appropriate school, at the end of the semester following the semester when the acts leading to referral occurred. 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 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~~ *informed*, and that the probation officer relative to a pupil ordered placed in a community day school by court order should also be ~~notified~~ *informed*. 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 school district personnel, including the pupil’s teachers, and~~ 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 *pupils* in a  
 4 county 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 (b) (1) *Referred to county community schools by a school*  
 13 *district as a result of the recommendation by a school attendance*

1 *review board. A pupil shall not be referred by a school district*  
2 *unless the office of education has space for enrollment available,*  
3 *the school district and county board of education determine that*  
4 *the county community school meets the educational needs of the*  
5 *pupil, the pupil does not incur transportation costs above and*  
6 *beyond those necessary to attend his or her prior school of*  
7 *residence, and the parent has not expressly objected to the referral.*

8 (2) *The pupil has the right to return to his or her prior school*  
9 *or another appropriate school within his or her school district at*  
10 *the end of the semester following the semester when the acts*  
11 *leading to referral occurred, regardless of whether the pupil is*  
12 *successful at the county community school.*

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

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

23 (C) Under the supervision of a probation officer pursuant to  
24 Section 726 and paragraph (3) of subdivision (a) of Section 727  
25 of the Welfare and Institutions Code with the consent of the pupil's  
26 parent, guardian, or responsible adult appointed by the juvenile  
27 court to make educational decisions for the pupil. The enrollment  
28 of a minor covered by this paragraph in a county community school  
29 shall be consistent with paragraph (2) of subdivision (c) of Section  
30 726 of the Welfare and Institutions Code, which provides that all  
31 educational and school placement decisions shall seek to ensure  
32 that the youth is in the least restrictive educational program, has  
33 access to the academic resources, services, and extracurricular and  
34 enrichment activities that are available to all pupils, and are based  
35 on the best interests of the minor.

36 (D) Unless specifically ordered by a juvenile court, nothing in  
37 this subdivision shall be construed to conflict with the existing  
38 rights of a parent, guardian, or responsible adult appointed by the  
39 juvenile court pursuant to Section 726 of the Welfare and

1 Institutions Code to make educational placement decisions for the  
2 minor.

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

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

14 (ii) The attorney or the person holding the educational rights  
15 appointed by the court for a pupil who is under the jurisdiction of  
16 the delinquency court may, during a regularly scheduled hearing,  
17 raise any concerns with respect to whether the enrollment of the  
18 pupil in a county community school is meeting the educational  
19 needs of the pupil.

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

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

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

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

34 (d) Pupils whose school districts of attendance, or, for pupils  
35 who do not have school districts of attendance, school districts of  
36 residence, have, at the request of the pupil's parent, guardian, or  
37 responsible adult, approved the pupil's enrollment in a county  
38 community school, subject to the following:

39 (1) A pupil shall not be enrolled in a county community school  
40 pursuant to this subdivision unless the school district determines

1 that the placement will promote the educational interests of the  
2 pupil.

3 (2) A parent, guardian, or responsible adult of a pupil enrolled  
4 in a county community school pursuant to this subdivision may  
5 rescind the request to the placement, and the pupil shall be  
6 immediately reenrolled in the school that the pupil attended at the  
7 time of the referral, or, with the consent of the parent, guardian,  
8 or responsible adult, another appropriate school.

9 (e) The procedures outlined in subdivisions (b) to (e), inclusive,  
10 of Section 51225.2 govern the transfer of credits, records, including  
11 special education records, and grades required pursuant to  
12 subdivision (a) of Section 48645.5 and Section 49068 when the  
13 pupil transfers to and from the county community school.

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

15 SEC. 3. Section 1981.5 is added to the Education Code, to  
16 read:

17 1981.5. (a) A pupil who is involuntarily enrolled in a county  
18 community school pursuant to subdivision (a) of, or subparagraph  
19 (A) of paragraph (1) or paragraph (3) of subdivision (c) of, Section  
20 1981 shall have the right to reenroll in his or her former school or  
21 another comprehensive school immediately after being readmitted  
22 from the expulsion order pursuant to Section 48916 or  
23 court-ordered placement. Nothing in this section is intended to  
24 limit the school placement options that a school district may  
25 recommend for a pupil being readmitted.

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

30 (c) Additional academic or behavioral criteria or conditions  
31 shall not be added that would extend the duration of the placement  
32 of a pupil in a county community school beyond the terms of the  
33 initial order or any subsequent order to expel issued pursuant to  
34 Section 48916.

35 SEC. 4. Section 1983 of the Education Code is amended to  
36 read:

37 1983. (a) Pupils enrolled in county community schools shall  
38 be assigned to classes or programs deemed most appropriate for  
39 reinforcing or reestablishing educational development.

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

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

10 (d) An individually planned educational program based upon  
11 an educational assessment shall be prescribed for each pupil.

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

16 (f) County boards of education operating county community  
17 schools shall ensure that assessments in all areas of suspected  
18 disability and appropriate services and programs specified in a  
19 pupil's individualized education program are provided in  
20 compliance with ~~all applicable laws~~. *Section 56000 and following*  
21 *of the Education Code and Section 1400 and following of Title 20*  
22 *of the United States Code, and accompanying regulatory*  
23 *provisions.*

24 (g) County boards of education operating county community  
25 schools shall ensure that appropriate services and programs  
26 designed to address the language needs of pupils identified as  
27 English learners are provided in compliance with all applicable  
28 *state and federal laws and regulatory provisions.*

29 SEC. 5. Section 48660.1 of the Education Code is amended to  
30 read:

31 48660.1. (a) It is the intent of the Legislature that school  
32 districts operating community day schools, to the extent possible,  
33 include the following program components:

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

37 (2) Low pupil-teacher ratio.

38 (3) Individualized instruction and assessment. If an  
39 individualized assessment shows that the pupil requires additional  
40 educational services, supports, such as mental health counseling,



1 or classes, ~~such as college preparatory classes,~~ that are not available  
2 at the community day school, the parent, guardian, or responsible  
3 adult of the pupil should be ~~notified~~ *informed*. If the pupil has been  
4 placed pursuant to a court order as described in paragraph (2) of  
5 subdivision (a) of Section 48662, the probation officer should also  
6 be ~~notified~~ *informed*.

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

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

13 (b) For an expelled pupil, if the plan of rehabilitation required  
14 pursuant to subdivisions (b) and (c) of Section 48916 requires  
15 access to a particular service or program for the pupil to meet its  
16 conditions, that service or program shall be made available to the  
17 pupil free of cost or the rehabilitation plan shall be amended by  
18 the governing board of the school district that ordered the expulsion  
19 to remove the condition and reflect that the service or program is  
20 not available to the pupil.

21 (c) School districts operating community day schools shall  
22 ensure that assessments in all areas of suspected disability and  
23 appropriate services and programs specified in a pupil's  
24 individualized education program are provided in compliance with  
25 ~~all applicable laws.~~ *Section 56000 and following of the Education*  
26 *Code and Section 1400 and following of Title 20 of the United*  
27 *States Code, and accompanying regulatory provisions.*

28 (d) School districts operating community day schools shall  
29 ensure that appropriate services and programs designed to address  
30 the language needs of pupils identified as English learners are  
31 provided in compliance with all applicable *state and federal laws*  
32 *and regulatory provisions.*

33 SEC. 6. Section 48662 of the Education Code is amended to  
34 read:

35 48662. (a) A pupil may be involuntarily transferred to a  
36 community day school by a school district only if he or she meets  
37 one or more of the following conditions:

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

39 (2) The pupil is on probation with or without the supervision  
40 of a probation officer and consistent with an order of a juvenile

1 court, and is considered to be a ward of the court under Sections  
2 601 and 602 of the Welfare and Institutions Code and is ordered  
3 placed pursuant to Sections 725, 729.2, and 791 of, and paragraph  
4 (2) of subdivision (a) of Section 727 of, the Welfare and Institutions  
5 Code.

6 (3) The pupil is referred by the school attendance review board,  
7 or other district-level referral process if there is no school  
8 attendance review board, with the approval of and a determination  
9 by the school district that the proposed ~~placement~~ *school* will meet  
10 the educational needs of the pupil, including any needs related to  
11 the referral to the school attendance review board in the first  
12 instance, and that the proposed ~~placement~~ *school* is *geographically*  
13 accessible by the pupil without *the pupil* incurring any  
14 transportation costs above and beyond the costs to attend his or  
15 her school of residence. The term for an involuntary transfer under  
16 this paragraph shall be no longer than the end of the semester  
17 following the semester during which the acts leading to the referral  
18 occurred, regardless of whether the pupil is successful at the  
19 placement, at which time the parent, guardian, or responsible adult  
20 may choose whether to continue the pupil's enrollment at the  
21 community day school or to return the pupil to the prior school or  
22 another appropriate school. If the parent, guardian, or responsible  
23 adult has concerns at any time about the appropriateness of the  
24 proposed placement, he or she may raise those concerns with the  
25 school attendance review board or the school district, and those  
26 concerns shall be taken into consideration with regard to whether  
27 the placement shall continue.

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

30 (1) Under the supervision of a probation officer, with the consent  
31 of the minor and the minor's parent or guardian, pursuant to Section  
32 654 of the Welfare and Institutions Code.

33 (2) Under the supervision of a probation officer pursuant to  
34 Section 726 of, and paragraph (3) of subdivision (a) of Section  
35 727 of, the Welfare and Institutions Code with the consent of the  
36 pupil's parent, guardian, or responsible adult appointed by the  
37 juvenile court to make educational decisions for the pupil. The  
38 enrollment of a minor covered by this paragraph in a community  
39 day school shall be consistent with paragraph (2) of subdivision

40 (c) of Section 726 of the Welfare and Institutions Code and

1 subdivision (h) of Section 48853, which provide that all educational  
2 and school placement decisions shall seek to ensure that the minor  
3 is in the least restrictive educational program, has access to the  
4 academic resources, services, and extracurricular and enrichment  
5 activities that are available to all pupils, and that the decisions are  
6 based on the best interests of the minor.

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

9 (4) A pupil who is recommended to attend a community day  
10 school by a school district shall not be enrolled in a community  
11 day school pursuant to paragraph (3) unless the school district ~~has~~  
12 ~~made a finding~~ *determines* that the placement will promote the  
13 educational interests of the pupil.

14 (5) The parent, guardian, or responsible adult of a pupil enrolled  
15 in a community day school pursuant to paragraph (3) may rescind  
16 the request ~~to the~~ *for placement at the beginning of the semester*  
17 *or as soon thereafter as possible*, and the pupil shall be  
18 immediately reenrolled in the school the pupil attended at the time  
19 of the referral, or, with the consent of the parent, guardian, or  
20 responsible adult, in another appropriate school.

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

26 (d) First priority for assignment to a community day school  
27 shall be given to a pupil expelled pursuant to subdivision (d) of  
28 Section 48915, second priority shall be given to pupils expelled  
29 ~~for any~~ other reasons, and third priority ~~shall be given~~ for  
30 placement *shall be given* to all other pupils pursuant to this section,  
31 unless there is an agreement that the county superintendent of  
32 schools shall serve ~~any~~ of these pupils.

33 (e) Unless specifically ordered by a juvenile court, nothing in  
34 this section shall be construed to conflict with the existing rights  
35 of a parent or guardian or responsible adult appointed by the  
36 juvenile court pursuant to Section 726 of the Welfare and  
37 Institutions Code to make educational placement decisions for the  
38 minor.

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

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

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

11 (2) The attorney or the person holding the educational rights  
12 appointed by the court for a pupil who is under the jurisdiction of  
13 the delinquency court may, during a regularly scheduled hearing,  
14 raise any concerns with respect to whether the enrollment of the  
15 pupil in a community day school is meeting the educational needs  
16 of the pupil.

17 (3) Nothing in this subdivision is intended to limit in any way  
18 the rights or responsibilities of any person as set forth in paragraph  
19 (2) of subdivision (c) of Section 726 of the Welfare and Institutions  
20 Code and California Rule of Court 5.651.

21 SEC. 7. Section 48662.5 is added to the Education Code, to  
22 read:

23 48662.5. (a) A pupil who is involuntarily enrolled in a  
24 community day school shall have the right to reenroll in his or her  
25 former school or another comprehensive school immediately after  
26 being readmitted from the expulsion order pursuant to Section  
27 48916 or court-ordered placement. Nothing in this section is  
28 intended to limit the school placement options that a school district  
29 may recommend for a pupil being readmitted.

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

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

38 (d) Any school created for the purpose of enrolling pupils that  
39 may be assigned to a community day school pursuant to Section

1 48662 shall follow the same procedures for the involuntary transfer  
2 of pupils to a community day school set forth in this article.

3 SEC. 8. Section 48918 of the Education Code is amended to  
4 read:

5 48918. The governing board of each school district shall  
6 establish rules and regulations governing procedures for the  
7 expulsion of pupils. These procedures shall include, but are not  
8 necessarily limited to, all of the following:

9 (a) (1) The pupil shall be entitled to a hearing to determine  
10 whether the pupil should be expelled. An expulsion hearing shall  
11 be held within 30 schooldays after the date the principal or the  
12 superintendent of schools determines that the pupil has committed  
13 any of the acts enumerated in Section 48900, unless the pupil  
14 requests, in writing, that the hearing be postponed. The adopted  
15 rules and regulations shall specify that the pupil is entitled to at  
16 least one postponement of an expulsion hearing, for a period of  
17 not more than 30 calendar days. Any additional postponement may  
18 be granted at the discretion of the governing board of the school  
19 district.

20 (2) Within 10 schooldays after the conclusion of the hearing,  
21 the governing board of the school district shall decide whether to  
22 expel the pupil, unless the pupil requests in writing that the decision  
23 be postponed. If the hearing is held by a hearing officer or an  
24 administrative panel, or if the governing board of the school district  
25 does not meet on a weekly basis, the governing board of the school  
26 district shall decide whether to expel the pupil within 40 schooldays  
27 after the date of the pupil's removal from his or her school of  
28 attendance for the incident for which the recommendation for  
29 expulsion is made by the principal or the superintendent, unless  
30 the pupil requests in writing that the decision be postponed.

31 (3) If compliance by the governing board of the school district  
32 with the time requirements for the conducting of an expulsion  
33 hearing under this subdivision is impracticable during the regular  
34 school year, the superintendent of schools or the superintendent's  
35 designee may, for good cause, extend the time period for the  
36 holding of the expulsion hearing for an additional five schooldays.  
37 If compliance by the governing board of the school district with  
38 the time requirements for the conducting of an expulsion hearing  
39 under this subdivision is impractical due to a summer recess of  
40 governing board meetings of more than two weeks, the days during

1 the recess period shall not be counted as schooldays in meeting  
2 the time requirements. The days not counted as schooldays in  
3 meeting the time requirements for an expulsion hearing because  
4 of a summer recess of governing board meetings shall not exceed  
5 20 schooldays, as defined in subdivision (c) of Section 48925, and  
6 unless the pupil requests in writing that the expulsion hearing be  
7 postponed, the hearing shall be held not later than 20 calendar days  
8 before the first day of school for the school year. Reasons for the  
9 extension of the time for the hearing shall be included as a part of  
10 the record at the time the expulsion hearing is conducted. Upon  
11 the commencement of the hearing, all matters shall be pursued  
12 and conducted with reasonable diligence and shall be concluded  
13 without any unnecessary delay.

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

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

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

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

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

24 (5) Notice of the opportunity for the pupil or the pupil's parent  
25 or guardian to appear in person or to be represented by legal  
26 counsel or by a nonattorney adviser, to inspect and obtain copies  
27 of all documents to be used at the hearing, to confront and question  
28 all witnesses who testify at the hearing, to question all other  
29 evidence presented, and to present oral and documentary evidence  
30 on the pupil's behalf, including witnesses. In a hearing in which  
31 a pupil is alleged to have committed or attempted to commit a  
32 sexual assault as specified in subdivision (n) of Section 48900 or  
33 ~~committing~~ *to have committed* a sexual battery as defined in  
34 subdivision (n) of Section 48900, a complaining witness shall be  
35 given five days' notice before being called to testify, and shall be  
36 entitled to have up to two adult support persons, including, but not  
37 limited to, a parent, guardian, or legal counsel, present during ~~their~~  
38 *his or her* testimony. Before a complaining witness testifies,  
39 support persons shall be admonished that the hearing is  
40 confidential. This subdivision shall not preclude the person

1 presiding over an expulsion hearing from removing a support  
2 person whom the presiding person finds is disrupting the hearing.  
3 If one or both of the support persons is also a witness, the  
4 provisions of Section 868.5 of the Penal Code shall be followed  
5 for the hearing. This section does not require a pupil or the pupil's  
6 parent or guardian to be represented by legal counsel or by a  
7 nonattorney adviser at the hearing.

8 (A) For purposes of this section, "legal counsel" means an  
9 attorney or lawyer who is admitted to the practice of law in  
10 California and is an active member of the State Bar of California.

11 (B) For purposes of this section, "nonattorney advisor" means  
12 an individual who is not an attorney or lawyer, but who is familiar  
13 with the facts of the case, and has been selected by the pupil or  
14 pupil's parent or guardian to provide assistance at the hearing.

15 (c) (1) Notwithstanding Section 35145, the governing board of  
16 the school district shall conduct a hearing to consider the expulsion  
17 of a pupil in a session closed to the public, unless the pupil  
18 requests, in writing, at least five days before the date of the hearing,  
19 that the hearing be conducted at a public meeting. Regardless of  
20 whether the expulsion hearing is conducted in a closed or public  
21 session, the governing board of the school district may meet in  
22 closed session for the purpose of deliberating and determining  
23 whether the pupil should be expelled.

24 (2) If the governing board of the school district or the hearing  
25 officer or administrative panel appointed under subdivision (d) to  
26 conduct the hearing admits any other person to a closed deliberation  
27 session, the parent or guardian of the pupil, the pupil, and the  
28 counsel of the pupil also shall be allowed to attend the closed  
29 deliberations.

30 (3) If the hearing is to be conducted at a public meeting, and  
31 there is a charge of committing or attempting to commit a sexual  
32 assault as defined in subdivision (n) of Section 48900 or  
33 committing a sexual battery as defined in subdivision (n) of Section  
34 48900, a complaining witness shall have the right to have his or  
35 her testimony heard in a session closed to the public when  
36 testifying at a public meeting would threaten serious psychological  
37 harm to the complaining witness and there are no alternative  
38 procedures to avoid the threatened harm, including, but not limited  
39 to, videotaped deposition or contemporaneous examination in

1 another place communicated to the hearing room by means of  
2 closed-circuit television.

3 (d) Instead of conducting an expulsion hearing itself, the  
4 governing board of the school district may contract with the county  
5 hearing officer, or with the Office of Administrative Hearings  
6 pursuant to Chapter 14 (commencing with Section 27720) of Part  
7 3 of Division 2 of Title 3 of the Government Code and Section  
8 35207 of this code, for a hearing officer to conduct the hearing.  
9 The governing board of the school district may also appoint an  
10 impartial administrative panel of three or more certificated persons,  
11 none of whom is a member of the governing board of the school  
12 district or employed on the staff of the school in which the pupil  
13 is enrolled. The hearing shall be conducted in accordance with all  
14 of the procedures established under this section.

15 (e) Within three schooldays after the hearing, the hearing officer  
16 or administrative panel shall determine whether to recommend the  
17 expulsion of the pupil to the governing board of the school district.  
18 If the hearing officer or administrative panel decides not to  
19 recommend expulsion, the expulsion proceedings shall be  
20 terminated and the pupil immediately shall be reinstated and  
21 permitted to return to the classroom instructional program from  
22 which the expulsion referral was made, unless the parent, guardian,  
23 or responsible adult of the pupil requests another school placement  
24 in writing. Before the placement decision is made by the parent,  
25 guardian, or responsible adult, the superintendent of schools or  
26 the superintendent's designee shall consult with *school district*  
27 *personnel, including the pupil's teachers, and* the parent, guardian,  
28 or responsible adult regarding any other school placement options  
29 for the pupil in addition to the option to return to his or her  
30 classroom instructional program from which the expulsion referral  
31 was made. The decision not to recommend expulsion shall be final.

32 (f) (1) If the hearing officer or administrative panel recommends  
33 expulsion, findings of fact in support of the recommendation shall  
34 be prepared and submitted to the governing board of the school  
35 district. All findings of fact and recommendations shall be based  
36 solely on the evidence adduced at the hearing. If the governing  
37 board of the school district accepts the recommendation calling  
38 for expulsion, acceptance shall be based either upon a review of  
39 the findings of fact and recommendations submitted by the hearing  
40 officer or panel or upon the results of any supplementary hearing



1 conducted pursuant to this section that the governing board of the  
2 school district may order.

3 (2) The decision of the governing board of the school district  
4 to expel a pupil shall be based upon substantial evidence relevant  
5 to the charges adduced at the expulsion hearing or hearings. Except  
6 as provided in this section, no evidence to expel shall be based  
7 solely upon hearsay evidence. The governing board of the school  
8 district or the hearing officer or administrative panel may, upon a  
9 finding that good cause exists, determine that the disclosure of  
10 either the identity of a witness or the testimony of that witness at  
11 the hearing, or both, would subject the witness to an unreasonable  
12 risk of psychological or physical harm. Upon this determination,  
13 the testimony of the witness may be presented at the hearing in  
14 the form of sworn declarations that shall be examined only by the  
15 governing board of the school district or the hearing officer or  
16 administrative panel. Copies of these sworn declarations, edited  
17 to delete the name and identity of the witness, shall be made  
18 available to the pupil.

19 (g) A record of the hearing shall be made. The record may be  
20 maintained by any means, including electronic recording, so long  
21 as a reasonably accurate and complete written transcription of the  
22 proceedings can be made.

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

30 (2) In hearings that include an allegation of committing or  
31 attempting to commit a sexual assault as defined in subdivision  
32 (n) of Section 48900 or committing a sexual battery as defined in  
33 subdivision (n) of Section 48900, evidence of specific instances,  
34 of a complaining witness' prior sexual conduct is to be presumed  
35 inadmissible and shall not be heard absent a determination by the  
36 person conducting the hearing that extraordinary circumstances  
37 exist requiring the evidence be heard. Before the person conducting  
38 the hearing makes the determination on whether extraordinary  
39 circumstances exist requiring that specific instances of a  
40 complaining witness' prior sexual conduct be heard, the

1 complaining witness shall be provided notice and an opportunity  
2 to present opposition to the introduction of the evidence. In the  
3 hearing on the admissibility of the evidence, the complaining  
4 witness shall be entitled to be represented by a parent, guardian,  
5 legal counsel, or other support person. Reputation or opinion  
6 evidence regarding the sexual behavior of the complaining witness  
7 is not admissible for any purpose.

8 (i) (1) Before the hearing has commenced, the governing board  
9 of the school district may issue subpoenas at the request of either  
10 the superintendent of schools or the superintendent's designee or  
11 the pupil, for the personal appearance of percipient witnesses at  
12 the hearing. After the hearing has commenced, the governing board  
13 of the school district or the hearing officer or administrative panel  
14 may, upon request of either the county superintendent of schools  
15 or the superintendent's designee or the pupil, issue subpoenas. All  
16 subpoenas shall be issued in accordance with Sections 1985,  
17 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement  
18 of subpoenas shall be done in accordance with Section 11455.20  
19 of the Government Code.

20 (2) Any objection raised by the superintendent of schools or the  
21 superintendent's designee or the pupil to the issuance of subpoenas  
22 may be considered by the governing board of the school district  
23 in closed session, or in open session, if so requested by the pupil  
24 before the meeting. Any decision by the governing board of the  
25 school district in response to an objection to the issuance of  
26 subpoenas shall be final and binding.

27 (3) If the governing board of the school district, hearing officer,  
28 or administrative panel determines, in accordance with subdivision  
29 (f), that a percipient witness would be subject to an unreasonable  
30 risk of harm by testifying at the hearing, a subpoena shall not be  
31 issued to compel the personal attendance of that witness at the  
32 hearing. However, that witness may be compelled to testify by  
33 means of a sworn declaration as provided for in subdivision (f).

34 (4) Service of process shall be extended to all parts of the state  
35 and shall be served in accordance with Section 1987 of the Code  
36 of Civil Procedure. All witnesses appearing pursuant to subpoena,  
37 other than the parties or officers or employees of the state or any  
38 political subdivision thereof, shall receive fees, and all witnesses  
39 appearing pursuant to subpoena, except the parties, shall receive  
40 mileage in the same amount and under the same circumstances as

1 prescribed for witnesses in civil actions in a superior court. Fees  
2 and mileage shall be paid by the party at whose request the witness  
3 is subpoenaed.

4 (j) Whether an expulsion hearing is conducted by the governing  
5 board of the school district or before a hearing officer or  
6 administrative panel, final action to expel a pupil shall be taken  
7 only by the governing board of the school district in a public  
8 session. Written notice of any decision to expel or to suspend the  
9 enforcement of an expulsion order during a period of probation  
10 shall be sent by the superintendent of schools or his or her designee  
11 to the pupil or the pupil's parent or guardian and shall be  
12 accompanied by all of the following:

13 (1) Notice of the right to appeal the expulsion to the county  
14 board of education.

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

17 (3) Notice of the obligation of the parent, guardian, or pupil  
18 under subdivision (b) of Section 48915.1, upon the pupil's  
19 enrollment in a new school district, to inform that school district  
20 of the pupil's expulsion.

21 (k) (1) The governing board of the school district shall maintain  
22 a record of each expulsion, including the cause for the expulsion.  
23 Records of expulsions shall be a nonprivileged, disclosable public  
24 record.

25 (2) The expulsion order and the causes for the expulsion shall  
26 be recorded in the pupil's mandatory interim record and shall be  
27 forwarded to any school in which the pupil subsequently enrolls  
28 upon receipt of a request from the admitting school for the pupil's  
29 school records.

30 SEC. 9. If the Commission on State Mandates determines that  
31 this act contains costs mandated by the state, reimbursement to  
32 local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.

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